



MEGHALAYA
STATE ELECTRICITY REGULATORY COMMISSION

Remand Proceedings No. 1 of 2010

In the matter of –

Remand Order dated 19.04.2010 passed by the Hon,ble Appellate Tribunal for Electricity in Appeal No.67 of 2010 read with I.A.No.86 of 2010 viz -

Byrnihat Industries Association Limited

...
Appellant

- Versus -

Meghalaya State Electricity Regulatory Commission ...

Respondent

Present : Shri. P.J. Bazeley, Chairman, MSERC.

Date of Order - 05 August, 2010

ORDER

1. The instant proceedings arise out of the Remand Order dated 19.04.2010 passed by the Hon'ble Appellate Tribunal for Electricity (Appellate Jurisdiction) in Appeal No.67 of 2010 read with I.A.No.86 of 2010 viz: 'Byrnihat Industries Association Limited' (Appellants) – versus - the 'Meghalaya State Electricity Regulatory Commission (Respondent). The certified true copy of the said Order was issued by the Registry of the Tribunal on 20.05.2010 and received by the Commission, on 26.05.2010. The Hon'ble Tribunal was pleased to direct therein, as follows –

“We have heard the learned counsel for the Appellant as well as the Respondent- Commission.

The learned counsel for the Commission fairly submits that whatever Orders that will be passed in the matter, the same will be obeyed by the Commission.

It is a case where the impugned Order had been passed by the Commission increasing the tariff that too in the Review Petition without hearing the necessary parties including the Appellant, who was a party to the original proceedings. There is no dispute in the fact that the Review Petition has been entertained on the basis of the Application filed by the Meghalaya State Electricity Board and without issuing notice to the parties concerned, as prayed by the Meghalaya State Electricity Board the tariff has been increased. This, in our view, is against the principles of natural justice.

We have issued notice to the Meghalaya State Electricity Board and the affidavit of service has also been filed and nobody entered appearance on their behalf.”

Therefore, we deem it appropriate to set aside the Order impugned and remand the matter to the Commission, which in turn, has to hear the parties including the Appellant herein and on the basis of the material placed before the Commission, it shall decide the matter afresh on merits, uninfluenced by any of the findings given by it in the earlier Review Petition.”

THE PROCESS:

2. In compliance with the said remand order dated 19.04.2010 of the Hon'ble Tribunal, **the Commission passed orders on 26.05.2010 for reopening and taking up afresh the Review Petition dated 22.12.2009**, filed by the erstwhile Meghalaya State Electricity Board (MeSEB), now known as Meghalaya Energy Corporation Limited (MeECL), in the matter of Commission's Tariff (Distribution) Order dated 30.11.2009, and registered in the Commission as Review Petition No.1 of 2010–
 - i. for hearing of the parties concerned , namely the erstwhile Meghalaya State Electricity Board (MeSEB), now known as Meghalaya Energy Corporation Limited (MeECL) and the Byrnihat Industries Association Limited (BIA), and,
 - ii. for further deciding the matter on the basis of the material placed, afresh, before the Commission, by both parties in this regard.
3. The Commission furnished copies of the said review petition dated 22.12.2009, along with all its enclosures, to BIA and directed that their counter affidavit, if any, be filed within two weeks ending 14.06.2010. The Commission also directed that MeSEB / MeECL may file a fresh affidavit in this regard, if they so desire, within 14.06.2010.
4. Keeping in view that the year 2009-10 had long since closed, the Commission felt that –



a. it was necessary to ascertain the actual Transmission Charges for wheeling of power, which become payable by MeSEB / MeECL to the Power Grid Corporation of India / North Eastern Regional Load Despatch Centre (PGCIL/NERLDC) during the year 2009-10. The Commission, therefore, directed PGCIL/NERLDC to furnish detailed information reflecting wheeling-charges which became payable by MeSEB / MeECL to PGCIL/NERLDC during the fiscal year 2009-10, that is during the period 01.04.2010, to 31.03.2010, as –

- i. Transmission / Wheeling Charges,
- ii. RLDC charges,
- iii. Transmission / Wheeling Charges payable, to AEGCL or any other party(ies), if any,.
- iv. Open Access Charges, if any.

b. in order to accurately examine and consider the issues arising under these proceedings, in conformity with the remand order dated 19.04.2010 of the Hon'ble Tribunal, it was necessary to obtain the provisional financial data relating to revenue income and revenue expenditure of MeSEB of the year 2009-2010. The Commission, therefore, directed the MeSEB / MeECL to furnish the detailed provisional financial data relating to revenue income and revenue expenditure of the year 2009-10, in whatever interim form it was available, within 10.06.2010.

5. On 01-06-2010, the MeECL petitioned the Commission vide its letter No.MeECL/SE(RA)/43/2010-11/40 dated 1st June 2010 stating that –

Extract from MeECL letter No. MeECL/SE(RA)/43/2010-11/40 dated 1st June 2010 –

“.....at present the Revenue income of MeECL for fiscal year 2008-09 and 2009-10 is based on the Tariff Order dated 30.09.2008 which was made effective from October 2008. However, the Hon'ble Commission, vide its Order dated 10.09.2009 had set aside the Tariff Order dated 30.09.2008 and has given retrospective revision of the tariff from October 2008. This implies that the revenue income from October 2008 to March 2009 for the financial year 2008-09 and from April 2009 to November 2009 for the financial year 2009-10 are to be revised. Further, the Hon'ble Commission had directed the MeECL to complete revision of bills and make necessary adjustments within the 31st March 2010.

The MeECL, aggrieved by the Order dated 10.09.2009, had filed an Appeal before the Hon'ble Appellate Tribunal of Electricity, the matter of which is pending for disposal. The MeECL has also petitioned the Hon'ble Commission to grant extension of time beyond 31st March 2010 for revision of bills and making the necessary adjustments. The Hon'ble Commission, vide its Order dated 31.03.2010 did not consider it appropriate to entertain the petition since the matter was sub-judice before the Hon'ble Tribunal.

In the circumstances, it may be seen that the Revenue income of the MeECL for 2008-09 and 2009-10 shall depend upon the final order of the Hon'ble Tribunal.



It is therefore prayed before the Hon'ble Commission to keep in abeyance the submission of the Revenue data for 2009-10, pending disposal of the matter by the Hon'ble Tribunal.

6. After due consideration of the aforesaid submissions of MeECL as reproduced in para 5 of this Order, the Commission held that the instant proceedings arose out of the Remand Order dated 19th April 2010 passed by the Hon'ble Tribunal, remanding the Commission's Tariff (D) Order dated 29.01.2010 for the year 2009-10, back to the Commission, for deciding the matter afresh on merits, uninfluenced by any of the findings given by it in the earlier Review Petition. In the process of complying with the aforesaid Order of the Tribunal, the Commission had vide its' Order dated 27.05.2010 asked the MeECL to furnish the detailed provisional financial data relating to Revenue Income and Revenue Expenditure during the year 2009-10, in whatever interim form it is available, as on that date. The Commission was, therefore, of the opinion that the MeECL had confused the issue at hand by referring to the Commission Tariff (D) Order dated 10.09.2009, which relates to the Tariff for the fiscal year 2008-09. The said Order of the Commission which was appealed against by the MeSEB / MeECL is pending disposal before the Hon'ble Tribunal. The Commission finds no nexus between its' Tariff (D) Order dated 10.09.2009 relating to the year 2008-09, and the Commission's Tariff (D) Order dated 30.11.2009 relating to the year 2009-10, which is under consideration in the instant proceeding. It is evident from record that the MeSEB / MeECL has been allowed by the Commission to raise electricity dues, during the fiscal years 2008-09 and 2009-10, as follows:-
- a. During the period 01.10.2008 to 30.11.2009, as per rate approved by the Commission vide Tariff (D) Order dated 30.09.2008, read with Commission's Review Order dated 10.09.2009, since there is no Stay on the operation of the said Review-Order from the Competent Authority. Any Order passed by the Hon'ble Tribunal in Appeal No.37 of 2010 read with I.A No.84 of 2010 will be implemented as and when passed and received.
 - b. During the period 01.12.2009 to date as per rate approved by the Commission vide Tariff (D) Order dated 30.11.2009, since the Hon'ble Tribunal has vide its' Order dated 19.04.2010 in Appeal No.67 of 2010 and I.A No.86 of 2010 set aside the Commission's Revised Tariff (D) Order dated 29.01.2010 for the year 2009-10.
7. The Commission held that in view of the position brought out in para 6 of this Order, it followed that the difference between the Revenue collectable by the MeSEB/MeECL during 2009-10, as above, and the actual Revenue collected during the said fiscal year 2009-10, would be adjustable when the Commission trues-



up the Annual Revenue Requirement (ARR) for 2009-10 on the basis of the Audited Statement of Accounts for that year read with the Auditor General's Audit Note thereon. The deficit or surplus of Revenue during the said year, as trued up the Commission, would be adjustable while determining the ARR for the subsequent year, in such manner as may be specified by the Commission through a suitable Regulation. Since the Audited Statement of Account and Audit note thereon for the year 2009-10 is not likely to be available before the last quarter of 2010-11, such adjustment of Revenue Deficit or Revenue Surplus relating to the year 2009-10 may be made by the Commission while determining the ARR for 2011-12. **In view thereof, the Commission held that the MeSEB / MeECL's prayer for keeping the submission of provisional revenue income and revenue expenditure data for 2009-10, in the form such date was available as on date, in abeyance, pending disposal of the matter by the Hon'ble Tribunal was misconceived and unreasonable and was therefore rejected.** The Commission further directed the MeECL to submit the required provisional revenue income and revenue expenditure data for 2009-10 within the earlier fixed date namely 10-06-2010, to enable the Commission to further process and dispose of the Hon'ble Tribunal's Remand Order dated 19.04.2010.

8. In compliance with the Commission's Order dated 27.05.2010, the PGCIL/NERLDC submitted to the Commission, on 10.06.2010, the details of transmission and wheeling charges which became payable by MeSEB / MeECL during 2009-10, as obtained by them from the North Eastern Regional Load Despatch Centre (NERLDC), under cover of PGCIL letter No. NERLDC/Comml./103/359, dated 08.06.2010,. In its' response, PGCIL /NERLDC clearly stated as follows –

Extract of PGCIL (NERLDC) No. NERLDC/Comml./103/359 dated 08.06.2010.

(A) Transmission/Wheeling charges payable by MeESEB/MeECL to PGCIL and RLDC(ULDC) charges payable by MeSEB/MeECL to PGCIL.

The information as desired pertains to POWERGRID, NERTS and such information are not available with NERLDC. However, we have collected the figures from Comml. Deptt. of POWERGRID, NERTS and the same is enclosed herewith for your kind perusal.

(B) Transmission/Wheeling charges payable by MeSEB/MeECL to AEGCL or any other party(ies)

Such information is not available with NERLDC as these are purely bilateral in nature.



(C) **Open Access Charges, if any**

MeSEB/MeECL has not paid any Open Access Charges as directed Open Access customer (without involving trader). In case of transaction through trader, open Access customer is the trader and modality of payment of Open Access Charges is settled between buyer/seller & trader. Such details is not available with NERLDC.

Annexure-1

**Transmission and ULDC Charges Bills Raised to MeSEB/MeECL by
POWERGRID during 2009-10**

A. Monthly Bills

Months	Trans. Charges	ULDC Charges	Remarks
1	2	3	4
Apr-09	25594452	1207630	Provisional Trans. Charges
May-09	25898285	1218396	--- do ---
Jun-09	25300954	1212268	--- do ---
Jul-09	25908467	1211863	--- do ---
Aug-09	25334956	1211863	--- do ---
Sep-09	21758974	1120185	--- do ---
Oct-09	23620014	1120185	--- do ---
Nov-09	21360673	1053269	--- do ---
Dec-09	22188055	1055365	--- do ---
Jan-10	22414109	1065058	--- do ---
Feb-10	20265254	1069203	--- do ---
Mar-10	25043597	1136428	--- do ---
Total	284687790	13681713	

B. Arrear Bills

Months	Trrans. Charges	ULDC Charges	Income Tax
Apr-09	256408		
May-09	90841	2298771	
Jun-09	10453830		
Jul-09	305640		
Aug-09	941069	35242	1291201
Sep-09	3336547		17665094
Oct-09	773387		
Nov-09	1681614		
Dec-09	21984568		
Jan-10	829305		-518455
Feb-10	3835741		2234274
Mar-10	-110083397		-47888
Total	-65594447	2334013	20624226

9. In compliance with the Commission's Order dated 27.05.2010, the MeECL submitted to the Commission on 10.06.2010, the provisional data relating to revenue income and revenue expenditure of the year 2009-10, under cover of their letter No.MeECL/SE(RA)/43/45 dated 10-06-2010, In the said letter MeECL, stated as follows –



Extract of MeECL Letter No. MeECL/SE(RA)/43/45 dated 10th June, 2010.

..... I am directed to submit the provisional financial data relating to Revenue Expenditure and Revenue Income during the year 2009-10 as below:-

1. Annual Revenue Requirement (Provisional) 2009-10

(All figures are in Rs.Crores)

Serial No.	Items	Amount
1.	Power purchase	223.74
2.	Repair and maintenance	20.26
3.	Employee Cost	111.03
4.	Administrative and General expense	8.71
5.	Depreciation	17.08
6.	Interest and finance charges excluding State Govt. loan	72.70
7.	Provision for bad and doubtful debts	21.70
8.	Provision for Income Tax	4.94
9.	Net prior period	13.28
10.	Sub-total (1)	493.44
11.	Less other income	22.67
12.	Less Interest capitalized	58.65
13.	Less Employee cost capitalized	9.31
14.	Less Subsidy	13.68
15.	Sub-total(2)	104.31
16.	Net after deduction (1-2)	389.13
17.	Add Return on Equity	28.28
	Net Annual Revenue Requirement	417.41

2. Revenue Income (Provisional) for 2009-10:

(All figures are in Rs. Crores)

Serial No.	Items	Amount
1.	Inter State Sale of Power	
	(a) Assam	4.96
	(b) UI Sale, Others, etc.	22.01
2.	Domestic or Residentail	71.60
3.	Commercial	27.02
4.	Industrial Medium & Low Voltage	3.52
5.	Industrial High & Extra H.V.	220.93
6.	Public Lighting	0.99
7.	Irrigation & Agriculture	0.11
8.	Public Water Works	12.31
9.	Bulk Supply to others	29.94
10.	Misc / General Purpose	6.17
	Total Revenue	399.57

10. On 11-06-2010, the Commission considered and took on record the response of PGCIL/NERLDC as reflected in para 8 of this Order, as well as the response of MeECL as reflected in para 9 of this Order, and directed that copies of both the aforesaid communications be furnished to the BIA, with intimation to MeECL, giving them an opportunity to file their counter affidavit, if any, within 10 days ending 21st June 2010.



11. On 14-06-2010 the BIA petitioned the Commission as follows:-

“MECL has filed its additional information including the provisional financials for the year 2009-10 on 11.06.2010. The Hon’ble Commission by order dated 11.6.2010 has granted us time till 21.6.2010 to reply to the provisional expenditure and income filed by MECL.

Since the review petition filed by MECL and also the additional information filed on 11.6.2010 by MECL relate to the same period, namely, 2009-10, we proposed to file a consolidated reply to both the review petition and also the additional information filed by MECL on 11.6.2010.

It is requested that the Hon’ble Commission permit us to file a consolidated reply by 21.6.2010 dealing with both the review petition and also the submission filed on 11.6.2010”.

The Commission allowed the prayer of BIA and extended time for submission of their counter affidavit till 21-06-2010, as prayed for.

12. In compliance with the Commission’s order dated the 11-06-2010, the BIA filed a consolidated counter affidavit with copy to MeECL on 21.06.2010, stating as follows in the said counter affidavit –

Extract of Affidavit dated 21st June, 2010 submitted by Byrnihat Industries Association Ltd.

MOST RESPECTFULLY SHEWETH:

1. *The present proposal for the revised Annual Revenue Requirements has been filed by Meghalaya Energy Corporation Limited (MECL) for the year 2010-11 on 10.6.2010 making revisions in the revenue requirements for the year 2010.*
2. *The revised proposal has been filed by MECL reducing the revenue requirements from Rs.496.72 crores earlier claimed to Rs.461.40 crores. The main reason given for the reduction in the revenue requirements is on account of the non-commissioning of the Myntdu Leshka HEP project allegedly on account of flash floods.*
3. *It is submitted that the Hon’ble Commission should enquire as to the reasons for the delay in the commissioning of the project and whether the delay is on account of any deficiency on the part of MECL or whether on account of extraneous factors not attributable to MECL.*
4. *It is further submitted that on account of the non-commissioning of the project, the total availability of power has been reduced. MECL has not shown any proposal for arranging the shortfall in power availability during the year 2010-11.*
5. *It is submitted that the power supply in the State is very erratic and the industries are subjected to power cuts for major parts of the day. There is only supply of electricity for about 4 to 6 hours to the industries in the State. The above is despite the fact that the industries (HV and EHV) contribute more than 55% of the total revenues to the MECL. The loss levels in the industrial category is also negligible, thus helping the MECL to reduce the total average loss level in the system.*
6. *Further, the industries in the State also contribute to the revenues to the State and also provide employment in the State. However, on account of*



the erratic power supply to the industrial consumers, the output of the industries and also the revenues to all concerned including the State and MECL are reduced. In the circumstances, it is in the interest of the industries, the State and also MECL that industries are provided assured power supply.

7. *It is submitted that as opposed to the very restricted power supply of 4 to 6 hours that is being supplied to the Respondent Industries, MECL should supply assured power supply for at least 14 to 16 hours in a day to enable the industries to become more competitive and to ensure industrialization of the State. It is submitted that the restriction in supply to industries may be restricted to peak hours when MECL would be required to procure power at high prices, so as to reduce the power procurement cost of MECL.*
 8. *The above would ensure supply of electricity to industries during non-peak hours which will reduce the power procurement cost of MECL while at the same time ensuring supply of electricity to industries for 14-16 hours thereby benefiting all concerned.*
 9. *It is submitted that the present revised proposal of MECL does not address the issue of procurement of power on account of non-commissioning of the Leshka HEP project. Despite the above and the reduction in the revenue requirements, MECL has proposed to the same tariff as was proposed earlier. It is submitted that reduction in revenue requirements ought to reduce the tariff chargeable from the consumers. In the circumstances, it is not correct on the part of MECL to propose the same tariff as in the earlier petition.*
 10. *It is submitted that the above submission are in addition to and without prejudice to the submissions of the Respondent that the proposals of the MECL are very high and are not corresponding to the actual expenditure incurred by MECL during the previous years. The Respondents reiterates the submissions earlier made in reply to the tariff petition filed by MECL.*
 11. *It is further submitted that in view of the revised proposal filed by MECL, the Hon'ble Commission conduct an oral hearing on the revised proposal and invite objections and suggestions from the stake-holders.*
 12. *The Respondent crave leave to submit further information and representations as may be necessary for the disposal of the tariff petition. The Respondent also crave leave to make oral submissions at the time of the hearing before the Hon'ble Commission.*
13. The submissions of BIA as reflected in para 12 above were considered by the Commission and taken on record on 26.05.2010. In doing so, the Commission, directed that a copy thereof be furnished to MeECL, with notice to both the parties, namely the MeECL and the BIA for appearance and final hearing of the matter on 14.06.2010.
14. During hearing on 14.07.2010, Byrnihat Industries Association(BIA) was represented by learned Counsel Ms Swapna Seshadri and two Members of the BIA. The Meghalaya Energy Corporation Limited(MeECL) was represented by its' learned Director Distribution Shri C.D.Saio and eight Other Officials of the Corporation.



15. In their oral submissions, on 14.06.2010 the learned Counsel for Byrnihat Industries Association –

- i) reiterated the position stated in their affidavit dated 21.06.2010. as reflected in para 12 of this order;
- ii) stated that the AT&C losses of MeSEB / MeECL for the year 2009-10 had not been adequately reflected in the submissions of MeSEB / MeECL in the instant proceedings. The losses appeared to be higher than what was indicated in the Commission's Tariff(D) Order dated 30.11.2009 for the year 2009-10. As such, they urged the Commission to require the MeECL to confirm the provisional AT&C losses of the year 2009-10. They also urged the Commission to impose commensurate penalty on MeECL for failing to reduce the AT&C losses by the mandated 3 (three) per cent from the AT&C loss level of the preceding year 2008-09, before determining the revised ARR for the year 2009-10, under the instant proceedings.
- iii) stated that MeSEB / MeECL had continued to raise bills during 2009-10 as per the higher tariff rates approved by the Commission vide its' Tariff(D) Order dated 30.09.2008, even after the Commission had revised the Tariff(D) rates downwards, with effect from 01.10.2008, vide its' Revised Tariff(D) Order dated 10.09.2009. As such, the MeSEB / MeECL had collected unauthorized revenue during the said period, much in excess of its annual revenue requirement, as may be verified from the data given in their Audited Statement of Accounts for the year 2007-08 and 2008-09.
- iv) For such reasons, the learned Counsel for BIA submitted that there was no justification to revise the Tariff(D) rates for the year 2009-10, at this stage when the year 2009-10 was long over, and the processing and hearing of the Tariff(D) Petition of MeECL for the year 2010-11 had also been completed by the Commission and Tariff(D) Orders for the current year 2010-11 were expected to be notified by the Commission, soon.

16. In the oral submissions on behalf of MeECL, their learned Director Distribution -

- i) reiterated the position stated in their review petition dated 22.12.2009 with reference to the Commission's Tariff(D) Order dated 30.11.2009 for the year 2009-10.

For proper appreciation, these are briefly stated below -

(a) " ...there has been double deduction of an amount of Rs.21.56 crores as Interest on State Government loan by the Commission while finalizing the charges on the head aforesaid to be included in the Annual Revenue Requirement for the financial year 2009-10. The Petitioner prays that the Commission review the matter and enhance the assessed ARR by Rs.21.56 crores.

(b) the approved amount of Rs.31.26 crore payable to PGCIL as transmission charges for wheeling of 868.31 million units of power during 2009-10, is inadequate, and falls short by Rs.9.02 crores. In



other words, the Petitioner has sought for a total amount of Rs.40.28 crores for the purpose of defraying wheeling charges payable to PGCIL for transmission/wheeling of power during 2009-10. As such, Petitioner prays that the Commission review the matter and enhance the assessed ARR for the year 2009-10 by a further amount of Rs.9.02 crores. And

(c) the Tariff Order for 2009-10 needs to be suitably revised and the category-wise tariff rates, re-fixed.....”

17. Further, responding to the issues raised by the learned Counsel for BIA, the learned Director Distribution, MeECL stated as follows –

- (i) The AT&C losses have been continually reduced by MeSEB / MeECL and stood at 30.12 % during the year 2009-10,
- (ii) MeECL had billed consumers / realized electricity dues for the period ending 30.11.2009, at Tariff (D) Rates as fixed by the Commission vide its' Tariff(D) Orders dated 30.09.2008, pending decision of the Hon'ble Tribunal in Appeal No.37 of 2010 read with IA No.86 of 2010. However, the HT and EHT category industrial consumers had not settled the billed amount for energy consumed, but had only made part payments, resulting in arrears and consequent shortfall in revenue collection;
- (iii) The MeECL was entitled to a just and fair ARR for 2009-10, as appealed for.

18. Keeping in view the conflicting position brought out by the submissions of BIA as reflected in para 15 ii) above, the submission of MeECL as reflected in para 17 i) above, and the fact that MeECL did not include any data relating to AT&C losses while submitting the provisional financial data relating to the year 2009-10, the Commission directed the MeECL during hearing on 14.07.2010, to file a duly sworn Affidavit reflecting the correct provisional data relating to AT&C losses for the year 2009-10, within three days ending 19.07.2010. On the 16.07.2010, MeECL petitioned the Commission and sought for time till 30.07.2010 for submission of the required affidavit in respect of Aggregate Technical & Commercial loss for 2009-10. The Commission considered the request of MeECL and allowed them time as requested for. On 30.07.2010, MeECL submitted an Affidavit dated 30.07.2010 reflecting the provisional AT&C losses for the year 2009-10, under cover of their letter No.MeECL/SE(RA)/43/55, dated 30.07.2010. The said Affidavit reflected the provisional AT&C losses for the year 2009-10 as follows –



Relevant extract of Affidavit dated 30th July, 2010 submitted by MeECL under cover of Letter No. MeECL/SE(RA)/43/55 dated 30th July, 2010

“...That the information as required by the Hon’ble Commission in respect of Aggregate Technical and Commercial losses for FY 2009-10 are as hereunder:

1. The Aggregate Technical and Commercial losses for FY 2009-10, is calculated based on the Hon’ble Commission’s letter F.No.MSERC/Tar-Dist-13/09/240 dated 17.08.2009, which directed the MeECL to submit the AT&C loss figures in a format as prescribed by it. In this format, the AT&C loss calculation takes into account the energy availability, energy sold and collection made within the State only. The provisional AT&C loss arrived at, based on this format is 40.05%, calculation of which is as below:

Sl No.	Particulars	Calculation	Unit	2009-10 (prov)	Remark
1.	Generation (own as well as any other connected generation net after deducting auxiliary consumption) within area of supply of DISCOMS	A	MU	532.31	
2.	Input energy (metered import) received at interface points of DISCOM network.	B	MU	819.61	Net actual drawal at 132 KV (less outside sale at 132 KV) plus purchase from Shyam Century Ferrous Ltd.
3.	Input energy (metered Export) by the DISCOM at interface points of DISCOM network.	C	MU	13.16	ASEB sale at 33 KV
4.	Total energy available for sale within the licensed area to the consumers of the DISCOM	D=A+B-C	MU	1338.76	
5.	Energy billed to metered consumers within the licensed area of the DISCOM	E	MU	896.09	Metered data (only) not available.
Sl No.	Particulars	Calculation	Unit	2009-10 (prov)	Remark
6.	Energy billed to un-metered consumers within the licensed area of the DISCOM	F	MU	896.09	Un-metered data (only) not available
7.	Total energy billed.	G=E+F	MU	896.09	
8.	Amount billed to consumers within the licensed area of the DISCOM	H		393.90	
9.	Amount realized by the DISCOM out of the amount billed at H#		Rs. in crore	340.51	
	Revenue from sale of power			340.51	
	RE subsidy			12.31	
	Total	I		352.82	
10.	Collection Efficiency(%)	$J=(I/H) \times 100$	%	89.57	
11.	Energy realized by the DISCOM	$K=J \times G$	MU	802.64	
12.	Distribution Loss (%)	$L=(D-G) \div D \times 100$	%	33.07	
13.	AT&C Loss (%)	$M=(D-K) \div D \times 100$	%	40.05	
# Amount received in the current year for the amount billed in the previous years was not excluded in this head. However subsidy received against the current year’s sale of electricity is considered in this head.					

2. It is submitted that the collection efficiency during FY 2009-10 was adversely affected due to part payment of the current bills by the members of the Byrnihat Industries Association (BIA). It may be informed that the amount paid by the industries for the period April to November 2009 was Rs.121.34 crores against a demand of Rs.159.12 crores (as per Tariff Order dated 30th September 2008), and thereby outstanding amount is Rs.37.78 crores.
3. It may be kindly recalled that BIA had appealed against the Tariff Order dated 30th September 2008 of the Hon’ble Commission. Thereafter, the erstwhile MeESEB had appealed against the Hon’ble Commission’s trused Tariff Order dated 10th September 2009 before the Hon’ble Appellate Tribunal for Electricity, New Delhi. This appeal (Appeal No. 37 of 2010 & IA No. 84 of 2010) is expected to be disposed shortly, as per the Order dated 28th May, 2010 issued by the Tribunal. A copy of this Order is enclosed as Annexure-A.



4. *Furthermore, it may be kindly recalled that the MeECL vide its Petition dated 26th March, 2010 had requested extension of time for revising the bills in compliance to the Hon'ble Commission's Order dated 10.09.2009. In response, the Hon'ble Commission issued an Order dated 31st March, 2010, stating, "This Commission does not consider it appropriate to entertain the instant Petition dated 26.03.2010 of the Petitioner (MeSEB), or to pass any orders thereon, since the matter is sub-judice before the Appellate Tribunal."*

THE FINDINGS:

19. The Commission carefully considered the submissions contained in the Affidavit dated 30.07.2010 filed by MeECL and noted with concern that MeSEB / MeECL had sought to justify the increased level of AT&C losses of 40.05 percent during 2009-10, as against 33.79 percent during 2008-09, by stating that *"the collection efficiency during FY 2009-10 was adversely affected due to part payment of the current bills by the members of the Byrnihat Industries Association (BIA). It may be informed that the amount paid by the industries for the period April to November 2009 was Rs.121.34 crores against a demand of Rs.159.12 crores (as per Tariff Order dated 30th September 2008), and thereby outstanding amount is Rs.37.78 crores)".* The justification offered by MeSEB / MeECL is wholly misconceived and untenable. The Commission's Tariff(D) Order dated 30.09.2008 was revised vide Commission's Tariff(D) Order dated 10.09.2009. The tariff rates were thereby revised downwards by an average of over 20 percent, with effect from 01.10.2008. The Commission's Tariff(D) Order dated 10.09.2009 has not been stayed or set aside by any Competent Authority. The MeSEB / MeECL were required to comply with the said Tariff(D) Order dated 10.09.2009 and to implement the directions contained therein. By continuing to raise / realize electricity bills from consumers, for the period 01.10.2008 to 30.11.2009, as per rates fixed by Tariff(D) Order dated 30.09.2008, as indicated by them in their said Affidavit dated 30.07.2010, the MeSEB / MeECL have violated the Commission's Tariff Order dated 10.09.2009, and are liable to be proceeded against and penalized as per provisions of Section 142 of the Electricity Act of 2003.
20. Considering the critical level of increasing AT&C losses (provisional) during the year 2009-10, as reported by MeECL, the Commission hereby decides to discourage such inefficiency, and to impose a penalty for MeSEB / MeECL's failure to reduce the AT&C loss by the mandated level of 3 percent from the previous year (2008-09) level of 33.79 percent. The penalty is accordingly assessed at Rs.55.27 Crores, as per detailed calculation shown at Schedule-I below –



SCHEDULE-I

CALCULATION OF PENALTY FOR FAILURE TO CAUSE A MINIMUM OF 3% REDUCTION IN AGGREGATE TECHNICAL & COMMERCIAL (AT&C) LOSSES DURING 2009-10

1.	AT & C Losses during 2008-09 as reported by MeSEB vide their letter No. MESEB/SE(RA)33/43 dt.14.10.2009.	=	33.79%
2.	Mandated minimum reduction of AT&C Losses for Entities having AT&C Losses in excess of 30%.	=	3.00%
3.	Maximum permissible AT&C Loss for MeSEB during 2009-10 after reduction of such loss by a minimum of 3% from the previous year's level.	=	30.79%
4.	Actual AT&C Losses during 2009-10 as reported by MeSEB vide their Affidavit dated 30.07.2010 under cover of their Letter No. MESEB/SE(RA)43/55, dt.30.07.2009.	=	40.05%
5.	Shortfall in minimum reduction of AT&C Losses by MeSEB during 2009-10 = (40.05-30.79%).	=	9.26%
6.	Shortfall in minimum reduction of AT&C Losses by MeSEB during 2009-10 in Million Units = (9.26% of 1338.76 Mu's).	=	123.9692 MU's
7.	Average aggregate Unit Rate for sale of power by MeSEB during 2009-10 = Revenue income from sale <u>of power during 2009-10</u> Total Energy billed	=	Rs.4.4590
			(Based on data submitted by MeECL vide their Affidavit dated 30.07.2010 under cover of their Letter No. MESEB/SE(RA)43/55, dt.30.07.2009).
8.	Penalty for failure to reduce AT&C Losses by 3% during 2009-10 = 123.9692 MU x Rs.4.4590	=	55.2778 Cr
		=	Say Rs.55.27 Cr

21. After careful examination and verification of the submissions made during hearing, by the Byrnihat Industries Association (BIA), as well as those of the Meghalaya State Electricity Board (MeSEB) now known as Meghalaya Energy Corporation Limited (MeECL), the Commission is of the considered view that the review of the level of ARR for the year 2009-10, as petitioned for by MeSEB / MeECL in the instant proceedings, has to be undertaken on the basis of material on record, and, the provisional financial data of revenue income and expenditure as submitted by MeECL. On such basis, the Commission finds and decides as follows—

- a. DOUBLE DEDUCTION OF INTEREST ON STATE GOVERNMENT LOANS:** The submission is valid. Due to oversight, the Commission deducted the said amount of Rs.21.56 crores from the amount proposed for 'Interest & Finance Charges' in the ARR proposal for 2009-10, although, the Petitioner had already debited the said amount while calculating the 'Interest & Finance Charges' in their ARR proposal. The Commission, therefore decides to admit and allow the submission of the Petitioner in this regard. **However, as against an amount of Rs.71.34 Crores allowed as 'Interest & Finance Charges' in the ARR for 2009-10 vide Commission's Tariff(D) Order dated 30.11.2009, the MeECL has vide its' letter No. MeECL/SE(RA)/43/45 dated 10.06.2010, clearly indicated that the provisional financial data for revenue expenditure during 2009-10 shows an expenditure of Rs.72.70 Crores only against 'Interest & Finance Charges'. Consequently the Commission accepts the said provisional**



expenditure of Rs.72.70 as reported by MeECL, and disposes of the appeal in this regard, accordingly.

b. INADEQUACY OF AMOUNT APPROVED FOR MEETING THE COST OF TRANSMISSION CHARGES PAYABLE TO PGCIL FOR WHEELING OF POWER :

i. The Commission finds that the submissions of MeSEB / MeECL in their Review Petition was neither brought out by them in their Original Tariff Petition for 2009-10, nor did they submit any document as the basis of determination of the actual amount payable. In pursuance of the Commission's directive, the Power Grid Corporation of India Limited / North Eastern Regional Load Despatch Centre (PGCIL / NERLDC) informed the Commission vide their letter No.NERLDC / Comml / 103 359, dated 08.06.2010 that the amount payable by MeSEB as transmission charges for the year 2009-10 was Rs.28.47 crores, based on actuals upto the end of the month of March, 2010.

ii. The PGCIL also indicated in their aforesaid communication that the following amounts are payable by MeSEB / MeECL for the year 2009-10, for purposes related to the transmission of power –

- (1). ULDC Charges --- Rs.1.37 Crores
- (2). Adjustment of Arrear
Transmission Charges
for the year 2008-09 - Rs.(-)6.56 Crores
- (3). Adjustment of Arrear
ULDC Charges
for the year 2008-09 - Rs. 0.23 Crores
- (4). Adjustment of Arrear
Income Tax Charges
for the year 2008-09 - Rs. 2.06 Crores

iii. In view thereof, the total amount payable to PGCIL / NERLDC, by MeSEB / MeECL as transmission / wheeling Charges, etc., for the year 2009-10 stands at Rs.(28.47 + 1.37 - 6.56 + 0.23 + 2.06) = Rs.25.57 crores as against the amount of Rs.31.26 crores allowed vide the Commission's impugned Tariff(D) Order dated 30th November, 2009. The allowed amount of Rs.31.26 crores, is therefore, far in excess of the required amount by Rs.5.69 crores.



- iv. However, as per provisional financial data for the year 2009-10, as submitted by MeECL, the expenditure for purchase of power including transmission charges during 2009-10 was Rs.223.74 Crores, as against Rs.250.24 Crores approved vide Commission's impugned Tariff(D) Order dated 30.11.2010. As such, the Commission accepts the revised provisional figure of Rs.223.74 Crores for the purpose of assessing provisional Revised ARR for the year 2009-10, and disposes of **the appeal in this regard.**

THE DECISIONS:

22.The Commission further examined the detailed provisional financial data of revenue income and revenue expenditure during 2009-10, as submitted by MeECL and decided as follows -

1. **Purchase of Power including Transmission Charges:-**
MeECL has reported a provisional expenditure of Rs.223.74 crores during the year 2009-10, as against Rs.250.24 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.223.74 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.
2. **Repair and Maintenance:**
MeECL has reported a provisional expenditure of Rs.20.26 crores during the year 2009-10, as against Rs.17.74 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.20.26 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.
3. **Employees Cost:**
MeECL has reported a provisional expenditure of Rs.111.03 crores during the year 2009-10, as against Rs.103.24 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.111.03 is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.
4. **Administration and General Expenses :**
MeECL has reported a provisional expenditure of Rs.8.71 crores during the year 2009-10, as against Rs.8.71 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of



Rs.8.71 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

5. Depreciation:

MeECL has reported a provisional expenditure of Rs.17.08 crores during the year 2009-10, as against Rs.15.53 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.17.08 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

6. Interests and Finance Charges:

MeECL has reported a provisional expenditure of Rs.72.70 crores during the year 2009-10, as against Rs.71.34 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.72.70 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

7. Other Debits (including provision for Bad Debts):

MeECL has reported a provisional expenditure of Rs.21.70 crores during the year 2009-10, as against Rs.10.00 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.21.70 crores is unreasonably excessive and exceeds the approved level by over 100%. No justification has been indicated by MeECL. Had MeSEB/MeECL faced a need for incurring expenditure in excess of the approved level, to a level which is more than double of it, they could have come up with a Review Petition in due time, but they did not do so. The Commission finds no justification to approve expenditure of the proposed order of Rs.21.70 crores. Consequently, the Commission retains the approved a level of Rs.10.00 crores only for Other debts (including provisional for Bad Debts) during the said year 2009-10 for the purpose of assessing provisional Revised ARR for the year 2009-10.

8. Other (Miscellaneous) Prior Period Credit Charges:

MeECL has reported a provisional expenditure of Rs.13.28 crores during the year 2009-10, as against NIL amount approved vide Commission's Tariff (D) Order dated 30.11.2009. Since the Commission did not approve any allocation for such purpose in its Tariff Order dated 30.11.2009 and MeSEB/MeECL did not appeal for any review in this regard in time, the Commission finds no justification to consider the proposed expenditure of Rs.13.28 crores for Other (miscellaneous) – Prior Period Credit Charges during



2009-10. The Commission retains the approved level of NIL expenditure for such purpose during the said year 2009-10, for the purpose of assessing provisional Revised ARR for the year 2009-10.

9. **Provision for Income-Tax:**

MeECL has reported a provisional expenditure of Rs.4.94 crores during the year 2009-10, as against NIL approved vide Commission's Tariff (D) Order dated 30.11.2009. For reason that payment of Income Tax is unavoidable items of expenditure. The provisional expenditure of Rs.4.94 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

10. **Capitalised Interest and Finance Charges:**

MeECL has reported a provisional expenditure of Rs.58.65 crores as 'Capitalized Interest and Finance Charges' during the year 2009-10, as against Rs.58.20 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.58.65 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

11. **Capitalised Employees Cost :**

MeECL has reported a provisional expenditure of Rs.9.31 crores as 'Capitalized Employee Cost' during the year 2009-10, as against Rs.9.31 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional expenditure of Rs.9.31 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

12. **Other Income:**

MeECL has reported a provisional 'Other Income' of Rs.22.67 crores during the year 2009-10, as against Rs.36.39 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional 'Other Income' of Rs.22.67 crores is accepted for the purpose of assessing provisional Revised ARR for the said year 2009-10.

13. **R.E.(Rural Electrification) Subsidy :**

MeECL has reported a provisional income of Rs.13.68 crores during the year 2009-10 from R.E. Subsidy as against Rs.13.68 crores approved vide Commission's Tariff (D) Order dated 30.11.2009. The provisional income of Rs.13.68 crores is accepted for the purpose of assessing provisional Revised ARR for for the purpose of



assessing provisional Revised ARR for the year 2009-10. for the purpose of assessing provisional Revised ARR for the year 2009-10. the said year 2009-10.

14. **Fiscal Losses for Failure to Cause 3% reduction of AT&C Losses :**

The MeECL have reported through a sworn Affidavit dated 30.07.2010 that the AT & C losses which stood at 33.79% during 2008-09 have gone up to 40.05% during 2009-10. Such operating inefficiency cannot but be penalized. As against Rs.11.80 crores assessed as penalty for fiscal loss due to failure to cause 3% reduction of AT&C losses from the previous year(2008-09)'s AT & C loss level, as per Commission's Tariff (D) Order dated 30.11.2009, the Commission now fixes a penalty of Rs.55.27 crores for the critical increase in AT&C loss levels, for the purpose of assessing the provisional revised ARR for the said year 2009-10, for reasons set out in para 22 of this Order.

15. **Return on Equity :**

The Commission retains the Return on Equity, assessed at the rate of 14% on an Equity Base of Rs.202.00 crores, amounting to Rs.28.28 crores for the purpose of assessing provisional revised ARR for the said year 2009-10.

23. Keeping in view the Commission's decision recorded above, and the provisional financial data of revenue income and revenue expenditure for the year 2009-10 as submitted by MeECL, the Annual Revenue Requirement of MeSEB / MeECL for 2009-10 is revised at Rs.337.16 Crores, as against Rs.375.70 crores approved earlier. The details of the said Revised Annual Revenue Requirement of Rs.337.16 crores are reflected in Table 1 below –



TABLE – I

Sl. No.	Items	2008-09 Rs.in Crores					TRUISED (ACTUAL) ARR Rs.in Crores		ARR for 2009-10 as approved by the Commission vide its' Order dt. 30.11.2009	Revised ARR for 2009-10 as per provisional financial data for 2009-10, as submitted by MeECL vide their letter No.MeECL/SE(RA)/43/45, dt.10.06.2010	REVISED ARR FOR 2009-10 AS PROVISIONALLY ASSESSED BY THE COMMISSION VIDE IT'S ORDER DATED 05.08.2010 IN REMAND PROCEEDINGS No.1 of 2010
		ARR as proposed by MeSEB	ARR allowed by the Commission vide its' Tariff Order dt.17.12.08	ARR based on data given in the Pre-Audited Statement of Accounts for 2007-08	ARR for 2008-09 as decided by the Commission on review vide its' Order dt.10.09.09	ARR for 2008-09 as per Audited SoA for 2008-09 read with Audit Notes thereon.	2007-08 as per Audited SoA	2008-09 As per - Audited SoA			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	(i). Purchase of Power inclgd. Trans. Charges	264.89	264.89	201.89	201.89 + 15.51	206.98	220.97	206.98	250.24	223.74	223.74
	Repair & Maintenance	29.17	29.17	20.09	20.09	16.05	17.23	16.05	17.74	20.26	20.26
	Employees cost	102.81	102.81	102.41	102.41	104.79	95.93	104.79	103.24	111.03	111.03
	Administration and General expenses	8.78	8.78	4.35	4.35	7.92	7.32	7.92	8.71	8.71	8.71
	Depreciation	15.37	15.37	14.85	14.85	14.12	12.90	14.12	15.53	17.08	17.08
	Interest & Finance Charges	93.88	64.86	65.69	65.69	70.01	58.59	70.01	71.34	72.70	72.70
	Other Debits (including provision for Bad Debts)	10.00	10.00	10.00	10.00	18.48	2.22	18.48	10.00	21.70	10.00
	Other (Miscellaneous) – Prior period Credit / Charges	0.00	0.00	31.95	0.00	0.00	0.00	0.00	0.00	13.28	0.00
	Provision for Inc.tax	0.00	0.00	0.00	0.00	4.21	0.15	4.21	0.00	4.94	4.94
	Sub-total – 1	524.90	495.88	451.23	434.79	442.56	415.31	442.56	476.80	493.44	468.46
	Less: Expenses Capitalised	41.17	41.17	40.67	40.67	48.33	44.47	48.33	58.20	58.65	58.65
	i) Interest & Finance Charges	0.00	0.00	0.00	0.00	8.47	10.66	8.47		0.00	0.00
	ii) Other Expenses								9.31	9.31	9.31
	iii). Employee Cost										
	Sub total --- 2	41.17	41.17	40.67	40.67	56.80	55.13	56.80	67.51	67.96	67.96
	Net expenses (1-2)= 3	483.73	454.71	410.56	394.12	385.76	360.18	385.76	409.29	425.48	400.50
	Less:										
	i) Other Income	0.00	0.00	0.00	0.00	39.78	32.39	39.78	36.39	22.67	22.67
	ii) R.E.Subsidy	0.00	0.00	33.49	33.49	11.70	32.80	11.70	13.68	13.68	13.68
	iii) Subsidy against power purchased	0.00	0.00	0.00	0.00						
	iv) Recovery against supply of power to Government Departments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	v) Fiscal Loss for failure to cause 3% reduction of AT&C loss	0.00	17.26	0.00	17.26	18.42	5.44	18.42	11.80	0.00	55.27
	Sub-total --- 4	0.00	17.26	33.49	50.75	69.90	70.63	69.90	61.87	36.35	91.62
	Net Pafter deductions (3-4)	483.73	437.45	377.07	343.37	315.86	289.55	315.86	347.42	389.13	308.88
	Add: Return on equity	28.28	28.28	28.28	28.28	28.28	28.28	28.28	28.28	28.28	28.28
	Net for ARR	512.01	465.73	405.35	371.65	344.14	317.83	344.14	375.70	417.41	337.16
	TOTAL ENERGY SALES in MU's	1071.44	1071.44	1071.44	1071.44	1044.60	1058.10	1044.60	1013.97	***896.09	***896.09
	Avg Unit Cost of Power in Paise / Unit	478	435	378	347	329	300	329	371		376
	Revenue Income from Sale of Power					392.51	321.82	392.51		399.57	399.57
	Avg Unit Cost of Power in Paise / Unit, actually realised					376	304	376	371	446	446
	EXCESS REVENUE EARNED OVER TRUISED / APPROVED ARR					(+) 48.37	(+) 03.99	(+) 48.37			(+) 62.41

*** = Total energy billed during 2009-10 as per MeECL Affidavit dated 30.07.2010, submitted to the Commission vide MeECL letter No.MeECL/SE(RA)/43/55, dt. 30.07.2010



24. The Commission notes from record that while the provisional ARR for the year 2009-10, based on provisional financial data of revenue income and revenue expenditure during the year 2009-10, as reflected in Table-I above, stands assessed by the Commission at Rs.337.16 Crores, the revenue income from sale of power is Rs.399.57 Crores. It is therefore evident that there is considerable revenue surplus amounting to Rs.62.41 Crores during the year. **The surplus of Revenue during the said year, as subsequently trued up the Commission, based on the Audited Statement of Accounts for the year 2009-10, read with CAG;s Audit Notes thereon, would be adjustable while determining the ARR for the subsequent year, in such manner as may be specified by the Commission through a suitable Regulation.**
25. Keeping in view the finding recorded at para 24 of this Order, the Commission is of the considered opinion that there is no justification for any retrospective upward revision of tariff for the year 2009-10, as prayed for by the MeSEB / MeECL in their Review Petition dated 22.12.2009, at this stage, when the year 2009-10 is long over.
26. The Commission accordingly decides that the Tariff (D) as fixed vide Commission's Tariff(D) Order dated 30.11.2009 will remain unchanged, until Tariff (D) Orders for the year 2010-11 are notified by the Commission.
- 27. The instant review proceedings are disposed of accordingly.**
28. Certified copy of this Order be immediately furnished to –
- (1) both the parties, namely the BIA and the MeECL;
 - (2) the Registrar, Appellate Tribunal for Electricity in compliance with the Hon'ble Tribunal's Remand Order dated 19.04.2010;
 - (3) State Government in the Power Department; and
 - (4) the Secretary, Central Electricity Regulatory Commission.
29. Given under the hand and seal of the Meghalaya State Electricity Regulatory Commission, at Shillong, on this the 05th.day of August, 2010.

(P.J.Bazeley)
Chairman, MSERC

