

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 163 of 2020

Petition of Adani Electricity Mumbai Ltd. -Distribution seeking reconciliation of the issue of Standby Charges decided in the Commission's Order dated 30 March 2020 in Case No. 300 of 2020 with the Clarificatory Order dated 20 August 2019 passed by the Hon'ble Supreme Court in MA. 1404 of 2019 in Civil Appeal No. 415 of 2007

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Adani Electricity Mumbai Ltd.- Distribution Petitioner

V/s.

Tata Power Company Limited-Generation Respondent No. 1
Tata Power Company Limited -Distribution Respondent No. 2
BEST Undertaking ... Respondent No.3

Appearance

For the PetitionerMs. Deepa Chawan (Adv.)
For the Respondent No.1 Shri Venkatesh (Adv.)
For the Respondent No. 2 Shri Peyush Tandon (Rep.)
For the Respondent No. 3 Shri N.N. Chaugule (Rep.)

ORDER

Date: 21 December, 2020

1. Adani Electricity Mumbai Ltd. (Distribution) (**AEML-D**) has filed a Petition on 6 August 2020, under Sections 86(1)(a) and 86(1)(f) of the Electricity Act, 2003 (**EA**) and under

Regulations 92 to 95 of the MERC (Conduct of Business) Regulations, 2004, (**CBR Regulations**) seeking reconciliation of the issue of Standby Charges decided in the Order dated 30 March 2020 in Case No. 300 of 2020 with the Clarificatory Order dated 20 August 2019 passed by the Hon'ble Supreme Court in MA No. 1404 of 2019 in Civil Appeal No. 415 of 2007.

2. **AEML-D's main prayers are as follows:**

- i. *Hold and direct that the refund of standby charges, or any component of the said charges, to be made by TPC-G to AEML-D, cannot at all be passed on to the consumers of TPC-G, including AEML-D;*
- ii. *Consequently, pass necessary orders for the purpose of aligning both the tariff orders dated 30.03.2020, passed in Case No. 300 of 2019 (for TPC-G) and Case No. 325 of 2019 (for AEML-D), with the final order dated 20.08.2019 passed by the Hon'ble Supreme Court in Civil Appeal No. 415 of 2007;*

3. **AEML-D's Petition states as follows:**

- 3.1 The present Petition has been filed by AEML-D pursuant to the liberty granted by the Commission in its Order dated 21 July 2020 passed in Case No. 103 of 2020 (**AEML-D Review Order**) which had been filed by AEML-D seeking review of the Multi Year Tariff (**MYT**) Order for AEML-D passed by the Commission in Case No. 325 of 2019.
- 3.2 The Commission, in the MYT Orders in Case No. 300 of 2019 (**TPC-G MYT Order**), and Case No. 325 of 2019 (**AEML-D MYT Order**) dated 30 March 2020, made observations/ findings whereby the refund of the Standby Charges over-recovered by Tata Power Company Ltd.-Generation Business (**TPC-G**), and which are required to be refunded to AEML-D, was allowed as pass through the Annual Revenue Requirement (**ARR**) for recovery from the consumers/beneficiaries of TPC-G, i.e. AEML-D, Tata Power Company Ltd.-Distribution (**TPC-D**) and Brihanmumbai Electric Supply & Transport Undertaking (**BEST**). However, as per the Judgment of the Hon'ble Supreme Court dated 20 August 2019 (**Supreme Court Clarificatory Order**), the refund of excess Standby Charges recovered by TPC-G was prohibited from being passed on to the consumers of TPC-G. Therefore, there exists a conflict between the findings made by the Commission in the MYT Orders as compared to Supreme Court Clarificatory Order.
- 3.3 The sole issue in the present Petition is to seek correction of the findings rendered by the Commission in MYT Orders for TPC-G and AEML-D so that the said MYT Orders can be brought in line with the Supreme Court Clarificatory Order.
- 3.4 Vide its Order dated 31 May 2004 in Case No. 7 of 2000 (**Standby Order**), the Commission worked out the excess amount of Standby Charges of Rs. 322.30 Crore for FY 1998-99 to FY 2003-04, to be refunded by TPC to AEML-D (then BSES) along with the net interest of Rs. 8.37 Crore payable by BSES to TPC for delayed payments in FY 1998-99 and FY 1999-00.
- 3.5 Thereafter, in the Tariff Order of TPC dated 11 June 2004 in Case No. 30 of 2003, the Commission ruled that while computing the Tariff of TPC, it has proceeded to draw

up/utilise the reserves accumulated by TPC to meet the gap between Clear Profit and Reasonable Return created on account of refund of Standby Charges to BSES.

- 3.6 The Standby Order was challenged by TPC before the Appellate Tribunal for Electricity (**ATE**) which vide its Judgment dated 20 December 2006 in Appeal No. 202 of 2005 (**ATE Judgment**), directed that the amount of Standby Charges paid by BSES in excess of its share was to be refunded by TPC to BSES (now AEML). The amount to be refunded by TPC to BSES was determined at Rs. 354.14 Crore. (Rs. 339 Crore principal amounts plus Rs. 15.14 Crore interest).
- 3.7 TPC challenged the ATE Judgment before the Hon'ble Supreme Court, which disposed of the Civil Appeal vide its Order dated 2 May 2019 in Civil Appeal No. 415 of 2007, (**Supreme Court Main Order**) whereby it upheld the ATE Judgment and directed the release of the amount deposited by way of Bank Guarantee to AEML-D along with the interest. AEML-D, hence, realized the said amount from TPC.
- 3.8 Further, TPC filed a Clarification Application, whereby the Hon'ble Supreme Court passed a further Order dated 20 August 2019 (**Supreme Court Clarificatory Order**). The liability of TPC-G towards refund of the excess Standby Charges paid by AEML-D, was specifically prohibited by the Hon'ble Supreme Court from being passed on to the consumers of TPC-G.
- 3.9 In the aforesaid proceeding before the Hon'ble Supreme Court, TPC specifically contended that it was under the impression that the ATE Judgment had been stayed, and as such, it did not raise the bills on the consumers. The Hon'ble Supreme Court, in its Clarificatory Order, clarified that there was no stay on the ATE Judgment. Therefore, it was open for TPC to raise bills upon its consumers after the ATE Judgment.
- 3.10 The Hon'ble Supreme Court also held that TPC failed to raise such invoices upon consumers (i.e. AEML-D and other Distribution Licensees) from year 2006 to year 2019, as such it was too late for TPC to seek a clarification regarding raising of such bills qua the Clarification Application filed in the year 2019. Hence, as per the Supreme Court Clarificatory Order, the right of TPC to raise such bills was closed, and as such, the permission to raise bills upon consumers of TPC-G, was denied.
- 3.11 The Commission, in the MYT Order for AEML-D, included the amount of Rs. 35.53 Crore in the ARR for FY 2020-21, to be paid to TPC-G, towards Standby Charges. However, same ought not to have been considered in view of the Supreme Court Clarificatory Order.
- 3.12 TPC-G, in its MYT Petition in Case No. 300 of 2019, claimed the difference between the amount of refund of Standby Charges payable to BSES/R-Infra/AEML as determined in the ATE Judgment and as determined by the Commission in Standby Order along with carrying cost to be recovered from the three Distribution Licensees of Mumbai.
- 3.13 TPC-G's prayer in its MYT Petition, for passing on the liability of the refund of aforesaid differential Standby Charges, upon its "consumers", was an abuse of the process of the Commission. However, the Commission, in the TPC-G MYT Order observed that the

additional amount of Standby Charges incurred by TPC-G is to be recovered from “consumers” of the past period (FY 1999-2000 to FY 2003-04), including AEML-D.

- 3.14 AEML-D filed a review Petition in Case No. 103 of 2020 against its MYT Order in Case No. 325 of 2019 in which imposition of Standby Charges of TPC-G was one of the issues. The Commission vide Order dated 21 July 2020, (**AEML-D review Order**) granted liberty to AEML-D to file a separate Petition, by making all the concerned entities as respondents. Accordingly, the present Petition has been filed by AEML-D.
- 3.15 In view of the Supreme Court Clarificatory Order, TPC-G cannot be allowed to raise bills upon its consumers qua Standby Charges, which are required to be refunded. The findings/ observations made by the Commission in the MYT Orders for TPC-G and AEML-D, whereby the shortfall on account of the refund of Standby Charges to be made by TPC-G to AEML-D, will be distributed in proportion of the “consumers” of TPC-G, i.e., AEML-D, TPC-D and BEST, are in conflict with the Supreme Court Clarificatory Order. Further, these findings are virtually in the nature of being a contempt of the Supreme Court Clarificatory Order. The said observation, has resulted in artificially inflating AEML-D’ ARR, thereby resulting in a Tariff shock for the retail consumers.
- 3.16 Hence, the Commission ought to align the MYT Orders for TPC-G and AEML-D with the Supreme Court Clarificatory Order by using inherent powers provided under Regulations 90 to 95 of the MERC (Conduct of Business) Regulations, 2004 (**CBR Regulations**).
- 3.17 AEML-D in its review Petition in Case No. 103 of 2020, also pleaded that existing reserves available with TPC-G ought to be drawn for the purpose of meeting the requirement of refund of Standby Charges. In the present Petition, AEML-D has not raised the issue of reserves available with TPC-G. However, the same ought not to be treated as a waiver by AEML-D. Further, if the Commission is of the opinion that the above issue can also be raised and adjudicated in the present Petition, in such event, AEML-D craved leave to raise the said issue.

4. **TPC-G’s reply dated 26 August 2020 stated as follows:**

A. Preliminary Submissions

- 4.1 Present Petition is not maintainable before the Commission on account of the following reasons:
 - I. AEML-D cannot seek modification/review of TPC-G MYT Order and AEML-D MYT Order by way of the present Petition**
- 4.2 AEML-D had filed a Petition in Case No. 103 of 2020 seeking review of the AEML-D MYT Order and it had specifically raised the issue of Standby Charges determined in TPC-G’s MYT Order. However, at the relevant time AEML-D did not assail the TPC-G MYT Order in any manner.
- 4.3 The Commission has dealt with the issue raised by AEML-D in the AEML-D Review Order and has duly noted that AEML-D’s submissions have already been dealt with in TPC-G’s MYT Order. AEML-D could have made its submissions regarding Standby

Charges in TPC-G MYT Petition which was not done by AEML-D. Further, the limitation period to seek review of this Order has now lapsed. Thus, TPC-G MYT Order has attained finality. Thus, AEML-D, through the present proceedings, cannot assail/question the finding rendered by the Commission in TPC-G's MYT Order.

- 4.4 Additionally, AEML-D is essentially seeking a review/modification of two Orders, i.e., TPC-G's MYT Order and AEML-D's MYT Order, which is not permissible in the current legal framework. Such modification of two Orders through a single Petition is not envisaged either in the Regulations or the EA, or even under the Civil Procedure Code, 1908 (CPC).
- 4.5 Further, AEML-D has not furnished any reason as to why it has not raised this very issue before the Commission when TPC-G's filed its Review Petition (Case No. 94 of 2020) or when the said Petition was being heard. AEML-D also did not prefer a Review on TPC-G's MYT Order.
- 4.6 Hence, the present Petition ought to be dismissed as the same is an abuse of the process of law.

II. AEML-D is seeking a second review, which is impermissible in law

- 4.7 The Commission has already exercised its power of review in Case No. 103 of 2020 (**AEML-D Review Order**) and Case No. 94 of 2020 (**TPC-G Review Order**). Therefore, there cannot be any modification done once the review Petitions have been disposed of.
- 4.8 By way of the present Petition, the Petitioner is seeking a second review of the TPC-G's MYT Order and AEML-D's MYT Order, which is also impermissible in law in terms of Order 47 Rule 5 of the CPC.
- 4.9 As held by the Hon'ble Supreme Court in the matter of *Delhi Administration v. Gurdip Singh Uban and Ors.*, (2000) and *J. Ranga Swamy v. Government of Andhra Pradesh and Ors.*, it is a settled principle of law, that a second review Petition, whatsoever called, is not maintainable.
- 4.10 The issues raised in the present Petition have attained finality as no Appeal has been filed against the TPC-G's and AEML-D's Orders. Accordingly, AEML-D cannot seek a second review under the garb of the instant Petition. Therefore, the Commission should dismiss the present Petition as not maintainable.

III. The Commission has become functus officio in so far as the MYT Orders for TPC-G and AEML-D are concerned

- 4.11 AEML-D in the present Petition, has relied upon the inherent powers of the Commission, which included the general power to amend/rectify as provided under Regulations 90 to 95 of CBR Regulations. Accordingly, AEML-D has contended that the Commission has powers to amend the MYT Orders for TPC-G and AEML-D.
- 4.12 Civil Courts have been granted similar inherent powers including power to amend/rectify its Orders (Section 151 and 152 of CPC). However, this power is limited

to the aspect of arithmetical/clerical errors and cannot be used to modify the purport of the Order passed by it. If the same is allowed then the entire review/appellate jurisdiction would become redundant and Parties, instead of filing review/appeal, would approach the same Court and seek modification of its decisions. Therefore, AEML-D's contention is liable to be rejected.

- 4.13 The law in this regard is settled by the Hon'ble Supreme Court in various judgments (*in the matter of Dwaraka Das v. State of M.P, (1999), Deputy Director Land Acquisition vs Malla Atchinadu & Ors. and UP SRTC v. Imtiaz Hussain*) wherein it was held that after the passing of the Judgment, decree or Order, the court or the tribunal becomes functus officio and thus is not entitled to vary the terms of the Judgments, decrees and Orders earlier passed. It was also held that for the aggrieved party, the proper remedy for seeking any correction on the merits of the case is to file an Appeal or Review Application.
- 4.14 Hence, the Commission cannot revisit the MYT Orders for TPC-G and AEML-D and modify its purport. Further, the Commission has already reviewed the aforesaid Orders in Case Nos. 103 and 94 of 2020. Therefore, if AEML-D is aggrieved by the said Orders, the only remedy available is to approach the Hon'ble ATE. Hence, the Commission should dismiss the present Petition as non-maintainable.

B. Submissions on Merit

- 4.15 AEML-D is trying to mislead the Commission by making false submissions. The alleged non-compliance of the Supreme Court Clarificatory Order is nothing but a red herring and the same ought to be rejected.
- 4.16 The Standby Order was challenged by TPC before the Hon'ble ATE which vide its Judgment dated 20 December 2006, directed that 23% of the Standby Charges for the period in question should be borne by BSES/REL/AEML and balance should be borne by TPC and further directed refund of the excess amount deposited by BSES/REL/AEML.
- 4.17 Another Appeal filed by BSES/REL/AEML was rejected by the Hon'ble ATE vide its Judgment dated 20 April, 2007.
- 4.18 The amount of Standby Charges payable by TPC as determined in the ATE Judgment was Rs. 354.14 Crore [Rs. 339 Crore (net amount) + Rs. 15.14 Crore (total interest accrued during FY 2001-2004)]. As against this amount, the Commission had considered an amount of Rs. 313.93 Crore [Rs. 322.3 Crore (net amount) - Rs. 8.37 Crore (total interest accrued during FY 2001-2004)] payable by TPC-G.
- 4.19 TPC challenged the ATE Judgment in Hon'ble Supreme Court in Civil Appeal No. 415 of 2007. In addition, BSES/REL/AEML filed Civil Appeal No. 3229 of 2007 before the Hon'ble Supreme Court aggrieved by the ATE Judgment dated 20 April 2007.
- 4.20 The Hon'ble Supreme Court in Civil Appeal No. 415 of 2007, by its Order dated 7 February 2007, granted an interim stay to the ATE Judgment and directed TPC to

furnish a bank guarantee of Rs. 227 Crore and deposit a separate sum of Rs. 227 Crore with the Registrar General of the Hon'ble Supreme Court.

- 4.21 Subsequently, the Hon'ble Supreme Court, in its Judgment dated 2 May 2019, upheld the ATE Judgment and ordered the entire amount including interest lying with the Registrar of the Hon'ble Supreme Court be paid to AEML-D. Thus, an amount of Rs. 354.14 Crore became payable by TPC-G against an amount of Rs. 313.93 Crore approved by the Commission in its Order in Case No. 30 of 2003.
- 4.22 Accordingly, TPC-G has released the payments due to AEML as per the aforesaid Judgment of the Hon'ble Supreme Court. However, there was an additional interest of Rs. 100 Crore (for interest from 1 April 2004 to 31 January 2007, i.e., for 34 months @ 10% for excess amount paid). In addition to the above, the Hon'ble Supreme Court directed interest @10% on Rs. 354 Crore payable on or after 1 April 2004 till the date of payment.
- 4.23 With respect to the payment liability of additional interest on Rs. 354 Crore on account of stay of ATE Judgment, TPC-G filed a Clarification Application, whereby the Hon'ble Supreme Court in its Clarificatory Order observed that that "*now it is too late in the day to seek such clarification that liability may be permitted to be passed on to consumers*". Hence, the Hon'ble Supreme Court, disallowed the recovery of interest from the consumers on the base amount, which became payable by TPC-G to BSES by virtue of the Hon'ble Supreme Court Judgment dated 2 May 2019. The said issue attained finality and there was no re-agitation of the same by TPC/TPC-G.
- 4.24 Further, the amount allowed to TPC-G in its MYT Order is not the amount which was disallowed in the Supreme Court Clarificatory Order. The sum allowed is the difference in amount determined by the Commission in Standby Order and that allowed in ATE Judgment and the interest thereon for the Standby Charges for the period FY 2000-01 to FY 2003-04. The computation is as follows:

Sr. No.	Particulars	Unit	Value
1	Principal amount as per Table 5.12 as on 31 March 2004	Rs. Crore	40.21
2	No. of days between 30 September 2020 (mid-point of FY 2020-21) and 31 March 2004	Days	6027
3	Interest @10%	Rs. Crore	66.40
4	Total amount payable by Distribution Licensees	Rs. Crore	106.61

- 4.25 The amount of Standby Charges was to be paid from the Contingency Reserves available with TPC-G. However, the Commission, in the Tariff Order for TPC dated 11 June 2004 in Case No. 30 of 2003, had apportioned the entire Reserves available with TPC till FY 2005-06 including Reserves for the period from FY 1999-2000 to FY 2003-04 as held in Para 9.3.3 of the said Tariff Order. Therefore, no Reserves were available with TPC for the period from FY 1999-2000 to FY 2003-04 for which the additional amount of Standby Charges are to be borne by TPC.

- 4.26 Further, the dispute regarding Standby Charges was related to the share of Standby Charges to be borne by TPC and BSES, respectively, for the Standby facility provided by MSEB to ensure uninterrupted supply of power to Mumbai. The respective share of Standby Charges to be borne by TPC and BSES in the past has been considered as part of ARR of respective Utility in their Tariff Petitions. In case the additional amount to be borne by TPC towards Standby Charges for the period FY 1999-2000 to FY 2003-04 was included in ARR of TPC for respective years, the same would have been borne by consumers of TPC including BSES (now AEML-D/Petitioner). Hence, the recovery of Standby Charges through tariff is different than the share of Standby Charges to be borne by BSES (now AEML-D/Petitioner) and TPC-D.
- 4.27 Therefore, since the differential amount was envisaged to be a part of ARR of TPC-G, the same cannot be questioned at this stage by AEML-D. The same has been the understanding of the Commission and the amount on account of Standby Charges for FY 2001-04 has been correctly allowed by the Commission vide MYT Order for TPC-G.
- 4.28 Thus, AEML-D is misleading the Commission by making extraneous submissions which have now been crystalized in light of the Supreme Court Clarificatory Order and the MYT Order for TPC-G.
- 4.29 In view of the above, the Commission should dismiss the present Petition as non-maintainable and without any merit with exemplary costs.
5. **BEST's reply dated 14 September 2020 stated as follows:**
- 5.1 Based on the Supreme Court Order, the Commission in MYT Order for TPC-G allowed Rs. 106.61 Crore as claimed by TPC-G towards recovery of Standby Charges along with carrying cost as a part of the past recoveries from the Mumbai DISCOMs, viz. AEML-D (Rs. 35.53 Crore), BEST (Rs. 44.57 Crore) and TPC-D (Rs. 26.50 Crore).
- 5.2 AEML-D has rightly pointed out that the Hon'ble Supreme Court in Para 12 of its Clarificatory Order clarified that there was no stay as to the Tariff to be realized from the consumers and it was conceded before the Court that liability has been passed over to consumers. The Hon'ble Supreme Court declined to grant relief to TPC by ruling that it was too late to seek such a clarification that liability may be permitted to be passed on to consumers and that prayer sought, would have the effect of reviewing the Order itself.
- 5.3 The Supreme Court Clarificatory Order prima facie clarified that passing on of the liability of TPC towards refund of the excess Standby Charges to the consumers of TPC in that period, is not permissible.
- 5.4 The Commission should consider the Supreme Court Clarificatory Order, wherein new evidence is brought before the Commission by AEML-D in the present Petition and pass appropriate Order for refund of additional recovery of Standby Charges allowed and being recovered through TPC-G's applicable Tariff to the DISCOMs. The financial impact of the Order by the Commission in present Petition by way of any relief granted to AEML-D as well as consequential relief to BEST and TPC-D may be considered

during Mid-Term Review of TPC-G's ARR with due regard to passing on holding cost by TPC-G to these DISCOMs.

6. AEML-D's rejoinder dated 1 September 2020 stated as follows:

- 6.1 AEML-D has filed the present Petition pursuant to the liberty granted by the Commission in the AEML-D Review Order. The reason for granting such liberty is on account of the fact that as per Supreme Court Clarificatory Order, TPC-G cannot raise any invoices upon consumers from Year 2006 to Year 2019, as TPC-G failed to raise any such bills from the date of passage of the ATE Judgment.
- 6.2 In view of Regulation 92 of CBR Regulations, the Commission has the powers to pass any such Order or Order(s) under the regulatory framework in order to meet the ends of justice.
- 6.3 TPC-G has ignored Para 9.22 of the AEML-D Review Order which makes it clear that in the opinion of the Commission, AEML-D's issue qua a conflict between the MYT Orders for TPC-G and AEML-D with the Supreme Court Clarificatory Order was found to have merit. Hence, the Commission granted liberty to AEML-D to file the present Petition and TPC-G cannot question the wisdom and intent of the above liberty granted by the Commission, by way of its reply.
- 6.4 Further, TPC-G's contention as regards the TPC-G MYT Order attaining finality, is misplaced since the present Petition is a continuation of the proceedings related to the above case, being specifically permitted by the Commission. Hence, TPC-G's contention that AEML-D cannot seek modification/review of MYT Orders for TPC-G and AEML-D by way of the present Petition, ought to be rejected.
- 6.5 AEML-D is not seeking a second review of its MYT Order but is seeking to align the said Order and the MYT Order for TPC-G with the Supreme Court Clarificatory Order.
- 6.6 The Commission in AEML-D review Order partly allowed AEML-D's claim. However, TPC-G is contending that the present proceedings amounts to a second review Petition, is fundamentally flawed as the Commission specifically granted liberty to AEML-D for filing the present Petition.
- 6.7 Under Regulations 93 and 94 of the CBR Regulations, the Commission can provide for any procedure to be followed, which is over and above, and not provided under the said Regulations. Accordingly, the Commission can exercise jurisdiction in the present Petition, in the interest of justice pursuant to the Order of the Hon'ble Supreme Court.
- 6.8 It is a settled principle of law that the Commissions/Tribunals are statutory authorities and are bound by the four corners of the said statute. The Regulatory Commissions have been given powers to regulate their own procedure, as provided under Section 92 of the EA. In exercise of the said powers, the Commission enacted the CBR Regulations which outlines the procedure, including filing of review Petitions, and any other Petitions/proceedings.
- 6.9 Hence, TPC-G cannot take a stand that the present proceedings are not maintainable on account of alleged second review, as the present proceedings have been specifically

permitted, by way of liberty granted in the AEML-D Review Order. The objection of TPC-G as regards the Petitioner seeking a second review is liable to be rejected.

- 6.10 TPC-G has also contended that the Commission has become functus officio in so far as MYT Orders for TPC-G and AEML-D are concerned. The aforesaid contention of TPC-G is erroneous and is denied. A Court of Law becomes functus officio only in the event there is no continuing proceeding pending. In other words, the principle of functus officio is not applicable to a proceeding, which is a continuation of the previous proceedings. On account of the liberty granted in the AEML-D review Order, the present proceedings are a continuation of the proceedings, which resulted in the passage of the aforesaid Tariff Orders, and the initiation of the aforesaid proceedings are permitted under Regulations 92 to 94 of the CBR Regulations.
- 6.11 In the event, the MYT Orders for TPC-G and AEML-D are not aligned with the Order of the Hon'ble Supreme Court, then the same would virtually amount to a contempt of the said Order. In order to avoid any such issue, the Commission has consciously deemed it appropriate to grant liberty to AEML-D to approach the Commission by way of the present Petition.
- 6.12 The reference Judgments the Hon'ble Supreme Court referred by TPC-G in its reply are not applicable to the present Petition, as the Petition is a continuation of proceedings pertaining to the MYT Orders for TPC-G and AEML-D.
- 6.13 Further, TPC-G's contention that the only remedy available to AEML-D is to approach the Hon'ble ATE by way of an Appeal is flawed, as an Appeal is a statutory remedy, and similarly, initiation of proceedings under Regulations 92 to 94 of the CBR Regulations for correction of an earlier Order, is also a statutory remedy. Therefore, when the present Petition has already been filed, then it is not necessary for AEML-D to separately file an Appeal before the Hon'ble ATE.
- 6.14 TPC-G has further contended that the inherent powers available under the CBR Regulations are similar to the powers available under Sections 151 and 152 of the CPC, and that, under the said provisions, the power is limited to correction of arithmetical errors. Thus, TPC-G is contending that the present Petition does not seek correction of any arithmetical error, etc., and as such, the Petition is not maintainable. However, the above submission is erroneous, for the reason that there are no provisions similar to Regulations 93 and 94 of the CBR Regulations in the CPC. Therefore, the powers available under the above Regulations are wider than the inherent powers available under the CPC. Further, in light of Section 92 of the EA, the Commission has complete powers to regulate its own procedure. Further, reference needs to be made to Section 94 of EA, which limits the applicability of the CPC to the items mentioned under Sections 94(1)(a) to (g).
- 6.15 Therefore, the provisions of CPC are not applicable for proceedings before the Commission. Accordingly, TPC-G cannot make an interpretation of the scope of the inherent powers available to the Commission, by relying upon the provisions of the CPC.

- 6.16 TPC-G seeks to distinguish the Supreme Court Clarificatory Order by contending that vide the aforesaid Order, the recovery of interest from consumers on base amount was disallowed. It is further contended by TPC-G that the amount allowed in the MYT Order for TPC-G was not the amount, which was disallowed by the Supreme Court Clarificatory Order. However, Paras 5 to 7 of TPC-G's application seeking clarification of Supreme Court Order would indicate that the aforesaid contention of TPC-G is misleading.
- 6.17 In Para 5 of the Clarification Application, TPC-G had referred to Paras 1, 25 and 32 of the Supreme Court Order. From the said para, it is evident that TPC-G wished to highlight the fact that in Para 32, the Hon'ble Supreme Court had held that there was no stay on the ATE Judgment.
- 6.18 In Para 6 of the clarification application, TPC-G had submitted that the aforesaid para requires clarification to the extent that there was a stay of the ATE Judgment. In the said para also, there is no mention that TPC-G was seeking clarification only with respect to the interest component.
- 6.19 In Para 7 of the Clarification Application, TPC-G expressly stated that it has not passed the "disputed" Standby Charges to the customers through their Tariff. Clearly, TPC-G sought clarification with respect to the entire disputed amount pertaining to Standby Charges and not limited to interest.
- 6.20 In view of the above, the distinction which is now being pleaded by TPC-G in its reply, that the Supreme Court Clarificatory Order was limited to only the interest component, is liable to be rejected.
- 6.21 TPC-G has further contended that in the event the additional amount towards Standby Charges, which is to be borne by TPC-G, was included in the ARR, then the same would have been borne by the consumers of TPC-G (i.e. AEML-D). This argument is speculative and cannot at all, be now raised before the Commission, when the same could have been raised before the Hon'ble Supreme Court. Once the Hon'ble Supreme Court "prohibited" TPC-G from passing on the liability of Standby Charges, TPC-G cannot raise the above argument in order to persuade the Commission to pass an Order, which would be contrary to the Order passed by the Hon'ble Supreme Court.
- 6.22 TPC-G, in its Reply, has attempted to rely upon its MYT Order in order to distinguish the Supreme Court Clarificatory Order. This cannot be permitted, and therefore, the averments of TPC-G are liable to be rejected. Hence, TPC-G's contentions ought to be rejected and AEML-D's prayers should be allowed.

7. At the e-hearing through video conferencing, held on 11 November 2020:

- 7.1. The advocate appearing for AEML-D re-iterated its submission as made out on the Petition and further stated that:
- i. TPC-G has contended that the Commission has become functus officio in so far as the MYT Orders for TPC-G and AEML-D are concerned and hence present Petition is not maintainable. However, AEML-D is not before a Court

of Law, rather it is before the Commission which has a quasi-judicial power empowered to make its own procedures. The Commission has framed its own CBR Regulations and therefore CPC would not be strictly applicable to it.

7.2. The Advocate appearing from TPC-G reiterated its submissions as made out in their replies and further stated that:

- i. AEML-D's prayers in the present Petition cannot be allowed de hors the MYT Orders and it will amount to review of the MYT Orders passed by the Commission. Hence, the present Petition is essentially a review Petition.
- ii. The Commission is barred by law from entertaining the review of the MYT Orders which have already been reviewed and this bar cannot be overcome by way of granting a liberty to AEML-D.
- iii. It needs to be seen as to whether a liberty can be granted to the extent that violates the existing provisions of law.
- iv. Once a review on an issue has been rejected, a review cannot be allowed on the same issue when the Party re-approaches upon grant of liberty.
- v. The issue of recovery of Standby Charges has been decided by the Commission in TPC-G MYT Order which has been passed after conducting a Public Hearing. Therefore, this issue cannot be redetermined in a bilateral manner without a Public Hearing.
- vi. The Commission in AEML-D Review Order has held that the Commission's decision on the issue of Standby Charges was a conscious decision and review was not allowed.
- vii. While deciding the present Petition based on the Supreme Court Orders, it needs to take into consideration as to what questions/issues were before the Hon'ble Supreme Court, based on which the Hon'ble Supreme Court has rendered its Judgments.
- viii. In its Clarification Application, TPC had sought clarification on the liability towards interest part of the Standby Charges which had been declined by the Hon'ble Supreme Court. The issue for recovery of differential Standby Charges allowed by the Commission in TPC-G MYT Order was not before the Hon'ble Supreme Court.
- ix. If in the opinion of AEML-D, the issue of recovery of differential Standby Charges was before the Hon'ble Supreme Court, it is not clear why AEML-D did not file a contempt Petition before the Hon'ble Supreme Court after issuance of the TPC-G MYT Order.
- x. AEML-D, during the proceeding for TPC-G MYT Petition, had suggested that reserve of TPC should be utilized for the recovery of differential Standby Charges, however, AEML-D did not point out the Supreme Court Clarificatory Order which is being emphasised now.

- 7.3. Representative of TPC-D stated that they have no specific submissions on the present Petition and the Commission may decide the Petition after considering the submissions of the all the Parties.
- 7.4. Representative of BEST stated that they have already filed their replies which may be considered by the Commission while deciding the Petition.
- 7.5. Responding to the arguments of TPC-G, the Advocate for AEML-D stated that:
- i. All the Parties have failed to bring the Supreme Court Clarificatory Order to the notice of the Commission during MYT proceedings including TPC-G.
 - ii. If TPC-G's submission is to be accepted that review of review cannot be allowed, that would mean that the Supreme Court Clarificatory Order would be ignored.
 - iii. With the liberty granted by the Commission to approach separately on the Standby Charges issue, AEML-D is not in a position to approach the Hon'ble Supreme contesting the same issue.
 - iv. The Clarification Petition of TPC did not seek clarification on the interest component as being claimed by TPC-G, but the clarification of the entire Standby Charges recovery was sought and there was no segregation of principal component and the interest component in the Clarification Petition.
 - v. TPC-G cannot take advantage of its own failure to bring the Supreme Court Clarificatory Order on record at the appropriate time.
 - vi. TPC-G is now contending that its reserves were exhausted, accordingly, recovery from the consumers is the only option. However, TPC ought to have agitated this issue before the Hon'ble Supreme Court.
 - vii. TPC-G didn't challenge the AEML-D Review Order which granted liberty to AEML-D to approach a separate Petition on the Standby Charges issue.
 - viii. The present Petition has also invoked the Section 86(1)(f) of EA which empowers the Commission to adjudicate the dispute between the Distribution Licensees and therefore the present Petition is not a review of review. Thus, the Order 47 of CPC would not come in way of deciding the present Petition.
 - ix. The Order dated 31 May 2004 in Case No. 7 of 2000 passed by the Commission and the Judgment dated 20 December 2006 in Appeal No. 202 of 2005 passed by the Hon'ble ATE have been merged into the Supreme Court Order which cannot be ignored.
- 7.6. After hearing the Parties, the Commission directed the Parties to file their respective written submission by 17 November 2020 with copies marked to all.
8. **Vide its written submission dated 18 November 2020, AEML-D stated that:**
- 8.1 The Supreme Court Clarificatory Order cannot be ignored and also the Tariff Orders cannot be passed in complete contravention of the same. When the Hon'ble Supreme

Court in the above Order has refused the permission to TPC for passing on the liability of refund of Standby Charges upon its consumers, such as AEML-D, the same may not be permitted by the Commission.

- 8.2 In the proceedings of Case No. 103 of 2020, for the first time, the Commission was apprised by AEML-D about the passage of the Supreme Court Clarificatory Order and through the Order dated 21 July 2020, the Commission granted liberty to AEML-D to file the present Petition.
- 8.3 During the proceedings of their respective Tariff Orders, neither TPC nor AEML brought the Supreme Court Clarificatory Order to the knowledge of the Commission. This resulted in the Commission passing the Tariff Orders dated 30 March 2020. Hence, none of the parties, especially TPC, can argue that the said Order has to be ignored and not given effect to, simply because the parties failed to place on record the above Order. If correction of the above Tariff Orders is not done in the present proceedings, then this would amount to a complete violation of the Supreme Court Clarificatory Order. In fact, TPC did not place the said Order on record during its MYT Tariff proceedings, when it was TPC which obtained the said Clarificatory Order. TPC was always aware of the fact that the aforesaid Order prevents passing through of Standby Charges.
- 8.4 The Hon'ble Supreme Court, vide its Order dated 7 February 2007, had granted an interim stay of the money part of the ATE Judgment dated 20 December 2006, and not on the stipulation that Tariff (Standby Charges) is to be realized from the consumers.
- 8.5 In its clarification Petition before the Hon'ble Supreme Court, TPC had categorically sought a clarification regarding passing on the liability of the refund of the Standby Charges on the consumers (AEML-D), and not interest component alone as is being argued by TPC.
- 8.6 In its Clarificatory Order, the Hon'ble Supreme Court had held as under:

“ We clarify that, while making the aforesaid observation what we meant was that the stay was on the money part of the order requiring refund. There was no stay as to the tariff to be realized from the consumers. The refund part, which was determined was stayed on certain stipulations. It was conceded before us that liability has been passed over to consumers and that fact has been recorded in paragraph 32 and other paragraphs in the judgment passed by us. Now it is too late in the day to seek such a clarification that liability may be permitted to be passed on to consumers. Apart from that prayer made will have the effect of reviewing the order itself. Hence, we are not inclined to grant said relief. No modification is required. Accordingly, the application for clarification/modification is disposed of.”

- 8.7 Once the Hon'ble Supreme Court directed that the liability of Standby Charges cannot be passed on to its consumers by TPC, the same is binding and cannot at all be ignored otherwise it would result in a contumacious conduct. No hyper-technical arguments being advanced by TPC, can permit violation of the Supreme Court Clarificatory Order.

- 8.8 The present Petition has been filed by invoking Sections 86(1)(a) and 86(1)(f) of the EA. The Commission determines Tariff as per powers available under Section 86(1)(a) of the EA. It is a settled principle of law that Tariff is a continuous process, and it keeps on revising periodically. Further, even the principles of res-judicata are not applicable to tariff proceedings.
- 8.9 As per the Judgment passed by the Hon'ble Supreme Court in UPPCL v. NTPC, following observations can be made:
- i. Revision of Tariff is distinguished from review of a Tariff Order. Hence, revision of Tariff cannot be denied, citing hyper-technical arguments qua review proceedings.
 - ii. In the above Judgment, the Conduct of Business Regulations, 1999 of CERC were the subject matter. The Hon'ble Supreme Court categorically referred to Regulations 110 to 117 therein, so as to hold that the Commission has extensive power in regard to the Tariff proceedings.
 - iii. The Conduct of Business Regulations, 1999 of the CERC are also existing today. The Commission has specified the CBR Regulations whereby the Regulations 92 to 94 are similar to Regulations 111 to 113 of the Conduct of Business Regulations, 1999 of CERC.
 - iv. The Hon'ble Supreme Court refers to Regulations 92 and 94 of the Conduct of Business Regulations, 1999 of the CERC, which provide for review. Thereafter, the Hon'ble Supreme Court held that the said provisions do not restrict the power of CERC to make additions or alterations in the Tariff. It was further held that making of a Tariff is a continuous process, and that the same can be amended or altered by the Commission, if any such occasion arises.
 - v. The concept of regulatory jurisdiction provides for revisitation of the Tariff.
 - vi. The Hon'ble Supreme Court also held that some persons who are consumers during the Tariff year in question may not continue to be the consumers in future. Also, there is addition of new consumers. Hence, for the past period, there is no reason as to why the new consumers should bear the brunt/ burden of a past liability.
- 8.10 The rationale for the Supreme Court Clarificatory Order is that the Standby Charges cannot be made a pass through to the consumers after a long period, wherein, the consumers have arranged their affairs in accordance with the then prevailing situation.
- 8.11 Therefore, in line with the aforesaid judgment of the Hon'ble Supreme Court, the Commission can invoke its powers available under Section 86(1)(a), read with Regulations 92 to 94 of the CBR Regulations, for the purpose of exercising regulatory jurisdiction and for revisiting the Tariff Orders dated 30 March 2020 passed in Case Nos. 300 of 2019 and 325 of 2019.
- 8.12 Further, as held in the above judgment, the present consumers of AEML-D cannot be burdened with a liability of Standby Charges, when TPC failed to pass on the same to

the consumers from the year 2006. In the Supreme Court Clarification Order, while rejecting the permission for passing on the liability by TPC on its consumers (AEML-D), it was specifically mentioned that there was no stay on the ATE Judgment dated 20 December 2006 (the stay was only on the money part), and it was too late for TPC to now seek passing of the aforesaid liability on the consumers.

- 8.13 TPC-G has argued that the present proceedings are in the nature of a second review, and that the same is not permitted. The said contention is erroneous because the present proceedings are fresh proceedings for adjudication of disputes involving revisitation of Tariff, and not a review.
- 8.14 Once liberty was granted to AEML-D by the Commission vide its Order in Case No. 103 of 2020, to file the present Petition, the same is a fresh cause of action which cannot be termed as a second review.
- 8.15 TPC-G became aware of the aforesaid Order passed by the Commission in August 2020 and it did not challenge the said Order. As such, now TPC-G cannot question the veracity of the observations and directions contained in the aforesaid Order, including the liberty granted to AEML-D to file the present Petition.
- 8.16 The aforesaid liberty was granted by the Commission in the most emergent of circumstances, whereby the Supreme Court Clarificatory Order was not brought to the knowledge of the Commission. This prevented the Commission from implementing the said Order.
- 8.17 When the Supreme Court Clarificatory Order was placed on record before the Commission in the proceedings of Case No. 103 of 2020, it was clearly evident that there is a dispute between AEML-D and TPC-G, qua passing on the reliability of Standby Charges to consumers, which permission was specifically denied by the Hon'ble Supreme Court. As such, the present Petition also invokes the dispute adjudication powers of the Commission under Section 86(1) (f) of the EA.
- 8.18 Thus, the Commission rightly granted liberty to AEML-D for filing a separate Petition and further directed that TPC-G and others be impleaded as Parties to such a proceeding.
- 8.19 Since the Tariff determination is a continuous process, the Commission always has the powers to amend or change Tariff Orders more than once in a financial year. From the Section 62(4) of EA, it is evident that the Commission can amend a Tariff Order more than once in a financial year, because the restriction to do so under this provision is qualified by the word "ordinarily" in the said provision. The word "ordinarily" signifies that the Regulatory Commission is provided with a "discretion" of amending a Tariff more than once on account of certain exigencies. The aforesaid provision has been inserted in the EA itself, so as to enable a Regulatory Commission to cater to an extreme situation which requires a revisitation or amendment of Tariff. Hence, the aforesaid power, which expressly flows from the EA cannot at all be allowed to be circumscribed by hyper-technical arguments that a Tariff Order cannot be amended since the same would amount to a second review.

- 8.20 Further, the issue whether the Supreme Court Clarificatory Order should be factored-in, in the Tariff dispensation of the utilities concerned (TPC-G and AEML-D), was never considered in any proceedings by the Commission. Hence, the present Petition is the first adjudication of the subject issue and therefore, maintainable.
- 8.21 Further, the present issue of the passage of the liability of Standby Charges by TPC to AEML, is also a dispute between the Distribution Licensees, which squarely falls within the domain of Section 86(1) (f) of the EA. Case No. 103 of 2020, which was essentially a review of a Tariff Order could not have resulted in an adjudication under Section 86 (1)(f) and therefore the Commission rightly granted the liberty in its Order dated 20 August, 2020.
- 8.22 TPC, having failed to produce the Supreme Court Clarificatory Order before the Commission, when it sought pass-through to its consumers of the very liability to refund the excess Standby Charges in its Tariff Petition, cannot today argue that the said Order of the Hon'ble Supreme Court ought not to be implemented by the Commission.
- 8.23 In fact, the above situation whereby the Commission was kept in dark about the above Order of the Hon'ble Supreme Court, squarely falls within the exceptions provided under Regulations 92 to 94 of the CBR Regulations in order to enable the Commission to correct and bring in line the Tariff Orders dated 30 March 2020, passed in Case Nos. 300 of 2019 and 325 of 2019 with the Supreme Court Clarificatory Order.
- 8.24 Under Regulations 92 and 93 of the CBR Regulations, the Commission can pass an Order by adopting a procedure, which is at variance with the CBR Regulations, on account of a "special circumstance". The bringing to the knowledge of the Commission the Supreme Court Clarificatory Order, creates a "special circumstance" for the Commission to adopt a procedure whereby AEML-D was given liberty in the AEML-D Review Order to file the present Petition. The aforesaid procedure adopted by the Commission was in line with Regulation 93 and is at variance with the procedure for review of an Order provided under Regulation 85 of the Conduct of Business Regulations.
- 8.25 TPC sought to rely upon a Judgement of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd.* It is the contention of TPC that inherent powers have its restrictions, and the same cannot be exercised in the present Case. In the above case, the Hon'ble Supreme Court denied the exercise of inherent jurisdiction by the Regulatory Commission, since the Tariff control period cannot be extended by invoking inherent powers, as the said powers stood exhausted. In the present case, the Supreme Court Clarificatory Order was not placed before the Commission when the Tariff Orders for TPC-G and AEML-D were passed. Therefore, the present situation cannot be compared with the situation existing in the aforesaid Judgement where the power to specify control period was already exercised/ exhausted, and accordingly, the Commission cannot be prevented from aligning with the Supreme Court Clarificatory Order.

- 8.26 AEML-D seeks to refer to a Judgment of the Hon'ble Supreme Court in *Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. And Ors.*, it has been held that change in facts of a particular case can lead to a different interpretation/ decision.
- 8.27 Further reliance is placed on the Judgement of the Hon'ble Supreme Court in *Pasupuleti Venkateswarlu v. Motor and General Traders*, whereby it has been categorically held that procedure is the handmaid and not the mistress of the judicial process, and that equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice.
- 8.28 Hence, the objections of TPC are hyper-technical and based on its interpretation of procedures, which cannot come in the way of the Commission in suitably amending the aforesaid Tariff Orders in line with the decision of the Supreme Court Clarificatory Order. If the argument of TPC is accepted, then the same would amount to perpetuating the illegality, and would be in the nature of contempt, when it is evident that the Tariff Orders are contrary to what was decided by the Hon'ble Supreme Court.
- 8.29 An Order passed completely contrary to the Supreme Court Clarificatory Order is void-ab-initio/ non-est. As such, the directions contained in para 6.2.13 to 6.2.17 of the TPC-G Tariff Order wherein the liability to refund the excess Standby Charges was allowed as a pass-through from TPC-G to AEML-D, are also void-ab-initio/non-est. Similarly, the directions contained in para 5.16 of the AEML-D Tariff Order are also void-ab-initio/ non-est. The same also renders the observations permitting passing on the liability of refund of Standby Charges by TPC-G to AEML-D, as per incuriam.
- 8.30 As laid by the Hon'ble Supreme Court in *Indore Development Authority v. Shailendra*, the doctrine of per incuriam is applicable qua an Order which has been passed either in blatant ignorance of law or of a binding authority.
- 8.31 In the present Case, the Tariff Orders dated 30 March 2020 passed by the Commission, to the extent of the observation qua passing on the liability of refund of Standby Charges upon AEML-D by TPC-G, were in ignorance of the binding Supreme Court Clarificatory Order and as such per incuriam.
- 8.32 The Supreme Court Clarificatory Order is binding on all stakeholders and cannot be ignored. Hence, the aforesaid observations qua passing on the liability of Standby Charges by TPC-G to AEML-D, contained in the TPC-G and AEML-D Tariff Orders have to be rendered as per-incuriam.
- 8.33 TPC-G has argued that Appeals have been filed before Hon'ble ATE, against the TPC-G and MYT Tariff Orders and as such, the present Petition cannot be entertained by the Commission. It is submitted that there is no such bar for a Regulatory Commission. In this context, reference may be made to the Judgment dated 29 May 2019, passed by Hon'ble ATE in Appeal No. 250 of 2016, wherein, an earlier Order dated 11 May 2017, passed in Appeal Nos. 250 of 2015 and 242 of 2016, was held to be per incuriam.
- 8.34 The Hon'ble ATE held the Judgment dated 11 May 2017 as per incuriam, even though Civil Appeals against the said Order are still pending before the Hon'ble Supreme

Court. The said Civil Appeals were filed on 7 September 2017, and the Hon'ble ATE held the Judgment dated 11 May 2017 as per incuriam on 29 May 2019.

- 8.35 Applying the same principle in the present case, the Commission can adjudicate the present dispute which has arisen pursuant to the TPC-G and AEML-D Tariff Orders while appeals against the said Orders are pending before Hon'ble ATE.
- 8.36 TPC-G has also argued that after the passage of the aforesaid Tariff Orders, the Commission has become functus officio, and therefore, the said Orders cannot be modified today. It is reiterated that the present Petition is a dispute which needs to be adjudicated and in respect of which liberty was duly granted in AEML-D Review Order. AEML-D has raised a specific dispute that the liability of refund of Standby Charges, cannot be passed through to its consumers by TPC-G, when the Hon'ble Supreme Court has clearly "prohibited" the same.
- 8.37 In view of the submissions made herein above, the present Petition ought to be allowed.

9 Vide its written submission dated 18 November 2020, TPC-G reiterated its submission made in the replies and further stated that:

- 9.1 The present Petition is not maintainable for the following reasons: -
- i. In the Review Order dated 21 July 2020, the Commission has duly noted the submissions of AEML-D in respect of the TPC-G MYT Order and rejected the contention of AEML for seeking review.
 - ii. The Commission in AEML-D Review Order has categorically denied the prayer of Review as sought by AEML-D. The Commission has also held that the Supreme Court Clarificatory Order is not a new piece of evidence as required under Order 47 Rule 1 of Civil Procedure Code, 1908. Hence, Review is in the nature of an Appeal and cannot be allowed. However, since AEML-D made allegation of contempt of the Orders passed by the Hon'ble Supreme Court, the Commission granted liberty to AEML-D to file an appropriate Petition.
 - iii. Therefore, in so far as Review of the Order dated 30 March 2020 in case of AEML-D is concerned, Review on the basis of the Supreme Court Clarificatory Order was categorically rejected. AEML has not furnished any reason as to why it has not raised this very issue before the Hon'ble Commission when:-
 - a. Proceedings in Case No. 300 of 2019 (TPC-G MYT Petition) were going on;
 - b. Proceedings in Case No. 325 of 2019 (AEML-D MYT Petition) were going on;
 - c. Proceedings in TPC-G's filed its Review Petition (Case No. 94 of 2020) were being conducted.
 - iv. All the above proceedings were concluded after passing of the Supreme Court Clarificatory Order and in neither of them AEML-D raised the contentions as being raised in the present Petition. Hence, clearly AEML-D was also under the

impression that the Supreme Court Clarificatory Order in no manner prescribes, that despite the reserves of TPC-G being entirely appropriated by the Commission, the impact of Standby Charges computation/ ratio change would not be passed on to the consumers.

9.2 In the garb of aligning the MYT Orders with the Supreme Court Clarificatory Order, AEML-D is in effect seeking second review of the MYT Orders which is not tenable in law in terms of Order 47 Rule 9 of the CPC. The relevant provisions of the CPC are being reproduced as follows:-

“9. Bar of certain application.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.”

9.3 The Hon’ble Supreme Court in *Delhi Administration vs. Gurdip Singh Uban & Ors.* and *J. Ranga Swamy vs. Government of Andhra Pradesh & Ors.*, has affirmed that second Review against an Order is impermissible.

9.4 The Commission has already exercised its power of review in Case No. 103 of 2020 (Review of Petition No. 325 of 2019) and Case No. 94 of 2020 (Review of Petition No. 300 of 2019). Therefore, there cannot be any modification done once the review Petitions have been disposed-off and the Commission has become functus officio. If the plea of AEML-D is to be accepted then no proceedings can ever achieve finality and the matter can be re-agitated before the same forum repeatedly even after the proceedings of Review has come to an end.

9.5 The Commission is bound by the rigors of Order 47 of CPC in its entirety. The way Order 47 Rule 9 bars second review of the order, the same way Order 47 Rule 7 bars an appeal against the review order. As held by the Hon’ble ATE in the matter of *M/s Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited vs. MPREC*, Section 94(1)(f) of EA incorporates by reference to the provisions of the CPC in regard to exercise of power over the Review of its own Orders. Accordingly, the relevant provisions of CPC 114 and Order 47 Rule 7 deal with Review as if it has been provided for in Section 94 of the EA including the provision of Order 47 Rule 7. Therefore, just as in the case of Order 47 Rule 7 an Appeal against the Review Order does not lie, similarly, in Order 47 Rule 9, the second review of an Order already reviewed cannot be entertained.

9.6 The present Petition is nothing but a second review in the garb of inherent power, therefore, the Commission ought to reject the Petition of AEML-D. Further, liberty granted by the Commission itself needs to stand the test of law. In this regard, reliance is placed on the Judgment of the Hon’ble Supreme Court in *Kewal Chand Memani vs. S.K. Sen & Ors.*

9.7 The Commission has already reviewed the MYT Orders for TPC-G and AEML-D. Therefore, if the AEML-D is aggrieved by the said Orders, the only remedy available is to approach the Hon’ble ATE in Appeal under Section 111 of the EA.

- 9.8 AEML-D has relied upon the inherent powers of the Commission qua Regulation 90-95 of the CBR Regulations and in view thereof, has sought to amend the MYT Orders. The said contention of AEML is devoid of merit for the following reasons:
- i. The Civil Court has been granted similar inherent powers including power to amend/rectify its Order (Section 151 and 152 of CPC), however, such power is not unfettered.
 - ii. The Hon'ble Supreme Court in its *Judgment GUVNL vs. Solar Semiconductor Power Company (India) Private Limited & Anr.* has dealt with the scope of the inherent powers of the GERC. As per the principles laid down in the Judgment, the inherent powers are procedural powers recognised by the Commission to grant a procedural relief and not to carry out any substantive adjudication. Further, the inherent powers can never be invoked if one violates the substantive provisions of the statute. Therefore, in the present case inherent power of the Commission cannot be invoked to the detriment of Section 94 and Section 111 of the EA.
 - iii. In the instant Petition, the substantive provision of the statute is Section 94 read with Order 47 under which review proceedings can be adjudicated. Therefore, AEML-D by invoking the inherent powers of the court cannot seek review/amendment/ modification of the Order.
- 9.9 In the Original Order i.e. Civil Appeal No. 415 of 2007, a recording was made that the entire original amount along with the interest is passed on to the consumers.
- 9.10 TPC-G filed a clarification application seeking a generic clarification that the aforesaid finding of the Hon'ble Supreme Court has been wrongly recorded. The Hon'ble Supreme Court vide its Order dated 20 August 2019 denied the prayer for clarification.
- 9.11 Therefore, the Original Order exists, the said Order did not even whisper that the delta amount i.e. Rs. 354 Crores (approx.)- Rs. 313 Crores (approx.) along with the interest has to be borne by TPC-G.
- 9.12 Further, rejection of the prayer for clarification of TPC-G by the Hon'ble Supreme Court, does not mean that the delta amount along with the interest has to be borne by TPC-G albeit the said issue was never raised before the Hon'ble Supreme Court. The Hon'ble Supreme Court was not seized of:-
- a. The fact that contingent reserves of TPC-G were appropriated to meet the Standby Charges liability.
 - b. That the said reserves were depleted in its entirety by the Commission in its Order dated 3 October 2006 passed in Case No. 12 of 2005 and 56 of 2005.
- 9.13 If the above issues were never raised/ contested before the Hon'ble Supreme Court, then it is not understandable as to how the Clarificatory Order denying clarification can be read to the detriment of TPC-G.

- 9.14 AEML-D by picking a sentence of the Order and reading it as a provision of the statute. A Judgment should be read in a context what it was delivered in. It is trite law that a Judgment cannot be read as statute. The Hon'ble Supreme Court has upheld the same in the following Judgments:
- i. Zee Telefilms Ltd. vs. Union of India (2005)
 - ii. Islamic Academy of Education vs. State of Karnataka
 - iii. P.S. Sathappan v. Andhra Bank Ltd.
- 9.15 AEML-D did not even whisper about the Clarificatory Order, at the time of filing of the objections/reply in Case No. 300 of 2019 and during the proceedings of the said matter. Even the case of AEML-D was that available reserves of TPC-G ought to be used to meet the part liability of Standby Charges. This fact has not even been controverted by AEML-D during its submissions or during the course of hearing.
- 9.16 TPC-G did not even mention the change in computation of Standby Charges liability and its impact in its Application. Therefore, it is incomprehensible that the Clarification Application is now being skewerdly interpreted to the detriment of TPC-G.
- 9.17 The effect of denial is that the Original Order stands and the said Order did not even whisper that the delta amount i.e. Rs. 354 Crores (approx.)- Rs. 313 Crores (approx.) along with the interest has to be borne by TPC-G. It is not even the case of AEML-D that the Judgment dated 2 May 2019 in any manner precludes the delta amount being recovered by TPC-G. Therefore, even if the effect of Clarification Order is to be considered nothing turs on it as the Order denying clarification essentially affirms the original Order.
- 9.18 The respective share of Standby Charges to be borne by TPC and BSES in the past has been considered as part of ARR of respective Utility in their Tariff Petitions. In case the additional amount to be borne by TPC towards Standby Charges for the period FY 1999-2000 to FY 2003-04 was included in ARR of TPC for respective years, the same would have been borne by consumers of TPC including BSES (now AEML-D/Petitioner).
- 9.19 The total TPC-G liability adjudicated by the Hon'ble ATE, in its Judgment dated 20 December 2006 was Rs. 354 Crores. The said Judgment was challenged before the Hon'ble Supreme Court wherein, vide Interim Order dated 7 February 2007, a stay was granted on the operation of ATE Judgment by the Hon'ble Supreme Court. It was on account of the same that the Commission could not factor in the differential amount in subsequent Tariff Order for TPC-G.
- 9.20 In fact, even during the proceedings of Case No. 300 of 2019, the sole contention of AEML-D was that the difference of Stand-By Charges ought to be recovered from Reserve Surplus of TPC-G for the relevant time. The Commission, in TPC-G MYT Order held that no such reserve was available and that the said amounts shall be recovered from the then consumers of TPC-G. It is only then AEML-D has sought to introduce the Supreme Court Clarificatory Order as a red-herring. The Order was passed

even before Case No. 300 of 2019 was filed and at no point in time AEML-D ever agitated any purported violation of the Orders passed by the Hon'ble Supreme court. Hence, the contention is bereft of merit and logic and is liable to be rejected.

Commission's Analysis and Ruling:

- 10 After going through the submissions of AEML-D and TPC-G, the Commission notes that the entire basis of filing of present Petition and the bone of contention is the observations made by the Hon'ble Supreme Court in its Clarificatory Order. It is AEML-D's case that the MYT Orders passed by the Commission needs to be aligned with the observations made by the Hon'ble Supreme Court. On the other hand, TPC-G has objected to the Petition both on maintainability as well as merits of the matter.
- 11 AEML-D, in support of maintainability of its Petition has stated that AEML-D is not seeking a second review of its MYT Order but is seeking to align the said Order and the MYT Order for TPC-G with the Supreme Court Clarificatory Order. As per AEML-D, in view of Regulation 92 of CBR Regulations, the Commission has the powers to pass any such Order or Order(s) under the regulatory framework in order to meet the ends of justice. AEML-D further stated that the Commission had granted specific liberty to it to avoid any conflict with the Supreme Court Clarificatory Order and therefore, the present Petition is maintainable.
- 12 While objecting to the maintainability of the Petition, TPC-G has stated that no submission had been made by AEML-D on the Supreme Court Clarificatory Order at the time of MYT proceedings of TPC-G. Further neither review was sought by AEML-D for TPC-G MYT Order nor did it challenge the Order. The limitation period to seek review of this Order has now lapsed. Thus, TPC-G MYT Order has attained finality. Hence, AEML-D, through the present proceedings, cannot assail/question the finding rendered by the Commission in TPC-G's MYT Order. As per TPC-G, second review of the MYT Orders is not maintainable. TPC-G further stated that, inherent powers which AEML-D has relied upon, are limited to the aspect of arithmetical/clerical errors and cannot be used to modify the purport of the Order passed by it. TPC-G has also contended that the Commission has become functus officio after passing of the Order. TPC-G has relied upon few Judgments passed by the Hon'ble Supreme Court.
- 13 On the issue of maintainability of the present Petition, the Commission notes that vide its Petition in Case No. 103 of 2020 seeking review of its MYT Order, AEML-D had raised the issue of Supreme Court Clarificatory Order. However, the Commission was not able to adjudicate the same as the issue had been decided in TPC-G MYT Order and not in AEML-D MYT Order. Also, TPC-G was not party to that proceeding. Further, the Commission was of the opinion that Supreme Court Clarificatory Order might have some bearing on the issue and therefore opportunity needed to be granted to AEML-D to highlight its issue in presence of TPC-G. Same was thought to be important to ensure that TPC-G MYT Order was not in conflict with the Supreme Court Clarificatory Order and there was no contempt of that Order. With this background, the Commission had given a liberty to AEML-D. The relevant para. is reproduced below:

“ 9.17 The amount of Stand-by Charges payable by AEML-D to TPC-G as mentioned in AEML-D’s MYT Order has been computed in the Commission’s MYT Order in Case No. 300 of 2019 for TPC-G. All the contentions made by AEML-D in its Review Petition are against the Commission’s rulings on merits of the issues examined in the above-said MYT Order of TPC-G. Therefore, the issue raised by AEML-D about Stand-by Charges actually relate to the review of the MYT Order in Case No. 300 of 2019.

....

9.20 AEML-D has submitted that it is not required to make TPC-G a respondent in the Review matter, as TPC-G was not a Party in the original MYT Petition of AEML-D. However, AEML-D has not submitted how the Commission can undertake a review of the TPC-G MYT Order through a review filed on AEML-D MYT Order. The Commission does not find merit in this contention as AEML-D is expecting review of another Licensee’s Order, without offering it the opportunity to express its views on the points made against its Order. This is against the Principles of Natural Justice and cannot be accepted.

9.22 In view of the above, the Clarificatory Order of Hon’ble the Supreme Court cannot be considered under “discovery of new and important matter or evidence “under the Review Petition. Neither is this a case of “error apparent on the face of the record”. The Commission has made a conscious decision to recover the Stand-by Charges of TPC-G from all the beneficiaries (BEST, AEML-D and TPC-D) after considering the Judgment dated May 02, 2019 of Hon’ble the Supreme Court and AEML-D’s contentions in this regard. The issue of levy of Stand-by Charges raised by AEML-D in its Review Petition is an appeal in disguise against the MYT Order of TPC-G. The scope of review is very limited, and the contentions of AEML-D in this regard do not satisfy the criteria specified for review of the AEML-D MYT Order. Also, the Commission is not aware if any appeal has been preferred by AEML-D against the MYT order (covering this point) of TPC-D. **Hence while ruling that the Review is not admissible on this issue, considering AEML’s contention that said Order of the Commission is causing contempt of clarificatory Order of the Hon’ble Supreme Court, the Commission grants liberty to AEML-D to file a separate petition as per the provisions of the Conduct of Business regulations, by placing all the facts supporting its contention and by making all the concerned, as party(ies) in that petition.**

14 Thus, the need for granting liberty to AEML-D had arisen on account of the extraordinary circumstances of the possibility of contempt of the Supreme Court Clarificatory Order. It is necessary to examine as to whether by allowing the recovery of Standby Charges in the MYT Orders for TPC-G and AEML-D, there has been any illegality committed in the wake of the Orders passed by the Hon’ble Supreme Court. Under Regulation 92 of CBR Regulations, the Commission has inherent power to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse

of the process of the Commission. **In light of the above, the Commission deems it appropriate to hold that the present Petition filed by AEML-D is maintainable and accordingly, the Commission proceeds with deciding the same.**

- 15 On the merit of the Petition, it is the claim of AEML-D that on account of Supreme Court Clarificatory Order, TPC-G was barred from seeking recovery of the Standby Charges from the Distribution Licensees. On the other hand, TPC-G stated that the Hon'ble Supreme Court in its Clarificatory Order observed that that "*now it is too late in the day to seek such clarification that liability may be permitted to be passed on to consumers*". Hence, the Hon'ble Supreme Court, disallowed the recovery of only interest part from the consumers on the base amount, which became payable by TPC-G to BSES by virtue of the Hon'ble Supreme Court Judgment dated 2 May 2019. Further, the amount allowed to TPC-G in its MYT Order is not the amount which was disallowed in the Supreme Court Order. The sum allowed in the MYT Order is the difference in amount determined by the Commission in Standby Order and the ATE Judgment and the interest thereon for the Standby Charges for the period FY 2000-01 to FY 2003-04.
- 16 In sum and substance, it is the claim of TPC-G, (while filing its reply which was reiterated during the hearing also) that it was interest on the Standby Charges Payment liability which had been rejected by the Hon'ble Supreme Court and TPC-G was entitled to recover the differential Standby Charges from its consumers. In its written submission, TPC-G has taken a different stand and stated that since its Clarification Application had been rejected, the Original Order dated 2 May 2019 passed by the Hon'ble Supreme Court stands. TPC-G contends that the said Order did not even whisper that the delta amount i.e. Rs. 354 Crores (approx.)- Rs. 313 Crores (approx.) along with the interest has to be borne by TPC-G.
- 17 The Commission is of the view that the aforesaid contentions are devoid of any merit. The Supreme Court Clarificatory Order is in continuation of the Supreme Court Main Order dated 2 May 2019. Accordingly, the said Order cannot be ignored as sought to be interpreted by TPC-G. Further, from bare perusal of the Clarification Application filed by TPC before the Hon'ble Supreme Court and the Supreme Court Clarificatory Order, it is observed that it is factually incorrect claim of TPC-G that it was interest on the Standby Charges Payment liability which had been rejected by the Hon'ble Supreme Court and TPC-G was entitled to recover the differential Standby Charges from its consumers. The relevant extract of the Clarification Application filed by TPC is given below:
- “ 4. It is respectfully submitted that the present application is being filed on behalf of the Appellant seeking clarification of the judgment dated 02.05.2019 passed by this Hon'ble Court and appropriate directions primarily on the point that the general principles of apportionment of part-payment of the decretal amount towards the interest component first may not be applicable to the present case, since the arrangement by virtue of which the amount for payment has arisen is regulatory in nature and cannot be treated as a normal commercial arrangement.*

*It is pertinent to highlight that the standby charges that were to be paid by the Appellant/Applicant were essentially towards compensating MSEB for the losses that it would suffer on account of reduction of off-take of electricity from MSEB. **It is also pertinent to point out that such standby charges were eventually to be recovered by the Applicant from its customers through increase in tariff.***

These aforesaid aspects have also been duly noted by this Hon'ble Court in Para. 4 of its judgment dated 02.05.2019 as follows:

“The standby facility charges paid by TPC to MSEB were factored into tariff charged by TPC from its customers including BSES/REL. ”

5. It is further respectfully submitted that the Appellant is a revenue neutral entity providing public utility services. The activities of Appellant/Applicant are regulated by the MERC under the Electricity Act, 2003 which was enacted for regulating the framework “....relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff....” amongst other objectives.

7. It is therefore most respectfully submitted that in view of the above factual background, the Applicant craves the leave of this Hon'ble Court to consider the following aspects relating to the objective behind the imposition of standby charges and the fact that the transaction in the present proceeding cannot be purely commercial in nature, as follows:

(a) It may be noted that the Applicant /Appellant in the captioned Civil Appeal is a regulated entity and is revenue neutral as it is only allowed to receive regulated returns. The liability (either principle and/or interest) arising pursuant to the judgment dated 02.05.2019 of this Hon'ble Court will necessarily result in burdening the consumers on the Applicant/Appellant directly or indirectly.

(b) It is also pertinent to bring to the attention of this Hon'ble Court that at the time of filing the present clarificatory application, the Appellant has also preferred a review Petition bearing no. 1615 of 2019 in the present matter including the ground that in para. 32 of the said judgment, this Hon'ble Court has held as under:

“ ...The implementation of the order of the APTEL would mean that the determination made by it has been acted upon and corresponding liability factored into tariff has been passed on the customers and actual consumers and realised from them since there was no such interim stay on implementation of order.”

11. The Appellant/Applicant further craves the leave of this Hon'ble Court to specifically direct the concerned Electricity Regulatory Commission to consider

the interim order dated 07.02.2007 as well as the final order dated 02.05.2019 passed by this Hon'ble Court in the present proceedings as and when the Appellant/Applicant seeks a tariff revision to recover from its customers/consumers, a pass through of any liability (either principle and/or interest) that will need to be paid in compliance of this Hon'ble Court's judgment.

Prayer

It is therefore, most respectfully prayed that in light of the specific facts and background elaborated hereinabove, this Hon'ble Court may graciously be pleased to:

...

*c) Direct the concerned Electricity Regulatory Commission to consider the interim order dated 07.02.2007 as well as the final order dated 02.05.2019 passed by the Hon'ble Court as and when the Appellant/Applicant seeks a tariff revision **to recover from its customers/consumers, a pass through of any liability (either principal and/or interest) that will need to be paid in compliance of this Hon'ble Court's judgment***

18 Thus, it is clear that main issue in TPC's Clarificatory Application, was regarding apportionment of the part amount of Rs. 227 Cr. withdrawn by AEML-D. AEML-D had apportioned this part payment against the interest amount of Rs. 100 Cr. and as per TPC-D, this amount needed to be first apportioned against the principal amount of Rs. 339 Cr. However, TPC, in its Application also contended that there was an interim stay to the ATE Judgment granted by the Hon'ble Supreme Court vide the interim Order dated 7 February 2007. There was a specific prayer of TPC wherein it requested the Hon'ble Supreme Court to issue directions to the Commission to consider the interim Order dated 7 February 2007 as well as the final Order dated 2 May 2019 passed by the Hon'ble Court, at time of Tariff revision to enable TPC to recover from its consumers, a pass through of any liability (either principal and /or interest) arising on account of the Judgment of the Hon'ble Supreme Court.

19 However, the Hon'ble Supreme Court did not allow the aforesaid Application holding that it was too late to seek any clarification that liability may be permitted to be passed on to consumers. The relevant extract of the Supreme Court Clarificatory Order is as under:

*"12. Coming to the clarification sought of certain observations and application for rectification of observation made in the judgment and order dated 02.05.2019, it is submitted that **this Court has observed that there was no interim stay granted on the order passed by the APTEL.** We clarify that, while making the aforesaid observation what we meant was that the stay was on the money part of the order requiring refund. **There was no stay as to the tariff to be realized from the consumers.** The refund part, which was determined was stayed on certain stipulations. **It was conceded before us that liability has been passed over to consumers and that fact has been recorded in paragraph 32***

and other paragraphs in the judgment passed by us. Now it is too late in the day to seek such a clarification that liability may be permitted to be passed on to consumers. Apart from that Reliefs sought will have the effect of reviewing the order itself. Hence, we are not inclined to grant said relief. No modification is required. Accordingly, the application for clarification/ modification is disposed of.”(emphasis added)

- 20 It is evident from the aforesaid extract of the Supreme Court Clarificatory Order that TPC’s request for directions to Regulatory Commission for allowing recovery of Standby Charges liability (principal as well as the interest) has been rejected by the Hon’ble Supreme Court. The Commission is of the view that pursuant to the aforesaid Supreme Court Clarificatory Order, TPC-G has lost right to recover any further amount from the consumers, be it differential principal amount and interest thereon.
- 21 The Commission further notes that the Supreme Court Clarificatory Order had a bearing on the MYT Petition of TPC-G on account of TPC-G’s request to seek recovery of differential Standby Charges citing the Supreme Court Order. However, this important Order was neither brought on record by TPC-G nor AEML-D pointed out the same while submission of its objection on the TPC-G’s MYT Petition.
- 22 The decision of this Commission allowing the differential Standby Charges alongwith the interest thereon, was due to ignorance of the important Order passed by the Hon’ble Supreme Court and the same would need to be corrected considering the fact that specific observations have been recorded in the Supreme Court Clarificatory Order. **Accordingly, the Commission deems it appropriate to revise its decision of allowing TPC-G to recover the amounts towards differential Standby Charges determined in its MYT Order from the Mumbai DISCOMs.**
- 23 The Commission notes that following recovery has been approved in the TPC-G MYT Order from the Distribution Licensees:

Sl. No.	Particulars	Past recoveries approved in this Order			
		BEST	TPC-D	AEML-D	Total
1	Impact of Review Order	7.03	6.77	-	13.80
2	Truing up for FY 2017-18	(0.27)	3.09	-	2.81
3	Truing up for FY 2018-19	(42.46)	(47.46)	-	(89.92)
4	Provisional Truing up for FY 2019-20	(26.37)	(31.68)	-	(58.04)
5	Recovery of amount of entry tax	99.49	81.97	50.35	231.80
6	Difference in the Standby Charges as worked out by Hon’ble ATE	44.57	26.50	35.53	106.61
7	Grand Total	81.99	39.18	85.88	207.05

- 24 After taking into consideration the carrying cost for such recovery during the year, the net past Revenue Gaps to be passed on to the Distribution Licensees, viz. BEST, TPC-D and AEML-D, had been worked out in TPC-G MYT Order as under:

Sl. No.	Particulars	Past recoveries approved in this Order			
		BEST	TPC-D	AEML-D	Total
1	Net Amount for recovery during FY 2020-21	83.78	39.79	88.28	211.84

- 25 In TPC-G's MYT Order, the Commission has allowed TPC-G to recover this approved amount, from BEST, AEML-D and TPC-D in twelve (12) equal monthly instalments from 1 April 2020 to 31 March 2021. Accordingly, till date, the nine monthly instalments might have already been recovered by TPC-G. **TPC-G is directed not to recover the component of Standby Charges in the balance instalments from the above Distribution Licensees. Also, the amount refundable to AEML-D, BEST and TPC-D by TPC-G on account of component of Standby Charges already paid in the past instalments by them, alongwith the associated holding cost, may be claimed in the respective forthcoming Mid-Term Review (MTR) Petitions by AEML-D, BEST and TPC-D, which would be adjusted in the respective Mid-Term Review Orders of these utilities. TPC-G is directed to submit the computation of impact on account of this Order (refund of already recovered Standby Charges to the Distribution Licensees, alongwith the holding cost) in its forthcoming MTR Petition which would be considered by the Commission while approving its ARR under the MTR Petition.**

- 26 Hence, the following Order.

ORDER

1. Case No. 163 of 2020 is allowed.
2. In light of the Clarificatory Order dated 20 August 2019 by the Hon'ble Supreme Court and discussions made at Para. 10 to Para. 21 of this Order, the Commission revises its decision of allowing Tata Power Company Ltd.-Generation to recover the amount determined towards Standby Charges in its Multi Year Tariff Order dated 30 March 2020 in Case No. 300 of 2019 from BEST Undertaking, Adani Electricity Mumbai Ltd.- Distribution and Tata Power Company Ltd.- Distribution.
3. Tata Power Company Ltd.-Generation is directed not to recover the component of Standby Charges in the balance instalments from the above Distribution Licensees. Also, the amount refundable to BEST Undertaking, Adani Electricity Mumbai Ltd.- Distribution and Tata Power Company Ltd.- Distribution by Tata Power Company Ltd.-Generation on account of component of Standby Charges already paid in the past instalments by them, may be claimed, alongwith the associated holding cost in the respective forthcoming Mid-Term Review Petitions

by these Distribution Licensees which would be adjusted in the respective Mid-Term Review Orders of these utilities.

4. **Tata Power Company Ltd.-Generation is directed to submit the computation of impact on account of this Order (refund of already recovered Standby Charges to the Distribution Licensees, alongwith the holding cost) in its forthcoming Mid Term Review Petition which would be considered by the Commission while approving its Annual Revenue Requirement under the Mid Term Review Petition.**

**Sd/-
(Mukesh Khullar)
Member**

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

