

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 176 of 2016

In the matter of
Petition of Maharashtra State Electricity Distribution Co. Ltd. for review of certain
aspects of Multi-Year Tariff Order dated 3.11.2016 in Case No. 48 of 2016

and

Miscellaneous Application No. 5 of 2017

Application of Maharashtra Veej Grahak Sanghatana for intervention in Case No. 176
of 2016

Coram

Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

Maharashtra Veej Grahak Sanghatana Intervener

Appearance

For the Petitioner: Shri. Sanjeev Kumar (Rep)
Shri. Satish Chavan (Rep)
Shri. Milind Digraskar (Rep)
Smt. Swati Vyavahare (Rep)

For the Intervener: Shri. Pratap Hogade (Rep)

Consumer Representatives: Smt. Ann Josey (Prayas)
Dr. Ashok Pendse (TBIA)
Dr. S. L. Patil (TBIA)

Shri. Omprakash Rathi (CMIA)
Shri. Hemant Kapadia (Individual CR)
Shri. Sunil Sonawane (Individual CR)

ORDER

Dated: 20 November, 2017

1. The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 16 December, 2016 under Section 94 (1) (f) of the Electricity Act (EA), 2003 read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 for review of certain aspects of the Multi-Year Tariff (MYT) Order dated 3 November, 2016 in Case No.48 of 2016.
2. MSEDCL's prayers are as follows:
 - a) *"To admit the Petition as per the provisions of the Section 94 (1) (f) of the Electricity Act 2003 read with Regulation 85 (a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations 2004;*
 - b) *To allow the Review of the MYT Order dated 3rd November 2016 passed by Hon'ble Commission;*
 - c) *To consider the submission made by the Petitioner and consider the same positively while deciding the Petition;*
 - d) *To correct the percentage of GFA amount considered for Wires Business for calculation of O&M Expenses for FY 15-16;*
 - e) *To consider the no. of consumers for MSEDCL as submitted for calculation of O&M Expenses for FY 14-15;*
 - f) *To consider the GFA Reconciliation submitted by the Petitioner and accordingly revise the Depreciation, Interest on Loans, Return on Equity and contribution to Contingency Reserves;*
 - g) *To consider the consumer contribution and grants for FY 14-15 and FY 15-16 as submitted by the Petitioner in MYT Petition;*
 - h) *To allow Miscellaneous Expenses of Rs.109 Crs (Refund of penalty charged to Adani Power Maharashtra Ltd) separately over and above the normative O&M expenses;*
 - i) *To allow Intangible Assets Written Off during FY 14-15;*
 - j) *Not to consider the Excess Provision for Depreciation in Prior Period Expenses;*

- k) *Not to consider the Efficiency Loss due to restatement of Distribution Loss in FY 2015-16 before the Mid Term Review;*
 - l) *To revise Energy Balance for FY 15-16 based on energy at Distribution Periphery as submitted by Petitioner;*
 - m) *To consider the realistic sales growth for HT I Industrial Category;*
 - n) *To correct the LT AG sales for 3rd Control Period based on the approved sales for FY 14-15 and FY 15-16;*
 - o) *To correct the Energy Balance for 3rd Control Period based on MSEDCL submission in the present Petition;*
 - p) *To treat Bhusawal 3 and Nashik 3,4,5 as Must Run Stations and allow power purchase from them for the 3rd Control Period;*
 - q) *To correct the Power Purchase from TAPS 3&4 for FY 17-18 and allow its impact of same;*
 - r) *To correct the Fixed Cost of Adani Power (1200 MW) Plant and allow its financial impact;*
 - s) *To allow the net impact of LT AG sales revision by considering the revision in the Energy Balance, power purchase cost and revenue from Ag sales;*
 - t) *Not to deduct the RPO penalty of Rs. 260 Crs from ARR;*
 - u) *To correct the error in calculation of Income from Additional Surcharge for the 3rd Control Period;*
 - v) *Not to consider the sharing of Efficiency Loss on account of Distribution Loss restatement before the Mid Term Review;*
 - w) *To allow the O&M Expenses as projected by the Petitioner in MYT Petition in Case No. 48 of 2016;*
 - x) *To allow the depreciation on the total GFA including grants;*
 - y) *To allow the carrying cost on the Financial Impact of this Review Petition;*
 - z) *To allow the recovery of the Financial Impact of Review Petition by way of suitable mechanism;...”*
3. While the issue-wise contentions made in the Review Petition and during these proceedings are set in greater detail subsequently in this Order, the Review Petition concludes as follows:

3.1. The Commission issued the impugned Order on 3 November, 2016 for the 3rd Control Period FY 2016-17 to FY 2019-20. The Order contains certain apparent errors; and on certain issues, MSEDCL has apprehensions over the way they have been dealt with by the Commission. Hence this Review Petition.

3.2. The Review Petition is submitted for rectification of the apparent errors and review of the certain critical rulings of the Commission so that the resultant revenue gap is appropriately re-stated. Total financial impact of the Review Petition is worked out as below:

Sr. No.	Particulars	Impact (Rs. Crs)
1	Sharing of Gains/Losses for 3 rd MYT Control Period	1,978
2	Error in Energy Balance for 3 rd Control Period, Revised Ag sales and corresponding Impact of PP, RPO and Revenue	3,643
3	Income from Additional Surcharge	1,250
4	O&M Expenses for 3 rd Control Period	10,661
5	GFA reconciliation not considered for FY 14-15	
a)	Depreciation based on revised GFA for FY 14-15 to FY 19-20	1,156
b)	Interest on Long Term Interest for FY 14-15 to FY 19-20	547
c)	Return on Equity for FY 14-15 to FY 19-20(Also Consumer contribution as per MSEDCL included)	372
d)	O&M Expenses for FY 14-15 and FY 15-16	334
e)	Contribution to Contingency Reserve for 3 rd Control Period	31
6	Prior Period Expenses/(Income) for FY 14-15	1,007
7	Sharing gains and losses for FY 15-16	2287
9	Intangible Assets Written Off for FY 14-15	10
10	A&G Expenses FY 14-15 (Refund of Penalty to APML Rs.109 Crs)	109
11	Power Purchase from Bhusawal 3 and Nashik 3,4,5	538
12	Fixed Cost of Adani Power 1200 MW	65
13	Approved Revenue from Ag Unmetered Category	2
14	RPO Penalty	260
15	Total Financial Impact of Review	24,251

3.3. The Commission has calculated the carrying cost and holding cost. Considering the same principle, carrying cost on the above financial impact should be allowed.

4. The Maharashtra Veej Grahak Sanghatana (MVGS), 3/456/4, Kestij Hotel Building, Mahasatta Chowk, Sangli Road, Ichalkaranji, Distt. Kolhapur, through its President Shri. Pratap Ganpatrao Hogade, has filed a a Miscellaneous Application (MA) on 20 March, 2017 essentially opposing MSEDCL's Review Petition and raising certain related issues.

The intervention sought has been granted by the Commission, and is being considered as MA No. 5 of 2017 in these proceedings.

5. At the hearing held on 23 March, 2017:

5.1. MSEDCL stated that:

- a. The Review Petition has been filed within the period of 45 days stipulated for review, on 16 December, 2016 .
- b. Vide letter dated 17 March, 2017, MSEDCL has informed the Commission of its precarious financial situation. MSEDCL's total liability, which was Rs 11,714 crore on 31 March, 2014, has increased to Rs. 21,000 crore as on 31 January, 2017. Therefore, the Commission may allow recovery of the impact of the Review Petition by way of a suitable mechanism.
- c. Although the MYT Order is effective from 1 November, 2016, the revenue from the revised tariff has been considered as if the Order were applicable for the entire period of FY 2016-17. This has created a substantial Revenue Gap for MSEDCL. Further, reduced Industrial sales are negatively affecting its revenue. Short term borrowing has reached Rs. 8274 crore. MSEDCL is finding it difficult to sustain its financial operations. Hence, the Commission may allow recovery of the impact of the Review Petition from 1 April, 2017.
- d. The Commission's MYT Regulations, 2015 require that the sharing of efficiency gains / loss be undertaken at the time of Mid-Term Review (MTR). However, in the impugned Order, the Commission has provisionally shared the efficiency loss on account of higher Distribution Losses for FY 2015-16 to FY 2019-20. Although MSEDCL is not challenging the Commission's calculation of agricultural sales at present, the provisional sharing of losses, which is not in accordance with the Regulations, should not be required at this stage.
- e. There is an error in the Energy Balance for the MYT Control Period. Due to this error, sales for the Control Period have been overstated. In view of the decreasing sales of Industrial category, the Commission may lower its Industrial sales projections. Further, LT Agricultural sales have been understated due to an error in the Connected Load considered for projecting sales.
- f. The Commission did not consider the reconciliation of opening Gross Fixed Assets (GFA) for FY 2014-15 submitted by MSEDCL in its MYT Petition. Further, Rs. 483 crore has been allowed as capitalization of Infrastructure Scheme Phase II for FY 2015-16 as against Rs. 2440 crore projected by MSEDCL. To the

Commission's observation that such capitalization was allowed based on the progress report furnished by MSEDCL itself, MSEDCL requested that the capitalization be reconsidered based on the Audited Accounts for FY 2015-16 which are now available.

- g. MSEDCL has separately filed a Petition for amending the Operation and Maintenance (O&M) expenses provision in the MYT Regulations. The Commission has reserved that Petition for Orders. The O&M expenses approved in the MYT Order are much lower than warranted. Consequently, MSEDCL will not be able to meet its employee expenses for FY 2017-18, and it will affect its ability to serve consumers. Hence, O&M expenses may be allowed as projected in the MYT Petition.
- h. The Commission has ruled that Additional Surcharge will not be applicable to Captive Users to the extent of their self-consumption. However, while projecting revenue from Additional Surcharge, the Commission has considered consumption of such Captive Users also. This is an error apparent on the face of the record which needs to be corrected.
- i. The Commission in its previous Tariff Orders did not allow MSEDCL's claim for any excess or short provision of depreciation in prior period adjustments. However, in the impugned Order, the Commission has deducted excess provision on depreciation through prior period adjustment. This is not consistent with its earlier Orders, and hence requires to be reviewed.
- j. Bhusawal Unit 3 and Nashik Unit 3, 4 and 5 of Maharashtra State Power Generation Co. Ltd. (MSPGCL) are costly Generating Units but, due to transmission constraints, they are being run. However, the Commission has not included these Units in its monthly Merit Order Despatch (MOD) projections. Further, there is an error in the fixed cost considered for Adani Power Maharashtra Ltd. (APML)'s 1200 MW Power Purchase Agreement (PPA). All these have led to understating the power purchase cost of MSEDCL.
- k. The Commission has included penalty refund of Rs 109 crore to APML in O&M expenses, which is subjected to sharing of efficiency losses as per the Regulations. This penalty of Rs. 109 crore was considered as Non-Tariff Income in previous years. Hence, Rs. 109 crore should be allowed over and above the O&M expenses.
- l. Provisional imposition of Renewable Purchase Obligation (RPO) Regulatory Charges has created further difficulties in the critical financial situation of MSEDCL. MSEDCL has filed a separate Petition regarding the Commission's

direction on fulfilling RPO by FY 2015-16. That Petition is pending before the Commission. Hence, the provisional imposition of RPO Regulatory Charges may be reviewed.

- m. There is an error in the intangible assets written off for FY 2014-15. The impugned Order records that the GFA Table in the Annual Accounts does not show intangible assets written off, and hence the Commission has disallowed expenses towards such write-off. However, at the same time, the Commission has reduced the GFA of MSEDCL on account of intangible assets written off. This inconsistency in the impugned Order needs to be corrected.
- n. Rs. 24,251 crore is the total impact of the review sought in the Petition. The Commission should also allow carrying cost on this amount.

5.2. MVGS stated that:

- a. As against MSEDCL's proposed Revenue Gap of Rs. 56,372 crore for the 3rd Control Period, the Commission in the impugned Order has allowed a Revenue Gap of Rs. 9,149 crore. Now, through the Review Petition, MSEDCL is seeking approval for a Gap of Rs. 24,251 crore which, if allowed, would lead to a tariff increase of 11.65%. One can have sympathy for the precarious financial position of MSEDCL, but there are limitations on what can be allowed through a Review Petition. Every issue raised needs to be scrutinized against the provisions governing review of Orders.
- b. The Auditors have made serious adverse remarks relating to the fixed assets of MSEDCL in the Annual Accounts for FY 2014-15. According to the Auditors, MSEDCL does not undertake physical verification of assets, which is mandatory. Therefore, the Commission should undertake 3rd-party verification of MSEDCL's assets. Cost benefit analysis reports should also be verified before allowing capitalization of schemes.
- c. MSEDCL's contention of reduction in HT Industrial sales may be true only upto the month of October, 2016 because, subsequent to imposition of Additional Surcharge and revised Cross Subsidy Surcharge (CSS) from November, 2016, Open Access consumers are returning to MSEDCL. As regards Agricultural sales, MSEDCL may be directed to file its MTR Petition along with the Report of the Committee on Agriculture Sales, which would have to undergo a public process.
- d. Regarding MSEDCL's request to add 3 Generating Units/Stations in the MoD stack, it is observed that power from 9 Generating Units which were not part of the MOD approved in the impugned Order is being scheduled. Considering Fuel

Adjustment Charge (FAC), there is only a 4 paisa increase in Average Power Purchase Cost (APPC), the impact of which would not be more than Rs. 300 crore for 9 months. MVGS has calculated a negligible additionality of 4 paise, considering the cumulative power purchase summary for April-December, 2016 shown on MSEDCL's website, which may be referred to. However, MVGS has no objection to some other treatment of genuinely 'must run' Generating Unit impacts if there are adverse consumer perceptions regarding passing on such increase in FAC.

- e. The Commission has allowed O&M expenses as per the provisions of the MYT Regulations, 2015. These Regulations have now achieved finality. Hence, MSEDCL's request to allow O&M expenses as per its MYT Petition cannot be allowed.
- f. The Distribution Loss trajectory may be revisited only after the Committee report becomes available.
- g. These issues raised by MSEDCL cannot be allowed through a Review Petition. MSEDCL may pre-pone filing of its MTR Petition for early relief on these issues.

5.3. Prayas (Energy Group), an Authorized Institutional Consumer Representative (CR), stated that it would give its detailed written submission. However,

- a. Most of the issues raised are not admissible in review proceedings. Such review will vitiate the tariff determination process as it does not require public consultation.
- b. The MYT Order has set out the detailed rationale for its interim assessment and dispensation regarding Agricultural sales. This can be reviewed during the MTR proceedings once MSEDCL files the report of the Committee on Agricultural Sales.
- c. The sharing of efficiency gains and losses would in any case be reviewed in MTR proceedings. To do so now would be to revisit the merits of the impugned Order, which is beyond the scope of review.
- d. Under the guise of review of O&M expenses, MSEDCL is asking the Commission to go against or completely change its own MYT Regulations. Besides, it has filed a separate Petition for this, and would also have an opportunity at the MTR stage.

- e. Income from Additional Surcharge depends on the actual Open Access sales. At the time of MTR, the actual sales under Open Access will be available, and hence it would be better to revisit this issue at the time of MTR.
- f. During the public consultation on the MYT Petition, MSEDCL had not claimed any carrying cost in order to avoid any impact on consumer tariffs, stating also that it could be met by increased efficiency, etc. But now, in this Review Petition, MSEDCL is seeking carrying cost on the amount to be allowed in review. This should not be allowed.
- g. The 'must run' dispensation for some Units because of transmission issues, etc. cannot be in perpetuity, and the issue should be examined comprehensively.
- h. The Review Petition should not be admitted. If at all the Commission decides to admit it, the further process should be through public consultation similar to the process followed for the MYT Petition.

5.4. Chamber of Marathwada Industries and Agriculture (CMIA), an Authorized Institutional CR, referred to its written submission circulated today, which makes the following among other points:

- a. MSEDCL is not serving copies of its Petitions within time, and CMIA received this Review Petition only on 7 March, 2017.
- b. The scope of review proceedings is limited. Most of the issues raised are new issues which cannot be allowed in review.
- c. MSEDCL delayed filing its MYT Petition for 2 years. MSEDCL may be directed to file its Petition written along with the Report of the Committee on Agricultural Sales, which was to be finalized by 31 March, 2017.
- d. As regards the much higher capitalization claimed, MSEDCL has submitted new material regarding the progress of Infrastructure Scheme Phase-2. Such new material cannot be a basis for review of the MYT Order.
- e. Annual Accounts of FY 2014-15 have comments of the Auditors regarding serious irregularities in accounting of fixed assets by MSEDCL, including regarding asset verification and power purchase. Under these circumstances, 3rd-party verification of MSEDCL's assets is essential. Till such verification is completed, the GFA of 31 March, 2013 may be allowed to MSEDCL. Digitization and other systems should also be put in place.

- f. For capex cost-benefit analysis, for instance for capacitor banks, impact data should be maintained. In case of sub-stations, some assessment of impact on losses on account of reactive power should be made.
- g. In its MYT Petition, MSEDCL had proposed that its Aggregate Revenue Requirement (ARR) be reduced by excess provision on depreciation through prior period adjustment. Now, MSEDCL is seeking to reverse this treatment allowed by the Commission. Such request cannot be allowed in review.
- h. In the impugned MYT Order, the Commission has restated the Distribution Loss to a higher level, indicating a higher level of inefficiencies. Hence, the Distribution Loss trajectory should be maintained at 13.50% or lower.
- i. The electricity tariff in Maharashtra is already high. Any further increase will affect the consumers very adversely.

5.5. Shri. Hemant Kapadia, an Authorized CR, stated that he would file his written submission. In the meantime, he stated the following:

- a. Although he is an Authorized CR, MSEDCL has not served the Review Petition. He became aware of it through newspaper reports.
- b. The objective of the MYT Regulations is to have stability in electricity tariff over the Control Period. The MYT Order was issued on 3 November, 2016. Now, if this Petition is allowed, this objective will be defeated, particularly since the claim amounts to around 40% of the ARR approved.
- c. The report of the Committee on Agricultural Sales is expected by 31 March, 2017. Agricultural sales contribute 25 to 30% to the total sales of MSEDCL. If there is uncertainty about such a considerable quantum of sales, no purpose will be served by admitting this Review Petition.
- d. MSEDCL is claiming depreciation on assets created by consumers under Dedicated Distribution Facility (DDF) schemes. This is not correct. Third party verification of assets will reveal the facts.
- e. As per the Tariff Policy, consumer tariffs should be within $\pm 20\%$ of the Average Cost of Supply (ACoS). At present, the tariff of most consumer categories is more than 20% of ACoS. Any tariff hike will further increase this gap.

5.6. The Commission directed MSEDCL to serve its Review Petition on authorized Individual CRs also. Institutional and Individual CRs may file their responses within 10 days, and MSEDCL may file its Rejoinder within 10 days thereafter.

5.7. The Commission noted that representations have also been received from Shri Mahaveer Jain and some others who are not CRs or parties to these proceedings. These representations are also on some points which are not specific to the issues raised in the Review Petition, and may be taken up separately during the forthcoming MTR proceedings. In the meantime, the representations will be forwarded to MSEDCL.

6. At the next hearing held on 15 June, 2017:

6.1. MSEDCL stated that:

- a. The Review Petition has now been circulated to all CRs. MSEDCL has also filed detailed replies to the submissions of Prayas (Energy Group) and MVGS.
- b. Considering the precarious financial condition of MSEDCL, relief may be granted expeditiously.

6.2. MVGS stated that:

- a. MSEDCL is seeking approval of a Revenue Gap of Rs. 24,251 crore which will have a huge impact on tariff. In its Judgment on an Appeal filed against an earlier Order of the Commission, the Appellate Tribunal for Electricity (APTEL) had ruled that public consultation is mandatory before allowing any tariff increase. Hence, the relief sought in the Review Petition cannot be granted without a proper public hearing process. Alternatively, the Commission may ask MSEDCL to file its MTR Petition earlier than 30 November, 2017 when it is due, and this Review Petition can be clubbed with it.
- b. MSEDCL has stated that any delay in granting relief may lead to its collapse and that consumers may be subjected to Load Shedding. This is not correct as it is obligatory on MSEDCL to provide electricity to its consumers.
- c. MSEDCL has also stated that it does not have a policy for physical verification of its assets and does not have any objection if the Commission undertakes it. Hence, the Commission may undertake third-party verification of MSEDCL's assets.
- d. Para 8.2 of the Tariff Policy, 2016 mandates the Commission to undertake independent assessment of base-line data of various parameters for every Circle of

the Distribution Licensees. It further mandates the Commission to institute a system of independent scrutiny of financial and technical data submitted by Licensees. The Commission may pursue these provisions of the Tariff Policy.

- e. As against the approved APPC rate of Rs 3.80/kWh, MSEDCL's actual power purchase rate for April-February, 2017 was Rs. 3.75/kWh, i.e. lower than the approved rate. However, in the current month, MSEDCL has levied average FAC of Rs. 0.56/kWh, details of which are not available on its website. The Commission in its Order dated 24 December, 2013 (Case No. 170 of 2013) had directed MSEDCL to upload the details of FAC on its website, but MSEDCL is not complying with this direction.
- f. The Bombay High Court, in its Judgment dated 11 February, 2004 has expressed its opinion on Transmission and Distribution (T&D) Losses. Further, the Supreme Court in its Judgment dated 5 November, 1993 had issued directions relating to 'protection of the interest of consumers'. These comments and directions of the Courts should be considered while deciding the Review Petition.

6.3. Prayas (Energy Group) stated that:

- a. There is no ground for review with regard to claims such as O&M expenses and Agricultural sales. O&M expenses have been approved based on the MYT Regulations, 2015. Similarly, the Commission has provided the detailed methodology and reasons while approving Agricultural sales. Such reasoned decision cannot be altered under its review jurisdiction.
- b. MSEDCL has claimed a very large amount in its Review Petition. Such impact cannot be passed on without a public consultation process. If the Commission decides to admit this Review Petition, Public Hearings should be held at several locations in the State. Many of the issues in the Review Petition can also be dealt with at the MTR stage instead.
- c. Although MSEDCL has requested immediate relief for overcoming its precarious financial situation, allowing such a large tariff increase may lead to migration of MSEDCL's high end consumers to Open Access, Solar Rooftop Net-Metering, etc. and thereby worsen its situation.
- d. Tariff increase is not the only solution for overcoming the precarious financial situation. MSEDCL should look for other options such as increased financial support from Government under the Ujjwal Discom Assurance Yojana (UDAY), etc.

6.4. Thane-Belapur Industries Association, an Authorized Institutional CR, stated that:

- a. During the public consultation process on the MYT Petition conducted in June and July, 2016, MSEDCL submitted that the Indian Institute of Technology (IIT) Report on Agricultural Consumption is expected to be finalized soon. MSEDCL should submit the status of the Report and, if it is ready, it should be submitted to the Commission.
- b. Since its first Tariff Petition in the year 2000, MSEDCL is claiming a difficult financial position for justifying tariff hikes. This cannot be a ground for relief in a Review Petition. MSEDCL should withdraw this Petition and file its MTR Petition instead.
- c. The claim of Rs 24,251 crore is very large and will have a very adverse impact on industries and other consumers. MSEDCL can include this claim in its MTR Petition, which is due by 30 November, 2017. However, if the Commission admits the Review Petition, then Public Hearings should be conducted at different locations in the State.
- d. Details of FAC should be made available on MSEDCL's website.

6.5. CMIA stated that:

- a. Even though the Commission in its Daily Order dated 23 March, 2017 had directed MSEDCL to serve its Rejoinder to all parties and CRs, MSEDCL has provided it only to those who have filed written objections and not to others.
- b. The present Petition is actually an Appeal in the guise of a review, and needs to be rejected. Instead, MSEDCL should be directed to file its MTR Petition.
- c. Industry in Maharashtra cannot afford any increase beyond the existing tariff. Presently, industries are facing a situation such that all their efforts to improve efficiency and thereby reduce costs are nullified by higher electricity tariffs.
- d. MSEDCL should try to reduce its inefficiencies, which will help it to generate savings for mitigating the Revenue Gap. With its huge skilled manpower, MSEDCL has the capability for its revival. Inefficiencies of MSPGCL and losses in MSEDCL should be reduced on priority.

6.6. Shri. Hemant Kapadia stated that:

- a. The MYT Order was issued on 3 November, 2016. Within three months, MSEDCL has filed the present Review Petition with an additional demand which is 40% of its MYT ARR. However, MSEDCL has not been able to establish any error in the impugned Order.
- b. From 2005 to 2012, consumers have faced 12 tariff hikes. Through the impugned Order dated 3 November, 2016, the Commission has decided the tariff for several years, which provided much needed visibility in tariff projections. Therefore, instead of altering such tariff at this stage, MSEDCL should club this Review Petition with its upcoming MTR Petition.
- c. The status of the IIT Report on Agricultural consumption is not known. If the Commission desires, CMIA is ready to conduct an audit of Agricultural consumption in the Aurangabad area with the help of local Engineering Colleges.
- d. MSEDCL should not claim the costs relating to its assets in the ARR since physical verification of assets is not completed.
- e. Almost every work of consumers is done through the consumers themselves with 1.3% supervision charges and hence the cost of such works should not be accounted in the ARR of MSEDCL and depreciation, etc. may also not be considered.

6.7. Shri. Sunil Sonawane, Authorized Individual CR, stated that:

- a. Even after the Commission's direction at the last hearing, MSEDCL has not served a copy of its Review Petition to him.
- b. MSEDCL has claimed Rs. 24,251 crore and carrying cost in its Review Petition. Such a large amount cannot be allowed through a Review Petition, and hence the Petition should be dismissed.
- c. The GFA, which is used for tariff determination, is yet to be verified physically. Hence, the Commission should direct MSEDCL to complete such physical verification on priority.
- d. MSEDCL should be directed to publish the Circle-wise profit and loss so that the picture becomes clear to consumers. High losses in certain Circles due to inefficiencies should not be passed on to other consumers.

6.8. In response to the issues raised, MSEDCL stated that:

- a. Initiating the MTR process will take another six to seven months. In the present Petition, MSEDCL has only claimed review on the issues where there is error apparent on the face of the record. Hence, the Review Petition needs to be decided without waiting for the MTR Petition.
 - b. MSEDCL is not challenging the Commission's decision on Agricultural sales for FY 2014-15 and FY 2015-16. The Report of the Committee set up for studying Agriculture Consumption is yet to be received by MSEDCL. Once it is received, it would be submitted to the Commission.
 - c. Since April, 2014, MSEDCL is maintaining its Asset Register in the SAP system. The Companies Act mandates physical verification of assets on annual basis. Although at present MSEDCL does not have a policy for physical verification, it is in the process of framing such a policy.
 - d. Details of FAC are being uploaded on MSEDCL's website regularly. However, if there is a problem in viewing or downloading it, it will be sorted out immediately.
- 6.9. The Commission noted that the Review Petition has been filed under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 which specifies as follows:

Review of decisions, directions, and orders:

"85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."

Thus, the ambit of review is limited and MSEDCL's Petition has to be evaluated accordingly. However, before passing on the impact of such review, if any, the Commission will ensure that the process of public consultation mandated under the EA, 2003 and as stipulated in the APTEL Judgment is complied with.

7. MSEDCL's contentions and the Commission's rulings on each issue are set out below, considering the provisions of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 which governs review.

ISSUE I: GFA considered for Wires Business for normative computation of O&M Expenses for FY 15-16

MSEDCL's Submission

8. While approving the O&M expenses of Wires Business for FY 2015-16, the Commission has considered the Opening GFA as Rs. 32,073 crores instead of Rs. 35,678 crore. This is an error apparent on the face of record and needs correction. The opening GFA considered by the Commission is shown in following Table:

Particulars	Units	Approved by MERC
Parameters for O&M Expenses		
Opening GFA for Wires	Rs. Crore	32,073
Opening GFA for Supply	Rs. Crore	3,964
Total	Rs. Crore	36,037

9. The Commission has approved an opening GFA of Rs. 40,510 crore for FY 2015-16. Considering the methodology adopted by the Commission, the GFA pertaining to Distribution Franchisees of Rs. 868 crore is to be deducted from the opening GFA. Thus, the opening GFA for MSEDCL works out to Rs. 39,642 crore. Accordingly, with a 90:10 ratio, the Opening GFA for Wires and Supply should have been as given below:

Particulars	Units	Approved by MERC
Parameters for O&M Expenses		
Opening GFA for Wires	Rs. Crore	35,678
Opening GFA for Supply	Rs. Crore	3,964
Total	Rs. Crore	39,642

10. The Commission has correctly considered the Opening GFA for Supply Business as Rs. 3,964 crore as worked out in the above Table. However, it has not considered Rs. 35,678 crore for the Wires Business. The Commission may review this apparent error in the bifurcation of opening GFA in Wires and Supply Business used for calculation of the O&M expenses for FY 2015-16. Accordingly, the computation of O&M expenses as per norms for FY 2015-16 needs to be corrected.

Commission's Analysis and Ruling

11. **Upon verification of the financial model of the MYT Order, the Commission observes that, while determining the O&M expenses of the Wires Business for FY 2015-16, instead of applying the opening GFA of FY 2015-16, the opening GFA of FY 2014-15 has been wrongly applied.**

12. Hence, the review is allowed on this issue. MSEDCL may claim the impact on this account in its forthcoming MTR Petition, which is expected to be filed shortly.

ISSUE II: Number of consumers considered for normative computation of O&M Expenses for FY 14-15 – Distribution Franchisee consumers reduced twice

MSEDCL's Submission

13. In its MYT Petition, MSEDCL had submitted 2,18,53,000 as the total number of consumers, excluding consumers in the Distribution Franchisee (DF) areas. The Commission has considered this number as including DF and reduced it further, thereby resulting in reduction of consumers of DF twice. This has resulted in reduction of O&M expenses to that extent. Considering the number of consumers as 2,09,20,000 instead of 2,18,53,000 is an error apparent on the face of the record and needs to be corrected.
14. Further, considering the reduction of 29,000 consumers in the Agricultural category in the impugned MYT Order, the number of consumers to be considered for calculation of O&M expenses is 2,18,24,000.

Commission's Analysis and Ruling

15. Upon verification of the financial model underlying the impugned MYT Order, the Commission observes that the number of consumers considered for determining O&M expenses for FY 2014-15 was arrived at after deducting the number of consumers in DF areas from the total number of consumers (i.e. 2,18,53,000) submitted by MSEDCL. As the figure of 2,18,53,000 is of consumer excluding the DF areas, deduction of DF consumers from this netted total of consumers leads to double deduction of DF consumers.
16. Accordingly, the review is allowed on this issue. MSEDCL may claim the impact on this account in its forthcoming MTR Petition, which is expected to be filed shortly.

Issue III: Non-consideration of GFA reconciliation submitted by MSEDCL

MSEDCL's Submission

17. In its earlier MYT Order dated 26 June, 2015 in Case No. 121 of 2014, the Commission had directed MSEDCL to submit the reconciliation of the GFA so as to enable it to scrutinise, verify and ascertain the claims before they can be allowed. Accordingly, a reconciled statement of the difference amounting to Rs. 1,336 cores in the opening

balance of FY 2013-14 was submitted but was inadvertently not considered by the Commission in the impugned MYT Order.

18. In a similar case of FY 2007-08, after due diligence with respect to Cost-Benefit Analysis, the Commission had reviewed its decision and allowed all capex-related expenses. In spite of allowing this capex-related expense, the same (Rs. 815 crore) has not been considered in the opening GFA for subsequent years. Similarly, Rs. 208 crore and Rs. 112 crore of capitalisation at Head Office needs to be considered in the GFA but has inadvertently has not been considered. Similar type of capital expenditure booked at Head Office has been allowed for subsequent years.
19. Hence, the Opening GFA for FY 2014-15 needs to be revised considering the impact of previously disallowed additions, as shown in the following Table:

Table 1: Revised Opening GFA for FY 2014-15

<u>Particulars</u>	<u>Rs. Crore</u>	<u>Ref. Tariff Order</u>
Opening GFA for FY 2014-15 as per MERC	36,505	
Difference in GFA approved in FY 2007-08 – DPR/ Non DPR Schemes	815	17 August 2009 – Case No. 116 of 2008
GFA Disallowed in FY 2009-10, Capitalisation undertaken by Corporate Office and not falling under the Scheme	208	30 December 2011 Case No 100 of 2011
GFA Disallowed in FY 2011-12, Capitalisation by Corporate	112	11 June 2014- Case No. 38 of 2014
Opening GFA for FY 2014-15 revised	37,639	

20. The correction in GFA will impact a) O&M Expenses b) Interest on Long Term Loans c) Depreciation d) Return on Equity (RoE) e) Interest on Working Capital (IoWC) and f) Contribution to Contingency Reserves.
21. Further, for FY 2015-16, under the scheme “Infra Plan Works-II”, the Commission has approved capitalisation of only Rs. 483 crore as against Rs. 2,440 crore proposed by MSEDCL. The Commission has not provided any reference for consideration of Rs. 483 crore capitalization. MSEDCL had submitted the capitalization amount based on the information available at the time of submission of the MYT Petition. During the MYT Petition proceedings, it had not submitted a revised capitalization figure under the scheme “Infra Plan Works-II” in its replies to data gaps or in its additional submissions. Considering the submissions made by MSEDCL, the capitalization under the scheme

“Infra Plan Works-II” for FY 2015-16 should have been Rs. 2,440 crore. Accordingly, the Commission may revise the GFA for FY 2015-16. To substantiate this claim, MSEDCL in this Review Petition has submitted the progress of Circle wise capex and capitalization works executed under ‘Infra Plan Works-II’ for FY 2015-16.

22. Further, for the 3rd MYT Control Period, the Commission has considered the Opening GFA by adjusting grants and consumer contribution and allowed the Depreciation. However, during FY 2014-15, there was a change in the accounting policy. As per the Audited Accounts, the GFA balance is without considering the amount of Government Grants, subsidies and consumer contribution. 1/15th of this latter amount is accounted as Non-Tariff Income and the deferred amount is shown in capital reserves. Hence, the Commission wrongly deducted the Government Grants, subsidies and consumer contribution from the GFA for the computation of depreciation, which is an error apparent on the face of the record and needs correction.

MVGS’ Submission

23. In this Review Petition, MSEDCL has submitted the details of Circle-wise capex and capitalization along with the progress of works executed under the Infra II Scheme for FY 2015-16 as Annexure II, and sought revision in the GFA for FY 2015-16. Such new submissions cannot be permitted at the time of review and need to be rejected.
24. Many serious irregularities relating to maintaining of records on capital expenditure and inventory, etc. have been cited Auditors in the Audit Report of MSEDCL for FY 2014-15. MSEDCL being a corporate entity, maintenance of proper records with details and verification of all Fixed Assets once a year is compulsory. MSEDCL has already spent more than Rs.50,000 crore on capital expenditure in the last 10 to 12 years. Detailed inventory with regard to each Capital Expenditure Scheme must be digitized and the location and existence of the works must be shown by MSEDCL before claiming any further capitalization from FY 2014-15. Expenditure on capex schemes is being paid for by consumers and MSEDCL has to be held accountable for safeguarding the fixed assets purchased by it.
25. If MSEDCL is not maintaining proper records of inventory, and does not undertake periodic monitoring and review and Cost Benefit Analysis of each Capital Expenditure Scheme, the Commission should disallow such capitalization retrospectively.
26. The Commission may appoint third-party Auditors to check the physical inventory and digitization of all fixed assets with the help of the Materials Management Department of an Indian Institute of Management (IIM). Alternatively, in order to give justice to both MSEDCL and consumers, the Commission should direct a third-party investigation under Section 128 of the EA, 2003 for the inspection, checking and confirmation of all the GFA.

Prayas' Submission

27. GFA should only be adjusted for past capital expenditure if the Commission has not disallowed those expenses. The Commission may allow any addition to GFA only if the cost benefit analysis for capitalisation has been completed as per the Commission's directions and if the Commission has previously approved such capitalisation.

CMIA's Submission

28. In its Review Petition, MSEDCL has submitted details of Circle-wise capex and capitalisation along with progress of works executed under the Infra II Scheme and requested to revise the GFA for FY 2015-16. MSEDCL submitted the available information in the MYT Petition and is now submitting additional information in this Review Petition. Therefore, opportunity of hearing on this additional information must be given to the consumers through Public Hearings.
29. The Auditors have reported serious irregularities relating to maintaining records of capital expenditure and inventory in the Annual Report of MSEDCL for FY 2014-15. Being a corporate entity, MSEDCL needs to maintain proper records of assets and inventory with details of purchase invoices, date of receipt, specification, location of asset, details of depreciation made, etc.
30. When the Auditors have commented that they could not identify the physical existence of fixed assets and inventory, MSEDCL cannot claim the value of GFA as on 31 March, 2014. Till detailed third-party investigation and physical verification of assets and inventory with its value is done, only the GFA as on 31 March, 2013 should be allowed.
31. The Commission may appoint a third-party Auditor for investigation of the physical existence of assets and inventory and their value for the last ten years to arrive at the exact GFA and to recommend clear and transparent procedures for maintenance of records with digitization of each fixed asset and inventory. The Auditor should also be entrusted with scrutiny of the Cost Benefit Analysis Report of the Capital Expenditure Schemes completed till date.

MSEDCL's Reply

32. MSEDCL's request to re-consider the capitalization for the Infra Plan II is because the Commission had taken information from submissions which were not a part of the proceedings of the MYT Petition for arriving at its figure. None of MSEDCL's submissions in the MYT Petition proceedings contains the figure of Rs. 483 crore which has been considered by the Commission. In its MYT Petition submissions, MSEDCL had

shown the capitalization under the scheme “Infra Plan Works-II” for FY 15-16 as Rs. 2,440 Crore.

33. In this Review Petition, MSEDCL has updated information for capitalization under that scheme for FY 15-16 as Rs. 2,247.4 crore. Only to substantiate the claim of capitalization for Infra Plan II as submitted in the MYT Petition has MSEDCL provided this additional updated information. MSEDCL has sought the capitalization for Infra Plan II only as per its submissions in the MYT Petition. Hence the claim that MSEDCL has submitted new information is not correct.
34. For the Infra Schemes, MSEDCL has a 3-tier system for verification of actual assets commissioned:
- a. The Implementing Agency carries out inspection during the execution of works.
 - b. Thereafter, MSEDCL’s designated Technical Team along with the Agency’s representative conducts the inspection and joint measurement of the executed work.
 - c. Funding agency (REC/PFC)-appointed Third-party Inspection Agency also conducts the verification of executed work.
 - d. After rectification of defects pointed out during verification of works, the assets are taken over by MSEDCL, and accordingly the Work Completion Report is prepared.

It is only on the basis of the Work Completion Report that the capitalization of assets takes place.

35. Further, under R-APDRP/IPDS, infrastructure in all the towns has been mapped through the IT System. All 128 towns have been declared as go-live as on October, 2014. Asset verification under R-APDRP/IPDS has been completed by the Third-party Agency appointed by PFC.
36. MSEDCL has implemented the SAP system for integration with various systems of Finance, Operations and Projects in its daily working. In the SAP, coding for all the assets has been done and any addition in the GFA gets captured only through the SAP system. Therefore, each asset is verifiable.
37. The qualifications made by the Auditors are in respect of physical verification of assets and do not say that assets do not exist. Since power is actually being supplied to various consumers through the installed infrastructure, the existence of the assets cannot be doubted.
38. Initially, MSEDCL conducts an internal audit of accounts, including all expenditures relating to infrastructure projects. These accounts are further audited by a statutory auditor appointed by MSEDCL and empaneled with the Comptroller and Auditor General

of India (CAG). In addition, the Annual Accounts are also audited by CAG as a part of supplementary audit, as provided in the Companies Act, 2013. While scrutinizing the ARR/APR Petitions, the Commission also undertakes a prudence check. Chartered Accountant firms were appointed to physically verify the General Assets at Head Office and Circle levels in FY 2014-15. Hence, proper scrutiny of assets is being done at various levels.

39. At present, MSEDCL does not have any Policy for physical verification of fixed assets. It will frame a policy. If the Commission feels it useful to carry out physical verification of assets, MSEDCL does not have any reservation.
40. Vide its letter dated 26 July, 2017, MSEDCL has submitted that capitalization for FY 2015-16 should be considered based on the Audited Accounts which are now available. As per Audited Accounts for FY 2015-16, MSEDCL has capitalized Rs. 2387.93 crore in respect of Infra Plan Works-II.

Commission's Analysis and Ruling

A. GFA Reconciliation for FY 2014-15

41. **The Commission in its earlier MYT Order dated 26 June, 2015 in Case No. 121 of 2014 had directed MSEDCL to submit the reconciliation of its GFA in the Audited Accounts and Regulatory Accounts as follows:**

“4.3.5 The Commission has scrutinised the submissions of MSEDCL, and allowed Rs. 53.82 Crore as claimed for FY 2007-08. However, with regard to the consequential adjustment of Opening GFA and corresponding capital expenditure-related expenses for subsequent period from FY 2008-09 onwards, no computations of such additional claims have been submitted by MSEDCL. For these additional claims, the opening loan, opening equity and opening GFA for the respective years will have to be restated and reconciled vis-a-vis those approved. The Commission notes that the figures of opening GFA, opening equity and opening loan for FY 2013-14 shown in the Petition are different from the closing figures for FY 2012-13 as approved in Case No. 38 of 2014. MSEDCL's response to the Commission's query regarding this difference is not satisfactory. It has submitted that it is difficult to provide reconciliation of loan and equity due to the normative approach followed in earlier Orders. MSEDCL has neither claimed such adjustments nor has it provided any computations or supporting documents for the purpose. MSEDCL needs to reconcile and submit its computation of claims for past periods to enable the Commission to scrutinise, verify and ascertain such claims before they can be allowed. MSEDCL may do so in its next Tariff filing. In this Order, the Commission has allowed only the amount of Rs 53.82 Crore, as claimed by MSEDCL.”

Thus, MSEDCL was directed to submit the reconciliation for the Commission's scrutiny before allowing its recovery.

42. In response, in its subsequent MYT Petition, MSEDCL made the following submission:

“Table 12: Depreciation for FY 14-15

<i>Particulars</i>	<i>Rs. Crs</i>		
	<i>FY 2014-15 (Approved)</i>	<i>FY 2014-15 (Actual)</i>	<i>Deviation</i>
<i>Opening GFA</i>	<i>36,504</i>	<i>37,840</i>	<i>1,336</i>
<i>Depreciation</i>	<i>1,940</i>	<i>2,081</i>	<i>141 %</i>
<i>Depreciation</i>	<i>5.31%</i>	<i>5.50%</i>	<i>0.18%</i>

2.10.2 MSEDCL submits that the Opening GFA considered by MSEDCL for FY 2014-15 is on basis of Actual Audited Figure. There is a difference between approved and actual Opening GFA considered by MSEDCL because of certain disallowances by Hon'ble Commission in the past. Details of the same are provided in the following table.

<i>Particulars</i>	<i>Rs. crore</i>	<i>Ref. Tariff Order</i>
<i>Closing GFA as per MSEDCL as on FY 2013-14</i>	<i>37,841</i>	
<i>Closing GFA as per MERC Order as on FY 2013-14</i>	<i>36,505</i>	
<i>Difference</i>	<i>1,336</i>	
<i>Disallowance of IDC on excess capitalisation</i>	<i>42</i>	<i>Order dated 26.06.2015 - Case No. 121 of 2014</i>
<i>Difference in GFA approved in FY 2007-08 - DPR / Non-DPR Schemes</i>	<i>815</i>	<i>17th August 2009 - Case No. 116 of 2008</i>
<i>GFA disallowed in FY 2009-10, Capitalisation undertaken by Corporate Office and not falling under Scheme</i>	<i>208</i>	<i>30th December 2011 - Case No. 100 of 2011</i>
<i>GFA disallowed in FY 2011-12, Capitalisation undertaken by Corporate Office and not falling under Scheme</i>	<i>112</i>	<i>11th June 2014 - Case No. 38 of 2014</i>
<i>Disallowed Capitalisation Expenses on Single Phasing (Rs. 9508 crore - Rs. 9428 crore)</i>	<i>80</i>	<i>17 August, 2009 - Case No. 116 of 2008</i>
<i>Opening Balance difference in FY 2007-08</i>	<i>80</i>	
<i>Total Disallowed</i>	<i>1,336</i>	

2.10.3 Therefore, MSEDCL most humbly requests the Hon'ble Commission to approve the Depreciation as shown in Table 12.”

43. From the above, it will be seen that, in its last MYT Petition, MSEDCL had only provided the reasons for the mismatch between its actual GFA and the GFA approved by the Commission. The Tariff Orders referred to in the above Table are the Orders through which the Commission had disallowed such capitalization. Further as against, its request of allowing GFA reconciliation of Rs. 1336 crore in MYT Petition, in review Petition, MSEDCL seeks approval of Rs. 1,135 crore (815 + 208 + 112) as the reconciled GFA.
44. In this regards, the Commission notes that as against MSEDCL's claim of disallowance of GFA of Rs. 112 crore pertaining to capitalization undertaken at corporate Office, in Order dated 11 June, 2014 (Case No. 38 of 2014) the Commission has already allowed such capitalization as follows:

Table 2: Capitalisation for FY 2011-12 (Rs. crore)

<i>Particulars</i>	<i>Order in Case No. 19 of 2012</i>	<i>Actual</i>	<i>Approved after final Truing up</i>
<i>DPR Schemes</i>	5095.00	6053.20	6053.20
<i>Non-DPR Schemes</i>	892.00	605.34	605.34
<i>Other Adjustments by Corp Office</i>	-	112.00	112.00
<i>Total Capitalization</i>	5987.00	6770.54	6770.54

Further, MSEDCL's claim of allowing capitalization of Rs. 208 crore in FY 2009-10 has already been rejected by the Commission in its Order dated 15 June, 2012 (Case No. 21 of 2012). Similarly, disallowance of capitalization for FY 2007-08 through Order dated 17 August, 2009 was on account of non submission of cost-benefit analysis of the capital expenditure schemes carried out in FY 2007-08. Under such circumstances, MSEDCL's request of allowing reconciliation and thereby increase in GFA by Rs. 1,135 crore (815 + 208 + 112) cannot be allowed.

B. Capitalization of 'Infrastructure Plan-II' Scheme for FY 2015-16

45. According to MSEDCL, it had submitted the capitalization of 'Infrastructure Plan-II' scheme as Rs. 2,440 crore but the impugned MYT Order allowed only Rs. 483 crore without stating how this figure was arrived at. The Commission notes that this figure of Rs. 483 crore was taken from the Progress Report on the Infrastructure Schemes (upto March, 2016) submitted by MSEDCL vide its e-mail dated 8 September, 2016. Such periodic Progress Reports are a part of the process of monitoring of the implementation of capital expenditure schemes which have been

approved in principle by the Commission. Hence, there is no error in considering Rs. 483 crore as the capitalization for FY 2015-16. However, considering the audited figures of capitalization for FY 2015-16 now available, MSEDCL may make its claim in its forthcoming MTR Petition along with the Cost Benefit Analysis report.

C. Depreciation for FY 2014-15

46. MSEDCL has referred to the change in its Accounting Policy (from FY 2014-15) whereby GFA is being accounted after deducting consumer contribution and grants. MSEDCL has contended that, therefore, the deduction by the Commission of consumer contribution and grants from the opening GFA in the 3rd Control Period for calculation of depreciation is not correct. The Commission notes that in the 'Depreciation' section of its MYT Petition, MSEDCL had not mentioned any such change in Accounting Policy. Hence, the Commission undertook this deduction in the GFA as per the provisions of MYT Regulations, 2015. It cannot be termed an error. However, MSEDCL may take this up in its MTR Petition.

D. Third-party Verification of GFA

47. The Commission notes that the Companies Act requires MSEDCL to undertake regular verification of its assets. MSEDCL has stated that it is framing a policy for such asset verification. MSEDCL should provide the details of this policy in its forthcoming MTR Petition and the further steps proposed considering the statutory requirements.

ISSUE IV: Provision for Bad Debts on Trade Receivables

MSEDCL's Submission

48. In the impugned MYT Order, the Commission has approved the contribution to Contingency Reserve at 0.25% of the opening GFA for the respective years of the 3rd Control Period. However, considering the revision in GFA sought in this Review Petition, the contribution to Contingency Reserve also needs revision.

Commission's Analysis and Ruling

49. As there is no error in the GFA, as explained above, the question of allowing the additional impact towards the contribution to Contingency Reserve in these proceedings does not arise.

ISSUE V: Administrative and General Expenses (Miscellaneous Expenses of Rs. 109 crore)

MSEDCL's Submission

50. With regard to Administrative and General (A&G) Expenses, in its MYT Petition MSEDCL had claimed the amount of Liquidated Damages of Rs.109 crore refunded to APML as per the Commission's Order dated 30 March, 2015 (Case No. 144 of 2014). However, the Commission approved the O&M Expenses based on the norms without considering this refund made by MSEDCL.
51. In the True-up of FY 2013-14, the Commission had considered the Liquidated Damages of Rs. 126 crore collected by MSEDCL as Non-Tariff Income. However, as per the Order dated 30 March, 2015, the Liquidated Damages worked out to Rs. 17 crore. Accordingly, MSEDCL refunded the net amount of Rs. 109 (126 – 109) crore in FY 2014-15 and accounted for it in A&G Expenses.
52. This is a new and important matter or evidence which could not be produced by MSEDCL during the last MYT proceedings. MSEDCL had not anticipated this disallowance, and hence it was not submitted then. Therefore, the Commission may allow the expense of Rs. 109 crore separately over and above the normative of O&M expenses.

Prayas' Submission

53. Based on the legal implications of the Commission's decision, MSEDCL is bound to take appropriate steps. However, it is not clear if the Commission has allowed recovery of the refund from the consumer tariff. This cannot be a matter for consideration in review proceedings. If MSEDCL is permitted to recover these costs through tariff, then FAC would be the appropriate mechanism for their recovery as per the Regulations.

MSEDCL's Reply

54. The benefit of the penalty collected from APML has already been passed on to consumers in the previous truing up. Since MSEDCL has now refunded the penalty under the Head of A&G expenses, the same needs to be recovered.

Commission's Analysis and Ruling

- 55. In impugned MYT Order, O&M expenses for FY 2014-15 have been determined by applying the norms (linked to number of consumers, energy wheeled/sales, GFA) specified in the MYT Regulations, 2011. While doing so, the amount of Rs. 109 crore refunded to APML was not allowed as additional expenses over and above the O&M**

expenses computed based on the norms. The Commission notes that, when MSEDCL initially recovered the Liquidated Damages of Rs. 126 crore from APML, this amount was considered as Non-Tariff income for FY 2013-14. Vide its Order dated 30 March, 2015 in Case No. 144 of 2014 (on a Petition of APML), the Commission ruled that the Liquidated Damages amount due to MSEDCL was only Rs. 17 crore and directed MSEDCL to refund the excess recovery of Rs. 109 crore to APML. Accordingly, MSEDCL has refunded this amount to APML. Thus, since the ARR in the MYT Order has instead been reduced by the original and larger amount of Rs. 126 crore, the refund of Rs.109 crore has to be taken into account as an expense in the ARR. Hence, the review claim is allowed to that extent. MSEDCL may claim the impact on this account in its forthcoming MTR Petition.

Issue VI: Intangible Assets written off in FY 2014-15

MSEDCL's Submission

56. The Commission has disallowed an amount of Rs. 10 crore under 'Other Expenses' pertaining to write-off of intangible assets stating that no such amount was seen in the GFA Table. However, while doing so the Commission has considered the written off assets in the GFA calculation and reduced the GFA to that extent.
57. The Commission has disallowed these expenses of Rs. 10 crores, but at the same time reduced the write-off of this amount crores from the GFA, thus understating the GFA for FY 2014-15 by Rs. 10 crores. This is an error apparent on the face of the record and needs correction.

Commission's Analysis and Ruling

58. **There is no error in the impugned Order, as contended by MSEDCL. The reduction in GFA on account of write-off of tangible Assets and the disallowance of expenses on account of disposal of intangible Assets are distinct from each other. According to Note 12 to the Annual Accounts for FY 2014-15, MSEDCL has disposed of tangible Assets of Rs. 10.11 crore, and hence the Commission has reduced the GFA to that extent. As against MSEDCL's claim of Rs. 10 crore under Other Expenses on account of disposal of intangible assets, the Commission did not find any write-off of such assets in the Annual Account. Hence, in its MYT Order, the Commission did not allow expenses on account of disposal of intangible assets.**

VII. Treatment of Depreciation in Prior Period Expenses

MSEDCL's Submission

59. The approval of Prior Period Expenses to the extent of excess provision for depreciation of Rs. 1006.76 crore is not in line with the treatment of prior period claims in previous Orders, and also not as per the provisions of the Regulations pertaining to Depreciation. Therefore, this is an error apparent on the face of the record and needs correction.
60. While the Commission has approved the excess provision for depreciation of Rs. 1,006.76 crore, it has not considered the under-provision for depreciation of Rs. 494.21 crore. In all previous Orders, the Commission has not approved the prior period claims of operating expenses, depreciation, interest and finance charges, material-related expenses, etc. since these have been approved in the respective years as per the applicable norms/regulations and upon detailed scrutiny.
61. The amount of depreciation shown in the Prior Period Expenses or Income pertains to previous years, i.e. upto FY 2013-14. The Commission has approved the depreciation till FY 2013-14 based on regulatory norms and the provisions of the applicable Tariff Regulations.
62. Accordingly, the Commission may not consider the excess provision for Depreciation allowed in the truing up of FY 14-15 and increase the ARR for FY 14-15 to that extent.

MVGS' and CMLA's Submissions

63. In its MYT Petition, MSEDCL had sought approval to Prior Period Expenses to the extent of excess provision of Depreciation of Rs.1,006.76 crore and for its deduction from the ARR for FY 2014-15. MSEDCL had explained that, while implementing the new SAP-ERP system, it had found that depreciation on Fixed Assets had not been properly charged in the earlier years. MSEDCL then recomputed the depreciation retrospectively as per the newly implemented SAP-ERP and as per the regulatory provisions ascertained the excess / short depreciation charged on various fixed assets.
64. As suggested by MSEDCL, the Commission deducted Rs.1006.72 crore from the ARR towards Prior Period Expenses. Now, in this Review Petition, MSEDCL is citing the earlier practice of the Commission in its previous Tariff Orders. However, the reason submitted by MSEDCL for excess provision for Depreciation of Rs.1006.76 crore for FY 2014-15 was different in the previous years. This is a special case, and the Commission rightly considered MSEDCL's prayer to deduct Rs.1006.76 crore from its ARR. The contrary prayer in this Review Petition should not be allowed.

MSEDCL's Reply

65. In previous Tariff Orders, the Commission has disallowed claims towards the prior period depreciation on the ground that depreciation had been approved in the respective years as per the applicable norms/regulations. However, in the impugned Order, the Commission has deviated from the principle adopted in previous Tariff Orders. Since depreciation for previous years had been allowed on normative basis, the claim towards the prior period depreciation ought not to have been considered by the Commission for FY 2014-15.

Commission's Analysis and Ruling

66. In the impugned MYT Order, the Commission had considered Prior Period Expenses on account of excess provision of depreciation as follows:

“Commission's Analysis and Ruling

In reply to a query, MSEDCL stated that it has provided the details of Prior Period Expenses/ (Income) and Exceptional Items in the Petition. Considering the methodology adopted by Commission in the past, it has claimed the Prior Period Expenses/(income) for FY 2014-15 as per the details shown in the following Table along with reconciliation with the Audited Accounts.

Table 3-73: Net Prior Period Expenses/Income for FY 2014-15 as per Annual Accounts and as claimed, submitted by MSEDCL (Rs. crore)

Particulars	As per Annual Accounts (31 March, 2015)	MSEDCL Claim
<i>Income relating to Previous Year</i>		
<i>Receipts from Consumers</i>	124.43	124.43
<i>Interest Income</i>	0.26	0.26
<i>Excess Provision for Depreciation</i>	1,006.76	1,006.76
<i>Excess Provision for Interest and Finance Charges</i>	33.63	-
<i>Other Excess Provision</i>	133.58	133.58
<i>Excess Provision for Power Purchase</i>	-	-
<i>Other Income</i>	823.21	823.21
<i>SUB TOTAL (A)</i>	2,121.87	2,088.24
<i>Expenses / Losses relating to Previous Year</i>	-	-
<i>Short Provision for Power Purchase</i>	132.46	132.46
<i>Operating Expenses</i>	9.63	-
<i>Depreciation under provided</i>	494.21	-
<i>Interest and Other Charges</i>	10.08	-

<i>Particulars</i>	<i>As per Annual Accounts (31 March, 2015)</i>	<i>MSEDCL Claim</i>
<i>Administration Expenses</i>	<i>15.11</i>	<i>-</i>
<i>Material Related Expenses</i>	<i>8.01</i>	<i>-</i>
<i>Adjustment to Past Billing</i>	<i>239.07</i>	<i>239.07</i>
<i>SUB TOTAL (B)</i>	<i>908.56</i>	<i>371.53</i>
<i>Net Prior Period Expenditure/(Income) C = (B) - (A)</i>	<i>(1,213.31)</i>	<i>(1,716.71)</i>

From the Reconciliation Statement presented above, the Commission observes that MSEDCL has not claimed prior period items such as operating expenses, depreciation, interest and Finance Charges, material related expenses, etc., as these expenses have been approved in the respective years as per the applicable norms and upon detailed scrutiny. This is in line with the treatment given by the Commission in its earlier Order.

After scrutiny of the submissions and verifying these from the Audited Accounts, the Commission has approved the net Prior Period Income/Expense of Rs (1716.71) crore as claimed by MSEDCL.”

67. Table 3-73 of the impugned Order shows that, although the Annual Accounts recorded Prior Period Income as Rs. 2121.87 crore and Expenses as Rs. 908.56 crore, in its MYT Petition MSEDCL had claimed only Rs. 2088.24 as Prior Period Income and Rs. 371.53 crore as Prior Period Expenses. As recorded in the Order, MSEDCL stated that it has claimed the prior period items based on the methodology adopted by the Commission in its past Orders. In the Prior Period Income of 2088.24 crore, MSEDCL had included Rs. 1006.76 crore towards the excess provision for depreciation. Hence, the Commission considered that amount as Prior Period Income.
68. Thus, in the MYT proceedings, MSEDCL had itself sought prior period adjustment of Rs. 1006.76 crore towards the excess provision for depreciation. MSEDCL cannot altogether revise its prayer through review proceedings and now seek reversal of such prior period adjustment.
69. Moreover, the reason for such adjustment was the erroneous computation of depreciation in earlier years. Although the Commission allows depreciation to MSEDCL based on its approved GFA, the rate of depreciation is taken from its Annual Accounts. This is because, in each Tariff Petition in the past, MSEDCL has stated that depreciation in the Annual Accounts has been calculated based on the Tariff Regulations. Hence, the higher depreciation considered by MSEDCL in its Accounts in past years has led to excess depreciation being passed on to consumers.

Thus, there is no error is considering Rs. 1006.76 crore as Prior Period Income on account of the excess provision for depreciation.

VIII. Sharing of Efficiency Gains and Losses for FY 2015-16

MSEDCL's Submission

70. The Commission has calculated the efficiency loss due to restatement of Distribution Loss in FY 2015-16. It has approved the Energy for FY 2015-16. In the relevant Table of the MYT Order, the Energy at the distribution periphery is shown as 1,16,148 MU. However, while computing Efficiency Loss, the actual energy input at the Distribution Periphery was taken as 1,16,184 MU, resulting in overstatement of sales by 36 MU. This is an error apparent on the face of record and needs correction.

MVGS' and CMA's Submission

71. The due date for submission of True-up Petition for FY 2015-16 and the MTR for FY 2016-17 is already over. Therefore, the Commission may direct MSEDCL to file its MTR Petition within a month instead of raising issues in this Review Petition.

MSEDCL's Reply

72. The last date for filing the Petition for True-up of FY 2015-16 and MTR, as per the MYT Regulations, 2015, is 30 November, 2017.

Commission's Analysis and Ruling

73. There is a typographical error in the MYT Order inasmuch as the Energy at the Distribution Periphery should have been shown as 1,16,148 MU instead of 1,16,184 MU for computing the provisional efficiency loss. However, as the final computation will be undertaken in the True-up of FY 2015-16 in the forthcoming MTR when all the figures will undergo changes considering actuals, no separate relief on this account is required at this stage.

IX. Energy Balance for FY 2015-16

MSEDCL's Submission

74. In the approved Energy Balance for FY 2015-16 in the MYT Order, the Commission has considered Energy at the Distribution Periphery as 1,16,148 MU instead of 1,15,059 MU which was submitted by MSEDCL. Energy at the Distribution Periphery is based on

metered energy at the sub-station end which has been verified with the final data received from Maharashtra State Load Despatch Centre (MSLDC). MSEDCL had submitted the energy at Distribution Periphery based on the provisional data available when filing its MYT Petition. However, instead of revising the Inter-State Losses, being a derived number based on the approved sales for FY 2015-16, the Commission revised the metered figure of Energy at the Distribution Periphery. This is an error apparent on the face of the record and needs correction.

75. Further, the MYT Regulations, 2015 provide for the sharing of gains/losses for FY 2015-16 and FY 16-17 at the time of MTR. Accordingly, the Efficiency Loss due to restatement of Distribution Loss should be done only at the time of MTR and not during the MYT Tariff determination.
76. MSEDCL is facing precarious financial situation and its balance sheet is already stressed. Due to this advance sharing of Losses, MSEDCL will be further affected and its ability to invest for loss reduction will be further strained. Hence, the Commission may consider the Efficiency Loss due to restatement of Distribution Loss in the forthcoming MTR proceedings based on the actual performance instead requiring it to share the losses at the MYT stage.

Commission's Analysis and Ruling

77. **The Energy Balance for FY 2015-16 was approved on a provisional basis considering the details available and provided at the MYT determination stage. Hence, there is no error in the MYT Order. The actual figures of input energy at the Distribution Periphery would be considered at the time of final true-up of FY 2015-16 in the forthcoming MTR process.**
78. **Regarding the sharing of efficiency loss on account of the higher Distribution Loss provisionally determined for FY 2015-16, both on a provisional basis, the Commission had held as follows in the impugned MYT Order:**

“4.21 Sharing of Efficiency Loss on account of Distribution Loss restatement

As elaborated earlier in this Order, the sales for FY 2015-16 have been reassessed based on the revised Agriculture Index approved for the year. Accordingly, the Distribution Loss has been restated as 18.24%, as against 14.51% claimed by MSEDCL. At the same time, the power purchase quantum and expense reported for FY 2015-16 by MSEDCL has been provisionally allowed, as it is said to be the actual procurement till March, 2016. However, while doing so, the effect of restatement of a higher Distribution Loss has not been passed on to the consumers.

The impact of restatement of Distribution Loss as compared to the earlier approved target will have to be provisionally estimated and the efficiency loss on this account shared by MSEDCL and the consumers. Sharing of gains and losses on account of controllable factors is normally done at the time of subsequent truing-up of expenses. However, the impact of the sharing of efficiency loss on account of Distribution Loss restatement is significant. In case it is deferred, the future impact in terms of the additional carrying/holding cost may also be very substantial.

In view of the above, and considering its circumstances, the Commission has considered it appropriate to undertake the sharing of efficiency loss on account of the restatement of Distribution Loss in FY 2015-16 on a provisional basis.”

79. Thus, the Commission had explained the rationale for requiring the provisional sharing of the efficiency loss on account of the higher Distribution Loss for FY 2015-16 prior to the truing-up stage. It was a considered decision of the Commission, and not an error that would be a ground for review.

X. Energy Balance for MYT Control Period

MSEDCL’s Submission

80. The Commission had calculated the Energy Balance for the 3rd Control Period, as summarised below:

Particulars	Units	FY 16-17	FY 17-18	FY 18-19	FY 19-20
LT sales	MU	60,624	64,294	68,314	72,713
HT sales	MU	24,524	25,575	26,674	27,823
HT and Renewable OA Credit	MU	420	420	420	420
Sales to OA Consumers (Conventional)	MU	6,165	6,412	6,668	6,935
Total Sales to Consumers	MU	91,733	96,701	102,076	107,890
Distribution Loss	%	17.76%	16.26%	14.76%	13.26%
Distribution Loss	MU	18,872	17,941	16,946	15,876
Energy Available for Sale at 33kV	MU	110,606	114,642	119,023	123,766

81. From the above Table, considering the total energy available for sale at 33 kV and the total sales to consumers for FY 2016-17, the Distribution Loss works out to 17.06% and not 17.76% as shown by the Commission. i.e. $[(1,10,606 - 91,733)/(1,10,606) \times 100]$. Similar discrepancies can be seen in the computations for the subsequent years as well. Thus, this is an error apparent on the face of the record and needs correction.

82. Further, considering the trend based on the actual HT I Industrial sales for the first 6 months of FY 16-17 (H1) as compared to the approved projected sales, the Commission may revise the sales for the HT I Industrial category for the 3rd Control Period.
83. Considering the approved Distribution Loss trajectory, the Commission may reduce the sales of HT I Industrial category to the extent of the error in Distribution Loss. Considering the reduction in sales of HT I Industrial Category during FY 2016-17, the Commission may revise the Energy Balance appropriately.

MVGS' and CMLA's Submission

84. MSEDCL has claimed that there are errors in the calculation of approved Distribution Losses for the MYT Control Period. It also seeks revision in the figures of sales to HT-I Industrial consumers for the Control Period based on the actual sales in H1 of FY 2016-17. However, the sales were lower in that period because many consumers had opted for Open Access. Thereafter, in the impugned MYT Order, the Commission increased the Cross-Subsidy Surcharge (CSS) and also introduced Additional Charge. Since this has made Open Access unviable or less attractive, Industry category consumers subsequently reverted to MSEDCL. Hence, the sales to Industrial consumers during the MYT Control Period are bound to go increase. The Commission may reject MSEDCL's proposal to revise the projected Industrial category sales downwards.
85. During the Public Hearings, many consumers had raised the issue of manipulation of Agriculture consumption data by MSEDCL, including raising of fictitious energy bills, etc. Hence, MSEDCL's claims regarding the number of Agriculture consumers and their Connected Load are not reliable. Therefore, the Commission may reject the claim of MSEDCL with regard to a higher number of Agriculture consumers and Connected Load.

MSEDCL's Reply

86. HT-I Industrial sales from April, 2016 to February, 2017 were 20,591 MU as against the approved sales of 21,674 MU. Further, the Open Access quantum for that period was 7,503 MU. By the end of FY 2016-17, it is expected to reach around 8000 MU. The Commission had projected 6,385 MU under Open Access, which has already been exceeded in February, 2017. Thus, it is not true that most HT OA consumers have returned to MSEDCL.

Commission's Analysis and Ruling

- 87. There is no error in the percentage of Distribution Loss computed on the basis set out by the Commission in its MYT Order. For the 3rd MYT Control Period, the Energy Balance was prepared based on a bottom-up approach, i.e. approved sales**

were grossed up by the Distribution and Transmission Losses to arrive at the power purchase requirement. Distribution Loss has been considered as per the trajectory approved by the Commission. The Distribution Loss in terms of energy in MUs has been computed by applying the target Distribution Loss to the approved sales (excluding OA sales) and 6% Loss on OA sales.

88. MSEDCL's proposal to reduce the projected Industrial category sales would be assessed during the MTR proceedings considering the actual data for FY 2016-17.

XI. LT Agriculture Sales

MSEDCL's Submission

89. Due to non-consideration of the corresponding increase in Agricultural Connected Load compared to the approved increase in the number of Agricultural consumers, the approved sales figure for FY 16-17 (24,088 MU) is lower than for FY 15-16 (24,105 MU). This is an error apparent on the face of the record and needs correction.
90. Comparison of the number of Agricultural consumers and Connected Load for FY 2015-16 and FY 2016-17 as approved by the Commission in the MYT Order is as shown below:

Particulars	FY 2015-16	FY 2016-17	Change
Number of Consumers (Lakh)			
Un-Metered	15.19	13.91	-2.000
Metered	23.52	27.75	4.230
Total	39.43	41.65	2.220
Connected Load (Lakh HP)			
Un-Metered	83.42	72.93	-10.490
Metered	116.20	127.07	10.870
Total	199.62	200.00	0.380

From the above Table, it is evident that Connected Load has not been increased commensurately with the increase in the number of consumers. In the case of the un-metered Agricultural consumer category, the Connected Load has reduced by around 5 HP per consumer corresponding to the reduction in number of consumers. However, for the metered category, the increase considered in the Connected Load is very low, at around 2.5 HP per consumer compared to the increase in the number of consumers. Thus, the increase in the Connected Load for the metered category is not commensurate with the increase in number of consumers.

91. The Energy Balance for the 3rd Control Period needs to be corrected to incorporate increased Agricultural sales and the reduction in HT Industrial sales. The consequent higher power purchase will result in increased expenses on power purchase and RPO.
92. Therefore, the Commission may consider the impact of revised LT Agricultural sales, HT I Industrial sales, revised Energy Balance and the consequent revision in power purchase, Renewable Energy required against the RPO and the revenue from LT Agricultural sales, and allow the resultant financial impact of Rs. 3,643 crore.

MVGS' and CMA's Submission

93. At the Public Hearings during the MY proceedings, many consumers raised the issue of manipulation of the Agriculture consumption data by MSEDCL, including raising of fictitious energy bills, etc. Hence, its claims regarding the higher number of Agricultural consumers and Connected Load are not reliable. Hence, the Commission may reject the claim for increasing the number of Agricultural consumers and their total Connected Load.

Thane-Belapur Industries Association (TBIA, an Authorised Institution CR)'s Submission

94. Agricultural consumption is a crucial parameter in the ARR. Consumers have been consistently raising doubts regarding the over-statement of such consumption by MSEDCL. During the MYT proceedings, MSEDCL had stated that a Committee has been appointed and that the IIT, Mumbai is studying the issue. The Report of the Committee was expected by March, 2017. The Commission should direct MSEDCL to submit this Report.

Commission's Analysis and Ruling

95. **In its impugned MYT Order, the Commission has stated that the methodology for Agricultural sales estimation has been applied pending the Report of the Committee on Agricultural Sales. MSEDCL had stated that the Report is expected by March, 2017. Hence, the Agriculture sales figures would be revisited in the forthcoming MTR considering the Committee Report.**
96. **As far as the impact of increased power purchase, if any, is concerned, the FAC mechanism allows it to be passed through to the extent that the Distribution Loss is within the approved limits. Hence, there would be no financial impact on MSEDCL on this account.**

XII. Power Purchase from Bhusawal Unit 3 and Nashik Units 3, 4 and 5

MSEDCL's Submission

97. In its MYT Order, the Commission has approved power purchase from certain Thermal Power Stations/Units during the 3rd Control Period. It did not include power purchase from MSPGCL's Bhusawal Unit 3 and Nashik Units 3 to 5. However, due to transmission constraints, these Stations are in fact being scheduled despite being higher in the Merit Order Despatch (MOD) Stack due to their higher Energy Charges.
98. This aspect of transmission constraint as a result of which power is required from these Units inspite of higher Energy Charges has not been taken into account by the Commission, and these Units have been omitted from the projected MOD for the 3rd Control Period. MSEDCL has not been allowed the higher power purchase cost to that extent. This is an error apparent on the face of the record and needs to be rectified.
99. Due to non-consideration of these Units in the MOD Stack, the monthly FAC increases even after revision of the tariff for no fault of MSEDCL. Also, the recovery of actual expenditure by way of delayed FAC severely affects its cash flow. This creates unnecessary disconnect with the consumers and a financial burden due to the additional cost over and above the approved tariff.

Prayas' Submission

100. Overall changes in the Merit Order are not sufficient grounds for review. Any deviation in power purchase expenses can be recovered via FAC.

CMIA's Submission

101. MSEDCL is raising issues on increase of power purchase expenses on account of Technical constraints like Transmission which are temporary in nature. If there is variation in power purchase expenses, MSEDCL can levy FAC on the consumers. Hence there is no need to increase power purchase expenses.

Commission's Analysis and Ruling

102. **While approving the monthly MOD in the MYT Order, the effect of the transmission constraint resulting in procurement from these Units at that time was not considered as it was difficult to project the future impact particularly since, during the public consultation process, MSEDCL had stated that these constraints were expected to ease within six months. The operation of MOD is always subject to transmission constraints and other conditions. This had been explained by the**

Commission in its earlier Order dated 29 January, 2016 in Case No. 121 of 2015 on MSEDCL's Petition for review of the previous MYT Order passed in 2015 as follows (and which was also quoted at para. 4.4 of the impugned MYT Order):

“34. The Commission notes that the MOD principles have been in operation for a long time, and their implementation has been dealt with even in the first Tariff Order for MSEDCL in 2002. It is well settled that issues such as transmission constraints, technical minimum of Thermal Generating Stations etc. need to be considered while operating MOD. The power purchase cost approved for subsequent years in the Tariff Orders is an estimation based on various ex ante inputs. During the operating period of the Tariff Order, actual power purchase cost may vary on account of various factors. Power purchase cost is treated as an uncontrollable element for pass-through in the Tariff, provided the procurement meets the test of prudence. Variation in power purchase cost is passed on to consumers by MSEDCL through the FAC mechanism, which is subject to vetting. In this background, the Commission is of the view that no need for any further clarification as far as MOD is concerned.”

103. Thus, there is no need to review the MOD as approved in the impugned MYT Order. Variations in power purchase cost on account of running of costlier Units on account of transmission constraints is being passed on to consumers through the FAC mechanism.

XIII. Power Purchase from Tarapur Units 3 and 4 in FY 2017-18

MSEDCL Submission

104. In the impugned MYT Order, the Commission has approved the power purchase from 'Must Run' Stations/Units in the 3rd Control Period. The power purchase from the Tarapur Atomic Power Station (TAPS) Units 3 and 4 has been considered as 4,711 MU instead of 3,232 MU submitted by MSEDCL.

105. In contrast, the Commission has approved the power purchase quantum and cost for the Nuclear Power Corporation of India Ltd. (NPCIL) Generating Station as submitted by MSEDCL.

106. Thus, allowing 4,711 MU instead of 3,232 MU submitted by MSEDCL for TAPS Units 3 and 4 is an error on the face of record which requires correction. The Commission may accordingly revise the MOD Stack and approve the revised power purchase cost and quantum for FY 2017-18.

Prayas' Submission

107. This could be a typographical or calculation error which needs further investigation by the Commission.

Commission's Analysis and Ruling

108. The MYT Order states that the generation from NPCIL has been considered as projected by MSEDCL. However, for FY 2017-18, the TAPS Units 3 and 4 generation has been considered differently. The Commission finds that this inconsistency was because of an incorrect linkage in the Financial Model underlying the MYT Order.

109. Nevertheless, this was in the nature of a projection for FY 2017-18. Any difference is being passed on to consumers through the FAC mechanism. Hence, there is no need to restate the power purchase expenses on this account.

XIV. Fixed Cost of power from APML (1200 MW)

MSEDCL's Submission

110. While approving the capacity charge for FY 2016-17 for 1200 MW from APML, the Commission has considered Rs. 1.366 per unit as the fixed cost per unit, which is in fact for FY 2017-18, and similarly for the entire Control Period. The fixed rate for FY 16-17 is actually Rs.1.386 per unit. Thus, there is an error apparent on the face of record. The following Table shows the calculations of fixed cost considered by the Commission and proposed by MSEDCL in its MYT Petition:

FY	Approved by Commission			Submitted by MSEDCL			Impact
	Quantum	Rate	Fixed Cost	Quantum	Rate	Fixed Cost	
	MU	Rs/Unit	Rs. Crore	MU	Rs/Unit	Rs. Crore	
FY 2016-17	8220	1.366	1123	8220	1.386	1139	16
FY 2017-18	8220	1.346	1106	8220	1.366	1123	16
FY 2018-19	8220	1.326	1090	8220	1.346	1106	16
FY 2019-20	8243	1.307	1077	8243	1.326	1093	16
Total			4396			4462	65

111. Hence, there is an additional impact of Rs. 65 crore in power purchase. The Commission may provide the additional financial impact in the ARR.

Prayas' Submission

112. This could be a typographical or calculation error which needs verification by the Commission.

Commission's Analysis and Ruling

113. **The Commission finds that this is an error in the MYT Order. However, since it is in the nature of a projection of power purchase expenses, the difference between the projected and the actual expenses will be adjusted through the FAC mechanism. Hence, there is no need to restate the power purchase expenses on this account.**

XV. Approved Revenue from Unmetered Agricultural Category

MSEDCL's Submission

114. In Annexure II of the impugned Order, surplus revenue of Rs. 15 crore has been shown for the Energy Charge for LT IV(A): LT – Agriculture Unmetered - Pumpsets tariff category. However, being unmetered, this category is charged on the basis of HP and not per unit. Therefore, in the Energy Charge column, there need not be any value. Thus, this is an error apparent on the face of the record and needs correction.

115. Similarly, in Annexures III and IV, revenue of Rs. 6 crore and Rs. 11 crore has been shown for FY 2018-19 and FY 2019-20, respectively. Thus, the revenue from revised tariffs for FY 2017-18 to FY 2019-20 requires correction, and the difference allowed.

Prayas' Submission

116. This could be a typographical or calculation error which needs to be verified by the Commission.

Commission's Analysis and Ruling

117. **The Commission finds that there is a typographical error in Annexures II, III and IV of the Order. However there are no revenue implications. The revenue from Energy Charges shown against the un-metered Agricultural category is to be merged with the revenue from Demand Charges and Wheeling Charges. The total revenue shown from the sub-categories in Annexures II, III and IV is correct.**

XVI. Income from Additional Surcharge

MSEDCL's Submission

118. The Commission has determined the Additional Surcharge for FY 2016-17 as Rs. 1.11 per unit. The Commission has also ruled that Additional Surcharge will not be applicable to Captive Power Plant (CPP) Users to the extent of their self-consumption.
119. The Commission has approved Open Access sale for the 3rd Control Period of which almost 50% is on account of CPP sales. While calculating the revenue from Additional Surcharge, the Commission has applied the Surcharge to the entire quantum of Open Access sales, including CPPs. Considering the levy of Additional Surcharge on non-captive consumers, the projected income from Additional Surcharge has been overstated by 50%.
120. Thus there is an error apparent on the face of the record in the calculations of income from Additional Surcharge. Considering the approved income from Additional Surcharge for the 3rd Control Period, the net impact on the revenue gap would be an additional Rs. 1250 crore, as shown in the Table below.

Particulars	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Approved Income from Additional Surcharge (Rs. Crs)	284	710	738	768
Revised Income from Additional Surcharge (Rs. Crs)	142	355	369	384
Total Impact (Rs. Crs)	1250			

Prayas' Submission

121. This could be a typographical or calculation error which may be verified by the Commission.

Commission's Analysis and Ruling

122. **This is an error inasmuch as the revenue from Additional Surcharge has been computed based on total Open Access sales without deducting the sales to captive users. As Additional Surcharge is not applicable to Open Access captive users, the projected revenue from Additional Surcharge has been overstated to that extent. The projection of revenue from Additional Surcharge will be corrected accordingly at the MTR stage considering revised Open Access sales.**

XVII. Sharing of Gains or Losses in MYT Control Period

MSEDCL's Submission

123. In the impugned Order, the Commission has calculated the impact of sharing of additional power purchase burden owing to re-instatement of Distribution Loss. However, the MYT Regulations, 2015 specify that the sharing of efficiency gains and losses shall be done at the time of the MTR. Therefore, the sharing of gains and losses for the 3rd Control Period is beyond the purview of the MYT proceedings. Thus, this is an error apparent on the face of the record.

124. MSEDCL is passing through a precarious financial situation. Due to such advance sharing of loss, MSEDCL will be further adversely affected and its ability to invest in loss reduction will be further strained, thereby making it difficult to achieve the approved loss trajectory.

MVGS' and CMA's Submissions

125. MSEDCL has been spending very large amounts on Capital Expenditure Schemes for reducing Technical Loss. Any increase in Distribution Losses over and above the approved Loss level is only on account of Commercial Losses. The Commission considered FY 2015-16 as the base year for approving the Distribution Loss for the Control Period. Any lowering of the Distribution Loss trajectory would only encourage inefficiency and theft.

126. The objective of the EA, 2003 is to encourage efficiency. No Act or Regulation can allow theft to be encouraged. Hence, the revised higher level of Distribution Loss for the 3rd Control Period is not appropriate. The Commission may either maintain the Distribution Loss trajectory at 13.50%, including EHV sales, or lower it during the Control Period.

Prayas' Submission

127. Projecting efficiency gains or losses is not against the Commission's Regulations. As gain or losses are to be shared in the respective years, the Commission can project such sharing of loss or gain based on the possible Loss trajectories. Any deviation would be recovered or refunded based on actual performance and would be reviewed during the MTR. The request for not allowing gain/loss sharing questions the approach of the Commission itself and delves into the merits of the case. Thus, it is not a ground for review.

MSEDCL's Reply

128. The MYT Regulations, 2015 clearly state that the sharing of gains and losses shall be done at the time of the MTR. The exercise of sharing of gains and losses for the 3rd Control Period was beyond the purview of the MYT proceedings and hence an error apparent on the face of the record.

Commission's Analysis and Ruling

129. **In the MYT Order, the Commission has explained the reasons for requiring the sharing of the additional power purchase burden as follows:**

“5.23 Impact of Sharing of additional Power Purchase burden

...While approving the Distribution Loss trajectory, the Commission had discussed the excess power purchase in the 3rd Control Period due to the Distribution Loss restatement necessitated in FY 2015-16. Such additional power purchase expenditure owing to the higher loss level is significant, and passing on its entire burden to consumers cannot be justified. Hence, the Commission has decided on the sharing of the impact between consumers and MSEDCL in the ratio of 1:2, i.e. two-thirds would be borne by MSEDCL and the remaining by consumers, on a provisional basis. This is also in line with the provisions of the MYT Regulations, 2015 relating to sharing of efficiency loss on account of controllable expenses.”

It is evident that the sharing of the additional power purchase liability between MSEDCL and its consumers was a considered decision of the Commission, the rationale for which is recorded in the Order. Thus, there is no error or other ground for review.

XVIII. O&M Expenses in MYT Control Period

MSEDCL's Submission

130. On 17th September, 2016, MSEDCL submitted a Miscellaneous Application (MA) in the MYT proceedings in Case No. 48 of 2016. The main thrust of the MA was the modification of the MYT Regulations, 2015 to the extent applicable to the determination of O&M Expenses. Therefore, the Commission may hear both the matters (the MA Application and the main Petition) separately.

131. The MYT Regulations, 2015 specified norms based on the Wholesale Price Index (WPI) and Consumer Price Index (CPI) for computing the O&M expenses which result in much lower and unrealistic O&M expense approval. The WPI/CPI methodology only covers

the aspects of inflation/deflation only and does not account for the higher O&M costs on account of growth in consumer base, infrastructure requirement, etc.

132. Employee expenses constitute around 75% of the total O&M expenses. The employee expenses do not escalate at the lower rate as worked out as per the specified norms, but increase periodically following Pay Commission Reports for Government employees. The pay revision as per the Pay Commission is after 10 years, whereas at MSEDCL it is after 5 years. Considering the approved O&M expenses and large share of employee expenses, MSEDCL is left with very little for Repairs and Maintenance (R&M) activities.

133. In fact, the O&M expenses approved for FY 2019-20 are even lower than were approved for FY 2015-16. Hence, on this ground alone, the CPI/WPI methodology in the MYT Regulations, 2015 cannot be implemented fully since it does not even cover the escalation.

134. Lower approved O&M Expenses means severe restrictions on the O&M works and will result in adverse impact on quality of power supply and consumer services.

135. The Commission may approve the O&M expenses considering the realistic trend as proposed in its MYT Petition and shown below:

	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Projected O&M Expenses	7,388	8,192	9,410	10,394

136. These expenses are absolutely necessary for the operations of MSEDCL and has been projected at a reasonable level and may, therefore, be considered.

Prayas' Submission

137. Under the pretext of review, MSEDCL is seeking that the Commission go against its own Regulations. Review of approved O&M expenses determined accordingly cannot be part of a Review Petition as:

- i. The Commission has taken a view the MYT Order in accordance with its own Regulations and, thus, there is no error apparent on the face of the record and MSEDCL is questioning the merits of the decision.
- ii. The process for O&M expense determination is specified in the MYT Regulations, and changes in the MYT Regulations affect all Licensees.

138. The Commission's Regulations should not be subject to frequent changes. The Commission has introduced the inflation-linked methodology for determining O&M expenses after taking cognizance of the expenditure and performance of Distribution Licensees. The need to ensure operational efficiency still holds good, and therefore the Regulations should not be modified.

139. As per the Planning Commission's estimates, Maharashtra has amongst the highest O&M expenses on a per consumer basis in India and the opportunity to rationalize these expenses during the MYT period must not be lost. In case of wide variation, MSEDCL can seek relief during true-up process.

CMIA's Submission

140. In Case No. 123 of 2016, CMIA has shown how MSEDCL had taken advantage of the provisions relating to O&M expenses in the earlier MYT Regulations, 2011 and steeply increased these expenses and burdened consumers. CMIA has opposed any changes in this regard proposed by MSEDCL in the MYT Regulations, 2015.

Shri. Praneta Desale (Authorised Individual CR)'s Submission

141. Out of the additional Rs. 24,251 crore sought in review of the MYT Order, Rs. 10,661 crore is on account of O&M expenses. The presently approved O&M expenses of MSEDCL amount to 65 paise/kWh. MSEDCL's review claim will increase this by 35 paise/kWh. In contrast, in Gujarat, the O&M expenses amount to 20 to 25 paise/kWh; in Telangana and Chhattisgarh, they are 45 to 50 paise/kWh.

MSEDCL's Reply

142. The O&M expenses approved for FY 2019-20 are lower than even the expenses approved for FY 2015-16. Being absolutely necessary for its operations, MSEDCL has requested the Commission to review the methodology of O&M expenses. Being a controllable cost, any variation in O&M expenses at the time of true-up will add to the financial burden on MSEDCL by way of sharing of gains/losses.

143. The Commission has also deviated from the provisions of the MYT Regulations 2015 and considered three-year instead of one-year average variation in WPI and CPI since the escalation factor worked out to be negative. Thus, the Commission had exercised its powers under Regulation 102 to remove difficulties. This implies that the current provisions of the MYT Regulations, 2015 for O&M expenses are not adequate to cover the realistic growth in such expenses.

144. In fact, the escalation factor of 2.97% considered by the Commission (based on the WPI/CPI Norms) for estimating O&M expenses is not sufficient even to cover the rise seen in Dearness Allowance in the last few years, which is in the range of 6%-10%. Employee cost constitutes around 75% of the total O&M expenses. Therefore, considering the low approved O&M expenses and large share of Employee Expenses, MSEDCL is left with very little for R&M activities.
145. The share of O&M Expenses in the total cost of supply for Maharashtra in the Report referred to by Prayas is 1.3% for FY 2011-12, which is in line with the All India average. States like Chhattisgarh, West Bengal, Delhi, Uttarakhand, Uttar Pradesh, Punjab, Kerala and others have a higher share of O&M Expenses in the total cost of supply. Therefore, it is not correct to say that Maharashtra has among the highest O&M expenses.

Commission's Analysis and Ruling

146. **In the impugned MYT Order, the Commission had acknowledged certain issues in the application of the O&M expense norms of the MYT Regulations, 2015 in respect of MSEDCL. While continuing to consider the WPI and CPI, which is the basis of the relevant Regulation, the Commission made adjustments in the period of consideration of these indices in exercise of its power to remove difficulties. In this regard, the MYT Order reads as follows:**

“The Commission has analysed the WPI and CPI data for the previous year FY 2015-16. By applying 60% weightage to WPI and 40% weightage to CPI for FY 2015-16, the inflation factor works out to 0.74%. After applying the efficiency factor of 1%, the escalation factor for projecting O&M expenses from FY 2016-17 works out to (-) 0.26%.

The Commission recognises that the escalation rates based on actual WPI and CPI have reduced significantly during the last two years as compared to previous years. It may not be appropriate to apply this negative inflation factor for projecting the O&M Expenses from FY 2016-17 onwards as some such expenses are likely to increase on a year-to-year basis. The Commission also notes that, for the O&M expenses for its Tariff Regulations, 2014, the CERC considered the escalation rate computed based on the 5-year average WPI and CPI from FY 2008-09 to FY 2012-13 applying 60% and 40% weightage, respectively, and compared these with the actual increase in O&M expenses.

The inflation factor based on the provisions of the MYT Regulations, 2015 is negative due to the reduction in WPI in FY 2015-16 over FY 2014-15. The Commission is of the view that it would be more appropriate at this stage to apply the WPI and CPI variation over a period longer than a year so that wide fluctuations in any particular year are smoothened. Hence, the Commission has applied the three-year average variation in WPI and CPI to

arrive at the inflation factor for projecting the O&M Expenses from FY 2016-17 onwards.

Based on this approach, the inflation factor considering 60% and 40% weightage to WPI and CPI, respectively, works out to 3.97%. After applying the efficiency factor of 1%, the escalation factor to be considered for projecting O&M expenses from FY 2016-17 to FY 2019-20 would be 2.97%. Hence, in exercise of its powers under Regulation 102 of the MYT Regulations, 2015 to remove difficulties, the Commission has computed the O&M Expenses for FY 2016-17 to FY 2019-20 applying an escalation factor of 2.97% considering the three-year instead of one-year average variation in WPI and CPI.”

147. The approval of O&M expenses took into account certain factors which called for some adjustments in the application of the Regulations. Thus, a considered view was taken by the Commission on the issues raised by MSEDCL during the MYT proceedings, which are essentially the same as it is raising now. MSEDCL’s claim is, therefore, outside the restricted ambit of review.
148. However, the Commission has separately considered the Miscellaneous Application referred to by MSEDCL. In its recent Order dated 23 October, 2017 on that Application (Case No. 123 of 2016), the Commission has stated as follows:

”10. The weightage of 40% to CPI and 60% to WPI specified in the MYT Regulations, 2015 is based on the Tariff Regulations of the Central Electricity Regulatory Commission (CERC), though the CERC has considered a 5-year average as against one year in the MYT Regulations, 2015. However, considering the issues raised by MSEDCL and other Licensees, the Commission is of the prima facie view that these weightages and certain other stipulations may require to be revisited depending on the characteristics of generation, transmission and distribution activities. The Commission is separately considering the need to amend the MYT Regulations, 2015 suitably, in which case MSEDCL and others would have the opportunity to provide comments during the public consultation process.”

Accordingly, through a Public Notice dated 26 October, 2017, the Commission has sought public comments, by 17 November, 2017, on certain proposed amendments to the provisions of the MYT Regulations, 2015 relating to O&M expenses, for which an Explanatory Memorandum has also been provided. The draft amendments address some of the concerns raised by MSEDCL in these proceedings with regard to the allowable level of O&M expenses.

XIX. RPO Regulatory Charge for RPO shortfall in FY 2013-14

MSEDCL's Submission

149. In its impugned MYT Order, the Commission has imposed a RPO Regulatory Charge for shortfall in RPO compliance for FY 2013-14 to the extent of Rs. 260.33 crore (Rs. 161.72 crore for Non-Solar + Rs. 98.61 crore for Solar).
150. MSEDCL has filed a separate Petition in Case No. 44 of 2016 seeking carrying forward of its RPO shortfall and setting aside the ruling on the extent of disallowance of expenditure on purchase of Renewable Energy Certificates (RECs) and/or actual power procurement to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16. In the absence of conclusive adjudication of Case No. 44 of 2016, such penalty is premature. The Commission ought to have given MSEDCL a chance to make its submission in the matter. Therefore, on the principle of natural justice, MSEDCL seeks review of the penalty of Rs. 260 crore imposed by the Commission.

Prayas' Submission

151. MSEDCL was given sufficient time to meet its accumulated RPO commitments which it chose not to do for several years. The Commission had taken an informed call to mandate purchase of RECs to meet the shortfall based on its own Regulations and based on directions from the APTEL on RPO compliance in 2015. Therefore, MSEDCL's request for review on these grounds delves into the merits of the decision and has raised no error apparent or new information.

MSEDCL's Reply

152. In the absence of conclusive adjudication of Case No. 44 of 2016, such penalty is premature. The Commission ought to have given MSEDCL a chance to make its submission in the matter. Therefore, on the principle of natural justice, MSEDCL has sought review of the penalty of Rs. 260 crore.

Commission's Analysis and Ruling

153. **In the impugned MYT Order, the Commission has set out in detail the background and reasons for deducting the amount of RPO Regulatory Charge, and held as follows:**

“6.5. In its Order dated 4 August, 2015 in Case No. 190 of 2014 verifying the RPO compliance of MSEDCL for FY 2013-14, the Commission invoked Regulation 12 (provision for imposing RPO Regulatory Charges) of the RPO Regulations, 2010 with regard to the shortfall in compliance of RPO targets [upto FY 2013-14]...

The Commission estimated the cost of compliance if such shortfall is met by way of purchase of RECs at the floor price as Rs 260.33 Crore (Rs 161.72 Crore for NonSolar + Rs 98.61 Crore for Solar).

The Commission allowed MSEDCL to meet the shortfall by purchase of Solar and non-Solar RECs and/or by purchase of RE power to fully meet the shortfall against the RPO targets by the end of March 2016.

The Commission also clarified that, considering the circumstances set out in the said Order which have led to it invoking the provisions of Regulation 12, the expenditure on purchase of RECs and/or actual power procurement shall not be passed through to consumers to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16.

Subsequently, the Commission has also undertaken verification of RPO compliance by MSEDCL for FY 2014-15 in its Order dated 14 September, 2016 in Case 16 of 2016. In that this Order, the Commission determined a shortfall in fulfilment of RPO for FY 2014-15 as well. The cumulative shortfall against the Solar RPO at the end of FY 2014-15 stands at 1201.81 MU, and the cumulative shortfall for Non-Solar RPO is 1724.49 MU.

The Commission is yet to verify RPO compliance by MSEDCL for FY 2015-16. For FY 2015-16, MSEDCL has submitted RE procurement as 8544 MU out of the total energy procurement of 116,073 MU, which amounts to 7.36% as against the RPO target of 9% (0.5% for Solar and 8.5% for Non-Solar). While the detailed break-up of RE procurement between Solar, Non-Solar and Mini/Micro Hydro sources for FY 2015-16 will be scrutinised will be taken up at the time of verification of RPO compliance, it is evident from the information submitted for provisional true-up for FY 2015-16 by MSEDCL that there would be a shortfall in compliance of RPO targets for FY 2015-16 as well.

Thus, it appears that MSEDCL has not taken any substantive or effective action towards fulfilment of the shortfall in RPO targets, as per the directions in Case 190 of 2014, by the end of March, 2016, in spite of availability of RECs (Solar and Non-Solar) in the market.

Accordingly, in the present Order, the Commission has dis-allowed the RPO compliance cost of Rs 260.33 Crore to the extent of the shortfall in RPO compliance by MSEDCL, as directed in Case 190 of 2014, on a provisional basis. This would be reviewed at the time of MTR for true-up on the basis of the RPO compliance verification Order which would be passed by the Commission with regard to FY 2015-16.”

Thus, the provisional disallowance of Rs. 260.33 crore on account of RPO non-compliance was a considered and reasoned decision of the Commission, and no error or other tenable ground for review has been shown. As regards its separate Petition in Case No. 43 of 2016, that matter has been disposed of by the Commission vide its Order dated 24 October, 2017.

XX. Aggregate Financial Impact of Review Petition

MSEDCL's Submission

154. The aggregate financial impact of the issues raised in the Review Petition is as shown below:

Sr. No.	Particulars	Impact (Rs. Crs)
1	Sharing of Gains/Losses for 3 rd MYT Control Period	1,978
2	Error in Energy Balance for 3 rd Control Period, Revised Ag sales and corresponding Impact of PP, RPO and Revenue	3,643
3	Income from Additional Surcharge	1,250
4	O&M Expenses for 3 rd Control Period	10,661
5	GFA reconciliation not considered for FY 14-15	
a)	Depreciation based on revised GFA for FY 14-15 to FY 19-20	1,156
b)	Interest on Long Term Interest for FY 14-15 to FY 19-20	547
c)	Return on Equity for FY 14-15 to FY 19-20(Also Consumer contribution as per MSEDCL included)	372
d)	O&M Expenses for FY 14-15 and FY 15-16	334
e)	Contribution to Contingency Reserve for 3 rd Control Period	31
6	Prior Period Expenses/(Income) for FY 14-15	1,007
7	Sharing gains and losses for FY 15-16	2287
9	Intangible Assets Written Off for FY 14-15	10
10	A&G Expenses FY 14-15 (Refund of Penalty to APML Rs.109 Crs)	109
11	Power Purchase from Bhusawal 3 and Nashik 3,4,5	538
12	Fixed Cost of Adani Power 1200 MW	65
13	Approved Revenue from Ag Unmetered Category	2
14	RPO Penalty	260
15	Total Financial Impact of Review Petition	24,251

MVGS' Submission

155. The Commission in its impugned MYT Order has allowed an increase of Rs. 9149 crore. Through this Review Petition, MSEDCL is seeking a further increase of Rs. 24,251 crore. This is nothing but a new Tariff Petition under the garb of review. Many new issues have been raised. The Review Petition is not maintainable and needs to be rejected.

Prayas' Submission

156. The revenue gap claimed by MSEDCL in its Review Petition is three times the revenue gap estimated by the Commission in the MYT Order. If such an increase is allowed, it will render the entire MYT tariff determination process meaningless.

157. Without prejudice to Prayas' contention that many of the issues raised by MSEDCL are not maintainable or admissible in review proceedings, if the Commission decides to admit the Petition and grant any substantial relief to MSEDCL, the following process should be adopted for this purpose:

- i. Public hearings must be conducted at several locations across the State, as in the case of the Tariff determination process;
- ii. A Public Notice and Executive Summary, along with the Review Petition, should be published on the Commission and MSEDCL websites;
- iii. At least two major regional language newspapers should carry the Public Notice.

158. After prudence check, a part of the change in costs can be passed through via FAC or during the MTR process. Tariffs in Maharashtra are already high and increasing them further will affect small consumers and exacerbate sales migration through Open Access or captive use and considering falling renewable energy prices. This in turn will worsen the financial predicament of MSEDCL. Increasing tariffs to meet the revenue gap will not help MSEDCL to escape the vicious cycle of sales migration, backing down and low revenue recovery. Therefore, MSEDCL's predicament requires concerted efforts from various stake-holders. These may include increased support by the State Government via the UDAY, and require a White Paper covering the medium-term outlook on various issues of MSEDCL, etc.

CMIA's Submission

159. Power tariffs have already reached unbearably high levels. Consumers are not ready to bear any increase in tariffs.

Shri. Praneta Desale's Submission

160. Through this Review Petition, MSEDCL is seeking an increase of Rs. 24,251 crore over the Control Period, which amounts to an average increase of 12% for the next three years over and above the approved level. In fact, this is nothing but a new Tariff Petition under the garb of review. The Review Petition needs to be rejected. If the Commission decides to consider it, Public Hearings must be conducted as required for any tariff determination proceedings.

MSEDCL's Reply

161. The Commission has already conducted a hearing on this Review Petition in the presence of Authorized Institutional as well as individual CRs. Thus, there has been sufficient consumer representation in these proceedings.

162. The MYT Regulations, 2015 specify that the MTR Petition be filed by 30 November, 2017. Thus, it will take another 6-7 months to submit the MTR Petition and around a year to implement the impact of the MTR. MSEDCL is already in a precarious financial position and it will be difficult for it to sustain till that time considering the huge financial burden. Any further delay in recovery of legitimate expenses may lead to financial collapse which may lead to non-payment of dues or forced load shedding because of dearth of funds.

163. The issue of increased support by State Government via UDAY and a White Paper on issues before the MSEDCL is not specific to the issues raised in the Review Petition.

Commission's Analysis and Ruling

164. **Earlier in this Order, the Commission has ruled on each issue raised by MSEDCL in its Review Petition. On some issues, the financial impact is already being adjusted through the FAC mechanism. The impact of some other issues would be dealt with in the forthcoming MTR Petition. The precise financial impact due to MSEDCL would be determined in those proceedings, which would include a process of public consultation.**

XXI. Carrying Cost on the Financial Impact of Review Petition

MSEDCL's Submission

165. In the impugned MYT Order, the Commission has calculated the carrying cost and holding cost. Therefore, on the same principle, the Commission may allow the carrying cost on the financial impact of the Review Petition.

Prayas' Submission

166. MSEDCL's claim for carrying cost is contrary to its position during the public process on its MYT Petition. At page 182 of the MYT Petition, MSEDCL had stated as follows:

“Considering the tariff impact, MSEDCL submits that at present the carrying cost on the estimated gap is not claimed under the proposed tariff hike mechanism, even though the same is allowed to be considered in line with MYT Regulations, 2015. MSEDCL feels that the impact of carrying cost can be reduced to some extent by way of financial discipline, efficiency in operational parameters, expected reduction in open access resulting in higher revenue, Low cost fund tie-up, etc. However, MSEDCL submits that considering the final financial implication at the time of audited figures available for the respective years, the carrying cost on the gap as determined under true-up process filed during Mid- Term Review (MTR) will be claimed.”

167. Thus, claiming carrying cost on the largely inflated revenue gap proposed by MSEDCL in this Review Petition is contrary to its stand before the public and defeats the purpose of that public process.

MSEDCL's Reply

168. In its MYT Petition, MSEDCL had not claimed the carrying cost on the unrecovered revenue gap. However, MSEDCL had also submitted that carrying cost on the gap as determined in the MTR true-up process will be claimed. Thus, MSEDCL had not given up its claim of carrying cost. It had claimed the carrying cost on the revenue gap for FY 2014-15 and FY 2015-16 along with deduction of interest capitalized and provision for bad debts on trade receivables allowed in the Order dated 29 January, 2016.

169. Had there been an appropriate computation of the revenue gap, the impact would have been passed on from the date of Tariff Order itself. Regulation 32 of the MYT Regulations, 2015 also allows carrying cost on the admissible amounts. Accordingly, MSEDCL has rightly claimed carrying cost on the financial impact of the Review Petition.

Commission's Analysis and Ruling

170. **As the impact of the issues admitted in review will be considered in the forthcoming MTR proceedings, the issue of carrying cost will be considered at that time.**

The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No. 121 of 2015 and MA No. 5 of 2017 filed by Maharashtra Veej Grahak Sanghatana stands disposed of accordingly.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**


**(Ashwani Kumar Sinha)
Secretary**

