



MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

Miscellaneous Petition No.1 of 2010

In the matter of –

An application dated 19.11.2010 filed by the Byrnihat Industries Association (BIA) along with a duly executed supporting affidavit of same date, seeking direction from the Commission against the action taken by Meghalaya Energy Corporation Limited (MeECL), in issuing disconnection notice to the consumers alleging nonpayment of amount due for the period 2008-09.

Byrnihat Industries Association (BIA).....Petitioner

- versus -

Meghalaya Energy Corporation Limited(MeECL)... Respondent

Date : 21 February 2011.

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



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Byrnihat Industries Association (BIA).....Petitioner

- versus -

Meghalaya Energy Corporation Limited(MeECL)... Respondent

Date : 21 February 2011.

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

ORDER

1. The instant proceeding arises from an application dated 19.11.2010 filed by the Petitioner, namely the Byrnihat Industries Association (BIA) along with a



duly executed supporting affidavit of the same date, seeking direction from the Commission against the action taken by the Respondent, namely the Meghalaya Energy Corporation Limited (MeECL), in issuing disconnection notices to the consumers alleging non-payment of amount billed during the period 2008-09. The Commission noted that issues raised in the said petition relate to –

- (1) Recovery of arrears by the Respondent from members of the Petitioner Association for EHT/HT category of electricity supplied to them by the Respondents during 2008-09 etc.
- (2) Action arising out of a cited Order dated 03.11.2010 of the Hon'ble Appellate Tribunal for Electricity (Tribunal).

2. The Commission, noted that none of the following have been brought on record by the Petitioner-

- (a) the details of the arrear dues for electricity supplied during 2008-09, etc., sought to be recovered from the Petitioner by the Respondent;
- (b) the details of the cited Review Petition claimed to have been filed by the Petitioner before the Hon'ble Tribunal which led to the Tribunal's cited Order dated 03.11.2010;



(c) a certified copy of the Tribunal's cited Order dated 03.11.2010.

3. In the circumstances, the Commission required the Petitioner to file an Affidavit with a statement showing details of the arrear sought to be recovered from them by the Respondent indicating –

(a) period (calendar months) for which costs for of supply of electricity is sought to be recovered by the Respondent.

(b) the amount billed for each such month by the Respondent and the unit rate(s) as per billing.

(c) the amount paid and receipted for, against each such bill, and the basis for such payment.

(d) the amount pending against each such bills, and

(e) the reason(s) for non-settlement of each claim by the Petitioner.

4. Further, the Commission required the Petitioner to submit a certified copy of the Hon'ble Tribunal's cited Order dated 03.11.2010, along with a copy of their petition leading to the said Order dated 3..11.2010 of the Hon'ble Tribunal, in order to enable the Commission to take steps as may be required, to comply with the said Order.



5. The Commission also held that the truing-up exercise of the Annual Revenue Requirement of the Respondents for the year 2008-09 on the basis of the Audited Statement of Accounts for that year, read with the Comptroller & Auditor General of India's audit note thereon was already under process, in compliance with the Tribunal's Order dated 10.08.2010 in Appeal No.37. Both parties had been finally heard on the matter on 19.11.2010, and the Commission's final orders, thereon, were under preparation and due to be issued, soon.
6. In view thereof, the Commission asked both the parties to await the said 'Truing-up Order of the Commission on the ARR for the year 2008-09, before they take recourse to any further available course(s) of action, according to law.
7. The Commission asked the Petitioners to comply with the aforesaid requirements within fifteen days ending 10.12.2010, and to simultaneously furnish on record, a copy of their response along with copies of the documents furnished therewith, to the Respondent. The Petitioners were also asked to furnish a copy of their instant Affidavit dated 19.11.2010 and the connected Petition and enclosures thereto, to the Respondent, within the same date, that is 10.12.2010, to enable the



Respondent to file their counter Affidavit, if any, with copy on record, to the Petitioner, within 17.12.2010. The Commission fixed 21.12.2010 for hearing of both parties on the instant petition dated 19.11.2010 and issued notice to, accordingly.

8. However on 26.11.2010 the said Petitioners namely Byrnihat Industries Association (BIA) filed another application dated 19.11.2010 along with a duly executed supporting affidavit of the same date, in the matter of –

‘Truing-up exercise of the financials of Meghalaya Energy Corporation Limited (MeECL) for the year 2008-09 and consequent effect to be given by the Commission’

On 07.12.2010, the Commission took the aforesaid Petition on record and noted that the issues raised therein appeared to have been earlier raised in Misc. Petition No.1 of 2010, seeking direction from the Commission against the action taken by the Respondent, namely the Meghalaya Energy Corporation Limited (MeECL), in issuing disconnection notices to the consumers alleging non-payment of amount billed during the period 2008-09. These issues related to –

- (1) Recovering of arrears by the Respondent from members of the Petitioner



Association for electricity supplied during 2008-09, etc.

(2) Action arising out of a cited Order dated 03.11.2010 of the Hon'ble Appellate Tribunal for Electricity (Tribunal).

9. After careful consideration, the Commission directed that a copy of the instant Petition dated 19.11.2010 as submitted on 26.11.2010, along with all its enclosures be furnished to the Respondent (MeECL) to enable them to file a counter affidavit, if they so desire, within ten days ending 17.12.2010. The Commission fixed 21.12.2010 for hearing of both parties and further Orders.

10. On 21.12.2010 the Petitioners e-mailed a petition dated 21.12.2010 to the Commission, requesting for the postponement of hearing due to delay of the flight from Delhi on which their Learned Counsel was travelling to appear and take steps before the Commission.

The Commission was pleased to direct that the hearing fixed for 21.12.2010 be postponed and refixed at 11.00 A.M. on 11.01.2011 for hearing and issued notice to both the parties, accordingly.

11. On 11.01.2011, the Petitioners (BIA) were represented by Learned Counsel Ms. Swapna



Seshadri and three Office Bearers of the Byrnihat Industries Association. The Respondents (MeECL) were represented by their Learned Additional Chief Engineer (Commercial), Shri. C. Kharkrang, SE (RA&FD), Shri K.N. War, EE (Commercial), Shri. P. Lyngdoh and Others. The Commission heard both the parties and their written and oral submissions were taken on record.

12. In the course of hearing, it was clarified on behalf of the Respondents, by their Learned Additional Chief Engineer (Commercial) Shri C.Kharkrang , that the Revenue Receipt of Rs.432.29 crores during 2008-09, as reflected in their Audited Statement of Account for the year 2008-09, included an amount exceeding Rs.50.00 crores which is recoverable as arrears from the Petitioners / industrial consumers for EHT / HT category energy supplies during the year 2008-09. The recovery of this amount of arrears exceeding Rs.50.00 crores is the main issue being agitated in the instant proceeding before the Commission.

13. The Commission noted that the written and oral submissions made by the Respondents (MeECL) before the Commission in the truing-up proceeding for the year 2008-09 (which is under process) did not indicate that the Revenue Receipts for the year



2008-09 as reflected in the Audited Statement of Account for that year, included recoverable arrears exceeding Rs.50.00 crores from the Petitioners / industrial consumers of EHT / HT category. In view thereof, the Commission directed the Respondent to file a detailed statement supported by a duly sworn affidavit, within 10 days ending 20.01.2011, to reflect the standing provision of accounting procedure, under which such recoverable arrears have been included as Revenue Receipt for the said year. Also to provide a detailed breakup of the revenue receipts of Rs.432.29 crores for the year 2008-09 as reflected in the Audited Statement of Accounts for that year. Inclusive of the amount recoverable from the Petitioners/industrial consumers, as above. The Commission also directed the Respondent to furnish a copy of their said Statement and supporting affidavit to the Petitioners within the said date, and fixed 11.00 A.M. on 21.01.2011 for further hearing and order.

14. On 20.01.2011 the Respondent filed a Statement of the same date, furnishing the required information and other details in compliance with the directive of the Commission as reflected in para 14 of this Order, supported by a duly executed affidavit dated



20.01.2011. The Respondents stated therein, as follows –

“Most respectfully showed that the information as required by the Hon’ble Commission vide its Order dated 11.01.2011 are as hereunder:

1. *Standing provision of accounting procedure, under which such recoverable arrears have been included as revenue receipt for the said year.*

The Accounts of the State Electricity Boards are based on the “Commercial Accounting System for State Electricity Boards, Ministry of Power, Government of India”. As per Rule 9.1.11 and 2.128 of the aforesaid commercial accounting system, the recoverable arrears are to be included as revenue receipt for the said year. The relevant extract of the standing provision of accounting procedures is reproduced as below:-

CHAPTER II

COMPILATION OF ANNUAL ACCOUNTS

9. Accounting policies for transactions not covered by Annexure-III:- (1) A Board shall adopt commercial accounting system of year-end accruals even in respect of transaction for which no specific policy is prescribed in Annexure-III. The accounting policy adopted in such cases shall be stated in the statement of accounting policies, if the amounts involved are significant.

CHAPTER III

ANNEXURE-III BASIC ACCOUNTING PRINCIPLES AND POLICIES

CASH BASIS OF ACCOUNTING ONLY WHERE PRESCRIBED

1.11. The Cash Basis of accounting i.e. the practice of booking costs, revenues, assets and liabilities when money is received or paid and not when accrued shall not be adopted by a Board except in the specific cases where cash basis is prescribed in



this Annexure or in Annexure V. In all other cases, a Board shall follow commercial accounting system which required recording of transactions by which revenues, costs, assets and liabilities are reflected in the accounts for the period in which they accrue.

CHAPTER III

ANNEXURE-III BASIC ACCOUNTING PRINCIPLES AND POLICIES TIMING OF ACCOUNTING FOR REVENUE

2.128. Revenue from Sale of Power shall be accounted for on an accrual basis. The Accounting for revenue shall thus be totally delinked from the timing and the extent of actual collection of revenue from consumers. Where the sale of energy prior to the end of year has not been billed a provision for such unbilled revenue shall be made at the year-end so as to treat the amount as revenue in the year of supply of power.

A copy of the Commercial Accounting System for State Electricity Boards, Ministry of Power, Government of India is enclose. and marked as ANNEXURE I

(i) The MeECL also crave liberty to submit before the Hon'ble Commission that under the Commercial Accounting System for State Electricity Boards, the income tax payable by MeECL for FY 2007-08 is Rs.7.68 Crore and for FY 2008-09 is Rs.1.48 lakh in 2008-09, as shown in the Audited Statements of Account 2008-09 at Schedule 18, Serial No.2(g) at page 25. Under the provision of Section 209 of the Companies Act 1956, all books of accounts of the corporation are to be kept on accrual basis according to the double entry system of accounting. Further, the provisions of The Electricity (Supply) (Annual Accounts) Rules 1985, Para 1.12 (Annexure III) clearly states that "all prior revenue and costs arising on account of a difference between an accounting estimate made for accrual and actual values involved or on account of any other reason shall be accounted for prospectively and no retrospective restating of past year's figures shall be permitted" Accordingly, the erstwhile MeSEB in pursuance of the Assessment Order for the Assessment Year 2004-05 passed by the ACIT, Circle Shillong on



28.12.2007, was compelled to create a provision for tax in the accounts of 2007-08 under the head prior period to the tune of Rs.7.68 crore which was duly audited and certified by the Accountant General (Audit).

(ii) Consequently, the said provision of Rs.7.68 Crore (i.e. Rs.7.34 crore for MAT and Rs. 0.34 crore for FBT) which has already been charged in the accounts of 2007-08 cannot be subsequently charged again in the subsequent years accounts since the payments in the subsequent years will be reflected only by way of reduction from Cash & Bank Balances. Moreover, on the basis of the “Accrual Concept” it would be erroneous to charge again the unpaid balance in the Revenue Accounts of the subsequent years.

(iii) It is noteworthy to mention here that in accordance with the Order of the Hon’ble Tribunal dated 10th August, 2010, read with the provisions of Section 5.3 (h) (iii) of the National Tariff Policy, “Uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with past cost. Uncontrollable cost would include fuel cost, cost on account of inflation, tax and cesses, variation in power purchase unit costs including on account of hydro thermal mix in cases of adverse natural events”.

(iv) The MeECL submits that the summarized payments of income tax against the outstanding liability of Rs.7.68 crores are as follows:

Provision in 2007-08 for outstanding MAT ...Rs.7.34 crore
 Provision in 2007-08 for outstanding FBT ...Rs.0.34 crore
 Total Provision in 2007-08 for MAT & FBT ...Rs.7.68 crore

- | | |
|---|----------------------|
| • Paid during 2007-08 for MAT Rs. 0.50 crore | } |
| • Paid during 2008-09 for MAT Rs. 0.10 crore | |
| • Paid during 2009-10 for MAT Rs. 3.10 crore | |
| • Paid during 2010-11 for MAT <u>Rs. 1.80 crore</u> | |
| Total payment for MAT Rs. 5.50 crore | |
| • Paid during 2007-08 for FBT <u>Rs. 0.34 crore</u> | <u>Rs.5.84 crore</u> |
| Balance Outstanding for MAT | Rs.1.84 crore |



The details of payments for income tax during the years 2007-08, 2008-09, 2009-10 till date with copies of the respective challans are enclosed and marked as **ANNEXURE – II**.

(v) Since MAT and FBT were mandatory tax payments paid by the erstwhile MeSEB during 2007-08 and 2008-09, the MeECL submits before the Hon'ble Commission to allow inclusion of prior period expenditure on income tax at Rs. 7.68 crore during 2007-08 and Rs.1.48 lakhs during 2008-09 in the ARR of 2007-08 and 2008-09 respectively, as petitioned at paragraph 6 in the truing-up of the ARR for the years 2007-08 & 2008-09, which was submitted vide letter No.MeECL/SE(RA)/32/Pt-III/24 dated 12.10.2010.

2. **Detailed break up of Revenue Receipts of Rs. 432.29 crores for the year 2008-09 as reflected in the Audited Statement of Accounts for that year,**
The detailed break up of Revenue Receipts of Rs.432.29 Crore for the year 2008-09 is as below:

Serial No	Particulars	Amount (Rs)
I	Revenue from Sale of Power (Schedule – 1 of the Audited Statement of Account 2008-09)	
1	Inter State Sale of Power	
	(a) Assam	38030444
	(b) Mizoram	
	(c) Nagaland	
	(d) Tripura	
	(e) Manipur	
	(f) UI Sale, Others etc	546740467
2	Domestic or Residential	619066234
3	Commercial	243696559
4	Industrial Medium & Low Voltage	44118674
5	Industrial High & Extra H.V.	1955376659
6	Public Lighting	9310148
7	Irrigation & Agriculture	789602
8	Public Water Works	121059662
9	Bulk Supply to Others	282613569



10	Misc/General Purpose	7042651
11	Construction Project H.T	19072461
	Total Revenue	3886917130
12	Electricity Duty Recovery	20278222
13	Other State Levies Recovery	
14	Meter rent/Service line Recovery	10382281
15	Recoveries from theft of power/malpractice	
16	Wheeling Charges recoveries	55256657
17	Miscellaneous charges from consumers	22256657
	Gross Revenue from sale of Power	3945360018
18	Less	
19	Electricity Duty payable (contra)	20278222
20	Other State Levies payable (contra)	
	Sub Total	3925081796
II	Other Income (Schedule-5 of the Audited Statement of Accounts 2008-09)	
1	Interest on Staff Loans and Advances	136159
2	Income from Investment	17204765
3	Interest on Loans and Advances to Licensee	
4	Delayed payment charges from consumers	322802799
5	Discounts/Rebates from suppliers/contractors	39262024
6	Interest from Bank (other than fixed deposit)	6339617
7	Income from trading	736879
8	Income from staff welfare activities	
9	Miscellaneous Receipts	11373433
	Sub Total II	397855676
	Grand Total (I + II)	4322937472

3. The amount recoverable from the petitioners/industrial consumers.

- (i) The Hon'ble Commission in its Order dated 26.11.2010 at para 3 & 7 has stated as below:

“3. In the circumstances, let the Petitioner file an Affidavit with the statement showing details of the arrear sought to be recovered from them by the Respondent indicating –

- (a) Period (calendar months) for which costs for of supply of electricity is sought to be recovered by the Respondent.*



- (b) *The amount billed for each such month by the Respondent and the unit rate(s) as per billing.*
- (c) *The amount paid and receipted for, against each such bill, and the basis for such payment,*
- (d) *The amount pending against each such bill, and*
- (e) *The reason(s) for non-settlement of each claim by the Petitioner”.*

“7. Let the Petitioner comply with the requirements of para 3 and 4 of this Order within fifteen days ending 10.12.2010. Let them simultaneously furnish on record, a copy of their response along with copies of the documents furnished therewith to the Respondent. Let them also furnish a copy of their instant Affidavit dated 19.11.2010 and the connected Petition and enclosures thereto, to the Respondent, within the same date, that is 10.12.2010. Let the Respondent file their counter Affidavit, if any, with a copy on record, to the Petitioner, within 17.12.2010.

*A copy of the Hon’ble Commission’s Order dated 26.11.2010 is enclosed and marked as **Annexure-III***

- (ii) *The MeECL submits that the Byrnihat Industries Association (BIA) has not furnished to the MeECL the statements mentioned in para 3 as directed by the Hon’ble Commission in its Order dated 26.11.2010.*
- (iii) *Nevertheless, the MeECL in compliance to the direction of the Hon’ble Commission, submits the detailed Break up of Revenue Demand and collection of Industrial High Voltage including EHT for the year 2008-09 as below:*

Revenue Demand & Collection of Industrial High Voltage including EHT (in Rupees)		
Name of Divisions	Demand	Collection
East Garo Hills (D) Division	75840.00	114778.00
West Garo Hills(D) Division	261627.00	258765.00
Shillong Revenue Division	5728589.23	5685763.99
Western Revenue Division	1508328750.61	1163415524.84



Central Revenue Division	41847503.00	27655198.00
Jowai Revenue Division	376748007.60	309895541.08
Garo Hills Revenue Division	300664.78	399486.15
Williamnagar Revenue Division	2,085677.00	17096454.00
TOTAL	1955376659.22	1524521511.06

The table above shows the division-wise break up of Revenue Demand amounting to Rs.195.53 Crores against industrial High Voltage, including EHT, which is reflected in the Audited Statement of Account of 2008-09. Out of the total Billing Demand of Rs. 195.53 Crores, the collection amounted to only Rs.152.45 Crore resulting in outstanding receivables amount of Rs. 43.08 Crores for the year 2008-09;

- (iv) *The MeECL submits that the amount recoverable during FY 2008-09 from those industrial consumers which have been making part payment and assumed to be the Members of the Byrnihat Industries Association, is Rs. 40.64 crore. However, the outstanding amount from such consumers, as on 31st March 2009, inclusive of outstanding dues brought forward for the periods prior to April 2008 and the delay payment surcharge is Rs.50.08 crore. A copy of the detail statement indicating the bill amount and payment made in respect of such consumers is enclosed and marked as ANNEXURE-IV”*

16. During hearing on 21.01.2011, the Petitioners were represented by their Learned Counsel Shri A.K. Ganeshan and learned counsel Smt. Swapna Seshadri besides three others members of the BIA. The Respondents were represented by their learned Member Finance Shri. D.P.



Wahlang and their learned Additional Chief Engineer (Commercial) Shri. C. Kharkrang and three Other officials.

17. In their oral submission on 21.01.2011 the learned representative for the Respondent reiterated the submission contained in the Affidavit dated 20.01.2011 and under scored the fact that on the Hon'ble Appellate Tribunal having said aside the Commission's Order dated 10.9.2009 in so far as it related to retrospective revision of tariff for the year 2008-09, the Respondent had given notice to the Petitioners to settle their arrear dues for the year 2008-09 for EHT/ HT category for electricity supplied during that period, at tariff rate as fixed by the Commission's Tariff (D) Order dated 30.09.2008. The Respondents had however failed to settle such arrear dues. In view thereof and in accordance with the terms and condition for supply of electricity, as per standard agreement executed by them(Respondents) with the Consumers, they (Respondents) had issued notice to the defaulting consumers in question, and had stated therein that the Respondents would cause disconnection of electricity supply unless the arrear dues for supply were paid by the date specified in such notice. The learned Representative of the Respondents



further stated that such disconnection of electricity connection to a defaulting consumer was always resorted to, as a matter of normal course in all cases of default in payment of electricity bill within the specified time frame, as per terms and conditions of supply. The learned Representative of the Respondents, therefore, urged the Commission to dispose the matter in favour of the Respondents as the issues raised by the Petitioner in the instant proceeding, were ill-conceived and un-sustainable.

18. Responding, the Learned Counsel for the Petitioner stated that the provision of the Electricity Act 2003, Regulations framed there under in respect of determination of tariff and the National Tariff Policy mandated a tariff structure in all States, commensurate with reasonable revenue requirement for the purpose of generation, transmission and distribution of electricity, finance costs and admissible level of return on equity investment made by the generating, transmitting and distributing Companies, concerned. It was therefore expected that such Companies, while formulating and submitting their ARR and Tariff(D) determination petitions, would cause realistic estimations and projections of their revenue



requirement with reference to actual expenditure of the preceeding year(s) and their projected activities, during the year for which tariff was to be determined. In doing so, such Companies were not expected to resort to guesstimate or unreasonably inflated estimates, as this would result in unmerited and uncalled for increase in unit tariff rate of electricity and this would adversely effect the consumer, on whom the burden of resultant increase in tariff would fall. **In such context the learned Counsel for the Petitioners, placed on record, that case records clearly reveal that the Respondents had submitted highly inflated and unreasonably high estimates of revenue requirement.** Learned Counsel referred to the ARR and Tariff (D) Orders of the Commission for the year 2007-08 dated 17.12.2007 and pointed out that –

- the Respondent had sought for an ARR of Rs. 443.09 crores for the year 2007-08, although the audited statement of Account for that year revealed that the annual revenue expenditure of that year was Rs.345.10 crores only which clearly shows that the estimate submitted by the Respondent were over 28% in excess of actual revenue requirement.



Further the truing-up proceedings of the ARR for the year 2007-08 which was presently under process by the Commission, indicated that the Commission had provisionally assessed the trued-up ARR for the year 2007-08 at Rs. 319.65 crores, rendering the proposal originally submitted by the Respondent to be more unrealistic and unreasonable, in as much as the original proposal of Rs. 443.09 crores was over 38% in excess of provisional actual as above.

19. Similarly, the learned Counsel for the Petitioners referred to the ARR and Tariff (D) Orders of the Commission for the year 2008-09 dated 30.09.2008 and pointed out that –

- the Respondent had sought for an ARR of Rs. 512.01 crores for the year 2008-09. The Commission had provisionally assessed the trued-up ARR for the year 2008-09 at Rs. 371.65 crores, for that year, on the basis of provisional Statement of Accounts for that period. The proposed ARR of **Rs.512.01 crores for the year 2008-09 as proposed by the Respondent** was therefore stood over 72% higher than the provisional actual. **It was therefore evident that the Respondent had sought to reflect a very high and inflated ARR, which lead the Commission to fix an unduly high**



ARR, each year, with a corresponding high and unreasonable rate of tariff, which was passed on to the consumer, due to careless and inefficient assessment of their ARR.

20. Further, continuing submissions, the learned counsel for the Petitioner pointed out that the Audited Statement of Account for the year 2008-09 reflected considerable high level of profits, much in excess of the approved level of 14% on equity investment. In view thereof, if the Respondents are allowed to recover and realize the arrear dues on account of electricity supplied during the year 2008-09 along with DPC (Delayed Payment Charge), it will result in undue additional profits, with avoidable burden on Consumers.

21. Learned counsel for Petitioner therefore prayed that keeping in view the arising situation, the Commission may be pleased to decide and direct the Respondents not to recover any further additional electricity charges, in addition to what had already been paid and recovered from the consumers, at pre 30.09.2008 unit rates.



22. Learned counsel for the Petitioner also urged that the Commission may be pleased to direct that no disconnection should take place for the so called default in paying the so called arrear dues.

23. **CONCLUSIONS -**

After careful consideration of the written submissions of the Byrnihat Industries Association(BIA) as contained in their Affidavit dated 19.11.2010 and that of the Meghalaya Energy Corporation Limited (MeECL) as contained in their Affidavit dated 20.01.2011, and the oral submissions of both the parties, during hearing on 21.01.2011, the Commission notes that –

(1). the ARR for the fiscal year 2008-09 has since been trued-up vide Commission's Orders dated 18.02.2011 at Rs.358.31 Crores, based on the Audited Statement of Accounts for that year, read with the CAG's Audit Notes, thereon, against Revenue Income of Rs.404.62 Crores from the sale of power, during the same period, resulting in a revenue surplus of Rs.46.31



Crores and a consequent net Regulatory Asset of Rs.36.90 Crores.

(2). In view of the aforesaid arising revenue surplus and resultant generation of a net Regulatory Asset as per Commission's Truing-Up Order dated 18.02.2011 in Truing-Up Proceedings No.2 of 2010, the Commission finds that the proposed recovery of arrear dues relating to the fiscal year 2008-09 amounting to over Rs.40.00 Crores without DPC (Delayed Payment Charges) and over Rs.50.00 Crores with DPC, is anomalous, in as much as the MeECL have already collected more than the required level of approved revenue income to meet admissible and approved level of revenue expenditure.

Be that as it may, it now appears from notice received from the Hon'ble Supreme Court of India, in Civil Appeal No.(S)-of 2011, viz the



Byrnihat Industries Association –vs- the Meghalaya State Electricity Regulatory Commission & Another, that the Petitioners in the instant proceeding have filed an Appeal in the matter of Judgement / Order dated 10.08.2010 passed by the Hon’ble Appellate Tribunal for Electricity, in Appeal No.37 of 2010 and Order dated 03.11.2010 passed by the said Tribunal in Review Petition No.14 of 2010. The Commission is satisfied that the issues raised by them in the instant proceedings are substantially the same as those in the Civil Appeal filed by them before the Hon’ble Supreme Court.

The Commission further notes from the Hon’ble Supreme Court Order dated 31.01.2011 in the above regard, that the Appeal has been heard by the Hon’ble Supreme Court, and the delay in filing their Appeal has been condoned, and notice issued to this Commission and one Another



to show cause why the Appeal should not be admitted and why the application for stay should not be entertained.

In view thereof, the Commission holds that it is prudent and appropriate for it to dispose of this proceeding, but not to pass any further Order, pending disposal of the Appeal by the Hon'ble Supreme Court of India. Either party would be at liberty to come back to the Commission for further consideration, if any, thereafter.

Accordingly, the Commission disposes of this proceeding without passing any further Order, pending disposal of the matter by the Hon'ble Supreme Court of India. Either party is at liberty to come back to the Commission for further consideration, if any, thereafter.

Intimate both parties, accordingly.



Given under the hand and seal of the Meghalaya State
Electricity Regulatory Commission, this 21st.day of
February,2011, at Shillong.

(P.J.Bazeley),
Chairman,
Meghalaya State Electricity Regulatory Commission
21st. February,2011

