Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 95 of 2020

Case of The Tata Power Company Limited (Transmission) seeking review of certain aspects of Multi Year Tariff (MYT) Order dated 30 March, 2020 in Case No. 299 of 2019

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

The Tata Power Company Limited (Transmission) ..... Petitioner

Appearance

For the Petitioner : Ms. Swati Mehendale (Rep.)

ORDER

Date: 17 June, 2020

1. The Tata Power Company Limited (Transmission) (**TPC-T**) has filed a Petition on 23 May, 2020 under Section 94 (1)(f) of the Electricity Act (EA), 2003, read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, seeking review of certain aspects of the MYT Order issued on 30 March, 2020 for TPC-T in Case No. 299 of 2019 (**Impugned Order**) in the matter of Truing-up of ARR for FY 2017-18 and FY 2018-19, Provisional Truing-up of ARR for FY 2019-20 and ARR for 4th Multi Year Tariff (MYT) Control Period from FY 2020-21 to FY 2024-25.

2. **TPC-T's main prayers are as follows:**

"*A. To allow the various points raised under Review petition as listed below:*

a) Removal of Income from Amortisation of Service Line Contributions from the Non-Tariff Income (NTI) of Rs. 3.65 Crores and Rs. 2.43 Crores for FY 2017-18 and FY 2018-19 respectively.

b) *To allow surplus amount of Rs. 27.32 Crores as against approved Rs. 101.98 Crores for the total past recovery to be adjusted in FY 2020-21*

c) *To allow expenses of Rs. 4.08 Crores towards R&M expenses for FY 2018-19*

d) *Allow capitalisation of Rs. 0.43 Crores in FY 2017-18 towards Merged DPR scheme "Replacement of 22 kV and 33 kV Bus Sections at Carnac Receiving Station"*

e) *To allow any financial implication arising out of the above Review to be considered during the MYT Petition."*

3. The Commission scheduled the e-hearing on the Review Petition on 12 June, 2020. At the e-hearing, TPC-T reiterated the issues raised in the Review Petition and submitted that there was an error on the face of the record of the Impugned Order. Hence, review was maintainable as per the provisions of MERC (Conduct of Business) Regulations, 2004.

4. TPC-T has sought the review of the MYT Order in Case No. 294 of 2019. The grounds and submissions of TPC-T and also the Commission's analysis and ruling thereon are elaborated in the following paragraphs.

5. The Commission notes that the Review Petition has been filed under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, which specifies as follows:

> *"**<u>Review of decisions, directions, and orders:</u>***
>
> *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."*

6. It is noted that TPC-T's Review Petition is dated 23 May, 2020. As per the above-mentioned Regulations, the Review Petition is required to be filed within 45 days from the date of Order of the Commission, i.e., on or before 14 May, 2020. However, the Review Petition has not been filed within the specified period.

7. TPC-T has submitted that the delay in filing of the Review Petition is inadvertent and not intentional and is purely because of the lockdown imposed due to the current COVID-19 situation and the consequent difficulties arising out of it. In this regard, TPC-T has placed reliance on the Hon'ble Supreme Court Order dated 23 March, 2020 in Suo Motu Writ Petition (Civil)

No(s).3/2020, wherein it took cognizance for extension of Limitation and passed the below Order:

> *"This Court has taken Suo Motu cognizance of the* ***situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State****).*
>
> *To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court,* ***it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings****."*

8. In light of the above, TPC-T has requested the Commission to condone the delay of 9 days in filing the Review Petition and has requested the Commission to consider the same.

9. The Commission notes that the Review Petition has been filed by TPC-T within the period of limitation as per the Order passed by Hon'ble Supreme Court dated 23 March, 2020 and delay condonation for the same is not required.

10. The ambit of review is limited, and TPC-T's Review Petition has to be evaluated accordingly.

11. The Commission deals with the review issues submitted in the Petition in seriatim as follows:

12. **Issue 1: Treating Income from Amortisation of Service Line Contributions as part of the Non-Tariff Income (NTI) for FY 2017-18 and FY 2018-19**

TPC-T's submission

12.1. TPC-T has submitted that it has not considered income from Amortisation of Service Line Contribution as part of NTI for FY 2017-18 and FY 2018-19 in the MYT Petition. However, the Commission in the Impugned Order has considered Rs. 3.65 Crore and Rs. 2.43 Crore against "Transfer of Service Line Contribution" for FY 2017-18 and FY 2018-19, respectively, as NTI.

12.2. TPC-T has submitted that the Service Line/Capital Contribution is an amount received for the jobs carried out by TPC-T to cater to requirements of various statutory authorities like Mumbai Metropolitan Region Development Authority (**MMRDA**) , local governing bodies, Railways, etc., to facilitate execution of their infrastructure projects by making modifications to existing EHV transmission lines like raising of height, diversion of transmission lines or conversion of overhead transmission lines into underground cables, etc., as per their requirement.

12.3. As the amount is received from the entity as a Capital Contribution, the same is shown as a liability in the books of account of TPC-T. However, while submitting the Gross Fixed Assets (**GFA**) to the Commission, this amount is deducted from the regulatory GFA. Consequently, Return on Equity (RoE), Interest on Loan and Deprecation computed for the Transmission Business is without considering any Consumer Contribution.

12.4. Though TPC-T deducts the Capital Contribution from the GFA while computing the ARR, asset remains in TPC-T's books and hence, a corresponding liability to this extent of Consumer Contribution is created in the books of TPC-T. Since, such liability is not refundable to the entity who has funded it, this liability needs to be written back. TPC-T has adopted the methodology of writing back this liability at the rate of depreciation.

12.5. Reduction in liability is considered as NTI in the books of accounts. Since, the ARR is prepared by considering capitalisation after reduction of the Capital Contribution, such NTI is not offered to the beneficiaries of TPC-T, else, it will amount to double counting of NTI.

12.6. Therefore, TPC-T has requested the Commission to review its decision and accordingly, not consider "Transfer of Service Line Contribution" as part of NTI of TPC-T for FY 2017-18 and FY 2018-19.

Commission's Analysis and Ruling

12.7. The contention of TPC-T is that the Commission in the impugned Order has incorrectly treated Transfer of Service Line Contribution of Rs. 3.65 Crore and Rs. 2.43 Crore for FY 2017-18 and FY 2018-19, respectively, as a part of NTI.

12.8. While scrutinizing the MYT Petition filed by TPC-T, the Commission had observed that NTI amounts considered in the Petition formats were not matching with the Audited Accounts for FY 2017-18 and FY 2018-19. Therefore, the Commission had sought the reconciliation of amount of NTI shown in the audited accounts of TPC-T and MYT Petition formats. The specific query asked in this regard vide Data Gaps dated January 14, 2020, has been reproduced below, for reference:

"5. TPC-T in its Petition Formats, has submitted the figures for FY 2017-18 and FY 2018-19 which are not tallying with the figures in the Audited Accounts for FY 2017-18 and FY 2018-19 for following expense/income heads:
a. …;

c. Form 8- Non-Tariff Income.

TPC-T to provide proper reconciliation for the figures submitted against various heads in the above Forms with the figures in the Audited Accounts for FY 2017-18 and FY 2018-19.”

12.9. In its replies, TPC-T had provided reconciliation of Audited Accounts and MYT submission for NTI wherein TPC-T had only mentioned that it has not considered amount of Amortisation of Service Line Contributions as part of NTI for FY 2017-18 and FY 2018-19. Therefore, the Commission has considered the income from Amortisation of Service Line Contributions as part of NTI.

12.10. The reply submitted by TPC-T to the query raised by the Commission on the reconciliation of amount of NTI is reproduced as under:

“Table 1: Reconciliation of NTI for FY 2017-18 as submitted by TPC-T (Rs. Crore)

Particulars	***As per Audited Accounts***	***As per ARR MYT Submission***	***Difference***	***Remarks***
Other Operating Revenue				
Rental of land, Buildings, Plant and Equipment etc.	*2.74*	*2.74*	*0*	
Income in respect of Services Rendered	*0.08*	*0.08*	*0*	
Amortisation of Service Line Contributions	*3.65*	*0.00*	*3.65*	***Not Considered in Non-Tariff Income***
Miscellaneous Revenue	*6.36*	*6.37*	*(0.01)*	
HOSS	*0.51*	*0.52*	*(0.01)*	
Total (A)	***13.34***	***9.71***	***3.63***	

Table 2: Reconciliation of NTI for FY 2018-19 as submitted by TPC-T (Rs. Crore)

Particulars	***As per Audited Accounts***	***As per ARR MYT Submission***	***Difference***	***Remarks***
Other Operating Revenue				
Rental of land, Buildings, Plant and Equipment etc.	*2.74*	*2.74*	*0.00*	
Income in respect of Services Rendered	*0.10*	*0.10*	*0.00*	
Amortisation of Service Line Contributions	*2.43*		*2.43*	***Not Considered in Non-Tariff Income***
Miscellaneous Revenue	*2.53*	*2.54*	*(0.01)*	

HOSS	*0.23*	*0.24*	*(0.01)*
Total (A)	***8.03***	***5.62***	***2.41***

12.11. From the reply submitted by TPC-T, it is clear that TPC-T did not submit the detailed justification such as nature of expenses, justification for non-inclusion of amortisation of Service Line Contribution as part of NTI, in spite of specific query. Merely stating that some income has not been considered in NTI, without providing the justification for not considering the same as NTI, cannot be considered as a complete reply. In the Review Petition, TPC-T has provided detailed justification for non-consideration of Service Line Contribution as part of NTI. TPC-T has submitted that the Service Line Contribution is the Capital Contribution for the jobs carried out by TPC-T to cater to requirements of various statutory authorities and this amount is deducted from regulatory GFA for MYT submission. Since, TPC-T has computed the ARR (i.e., RoE, Interest on Loan and Deprecation) in the MYT Petition without considering any Consumer Contribution, the contra-entry of NTI on this account should also not be considered.

12.12. Hence, consideration of Amortisation of Service Line Contributions as a part of NTI considered in the impugned Order is an error apparent on the face of the record and the Review on this issue is admissible.

12.13. Therefore, NTI of Rs. 3.65 Crore and Rs. 2.43 Crore for "Transfer of Service Line Contribution" would not be considered as NTI for FY 2017-18 and FY 2018-19, respectively. Accordingly, the revised NTI for FY 2017-18 and FY 2018-19 is shown as under:

Table 3: Revised NTI approved by the Commission (Rs. Crore)

Sl.	**Particulars**	**FY 2017-18**		**FY 2018-19**	
		MYT Order	**Allowed in Review**	**MYT Order**	**Allowed in Review**
1	Non-Tariff Income	18.23	14.58	14.70	12.27
2	**Net Impact on ARR**		**3.65**		**2.43**

12.14. The net impact on ARR of TPC-T is Rs. 3.65 Crore for FY 2017-18 and Rs. 2.43 Crore for FY 2018-19, which would be allowed at the time of true-up/Mid-term Review. **However, the associated Carrying/(Holding) cost shall not be allowed as the error is because of TPC-T's incomplete submission while processing the Impugned Order in spite of specific query by the Commission.**

13. ***Issue 2: Non-consideration of surplus amount of Rs. 57.74 Crore already passed on in provisional truing up of FY 2017-18, while approving past Gap/(Surplus) till FY 2020-21***

TPC-T's Submission

13.1. While arriving at the Past Gap/(Surplus) recovery till FY 2020-21 in the Impugned Order, the Commission has not considered the surplus amount of Rs. 57.74 Crore for FY 2017-18, which was already passed on to consumers in the MTR Order of TPC-T in Case No. 204 of 2017 dated 12 September, 2018.

13.2. In the Impugned Order, the Commission had carried out the final truing up of FY 2017-18 and had arrived at a Surplus of Rs. 50.21 Crore as against the provisional Surplus of Rs. 57.74 Crore arrived at in the MTR Order. However, if the Surplus of Rs. 57.74 Crore already passed on to consumers in the MTR Order is considered, the net Gap/(Surplus) for FY 2017-18 works out to a Gap of Rs. 7.53 Crore instead of a Surplus of Rs. 50.21 Crore as shown in the Table below:

Table 4: Net Gap/(Surplus) for FY 2017-18 as submitted by TPC-T (Rs. Crore)

Sl.	Particulars	Amount
1	Provisional Surplus of FY 2017-18 passed on to consumers vide MTR Order in Case 204 of 2017	(57.74)
2	Actual Surplus of FY 2017-18 as per MYT Order in Case 299 of 2019	(50.21)
3	Net Gap/(Surplus) to be passed on to consumers = (2) – (1)	7.53

13.3. TPC-T has submitted that considering this Net Gap for FY 2017-18 at Rs. 7.53 Crore, the actual Past Gap/(Surplus) recovery till FY 2020-21 works out to a Surplus of Rs. 27.32 Crore as against Surplus of Rs. 101.98 Crore approved in the MYT Order in Case No. 299 of 2019.

13.4. TPC-T submitted the revised computation of Carrying/ (Holding) Cost and actual Past Gap/(Surplus) recovery till FY 2020-21 as under:

Table 5: Carrying/ (Holding) cost for Gap/(Surplus) Recovery till FY 2020-21, as submitted by TPC-T (Rs. Crore)

Particulars	Legend	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Carrying/ (Holding) Cost Rate	**A**	**14.75%**	**10.79%**	**10.18%**	**9.89%**	**9.55%**	**9.55%**
Opening Balance	B	-	-	-	4.60	(56.19)	(56.19)
Addition during the year	C	-	-	7.53	(57.47)		56.19

Particulars	Legend	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Less Incentive	D	-	-	2.94	3.32		
Closing Balance	E= (B+C-D)	-	-	4.60	(56.19)	(56.19)	-
Carrying/ (Holding) Cost	**F= AVG (B,E) x A**	**-**	**-**	**0.23**	**(2.55)**	**(5.37)**	**(2.68)**
Total Carrying/ (Holding) Cost	**I**						**(10.37)**

Table 6: Past Gap/(Surplus) Recovery till FY 2020-21, as submitted by TPC-T (Rs. Crore)

Particulars	Legend	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Opening Balance	A	-	-	-	7.53	(49.93)	(16.95)
Gap/(Surplus) Addition during the year	B	-	-	7.53	(57.47)	32.98	-
Revenue Gap/(Surplus) approved in MTR Order 204 of 2017	C	-	-	-	-	-	-
Interest on past recovery	D						(10.37)
Closing Balance	E=(A+B+C+D)	-	-	7.53	(49.93)	(16.95)	(27.32)
Total of past recoveries in FY 2020-21	**F=(D+E)**						**(27.32)**

13.5. TPC-T has requested the Commission to review the Impugned Order and approve Holding Cost of Rs. 10.37 Crore as against approval of Rs. 27.79 Crore and actual past surplus recovery of Rs. 27.32 Crore as against approval of Rs. 101.98 Crore till FY 2020-21.

Commission's Analysis and Ruling

13.6. The Commission, in MTR Order in Case No. 204 of 2017 (*Case of TPC-T for True up of ARR for FY 2015-16 and FY 2016-17, Provisional True up of ARR for FY 2017-18 and revised estimates of ARR for FY 2018-19 to FY 2019-20*), had approved Rs. 48.59 Crore as cumulative surplus till FY 2016-17 (as shown in Table 128 of the MTR Order reproduced below). Also, in the said Order, the Commission had approved standalone provisional surplus of Rs. 57.74 Crore for FY 2017-18 (as shown in Table 103 of the MTR Order reproduced below). So, the cumulative surplus at the end of FY 2017-18 was Rs. 106.33 Crore (Rs. 48.59 crore + Rs. 57.74 crore). The relevant extracts of the MTR Order in Case No. 204 of 2017 are reproduced below:

"***Commission's Analysis and Ruling***

5.13.2 *The provisional Revenue Surplus as approved by the Commission for FY 2017-18 is as summarized in the Table below:*

Table 103: Provisional Truing up for FY 2017-18, as approved by the Commission (Rs. Crore)

Particulars	*MYT Order*	*MTR Petition*	*Approved in this Order*
Operation & Maintenance expenses	*193.79*	*204.84*	*185.63*
Depreciation expenses	*127.89*	*142.37*	*137.55*
Interest on long-term loan capital	*104.88*	*108.35*	*92.63*
Other finance charges	-	-	-
Interest on working capital	*14.04*	*12.52*	*13.22*
Income tax	*66.74*	*23.67*	*21.23*
Contribution to contingency reserves	*7.79*	*8.04*	*7.87*
Total Revenue Expenditure	***515.13***	***499.79***	***458.12***
Return on equity capital	*164.66*	*169.18*	*163.93*
Aggregate Revenue Requirement	***679.79***	***668.97***	***622.05***
Less: Non-Tariff Income	*18.11*	*18.11*	*18.11*
Aggregate Revenue Requirement from Transmission Tariff	***661.68***	***650.86***	***603.94***
Revenue from Transmission Tariff	***661.68***	***661.68***	*661.68*
Revenue Gap/(Surplus)	**-**	***-10.82***	***-57.74***

…."

13.7. Also, in the said Order, the Commission had approved the past recoveries as a Surplus of Rs. 115.10 Crore, inclusive of holding cost of Rs. 8.77 Crore, to be recovered in the FY 2018-19 (as stated in para 6.12.10 of the MTR Order). This amount of Rs. 115.10 Crore surplus included the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18. (Rs. 115 .10 Crore = 8.77 Crore Holding cost + Rs. 106.33 Crore surplus of past period).

13.8. The calculations of carrying cost/ holding cost for past recoveries approved by the Commission in the MTR Order are reproduced as under:

"6.12.6 At the time of MYT Order, FY 2015-16 was being provisionally Trued-up. Therefore, the Commission had not given carrying/ (holding) cost for FY 2015-16. As final True-up of FY 2015-16 is being carried out in this Order, (holding)/carrying cost for FY 2015-16 is considered in this Order. The ATE in its Judgment vide Appeal No. 244 of 2015 and Appeal No. 246 of 2015 has decided against the appellants challenging disallowance of carrying cost as determined by the Commission. Accordingly, (Holding)/Carrying Cost is not considered by the Commission on incentives. Considering that final Truing up of FY 2015-16 and FY 2016-17 is being done in this MTR Order and the ATE Judgment referred above, (Holding)/Carrying Cost is calculated as follows:

Table 127: Calculation of Carrying/ (Holding) Cost (Rs. Crore)

Particulars	***FY 2015-16***	***FY 2016-17***	***FY 2017-18***	***FY 2017-18***
Opening Balance of cumulative gap/(surplus)	*-*	*25.66*	*-59.00*	*-59.00*
Revenue gap/(surplus) during the year (excluding Incentive)	*25.66*	*-84.67*		*59.00*
Closing Balance of cumulative gap/(surplus)	*25.66*	*-59.00*	*-59.00*	*-*
Interest rate (%)	*14.29%*	*10.79%*	*10.20%*	*9.45%*
Carrying/(Holding) Cost	*1.83*	*-1.80*	*-6.02*	*-2.79*
Total Carrying/(Holding) Cost				***-8.77***

6.12.7 Carrying/ (Holding) Cost on Revenue Gap/ (Surplus) due to provisional Truing up of FY 2017-18 is not considered in this Order. It will be considered after Audited Accounts for FY 2017-18 are available for final Truing up and will be adjusted at the end of the third Control Period in final Truing up of FY 2017-18.

6.12.8 Recovery of past revenue gap/(surplus) including incentives is as shown in Table below:

Table 128: Recovery of past revenue gap in FY 2018-19 (Rs. Crore)

Particulars	***FY 2015-16***	***FY 2016-17***	***FY 2017-18***	***FY 2018-19***
Opening Balance of cumulative gap/(surplus)	*-*	*32.48*	*-48.59*	*-106.33*
Addition during the year	*32.48*	*-81.06*	*-57.74*	*106.33*
Closing Balance of cumulative gap/(surplus)	*32.48*	*-48.59*	*-106.33*	*-*

6.12.9 Accordingly, the Commission approves Rs. 8.77 Crore towards Holding Cost and a Surplus of Rs. 106.33 Crore towards past period is adjusted in ARR of FY 2018-19 as shown in Tables above. Therefore, the total past recovery to be adjusted in FY 2018-19 is a Surplus of Rs. 115.10 Crore inclusive of holding cost.

6.12.10 The Commission approves the past recoveries including (holding)/carrying cost as a Surplus of Rs. 115.10 Crore to be recovered in the FY 2018-19, as against a Gap of Rs. 137.04 Crore submitted by TPC-T."

13.9. It is worth noting that in the MTR Order, the Commission had clearly mentioned that Rs. 115.10 Crore has been adjusted in FY 2018-19.

13.10. In the MTR Order, the Commission had approved ARR of Rs. 528.87 Crore for TPC-T for FY 2018-19, which included the adjustment of past surplus of Rs. 115.10 Crore. In InSTS Order dated 12 September, 2018 in Case No. 265 of 2018, the Commission had considered the ARR of Rs. 528.87 Crore for TPC-T (which was approved in TPC-T's MTR Order) for determining Total Transmission System Cost (TTSC) for FY 2018-19.

13.11. In the MYT Petition, TPC-T had not considered the Surplus of Rs. 115.10 Crore (which includes Rs. 57.74 Crore surplus for FY 2017-18) approved by the Commission in the MTR Order while computing the Revenue Gap of Rs. 68.07 Crore for FY 2018-19. TPC-T's submission was presented in Table 44 of the MYT Order, as reproduced below:

"*Table 44: Summary of Truing up including sharing of Efficiency Gains for FY 2018-19, as submitted by TPC-T (Rs. Crore)*

Particulars	***MTR Order***	***Actual***	***Efficiency Gains / (Loss)***	***Net Entitlement after sharing of Gains/(Losses)***
Operation & Maintenance expenses	*201.07*	*205.20*	*(2.33)*	*218.04*
Depreciation expenses	*148.90*	*138.27*		*138.27*
Interest on long-term loan capital	*96.72*	*91.85*		*91.85*
Refinancing & Other finance charges	*0.00*	*0.06*		*0.06*
Interest on working capital	*10.96*	*12.48*	*(0.72)*	*13.20*
Income tax	*21.23*	*33.24*		*33.24*
Contribution to contingency reserves	*8.27*	*8.37*		*8.37*
Total revenue expenditure	***487.15***	***489.47***		***503.04***
Return on equity capital	*176.31*	*177.28*		*177.28*
Aggregate Revenue Requirement	***663.46***	***666.75***		***680.32***
Less: Non-Tariff Income	*19.49*	*12.27*		*12.27*
Less: Income from other business				
Aggregate Revenue Requirement from Transmission Tariff	***643.97***	***654.48***		***668.05***
Incentive		*3.37*		*3.37*
Revenue from Transmission Tariff				*603.35*
Long-term TSUs incl Distribution Licensees		*604.80*		*604.80*
Less Cash Discount				*1.45*
Past Recoveries	***(115.10)***			
Revenue Gap/(Surplus)	***528.87***	***53.06***		***68.07***

…"

13.12. However, TPC-T had considered the Surplus of Rs. 115.10 Crore for computing the Past Recovery till FY 2020-21, as shown in Table 97 of the Impugned Order, as reproduced below:

"Table 97: Past Recovery Computation for Gap Recovery in FY 2019-20, as submitted by TPC-T (Rs. Crore)

Particulars		*FY 2015-16*	*FY 2016-17*	*FY 2017-18*	*FY 2018-19*	*FY 2019-20*	*FY 2020-21*
Opening Balance	*A*	-	*93.66*	*94.76*	*53.86*	*6.83*	*78.04*
Gap/(Surplus) Addition during the year	*B*	*93.66*	*1.10*	*(40.90)*	***68.07***	*71.21*	-
Revenue Gap/(Surplus) approved in MTR Order 204 of 2017	*C*	-	-	-	*(115.10)*	-	-
Interest on past recovery	*D*						*27.39*
Closing Balance	*E=(A+B-C+D)*	*93.66*	*94.76*	*53.86*	*6.83*	*78.04*	*105.43*
Total of past recoveries in FY 2020-21	***F=(D+E)***						***105.43***

…"

13.13. The Commission had computed the Revenue Surplus of Rs. 57.47 Crore for FY 2018-19 after considering Past Surplus of Rs. 115.10 Crore as approved in the MTR Order, in Table 45 of the MYT Order, as reproduced below for reference:

"Table 45: Summary of Truing up including net entitlement after sharing of Efficiency Gains/(Loss) for FY 2017-18 and 2018-19, as approved by the Commission (Rs. Crore)

Sr. No.	***Particulars***	***FY 2017-18***			***FY 2018-19***		
		MTR Order	***TPC-T Petition***	***Approved in this Order***	***MTR Order***	***TPC-T Petition***	***Approved in this Order***
1	…						
	…						
13	***Aggregate Revenue Requirement from Transmission Tariff***	***603.94***	***614.92***	***605.66***	***643.97***	***668.05***	***657.89***
14	*Incentive*		*2.97*	*2.94*		*3.37*	*3.32*
15	***Revenue from Transmission Tariff***	*661.68*	*658.79*	*658.80*		*603.35*	*603.59*
16	*Long-term TSUs incl. Distribution Licensees*	*661.68*	*661.68*	*661.68*		*604.80*	*604.80*
17	*Less Cash Discount*		*2.89*	*2.88*		*1.45*	*1.21*
18	*Past Recoveries*				*(115.10)*		*(115.10)*
19	***Revenue Gap/(Surplus)***	***(57.74)***	***(40.90)***	***(50.21)***	***528.87***	***68.07***	***(57.47)***

…"

13.14. From the above ruling of the impugned Order, it is worthwhile to note that the Revenue Surplus of Rs. 50.21 Crore approved after final True Up for FY 2017-18 (as shown in the Table No. 45 of the Impugned Order) is without considering surplus of Rs. 57.74 Crore approved by the Commission for FY 2017-18 at the time of provisional true-up in MTR Order. This provisional surplus of the FY 2017-18 is only considered by the Commission as part of the Truing up of FY 2018-19 as in the MTR Order, the effect of surplus owing to provisional true-up of FY 2017-18 was passed on in FY 2018-19 only.

13.15. Thus, while assessing the final Revenue Gap/Surplus for FY 2018-19 as part of true-up in the Impugned Order, the Commission has trued up the expenses of TPC-T and accordingly revised the ARR from Rs. 643.97 Crore to Rs. 657.89 Crore. While doing so, all the past period impact, i.e., Past Surplus of Rs. 115.10 Crore, as considered in the MTR Order was retained in entirety, as shown in Table 45 of the impugned Order. After considering this impact, the Revenue Gap/Surplus was determined to be surplus of Rs. 57.47 Crore in the final true up for FY 2018-19. Hence, it may be noted that, the Gap/(Surplus) pertaining to the past years passed on in FY 2018-19 in the MTR Order, have been considered at same level in the final true-up of FY 2018-19. Thus, all Gap/(Surplus) approved for past years remain the same and need not be further trued up.

13.16. In the Review Petition, TPC-T has considered the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18 to derive the Net Gap of FY 2017-18 as Rs. 7.53 Crore. However, in the Impugned Order, the Past Surplus of Rs. 115.10 Crore, which includes the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18, is considered to calculate the Revenue Surplus for FY 2018-19; because in the MTR Order, the Commission had considered the past recovery of a surplus of Rs. 115.10 Crore in the ARR of FY 2018-19. Therefore, the surplus amount of Rs. 57.74 Crore has not been considered in FY 2017-18. In view of this, the logic of TPC-T that impact of provisional true-up of FY 2017-18 should not be considered while arriving at the final Revenue Gap/Surplus of FY 2018-19 does not hold merit.

13.17. From the above analysis, it is clear that the Past Surplus of Rs. 115.10 Crore, which includes the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18, is already considered to calculate the Revenue Surplus for FY 2018-19 and this amount has not been considered again in computation of the Past Recovery till FY 2020-21 as shown in Table 99 of the MYT Order which is reproduced as shown below.

"Table 99: Past Gap/(Surplus) Recovery approved till FY 2020-21 (Rs. Crore)

Particulars	***Legend***	***FY 2015-16***	***FY 2016-17***	***FY 2017-18***	***FY 2018-19***	***FY 2019-20***	***FY 2020-21***
Opening Balance	*A*	-	-	-	*(50.21)*	*(107.67)*	*(74.69)*

Particulars	*Legend*	*FY 2015-16*	*FY 2016-17*	*FY 2017-18*	*FY 2018-19*	*FY 2019-20*	*FY 2020-21*
Gap/(Surplus) Addition during the year	*B*	-	-	*(50.21)*	*(57.47)*	*32.98*	-
Revenue Gap/(Surplus) approved in MTR Order 204 of 2017	*C*	-	-	-		-	-
Interest on past recovery	*D*					-	*(27.29)*
Closing Balance	*E=(A+B-C+D)*	-	-	*(50.21)*	*(107.67)*	*(74.69)*	*(101.98)*
Total of past recoveries till FY 2020-21	***F=(D+E)***						***(101.98)***

…"

13.18. Hence, the contention of TPC-T that there is an error in accounting of surplus of Rs. 57.74 Crore and consequent carrying/(holding) cost is incorrect.

13.19. In the Review Petition, TPC-T has considered the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18 to derive the Net Gap of Rs. 7.53 Crore for FY 2017-18. Considering this Net Gap, TPC-T has computed the actual Past Gap/(Surplus) recovery till FY 2020-21 amounting to a Surplus of Rs. 27.32 Crore, including Carrying/ (Holding) Cost of Rs. 10.37 Crore.

13.20. The Commission observes that though TPC-T has considered revised Net Gap of Rs. 7.53 Crore for FY 2017-18 after adjusting the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18; it has considered the surplus of Rs. 57.47 Crore for FY 2018-19 which was approved by the Commission for FY 2018-19. As mentioned earlier, the Commission had computed the Revenue Surplus of Rs. 57.47 Crore for FY 2018-19 after considering Past Surplus of Rs. 115.10 Crore, which also includes the surplus amount of Rs. 57.74 Crore approved in provisional truing up of FY 2017-18. Thus, TPC-T has erroneously computed Past Gap/(Surplus) recovery till FY 2020-21 as amounting to a surplus of Rs. 27.32 Crore.

13.21. Hence, there is no error apparent in the consideration of surplus amount of Rs. 57.74 Crore already passed on in provisional truing up of FY 2017-18 while approving past Gap/(Surplus) till FY 2020-21 in the MYT Order as claimed by TPC-T. Hence, review of the Impugned Order is not admissible on this issue.

13.22. **In view of the foregoing, the Commission is of the view that there is no error apparent on the face of the record and no ground has been made out for review of the impugned Order on this aspect, which would satisfy the requirements of Regulation 85(a) of the MERC**

(Conduct of Business) Regulations, 2004. Accordingly, no change is proposed in the calculation of ARR on this account.

14. ***Issue 3: Disallowance of Repair & Maintenance (R&M) expenditure interpreting the total expense of Rs. 4.08 Crore as tree trimming expenses and disallowing Rs. 3.06 Crore for FY 2018-19***

TPC-T's Submission

14.1. TPC-T, in its MYT submission, submitted an expense of Rs. 4.08 Crore as part of R&M expenses for FY 2018-19, as shown in the Table below:

Table 7: Breakup of Rs. 4.08 Crore as part of R&M expenses for FY 2018-19 (Rs. Crore)

S. No.	Particulars for FY 2018-19	Amount
1	Repair works for 110 kV Relay Panels & DCDB Room at Salsette and Ambernath	1.94
2	Expenses for attending safety defects and tree trimming jobs	1.75
3	Maintenance of ROW at Sanjay Gandhi National Park (SGNP)	0.39
	Total	**4.08**

14.2. TPC-T has submitted that the Commission has acknowledged in the Impugned Order that TPC-T has shown expenditure of Rs. 1.94 Crore for 'Repair work carried out for 110 kV Relay Panels & DCDB Room at Salsette and Ambernath' and Rs. 1.75 Crore for 'Expenses for attending safety defects and tree trimming jobs'.

14.3. Despite acknowledging the above facts, the Commission while approving the R&M expenses for FY 2018-19 has disallowed Rs. 3.06 Crore from R&M expenditure, with an observation that the total expenditure of Rs. 4.08 Crore in a single year towards tree trimming activity is not justified and hence, allowed only 25% of these expenses (i.e., Rs. 1.02 Crore).

14.4. TPC-T submitted that in its data gap response submitted to the Commission, it had clarified that an expenditure towards "Repairs works for 110 kV relay panels and DCDB Rooms at Salsette and Ambernath" (Rs. 1.94 Crore) was inadvertently shown as "Salsette and Ambernath civil maintenance and tree trimming". R&M expenditure of Rs. 1.94 Crore, which was actually incurred towards "Repair work carried out for 110 kV Relay Panels & DCDB Room at Salsette and Ambernath" during FY 2018-19, should not be considered as tree trimming activity.

14.5. Out of Rs. 1.75 Crore of expenses towards attending to safety defects and tree trimming jobs, Rs. 0.04 Crore was spent on attending safety defects at various receiving stations and balance Rs. 1.71 Crore have been incurred towards tree trimming expenses.

14.6. Expenses of Rs. 0.39 Crore incurred towards maintenance of Right of Way (ROW) at Sanjay Gandhi National Park (SGNP) during FY 2018-19 are pertaining to construction of corridor to protect flora and fauna as per Forest Guidelines to conserve wild life in the path of ROW of the transmission lines owned by TPC-T. The claim towards maintenance of ROW at SGNP was one-time legitimate expense duly paid by TPC-T to Forest Authority based on the demand raised by the Chief Conservator of Forest.

14.7. Considering the above submission, the expenditure towards tree trimming during FY 2018-19 was Rs. 2.10 Crore (Rs. 1.71 Crore + Rs. 0.39 Crore), which is a legitimate expenditure. Further, the actual expenditure of Rs. 1.98 Crore (Rs. 1.94 Crore + Rs. 0.04 Crore) was not for tree trimming. Hence, the deduction of this expenditure on account of it being a tree trimming expenditure appears to be an error.

14.8. Therefore, TPC-T requested the Commission to approve the total expenses of Rs. 4.08 Crore as part of R&M expenditure for FY 2018-19.

Commission's Analysis and Ruling

14.9. The main contention of TPC-T is that the Commission has disallowed Rs. 3.06 Crore in the impugned Order towards tree trimming work in spite of noting that these expenses were for other R&M works of substation.

14.10. TPC-T, in its submission in MYT Petition, had shown an expenditure of Rs.1.94 Crore for 'Salsette and Ambernath civil maintenance and tree trimming'. However, in data gap response, TPC-T submitted that expenditure of Rs. 1.94 Crore for 'Salsette and Ambernath civil maintenance and tree trimming' is actually towards repair work carried out for 110 kV Relay Panels & DCDB Room at Salsette and Ambernath, and there was no tree trimming expenditure.

14.11. The Commission found TPC-T's reply on higher expense for tree trimming as contradictory to its earlier submissions. Therefore, the Commission, in the Impugned Order, opined that since tree trimming activity is part of annual preventive maintenance schedule of TPC-T, the total expenditure of Rs. 4.08 Crore in a single year, i.e., in FY 2018-19, is not justified. Accordingly, the Commission had approved these expenses at Rs. 1.02 Crore, which is 25% of amount claimed by TPC-T in FY 2018-19; thus, the balance expenses of Rs.3.06 Crore was disallowed. The Commission also viewed that even Rs. 1.02 Crore expense against tree cutting activity is on the higher side, however, the same is being allowed.

14.12. The Commission's ruling in the Impugned Order while disallowing R&M expenses is reproduced as under:

> *"3.2.41* ***<u>The Commission observed that TPC-T has shown expenditure of Rs.1.94 Crore for 'Salsette and Ambernath civil maintenance and tree trimming'. Further,</u>***

expenditure of Rs.1.75 Crore was shown for 'Expenses for attending safety defects and tree trimming jobs'. The Commission asked TPC-T to justify such a high expense for tree trimming. TPC-T submitted that expenditure of Rs.1.94 Crore for 'Salsette and Ambernath civil maintenance and tree trimming' is actually towards repair work carried out for 110 kV Relay Panels & DCDB Room at Salsette and Ambernath, and there was no tree trimming expenditure. As regards expenditure of Rs.1.75 Crore shown for 'Expenses for attending safety defects and tree trimming jobs', TPC-T submitted that the mechanized tree trimming activity is part of annual preventive maintenance schedule. During FY 2018-19, TPC-T had undertaken tree trimming activities at Salsette, Kolshet, Kalyan, Ambernath, Borivali, Saki, Malad, etc. and also along 220/ 110 kV transmission lines. During FY 2018-19, a separate team had undertaken defect management in major receiving stations and identified the defects pertaining to safety compliance. All these defects were attended during FY 2018-19; hence, these expenses were on higher side.

3.2.42 ***The Commission is of the view that TPC-T's reply on higher expense for tree trimming is contradictory to its earlier submissions. The Commission is of the view that since tree trimming activity is part of annual preventive maintenance schedule of TPC-T, total expenditure of Rs. 4.08 Crore (Total expenditure of Rs. 0.39 Crore, Rs. 1.94 Crore and Rs.1.75 Crore) in a single year, i.e., in FY 2018-19 is not justified. Therefore, the Commission has approved these expenses at Rs. 1.02 Crore, which is 25% of amount claimed by TPC-T in FY 2018-19; thus, the balance expenses of Rs.3.06 Crore have been disallowed. The Commission is of the view that even Rs. 1.02 crore expense against tree cutting activity is on the higher side, however, the same is being allowed****. TPC-T should ensure that the R&M expenses are incurred in a prudent manner."*

14.13. Further, the Commission notes that TPC-T's R&M expenses have increased steeply over the last few years as under:

Table 8: Increase in R&M expenses for TPC-T (Rs. Crore)

Sr. No.	Period	R&M Expenses	Remark
1	FY 2014-15	18.73	CAGR of approved R&M Expenses works out to 12.75%.
2	FY 2015-16	23.59	
3	FY 2016-17	19.67	
4	FY 2017-18	25.99	
5	FY 2018-19	34.13	

14.14. The above Table shows that R&M expenditure of TPC-T has increased substantially in the last few years, despite utilisation of high cost advanced network such as GIS, Underground Cable, SCADA, etc. Even after considering the disallowance of Rs. 3.06 Crore for FY 2018-19, CAGR of R&M expenses of TPC-T is around 13% as shown in the Table above, which is very high.

14.15. Thus, disallowing R&M expenses of Rs. 3.06 Crore against "tree cutting activity account head "is not an error and is a conscious decision of the Commission, duly justified in the MYT Order.

14.16. **Further, it is worth noting the fact that neither is there an error on the face of record nor has TPC-T submitted any new facts on the record which were not available at the time of proceeding of the Impugned Order. In the present Review Petition, TPC-T has merely repeated its submissions made at the time of MYT Petition, which have already been considered by the Commission, before arriving at a decision in the Impugned Order. Hence, the review of the Impugned Order is not allowed on this count. Accordingly, no change is allowed in the approved R&M expenses for FY 2018-19.**

15. ***Issue No. 4: Disallowed capitalisation of Rs. 0.43 Crore in FY 2017-18 towards merged DPR for "Replacement of 22 kV and 33 kV Bus Sections at Carnac Receiving Station"***

TPC-T's submission

15.1. The Commission had given an "In-Principle" approval for Merged DPR scheme at Carnac with a scheme value of Rs. 23.61 Crore with the scope as under:

- Replacement of 33 kV switchgear by 33 kV GIS at Carnac; and
- Replacement of 22 kV Bus Section 1 & 3 at Carnac.

15.2. While submitting the capitalisation under these two schemes, TPC-T had estimated a cost overrun of Rs. 0.43 Crore in the provisional truing up of FY 2019-20. However, while disallowing the cost overrun of Rs. 0.43 Crore, the Commission has deducted Rs. 0.43 Crore from FY 2017-18 instead of FY 2019-20.

15.3. TPC-T has requested the Commission to allow capitalisation of Rs. 0.43 Crore in FY 2017-18 towards Merged DPR scheme "Replacement of 22 kV and 33 kV Bus Sections at Carnac Receiving Station". TPC-T has also submitted that the prudence check of cost overrun of Rs. 0.43 Crore can be taken up during final truing up in FY 2019-20.

Commission's Analysis and Ruling

15.4. The main contention of TPC-T is that the Commission has disallowed capitalisation of Rs. 0.43 Crore in FY 2017-18 instead of FY 2019-20, which is an error.

15.5. The merged DPR for 'Replacement of 22 kV and 33 kV Bus sections at Carnac Receiving Station' was approved by the Commission with a cost of Rs. 23.61 Crore. TPC-T had claimed capitalisation of Rs. 24.04 Crore against this DPR scheme till FY 2019-20 (Rs. 14.60 Crore till FY 2016-17, Rs. 0.75 Crore in FY 2017-18 and Rs. 8.68 Crore in FY 2019-20).

15.6. In the Impugned Order, the Commission had observed that this scheme had cost overrun of Rs. 0.43 Crore. After the prudence check, the Commission had disallowed cost overrun of Rs. 0.43 Crore. After verification of disallowance of capitalisation from the Financial Model, it is observed that Rs. 0.43 Crore has been inadvertently deducted from the capitalisation in FY 2017-18 instead of FY 2019-20.

15.7. This is an error apparent on the face of the record in the deduction of disallowed capitalisation of Rs.0.43 Crore. Hence, the Review is admissible on this issue.

15.8. Additional capitalisation of Rs. 0.43 Crore is allowable to TPC-T for FY 2017-18 and Rs. 0.43 Crore is to be disallowed from capitalisation for FY 2019-20. Impact of revised capitalisation on ARR and the associated carrying cost on the net amount allowable for FY 2017-18, FY 2018-19 and FY 2019-20, needs to be considered in the amount to be recovered in FY 2020-21. The revised capitalisation allowable to TPC-T is as under:

Table 9: Revised Capitalisation approved for FY 2017-18 and FY 2019-20 (Rs. Crore)

Sl.	Particulars	Capitalisation	
		MYT Order	Allowed in Review
1	Capitalisation for FY 2017-18	195.37	195.80
2	Capitalisation for FY 2019-20	623.07	622.64
3	Additional Capitalisation allowable for FY 2017-18	0.43	
4	Capitalisation to be disallowed for FY 2019-20	0.43	

15.9. It is to be noted that there will be a consequential impact of revised capitalisation on Depreciation, Interest on Loan and Return of Equity for FY 2017-18 and future years. TPC-T may claim this impact on the ARR and the Revenue Gap/(Surplus) for FY 2017-18, FY 2018-19 and FY 2019-20 with appropriate computations, at the time of MTR for the present Control Period.

16. Hence ***the*** following Order.

ORDER

Review is partly allowed on the issues raised by the Tata Power Company -Transmission as under:

1) **The prayer of Tata Power Company -Transmission for Removal of Income of Rs. 3.65 Crore and Rs. 2.43 Crore for Amortisation of Service Line Contributions from the Non-Tariff Income for FY 2017-18 and FY 2018-19, respectively, is allowed without carrying cost. The financial impact of the same will be considered at the time Mid Term Review for the present Control Period.**

2) **The prayer of Tata Power Company -Transmission to allow surplus amount of Rs. 27.32 Crore as against approved Rs. 101.98 Crore for the total past recovery to be adjusted in FY 2020-21 is dismissed as being without merit.**

3) **The prayer of Tata Power Company -Transmission to allow expenses of Rs. 4.08 Crore towards R&M expenses for FY 2018-19 is dismissed as being without merit and not admissible for review on this issue.**

4) **The prayer of Tata Power Company -Transmission to allow capitalisation of Rs. 0.43 Crore in FY 2017-18 towards Merged DPR for Replacement of 22 kV and 33 kV Bus Sections at Carnac Receiving Station is allowed. The consequential financial impact of the same may be filed by TPC-T at the time of Mid Term Review for the present Control Period.**

Sd/-	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**
Member	**Member**

(Abhijit Deshpande)
Secretary