Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.96 of 2020

Case of The Tata Power Company Limited (Distribution) seeking review of certain aspects of Multi Year Tariff (MYT) Order dated 30 March 2020 in Case No. 326 of 2019

Case No.98 of 2020

Case of Adani Electricity Mumbai Limited (Distribution) seeking review of certain aspects of MYT Order dated 30 March 2020 in Case No. 326 of 2019

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

Case No. 96 of 2020

The Tata Power Company Limited (Distribution) …..Petitioner

Case No. 98 of 2020

1) Adani Electricity Mumbai Limited (Distribution) ….. Petitioner
2) The Tata Power Company Limited (Distribution) ...... Impleaded Respondent

Appearance

1) For The Tata Power Company Limited (Distribution): Smt. Swati Mehendale (Res)
2) For Adani Electricity Mumbai Limited (Distribution): Shri. Vivek Mishra (Res)

ORDER

Date: - 01 July, 2020

1. The Tata Power Company Limited (Distribution) (TPC-D) and Adani Electricity Mumbai Limited (Distribution) (AEML-D) filed Petitions on 23 May, 2020 and on 4 June, 2020, respectively, under Section 94 (1)(f) of the Electricity Act 2003 (EA), read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 for review of certain aspects of

the MYT Order dated 30 March, 2020 for TPC-D, issued in Case No.326 of 2019 (Impugned MYT Order).

2. As TPC-D and AEML-D are seeking review of the same MYT Order in Case No. 326 of 2019 dated 30 March, 2020, both these cases are being dealt with in this common Order.

3. **Main prayers of TPC-D in Case No. 96 of 2020 are as follows**:

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

a) Non-Consideration of amount on account of the difference of actual UI amount paid to the UI Pool vs. UI amount received through various Tariff Orders while deriving the Past Gap/ (Surplus) for Tata Power-D in this Order

b) Revised Revenue for FY 2017-18 without revenue from TOD tariff as it was already part of revenue from Energy Charges.

c) Revised Revenue for FY 2018-19 without revenue from TOD tariff as it was already part of revenue from Energy Charges.

d) Revised Income Tax computation considering revised Revenue for FY 2017-18, Revised revenue and expenses for FY 2018-19.

e) Cross Subsidy Surcharge for EHV Public Water Works for FY 2020-21 to FY 2024-25.

B.To allow any financial implication arising out of the above Review to be considered during the MTR Petition."

4. **Main prayers of AEML-D in Case No. 98 of 2020 are as follows**:

a) Review portions of the order dated 30.03.2020 passed in Case No. 326 of 2019, as set out in the present Petition and consider the issues as raised in the present petition;

b) That this Hon'ble Commission may be pleased to correct the errors/ issues of oversight, as submitted above in the Order dated 30thMarch, 2020, in Case No. 326 of 2019;

c) That this Hon'ble Commission may be pleased to approve revised CSS for TPC-D from FY 20-21 to FY 24-25;

d) That this Hon'ble Commission may be pleased to approve mechanism for pass through of the additional cost in the tariffs of TPC-D for FY 20-21."

5. This Order has been structured to summarise issue wise submissions of TPC-D and AEML-D, their replies to each other submissions and Commission's Analysis and Ruling on the said issue.

6. **At the E-hearing held on 12 June 2020:**

6.1 TPC-D and AEML-D reiterated their respective submissions made in their Review Petitions.

6.2 AEML-D submitted that by not considering the Unscheduled Interchange (UI) reconciliation amount of Rs. 31.21 Crore and by approving the Revenue Surplus of Rs. 88.60 Crore for Supply Business till FY 2020-21, the tariffs of TPC-D consumers have been erroneously suppressed. This would affect the competitiveness of AEML-D as far as competing for retail consumers is concerned. AEML-D requested the Commission to approve a mechanism for passing through the effect of review order in tariffs of TPC-D with immediate effect. AEML-D also highlighted the computational error in Cross Subsidy Surcharge (CSS) and requested the Commission to revise the same.

6.3 TPC-D contended that Section 62(4) of EA stipulates that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except when the revision is with respect to any changes in the Fuel Surcharge formula. Therefore, frequent changes in the Tariff Order are not allowed. TPC-D accepted the error pointed out by AEML-D in computation of CSS; however, TPC-D submitted that as per the formula for determining CSS, the distribution loss component should be considered for change-over sales, and requested the Commission to revise the CSS accordingly.

7. 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:

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

Thus, ambit of review is limited, and these review Petitions have to be evaluated accordingly.

8. Before dealing with the issues for review, the Commission notes that both the review Petitions are not filed within 45 days period allowed in Regulation 85 of MERC (Conduct of Business) Regulations, 2004. On this issue, both parties have made following submissions:

8.1 TPC-D 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-D 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."*

In light of the above Judgment of Hon'ble the Supreme Court, TPC-D requested the Commission to condone the delay of 9 days in filing the Review Petition.

8.2 AEML-D has also relied on the above cited Supreme Court' Judgment dated 23 March 2020 and stated that in view of that Judgment, its review Petition dated 4 June, 2020 has been filed within the period of limitation.

9. In view of above stated facts, the Commission notes that the Hon'ble Supreme Court vide its Judgment dated 23 March 2020 has extended limitation period for filing of all types of Petitions including Review Petition. Therefore, the Commission considers that these review Petitions are filed within limitation period. Accordingly, the Commission is dealing with issues raised in these review Petitions.

10. **ISSUE I:Non-Consideration of differential UI amount while deriving the Past Gap/ (Surplus) in MYT Order**

TPC-D's Submission:

10.1 In the MYT Order, the Commission has approved Rs. 31.21 Crore on account of the difference of actual Unscheduled Interchange (UI) amount paid to the UI Pool vs. UI amount received through various Tariff Orders, while deriving the Past Gap / (Surplus) for TPC-D. The Commission has shown the approved amount of Rs. 31.21 Crore in Table 6-15 of the MYT Order for Past Gap recovery computation.

10.2 However, while computing the total past Surplus of Rs. 88.60 Crore of the Supply Business for FY 2019-20, the Commission has not added Rs. 31.21 Crore towards FBSM Reconciliation, though this amount has been approved for recovery.

10.3 Considering the approved amount of Rs. 31.21 Crore, the actual Cumulative Revenue Surplus works out to Rs. 57.39 Crore, which is to be recovered from the future period.

10.4 TPC-D has requested the Commission to recompute the Cumulative Past Gap/(Surplus) considering the approved amount of Rs. 31.21 Crore towards UI reconciliation.

AEML-D's Submission

10.5 The Commission has approved the amount of Rs. 31.21 Crore of UI Reconciliation. However, it has not been considered for calculation of the total surplus till March 2020 in Table 6-15 of the MYT Order. If the UI Reconciliation of Rs. 31.21 Crore is considered for calculations, the revenue surplus for Supply Business till March 2020 would be Rs. 57.39 Crore compared to Rs. 88.60 Crore approved by the Commission.

10.6 AEML-D has requested the Commission to allow impact of the same immediately. Said issue of allowing impact of review order has been dealt with subsequently in para no 15 of this Order.

Commission's Analysis and Ruling

10.7 Upon verification of the computations for Cumulative Gap/(Surplus) for the Supply Business from the Financial Model underlying the impugned MYT Order, the Commission observes that though the amount of Rs. 31.21 Crore has been approved towards UI reconciliation and shown in the Past Gap recovery; it has not been added in the total amount of past Surplus Recovery of Rs. 88.60 Crore for the Supply Business. Therefore, there is an error apparent on the face of the record in the computation of the Past Gap/(Surplus) for TPC-D.

10.8 Accordingly, the revised Revenue Surplus approved for Supply Business of TPC-D is as under:

Table 1: Revised Past Gap/(Surplus) till March 2020 approved by the Commission (Rs. Crore)

Particulars	**MYT Order**	**Allowed in Review**
Total Past Gap/(Surplus) Recovery	(88.60)	(57.39)
Revenue Surplus reduced by		**31.21**

10.9 Accordingly, the review is allowed on this issue. Issue of allowing impact of the same is discussed in para 16 below in this Order.

11. **ISSUE II: Revenue from Time of the Day (TOD) tariff considered twice for FY 2017-18 and FY 2018-19**

TPC-D's Submission

11.1 The Commission has approved total revenue of Rs. 3455.50 Crore for FY 2017-18 and Rs. 3625.03 Crore for FY 2018-19, as compared to the amount of Rs. 3388.84 Crore and Rs. 3612.72 Crore, respectively, as submitted by TPC-D in MYT Petition.

11.2 The above variation has occurred because the Commission has considered an additional revenue of Rs. 39.32 Crore for the Supply Business as compared to the Revenue submitted by TPC-D for FY 2017-18, out of which revenue of Rs. 27.35 Crore was considered as received from Indian Railways as per the Order of the Commission directing Indian Railways to pay Standby Charges to TPC-D. Similarly, the Commission has considered an additional revenue of Rs. 12.31 Crore on account of Railways for FY 2018-19.

11.3 Based on the above, net difference in revenue submitted by TPC-D and revenue considered by the Commission is as given below:

Table 2: Revenue for FY 2017-18 and FY 2018-19 as submitted by TPC-D (Rs. Crore)

Particulars	Legend	FY 2017-18	FY 2018-19
Revenue approved in the MYT Order	A	2494.56	2737.27
Revenue submitted by TPC-D	B	2455.24	2724.96
Difference	**c=a-b**	**39.32**	**12.31**
Revenue of Railway not considered by TPC-D	D	27.35	0.00
Net Difference	**e=c-d**	**11.97**	**12.31**

11.4 As seen from the above the Net additional revenue considered for FY 2017-18 and FY 2018-19 is Rs. 11.97 Crore and Rs. 12.31 Crore, respectively.

11.5 The above additional revenue is on account of consideration of the revenue twice from Time of Day (TOD) tariff in the MYT Order. In the submission made by TPC-D in MYT proceedings, revenue from TOD tariff was part of Revenue from Energy Charges. Since, in the revenue format there was a separate column for TOD Revenue, TPC-D presented revenue from Energy Charge (i.e., revenue including TOD Revenue) and Revenue from TOD tariff separately as well as per the format.

11.6 The breakup of revenue from Supply Business is given below:

Table 3: Breakup of Revenue for FY 2017-18 and FY 2018-19 as submitted by TPC-D (Rs. Crore)

Particulars	**Legend**	**FY 2017-18**	**FY 2018-19**
Revenue from Supply Business	1=9	2455.24	2724.96
Break up			
Revenue from Demand + Fixed Charges	2	264.85	307.13
Revenue from Energy Charges (including TOD)	3	2226.73	2414.65
PF Penalty/Rebate	4	(121.63)	(101.71)
LFI Incentive	5	(7.59)	(6.75)
Revenue from FAC	6	122.67	144.28
15 days Adjustment	7	1.37	(1.02)
Cash Discount	8	(31.15)	(31.62)
Revenue submitted by TPC-D	**9= 2 to 8**	**2455.24**	**2724.96**
Revenue from TOD which is a part of Energy Charge,however shown separately and not considered	10	11.97	12.31
Revenue considered in the MYT Order	**11=9+10**	**2467.21**	**2737.27**

11.7 In view of the above, TPC-D has requested the Commission to consider the revenue as submitted by TPC-D without adding the revenue from ToD Tariff, as the same has already been considered as a part of Revenue from Energy Charges.

Commission's Analysis and Ruling

11.8 In the Review Petition, TPC-D has submitted that the revenue from TOD was included in the Revenue from Energy Charges for FY 2017-18 and FY 2018-19. However, TPC-D had not mentioned the same anywhere in the original MYT Petition nor in the Forms submitted along with the Petition, wherein the Revenue from TOD tariff has been shown separately.

11.9 Though TPC-D has not added the revenue from TOD tariff in the total revenue in the Petition Formats, it was not clear in the Forms that revenue from TOD tariff is included in revenue from Energy Charges. The total Revenue as per the Format was intended to be the summation of the various heads of revenue shown in the Format. Therefore, the Commission had considered ToD revenue of Rs 11.97 Crore for FY 2017-18 and Rs 12.31 Crore for FY 2018-19 separately, while computing the total revenue for FY 2017-18 and FY 2018-19, respectively.

11.10 On perusal of the reconciliation of the revenue considered in ARR with Revenue in Audited Account Statements for FY 2017-18 and FY 2018-19, it is clear that the revenue from ToD should not be added separately, as the same is included in the Energy Charges.

11.11 Upon verification of the financial model underlying the impugned MYT Order and the revenue reconciliation, the Commission observes that it has considered ToD revenue of Rs

11.97 Crore for FY 2017-18 and Rs 12.31 Crore for FY 2018-19 in Energy charges as well separately as ToD charges while computing revenue for FY 2017-18 and FY 2018-19. Therefore, there is an error apparent on the face of the record leading to double counting of TOD Revenue in the Net Revenue for FY 2017-18 and FY 2018-19. Accordingly, the review is allowed on this issue. Issue of allowing impact of the same is discussed in para 16 below in this Order.

12. **ISSUE III: Return on Equity (Less Past Gap approved for FY 2018-19) considered as expenses for computing Income Tax for FY 2018-19**

TPC-D's Submission

12.1 The Commission has considered the normative expense of Rs. 2991.40 Crore for computing the Income Tax for FY 2018-19. Based on the normative expense approved in the MYT Order, TPC-D has compared the expenses for FY 2017-18 and FY 2018-19, as given in the Table below:

Table 4: Expenses considered in MYT Order for Income Tax Computation for FY 2017-18 & FY 2018-19 as submitted by TPC-D (Rs. Crore)

Particulars	Legend	FY 2017-18	FY 2018-19
Expenses Considered for Income tax Computation	**1=16**	**2817.19**	**2991.40**
Break Up			
Power Purchase Expenses (including Inter-state Transmission Charges)	2	2090.65	2193.92
Operation & Maintenance Expenses	3	206.37	208.59
Depreciation	4	117.69	121.05
Interest on Loan Capital	5	90.15	85.06
Interest on Working Capital	6	8.25	6.06
Interest on Deposit from Consumers and Distribution system users	7	17.96	19.93
Provision for Bad and Doubtful debts	8	(0.29)	2.87
Contribution to Contingency Reserve	9	5.82	6.40
Intra-State Transmission Charges	10	277.79	248.23
MSLDC Fees & Charges	11	0.90	0.77
DSM Expense	12	0.70	0.68
Benefit of Refinancing	13	1.22	0.00
Return on Equity for Wires Business	14		115.17
Past Gap	15		(17.33)
Total Expenses considered for Income Tax computation	**16=sum of 2 to 15**	**2817.19**	**2991.40**

12.2 As seen from above table, for FY 2018-19, unlike FY 2017-18, the Return on Equity (RoE) for Wires Business and Past Gap have also been considered as part of normative expenses while computing the Income Tax. As the Past Gap is the pure recovery of TPC-D and RoE is not part of expenditure, TPC-D has requested the Commission not to consider the same.

12.3 In view of this, the Expenses for Income Tax computation should be considered without RoE and past Gap. Also, the ToD Revenue considered twice should be reduced from the Revenue considered for Income Tax computation, both for FY2017-18 and FY 2018-19.

12.4 Revenue to be considered for Income Tax computation is Rs. 2455.24 Crore for FY 2017-18 and Rs. 2724.96 Crore for FY 2018-19.Expenses to be considered for Income Tax computation is Rs. 2817.19 Crore for FY 2017-18, and Rs. 2893.56 Crore for FY 2018-19 after deducting ROE of Rs. 115.17 Crore and Past Surplus of Rs. 17.33 Crore.

12.5 Based on the above Revenue and Expenses, TPC-D has requested the Commission to approve the Income Tax of Rs. 15.24 Crore for Wires Business and Rs. 119.97 Crore for Supply Business, for FY 2017-18. TPC-D has also requested the Commission to approve the Income Tax of Rs. 20.05 Crore for Wires Business and Rs. 142.57 Crore for Supply Business, for FY 2018-19.

Commission's Analysis and Ruling

12.6 Upon verification of the financial model underlying the impugned MYT Order, the Commission notes that it has considered RoE of Rs. 115.17 Crore and Past Surplus of Rs.17.33 Crore for Wires Business inadvertently as part of normative expenses while computing the Income Tax for FY 2018-19. Therefore, there is an error apparent on the face of the record. Accordingly, the review is allowed on this issue.

12.7 Therefore, the Income Tax computation needs to be revised for FY 2018-19 without considering RoE and the past Gap. Further, since the Net Revenue has been revised on account of double-accounting of revenue from ToD Charges as mentioned earlier, it has impact on Income Tax for FY 2017-18 and FY 2018-19.

12.8 The revised Income Tax allowable to TPC-D for FY 2017-18 and FY 2018-19is as under:

Table 5: Revised Income Tax for FY 2017-18 and FY 2018-19 as approved by the Commission (Rs. Crore)

Particulars	FY 2017-18		FY 2018-19	
	MYT Order	Allowed in Review	MYT Order	Allowed in Review
Income Tax on Wires Business	15.48	15.24	17.71	20.05
Income Tax on Supply Business	122.29	119.99	126.47	142.58
Total Income Tax	**137.77**	**135.23**	**144.18**	**162.63**

12.9 Issue of allowing impact of the same is discussed in para 16 below in this Order.

13. **ISSUE-IV:CSS charges not provided for EHV Public Water Works Category**

TPC-D's Submission

13.1 The Commission, in the MYT Order, has approved Cross Subsidy Surcharge (CSS) for EHV- Industrial and EHV- Commercial categories for FY 2020-21 to FY 2024-25. However, the Commission has not approved CSS for EHV – Public Water Works (PWW) category.

13.2 TPC-D has EHV PWW consumers. In the sales projections, TPC-D has projected Sales under this category. The Commission in the Annexure I (B): Revenue with Revised Tariffs for FY 2021-22 has projected Revenue under this category; however, CSS has not been approved for the same.

13.3 Though at present there are no Open Access (OA) Consumers under this category, in future, if any consumer wishes to take OA under this category, CSS would not be available to apply to this category.

13.4 In view of this, TPC-D requested the Commission to approve the CSS for this category.

Commission's Analysis and Ruling

13.5 The Commission has merged PWW category into Public Services (Others) category, which is elaborated in the Tariff Philosophy section of the MYT Order. Accordingly, the Commission has not approved a separate category for PWW in the revised Tariffs applicable for FY 2020-21 to FY 2024-25.

13.6 The revenue shown against HT PWW and EHV-PWW category in the Annexure I (B): Revenue with Revised Tariffs for FY 2021-22, is a representation issue, and the sales and revenue of this category is under Public Service (Others) category. It has been shown correctly in the Revenue sheet for other years.

13.7 Therefore, the Commission has not approved CSS for EHV – PWW for FY 2020-21 to FY 2024-25 as the said category has been merged with Public Service Category and does not exist as a separate consumer category.

13.8 However, considering TPC-D's submission that it has PWW consumer connected on EHV level, which now be categorized under 'Public Service (Others)', the Commission has determined CSS for EHV-Public Service category in subsequent section of this Order.

14. **ISSUE V: Computational error in determining CSS in TPC-D MYT Order**

14.1 TPC-D has not sought review of the computation of CSS for the Control Period in its review Petition.

<u>AEML-D's Submission</u>

14.2 AEML-D, in its review Petition, has submitted that Commission had determined the per unit Transmission Charges for the Control Period in Table 6-41 of the MYT Order for TPC-D. However, while determining the per unit Transmission Charges, the Commission has considered only the Direct sales of TPC-D, instead of the total sales including the Change-over sales.

14.3 Transmission Charges are related to delivery of power, which is procured for all consumers of TPC-D and not just its direct network consumers. Hence, while working out the per unit Transmission Charges for CSS calculation, both Direct sales and Change-over sales should be considered in the denominator.

14.4 The Open Access (OA) economics depends to a large extent on the amount of CSS charged to the OA consumers. OA consumers pay Wheeling Charges and CSS to the Distribution Licensee for usage of its Distribution network. Therefore, the decision of the HT consumers to use either of the Distribution Licensee's networks while sourcing power from third party through OA depends on the economics of Wheeling Charge and CSS. If CSS of TPC-D is incorrectly understated, the competitiveness of AEML-D as far as competing for OA consumers is concerned, will be adversely affected.

14.5 Therefore, AEML-D requested the Commission to revise CSS for TPC-D for the Control Period.

<u>TPC-D's Submission dated 11 June, 2020 on the issue raised in AEML-D's Petition</u>

14.6 It has reviewed the computation of CSS and agrees that the Change-over sales have not been considered for the computation of the Transmission Charges which is error.

14.7 Additionally, TPC-D has submitted that there is an anomaly in the computation of CSS with respect to consideration of Distribution Losses as per the Surcharge Formula provided in the Tariff Policy.

14.8 All the details pertaining to Change-over sales has been considered for computation of the CSS except the Distribution Losses applicable on Change-over sales. As part of settlement process of the Change-over sales, TPC-D supplies equivalent change-over sales energy to AEML-D duly grossed up for the applicable losses on the distribution network of AEML-D. Therefore, Distribution Losses ("L"), as part of Surcharge Formula for computation of

CSS, should also include, among other things, such losses applicable on Change-over sales as it also forms part of ARR of TPC-D.

14.9 The Commission has approved HT loss of 1.59% and LT loss of 6.43% for AEML-D in its MYT Order in Case No. 325 of 2019 issued on 30 March 2020. The same loss levels have been considered by the Commission while approving the Energy Input requirement for TPC-D for the 4th Control Period from FY 2020-21 to FY 2024-25.

14.10 TPC-D has submitted the revised CSS applicable for TPC-D considering the applicable losses on the Change-over sales and has requested the Commission to approve the correction for the computation of CSS for the 4th Control Period.

AEML-D's Rejoinder dated 15 June, 2015 on TCP-D's Submission dated 11 June, 2020

14.11 TPC-D has stated that it has found anomaly in the Distribution loss considered in the CSS computation formula. In this regard, it is submitted that the CSS determined for TPC-D in the Impugned Order is payable by OA consumers connected to TPC-D network. These consumers are liable to bear the distribution (wheeling) loss of TPC-D network as they are connected to TPC-D network. Changeover consumers, on the other hand, are connected to AEML-D's distribution network and hence they bear the distribution (wheeling) loss of AEML-D network and pay CSS as determined in the AEML-D's MYT Order in Case No. 325 of 2019 dated 30 March, 2019. Hence the contention of TPC-D that distribution (wheeling) loss of AEML-D network should be considered while calculating CSS for TPC-D's OA consumers is not correct.

14.12 The Commission has always been considering the distribution (wheeling) loss of TPC-D while calculating the CSS for TPC-D's OA consumers in TPC-D's Tariff Orders. This is a correct approach as the OA consumers connected to the distribution network of a particular Distribution Licensee will have to bear the distribution (wheeling) loss of that Distribution Licensee and have to pay the CSS to such Distribution Licensee. By including the distribution (wheeling) loss of AEML-D in the CSS calculations for TPC-D's OA consumers, TPC-D is distorting the CSS calculation method.

14.13 Hence, AEML-D has requested the Commission to reject the contention of TPC-D and revise the CSS of TPC-D as submitted by AEML-D in the Review Petition only by correcting the per unit transmission charges in the CSS formula.

Commission's Analysis and Ruling

14.14 AEML-D, in its Review Petition, has pointed out the error in the calculation of CSS for TPC-D for the 4thControl Period. Upon verification of the financial model underlying the impugned MYT Order, the Commission observes that while working out the per unit Transmission Charges, the Commission has inadvertently considered only Direct Sales of TPC-D, instead of the total sales including Change-over Sales. As a result, the per unit

Transmission Charges have been considered higher for the purpose of computing category-wise CSS. Consequently, the CSS for some categories has been approved lower than what they should have been.

14.15 Therefore, there is an error apparent on the face of the record in calculation of CSS because of non-consideration of Change-over Sales in computation of the Transmission Charges, and the review raised by AEML-D on this issue is allowed. Incidentally, TPC-D in its reply has also supported contentions of AEML-D.

14.16 As regards TPC-D's contention that the CSS should be revised by considering the applicable losses on the Change-over sales, it is to be noted that the Wheeling Losses on AEML-D's wires have never been considered by the Commission while computing the CSS for TPC-D. Further, even TPC-D had not considered Wheeling Losses on AEML-D's wires while proposing CSS in its MYT Petition. TPC-D had not even requested this in its Review Petition, and it is only in response to AEML-D's Review Petition on TPC-D's MYT Order, that TPC-D has proposed this new method. TPC-D's request in response to AEML-D's Review Petition appears to be an afterthought.

14.17 The Commission notes that CSS being computed as per formula specified under the Tariff Policy is for a person seeking supply from Distribution Licensee other than the parent Distribution Licensee by using Open Access of parent licensee's distribution network. Hence, losses 'L' in the formula needs to be of parent distribution licensee to whom consumer is connected and cannot be of other Distribution Licensee to which consumer does not have any network connectivity. Hence, TPC-D' request of considering impact of AEML-D's distribution loss in parameter 'L' for computation of CSS of TPC-D cannot be accepted. Nevertheless, while determining ARR and tariff of TPC-D, impact of wheeling loss of AEML-D to the extent of changeover sales is being factored in by way of grossing-up of Change-over sales of TPC-D, thereby increasing power purchase requirement, ARR and Tariff of TPC-D. Hence, impact of wheeling loss of AEML-D on account of Change over sale is already included in 'T' i.e. applicable tariff and 'C' i.e. power purchase cost parameters of CSS formula. For the reasons stated above, said impact cannot be included in parameter 'L' i.e. Distribution Losses of the CSS Formula. Hence, this request of TPC-D is rejected.

14.18 Therefore, the following Tables of the MYT Order are revised, in order to correct the CSS on account of revised Transmission Charges per kWh:

Table 6-41: Transmission and Wheeling Charges approved by the Commission (Rs./kWh)

Particulars	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
Wheeling Charges										

Particulars	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
EHV Charges	0.07	0.07	0.06	0.06	0.07	0.07	0.07	0.07	0.07	0.07
HT Charges	1.24	1.24	1.12	1.12	1.08	1.08	1.03	1.03	0.97	0.97
LT Charges	2.12	2.12	1.88	1.88	1.79	1.79	1.69	1.69	1.58	1.58
Transmission Charges										
EHV Charges	0.84	0.55	0.8	0.53	0.75	0.52	0.71	0.49	0.65	0.46
HT Charges	0.84	0.55	0.8	0.53	0.75	0.52	0.71	0.49	0.65	0.46
LT Charges	0.84	0.55	0.8	0.53	0.75	0.52	0.71	0.49	0.65	0.46

Table 6-42*: *Approved CSS for FY 2020-21 to FY 2024-25 (Rs/kWh)

Consumer Categories	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
EHV - Industry	1.14	1.32	1.30	1.34	1.34	1.34	1.34	1.34	1.32	1.32
HT I - Industry	0.50	0.79	0.61	0.87	0.69	0.93	0.64	0.86	0.53	0.72
EHV-Commercial	1.13	1.32	1.27	1.34	1.32	1.32	1.27	1.30	1.20	1.28
HT II - Commercial	1.55	1.64	1.66	1.66	1.67	1.67	1.68	1.68	1.70	1.70
HT III – Group Housing Society (Residential)	1.14	1.42	0.95	1.21	0.92	1.16	0.79	1.01	0.68	0.87
HT IV – Railways, Metro and Monorail	0.73	1.02	1.07	1.33	1.38	1.53	1.48	1.53	1.53	1.53
EHV – Public Services										
a) Govt. Edu. Inst. & Hospitals	-	1.44	-	0.90	-	1.08	-	1.03	-	1.07
b) Others	-	1.50	-	1.42	-	1.42	-	1.41	-	1.41
HT V – Public Services										
a) Govt. Edu. Inst. & Hospitals	1.53	1.64	1.52	1.60	1.61	1.61	1.57	1.57	1.57	1.57
b) Others	1.27	1.55	1.25	1.51	1.46	1.55	1.44	1.53	1.52	1.53
HT VI – EV Charging Stations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT CUSTOMERS										

Consumer Categories	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
LT I (A) - Residential (BPL)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT I (B) - Residential	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT II - Commercial										
(A) - Upto 20 kW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
(B) - > 20 kW &< 50kW	0.69	0.98	0.89	1.15	0.89	1.13	0.88	1.09	0.85	1.04
(C) - > 50kW	0.70	0.98	0.98	1.25	1.08	1.32	1.17	1.39	1.24	1.43
LT III (A) - Industry < 20 kW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT III (B) - Industry > 20kW	0.07	0.36	0.28	0.54	0.44	0.68	0.53	0.75	0.61	0.80
LT IV - Public Services										
a) Govt. Edu. Inst. & Hospitals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
b) Others	0.72	1.01	0.53	0.79	0.3	0.54	0.04	0.26	0.00	0.03
LT V - EV Charging Stations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

***Table 6-43**: Approved CSS for FY 2020-21 to FY 2024-25 (Rs/kVAh)*

Consumer Categories	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
EHV Industry	1.10	1.27	1.25	1.29	1.29	1.29	1.29	1.29	1.27	1.27
HT I – Industry	0.48	0.76	0.59	0.84	0.66	0.89	0.62	0.82	0.51	0.69
EHV- Commercial	1.09	1.27	1.22	1.29	1.27	1.27	1.22	1.25	1.15	1.23
HT II – Commercial	1.49	1.58	1.60	1.60	1.61	1.61	1.62	1.62	1.64	1.64
HT III - Group Housing Society	1.09	1.37	0.91	1.16	0.88	1.11	0.76	0.97	0.65	0.83
HT IV – Railways, Metro & Monorail	0.71	0.98	1.03	1.28	1.33	1.47	1.42	1.47	1.47	1.47
EHV - Public Service – Govt. Hospitals & Edu.	-	1.39	-	0.87	-	1.04	-	0.99	-	1.03

Consumer Categories	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review	MYT Order	Revised in Review
Institutions										
EHV - Public Service - Others	-	1.45	-	1.37	-	1.37	-	1.35	-	1.35
HT V(A) - Public Service - Government Hospitals & Educational Institutions	1.47	1.57	1.46	1.54	1.55	1.55	1.51	1.51	1.51	1.51
HT V(B) - Public Service - Others	1.22	1.50	1.20	1.46	1.40	1.49	1.39	1.47	1.46	1.47
HT VI - EV Charging Stations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

***Note**: CSS has not been determined in Rs/kVAh terms for LT categories as kVAh tariffs have not been introduced for LT categories in this Order.*

14.19 Above revised approved CSS shall be applicable from date of applicability of MYT Order i.e. 1 April 2020. Although in the subsequent part of the Order for the reasons stated therein, the Commission hasnot allowed revision in tariff on account of impact of other reviewissues allowed in this order, but in case of recalculation of CSS, as it is just a correction of arithmetical error without affecting any other part of the tariff structure, the Commission is allowing it to be effective from 1 April 2020 without waiting until the MTR process.

15. In addition to above issues of review raised by TPC-D and AEML-D, the Commission also notes an error in TPC-D MYT Order relating to allowing funds towards FBSM expenses in FY 2020-21 as summarised below:

15.1 In the TPC-D MYT Order, in order to provide common treatment to competing Distribution Licensees, the Commission has adopted the principle of including unbilled FBSM costs of FY 2018-19 and FY 2019-20 in FY 2020-21 on provisional basis for avoiding impact on consumer tariff. Relevant part of TPC-D's MYT Order is as follows:

"The Commission finds merit in AEML-D's submission in this regard. Moreover, given that as far as possible, same/similar treatment should be given to the competing Distribution Licensees, the Commission has estimated the likely impact of above aspects on TPC-D for FY 2018-19 and FY 2019-20, as under.

The Commission has applied the FBSM rate of Rs. 2.86/kWh based on latest data on the pool imbalance purchase of 450.95 MU for FY 2018-19 to estimate the likely FBSM *claim, which works out to Rs. 128.97 Crore. Similar, FBSM impact of Rs. 128.97 Crore is considered for FY 2019-20 also. Overall, the Commission considers FBSM payment of Rs. 257.94 Crore for FY 2020-21.*

Approval of likely impact of FBSM payment by the Commission is over and above the power purchase cost approved by the Commission, to provide buffer to the Distribution Licensee in case payments are required to be made for the past period. This will not be considered as part of power purchase cost for calculation of FAC. TPC-D should make payment of FBSM bills through this Fund and should not load such bill amount in FAC computation. In case actual bill amount of FBSM is more than the above Fund, such incremental amount may be considered for FAC computation."

15.2 Thus, the Commission has allowed Rs. 257.94 crore to be included in FY 2020-21 as FBSM fund to TPC-D for payment of unbilled FBSM charges for FY 2018-19 and FY 2019-20.

15.3 However, the Commission notes that for FY 2018-19 and FY 2019-20, it has already allowed Rs. 166.33 crore (Table 3-23 of TPC-D's MYT Order) and Rs. 82.19 crore (Table 4.14 and 4.15 of TPC-D's MYT Order), respectively, towards FBSM payments on provisional basis as claimed by TPC-D.

15.4 Therefore, expenses towards FBSM bills have been allowed on provisional basis for FY 2018-19 and FY 2019-20, again allowing expenses of Rs. 257.94 crore in FY 2020-21 for the same purpose is an error apparent on the face of record.

15.5 In case of AEML-D, when the Commission allowed such additional expenses to be included in FY 2020-21, it did not include such expenses in FY 2018-19 and FY 2019-20. However, in case of TPC-D, due to error as explained above, TPC-D has been allowed provision expenses towards FBSM twice.

15.6 This is clearly an error and TPC-D is entitled for consequential relief.

15.7 TPC-D in its additional submission dated 28 June 2020 has mentioned this issue and has sought review of the same. As the Commission has already dealt with the issue and accepted an apparent error as above, the Commission is not summarising TPC-D's submission here.

16. Impact of above Issues on Cumulative Past Gap / (Surplus) approved for TPC-D

TPC-D's Submission

16.1 TPC-D has computed the combined impact of above issues on the Cumulative Past Gap /(Surplus) as on March 2020 as Rs. 4.82 Crore for the Wires Business and Rs. 93.58 Crore for the Supply Business. The combined impact of Wire Business and Supply Business works out to Rs. 98.40 Crore.

16.2 TPC-D has requested the Commission to approve the combined Impact of Rs.98.40 Crore for Distribution Business.

AEML-D's Submission:

16.3 AEML-D in its Petition on the issue of non-consideration of UI Charges, has requested the Commission to give effect of the financial impact in TPC-D tariffs at the review stage itself, instead of waiting for True-up stage during Mid Term Review (MTR) Proceedings. AEML-D has contended that this issue directly impacts tariff competitiveness and hence, irreparable harm will be caused to AEML-D, if it is not addressed immediately. Therefore, AEML-D has requested the Commission to approve a mechanism for passing through of the impact of review order in tariffs of TPC-D with immediate effect.

TPC-D's Reply to AEML-D's contentions:

16.4 Section 62 (4) of the EA, 2003 stipulates that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year. Therefore, the prayer of AEML-D to give immediate effect to the UI amount and approve pass through mechanism in the tariffs of TPC-D with immediate effect is devoid of merits.

16.5 The Commission in the recent MYT Tariff Order of AEML-D in Case of 317 of 2018 has considered the impact of Review of MTR Tariff order dated 24 December, 2018 and ruled that the impact along with due carrying cost shall be considered at the time of true up of 2018-19. TPC-D has requested the Commission to adopt similar approach.

AEML-D's Rejoinder dated 15 June, 2015 to TPC-D's Reply:

16.6 MYT Orders have been made effective from the first day of April 2020 i.e. the first day of the financial year 2020-21. MYT Order is not a revision of tariffs because it is applicable from day one of the financial year. Therefore, the revision of tariffs, pursuant to the Review Petition(s), would be the first revision in the financial year after issuance of Order. Therefore, the issue of revision in tariffs more than once in a financial year is not relevant to the present case.

16.7 In Case of FY 2018-19, the tariffs applicable had been the ones which came into effect from 1April, 2018, as per the earlier MYT Order and then the first revision in the financial year took place when the MTR Order was issued on 12 September, 2018, effective from 1 September, 2018. Hence, in such a case, it could have been argued that there can be no further revision pursuant to the issue of MTR Order, because MTR Order itself was the first revision. However, that is not the case with FY 2020-21.

16.8 The Electricity Act, 2003 also enjoins upon the Regulatory Commissions to ensure fair competition and towards that end, if changes are required to be made in the retail tariffs so as to correct computational errors in the Tariff Order, the Regulatory Commissions can very well carry out the same using the wide powers vested in them as EA.

16.9 AEML-D has placed reliance of APTEL Order in Appeal No. 178 of 2016, dated 30 March 2017 in which it is ruled that when a review is filed, the same results in a re-examination of the earlier order. AEML-D has also placed reliance of the Hon'ble Supreme Court Order in *DSR Steel (P) Ltd. v. State of Rajasthan, reported in (2012) 6 SCC 782*; a plain reading of the same states that if a review is allowed, either in full or in part, the review Order merges with the earlier Order, and a single composite order takes shape. The identity of the earlier order then ceases to exist. Hence, any tariff component allowed in review would be treated as if the same was allowed in the original Order. This means that the tariff component allowed in a review proceeding cannot be termed as a revision of the tariff granted in the original Order.

16.10 TPC-D, in their own Review Petition, has pointed out several other computational issues, which will also result in correction of ARR for FY 2020-21 and thereafter. Considering all such changes, there could be substantial revision (increase) in per unit average cost of supply of TPC-D, which ought to recognized. Postponing the corrections till true-up would cause irreparable harm to AEML-D and its very large base of low-end consumers, given that the resulting changes in tariffs of TPC-D will influence consumer migration between the two Licensees.

16.11 In view of the above, AEML-D has requested the Commission to revise the tariffs of TPC-D for different consumer categories in order to correct the computational errors in TPC-D's MYT Order.

Commission's Analysis and Ruling

16.12 The Commission notes that TPC-D in its review Petition has computed impact of issues under review from FY 2017-18 to end of FY 2019-20 i.e. March 2020. Although, true-up of FY 2017-18 and FY 2018-19 has been completed in the MYT Order and hence expenses and revenue for these years are finalised, FY 2019-20 is yet to be trued-up. Hence, expenses and revenue of FY 2019-20 may undergo change based on true-up process which will be undertaken at the time of upcoming MTR proceeding in the year 2022. Therefore, ascertaining cumulative impact of review Order till FY 2019-20, at this point of time is not appropriate.

16.13 Regarding, AEML-D's contention that impact of this review Order is to be allowed immediately by revising tariff or through other appropriate method, the Commission notes that the Commission has allowed revision in CSS with immediate effect as there was error in using one of the input parameter for formula computing CSS. With corrected input, revised per unit CSS has been worked out which would be applicable to the concerned consumer. However, other issues on which review has been allowed forms part of ARR and for allowing impact of the same, tariff for all categories of consumers would require to be revised.

16.14 The Commission does not agree with AEML-D’s contention that tariff which is made applicable from 1 April 2020 should not be treated as first revision in tariff for FY 2020-21 and based on review allowed in the Petition, the Commission can revise tariff which would satisfy requirement of Section 62 (4) of the EA that tariff shall not be revised more than once in any financial year. Accepting such contention means the Commission can revise tariff twice in any financial year i.e. on 1 April 2020 and subsequently on any date in that financial year. This is not the intent of the EA when it stipulates that no tariff shall normally be revised more than once in any financial year. Hence, the Commission rejects this contention of AEML-D.

16.15 Further, Distribution Tariff takes input from Generation and Transmission Orders. Transmission Order in Maharashtra is prepared based on Tariff Orders of multiple Transmission Licensees operating in the State. Each of these Generating Company or Transmission Licensee may approach the Commission at different point of time for revision in their respective Tariff Order which if allowed would have impact on Order of Distribution Licensee. If process of allowing immediate recovery of review order is adopted, then tariff of Distribution Licensees would require amendment on multiple occasions to include the impact of review allowed to Generating companies, Transmission Licensees and also the Distribution Licensees. This cannot be permitted under Section 62 (4) of the Electricity Act, 2003. Therefore, this Commission has adopted the practice of deferring the impact of review Order till next tariff determination process by allowing corresponding carrying/holding cost. This practice is being uniformly adopted for all the generating companies and licensees in the State including AEML-D.

16.16 Further, although three issues viz. non-consideration of UI charges, double accounting of TOD charges and correct computation of Income Tax would have impact of increasing expenses, revised computation of CSS would increase the revenue of TPC-D thereby neutralizing the impact of increased expenses to some extent. Further, correcting double allowance of FBSM charges as pointed out at para 14 above may further neutralize the impact of increased expenses on account of this review Order and in fact instead of increase in tariff as sought by AEML-D, tariff would have to be reduced. However, for the reasons stated above, the Commission is not inclined to undertake revision in tariff at this stage by allowing immediate pass through of the review impact.

16.17 Accordingly, AEML-D’s request for allowing impact of this review Order immediately by revising tariff or through other appropriate method is rejected. TPC-D is directed to claim consequential impact of this review Order along with corresponding carrying/holding cost in upcoming Mid Term Review proceedings.

17. As recorded in earlier part of the Order, the Office of Commission has not been able to identify some of the Excel linkage/computational errors in Financial Model on which present review has been filed by TPC-D and AEML-D, and these errors are being considered for acceptance under present Review Order. The Commission acknowledges the fact that TPC-D's Tariff Petition consists of complexity of parallel operation of licensees in Mumbai which requires continuous reworking of sales projections and hence ARR of competing licensees. Further, APTEL Judgment of providing similar treatment on every issue to each competing licensee also needs to be complied with which may lead to providing some relief to any licensee without being prayed for it. Notwithstanding above, due diligence is expected in these computations since there is financial impact on the consumers on account of incorrect computation. The Utility may choose to approach the Commission seeking review of the Tariff Order for its convenient review points i.e. review points where recovery would increase and errors which might have led to additional recovery may not be highlighted by the Utility under review. Hence, Office of the Commission should exercise additional vigilance while undertaking detailed scrutiny of Tariff Petitions.

18. Hence, the following Order.

ORDER

1. **Case No. 96 of 2020 filed by Tata Power Company Ltd (Distribution) is allowed.**

2. **Case No. 98 of 2020 filed by Adani Electricity Mumbai Ltd (Distribution) is partly allowed.**

3. **Review of Order dated 30 March 2020 is allowed in terms of following:**

    a. **Prayer for consideration of UI amount of Rs. 31.21 Crore while computing revenue surplus of FY 2019-20 is allowed. Same shall be considered during true-up of FY 2019-20 at the time of upcoming MTR proceedings (para no. 10.9)**

    b. **Prayers regarding revising revenue for FY 2017-18 and FY 2018-19 by deducting revenue from ToD Charges is allowed. Impact of the same shall be claimed during upcoming MTR proceeding with carrying cost (para no.11.11).**

    c. **Prayers regarding revising Income Tax computation for FY 2017-18 and FY 2018-19 is allowed. Impact of the same shall be claimed during upcoming MTR proceeding with carrying cost (para no. 12.8).**

    d. **Prayer regarding recalculation of Cross-Subsidy Surcharge by considering correct transmission charges for FY 2020-21 to FY 2024-25 is allowed. Revised computed charges shall be applicable from 1 April 2020 (para no. 14.18)**

e. **Prayer regarding correcting double allowance of expenses towards FBSM expenses for FY 2018-19 and FY 2019-20 is allowed. Impact of the same shall be claimed during upcoming MTR proceedings (para no. 15.4)**

4. **Prayer of Adani Electricity Mumbai Ltd (Distribution) for allowing impact of review order immediately without waiting until MTR proceeding is rejected (para no 16.17).**

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

(Abhijit Deshpande)
Secretary