

MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

1st Floor (Front Block Left Wing), New Administrative Building Lower
Lachumiere, Shillong – 793 001
East Khasi Hills District, Meghalaya

Case No. 7 /2023

In the Matter of

Review petition filed under section 94(1) (F) of the Electricity Act 2003 Read with Regulation 22 of Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations 2014, read with Amendments and Regulation 21 of Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations 2007 read with amendments, seeking Review of Order dated 30th March 2023 in MSERC Case no.26 of 2022.

Byrnihat Industries Association (BIA)

13th Mile, Tamulikuchi, Byrnihat,
RiBhoi District, Nanpoh,
Meghalaya 793101

...Review Petitioner

Versus

Meghalaya Power Transmission Corporation Ltd

Lum Jingshal, Short Round Road
Shillong – 793001

...Respondent

Coram:

Shri. P.W.Ingty, IAS (Retd.), Chairman

Shri. R.K. Soni, District Judge (Retd.), Member

Counsel for the Petitioner	Ms.Mandakini Ghosh, Advocate
Counsel for the Respondent	Ms.Anukriti Jain, Advocate
Date of hearing	16/08/2023 & 21/08/2023
Date of Order	29.08.2023

(Hearing conducted through video conferencing)

1. Commission has issued the Tariff Order dated 30.03.2023 for determination of ARR and Transmission Tariff for FY 2023-24.

2. Byrnihat Industries Association (BIA) has filed the Review petition as per Regulation 22 of MSERC MYT Regulation 2014, Clause 21 of MSERC (Conduct of Business) Regulations 2007 and Sections 94 of Electricity Act 2003, against determination of Transmission Tariff for FY 2023-24 dated 30th March 2023.
3. Commission taking into consideration of all the facts and records, passed the order on the Review petition filed by Byrnihat Industries Association in the chapters annexed to this Order.

Sd/-
R.K. Soni, District Judge (Retd.),
(Member)

Sd/-
P.W. Ingty, IAS (Retd)
(Chairman)

Petitioner's Submission

1. The present Review Petition has been filed by the Review Petitioner, Byrnihat Industries Association ("BIA" or "Petitioner") before this Commission under Section 94(1)(f) of the Electricity Act, 2003 ("Act 2003"), Regulation 21(1) of the MSERC (Conduct of Business) Regulations, 2007 read with Regulation 22 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 ("MYT Regulations, 2014"). The Review Petitioner, Byrnihat Industries Association, an association of consumers is seeking review of the Commission's order dated 30.03.2023 in Petition No. 26 of 2022 filed by the Respondent, Meghalaya Power Transmission Corporation Ltd. ("MePTCL" or "Respondent"). The Respondent had filed the aforementioned petition seeking Determination of Aggregate Revenue Requirement (ARR) and Transmission Tariff and Open Access Charges for FY 2023-24 in the State of Meghalaya ("ARR Petition"). The Review Petitioner respectfully submits that the Order dated 30.03.2023 passed in Petition No. 26 of 2022 ("Impugned Order") is erroneous to the following extent:
 - a. The expenses of Meghalaya Energy Corporation Ltd. ("Holding Company" or "MeECL") Cost included in the ARR of MePTCL are erroneously allowed by the Meghalaya State Electricity Regulatory Commission ("Honorable Commission") as the same is in violation of the MYT Regulations 2014 and provisions of the Transfer scheme. Hence, it is prayed that the same may be disallowed and the tariff may be adjusted accordingly and;
 - b. The computation of transmission tariff by the Commission has been on erroneous premises as the same is derived based on Energy Sales instead of Energy at Transmission and Distribution periphery. Hence, it is prayed that this Commission may review the computation of transmission tariff.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

2. The Petitioner is a society registered under the Meghalaya Societies Registration Act, 1983 having its registered Office at Byrnihat, Ri-Bhoi District, Meghalaya. The Byrnihat Industries Association was formed by the different industrial units for the welfare, smooth and effective functioning of its units. The Petitioner regularly participates in the proceedings related to ARR and Tariff determination by the Commission and takes up the other issues concerning its Members.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

3. The Respondent, Meghalaya Power Transmission Corporation Limited is a deemed licensee in terms of Section 14 of the Electricity Act 2003, engaged in the business of Transmission of Electricity in the state of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

4. Commission in exercise of powers conferred under Section 181 read with Section 61, Section 62, Section 63, Section 64, Section 65 and Section 86 of the Electricity Act 2003 issued MYT Regulations i.e. Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 on 15.09.2014. Commission vide Notification dated 15.06.2021 issued Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2021 ("MYT Regulations 2021").

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

5. On 25.03.2021, Commission had passed orders in Case No. 03 of 2021 filed by the Respondent and determined the Multi Year Aggregate Revenue Requirement (ARR) for 3rd MYT Control Period from FY 2021-22 to FY 2023-24 and Transmission and Open Access Tariff for FY 2021-22 in the State of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

6. Petitioner Submitted that in accordance with the Regulation 6 of the MYT Regulations, the Respondent has filed the Petition for determination of the ARR and Transmission Tariff and Open Access Charges for FY 2023- 24 in Case No. 26 of 2022. In exercise of the powers vested under Section 62 (1) read with Section 62 (3) and section 64 (3) of the Electricity Act 2003 and MYT Regulations 2014 and other enabling provisions, the Commission has issued the Impugned Order for approval of the ARR and Transmission Tariff and Open Access Charges for FY 2023- 24 in the State of Meghalaya.

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

7. Commission in the Impugned Order has approved the Net ARR for FY 2023-24 to the Tune of Rs. 110.96 Crore and Transmission Charges & Open Access Charges for FY 2023-24 to the tune of Rs. 0.74 per kwh and Open Access Charge at Rs. 10,745 per MW per day. The relevant extract of the Impugned Order is reproduced below:

Table 5.1 : Approved Aggregate Revenue Requirement for FY 2023-24

(Rs. Crore)			
Sl. No.	Particulars	Filed by Petitioner	Approved by Commission FY 2023-24
1	Return on Equity (RoE)	15.67	15.67
2	Interest and Other Finance Charges	5.15	5.15
3	Operation and Maintenance expenses incl. of MeECL Cost	173.36	60.04
4	Interest on Working Capital	10.27	3.28
5	Depreciation as may be allowed	28.86	28.86
6	SLDC Charges	1.54	1.54
7	Prior Period Expenses	-	-
8	Total Annual Expenditure	234.85	114.54
9	Less: SLDC ARR	3.08	3.08
10	Less: Non Tariff and Other Income	19.08	19.08
11	Net Annual Revenue Requirement	212.69	92.38
12	Add: Revenue Gap in True up of FY 2020-21	159.07	18.61
13	Add: Amendment as requested arising due to True up for FY 2017-18 and ARR of FY 2021-22 and FY 2022-23.	29.83*	-
14	Total ARR for FY 2023-24	401.59	110.99
15	Less : Recovery of Proposed Penalty for Non Compliance of the Directives as analyzed and notified vide page no.46 & 47 of this Order		0.03
16	Net Gap for FY 2023-24		110.96

* This Transaction has been regulated in the ARR of FY 2022-23

Commission considers ARR at Rs.110.99 Crore for FY 2023-24.

Table 6.1 : Determination of Transmission Tariff for FY 2023-24

Sl.No	Particulars	Transmission ARR Projected	Approved by Commission
1	MePTCL ARR (Rs.Cr.)	401.59	110.99
2	Average Load in (MW)	283	283
3	Units to be Handled (MU)	1627.37	1491.97
4	Transmission Tariff (1/3)	2.47/kwh	0.74 ps/Kwh
5	Open Access Charges(1/2/365)	Rs.38878/MW per day	Rs. 10745/MW per day

Commission considers the Transmission Tariff at Rs. 0.74 ps/Kwh for FY 2023-24 and the open access charges shall be billed at Rs. 10745 /MW/per day.

Aggrieved by the unreasonably high and erroneous Transmission Tariff, the Review Petitioner under Regulation 22 of the MYT Regulations and the Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007 has preferred to Review the Tariff Order dated 30.03.2023 in Case No. 26 of 2022.

Commission's Analysis

Commission considers there is no error in the ARR and Transmission Tariff notified on 30.03.2023 in case no.26 of 2022. The total ARR approved for FY 2023-24 is arrived at Rs.110.99 Crore including the Revenue gap on True up of FY 2020-21 for Rs.18.61 Crore

while adopting the ARR approved in the MYT order notified on 25.03.2021 for Rs.92.38 Crore.

Erroneous consideration of O&M Expenses towards holding company (MeECL)

Petitioner’s Submission

8. The Commission by way of the Impugned Order has approved O&M Expenses towards Holding Company (MeECL) after applying inflation for the FY 2023-24 as depicted below:

Table 5.2 : Computation of O&M expenses for ARR of FY 2023-24

(Rs. Cr)

Particulars	First Half year	Full Year FY 2022-23	Escalation @ 5%	Estimates for FY 2023-24
MePTCL employee expenses	17.48	34.96	1.75	36.71
Apportionment of employee benefit expenses from holding company	5.53	11.06	0.55	11.61
R&M exp incl. MeECL exp	2.07	4.14	0.21	4.42
A&G exp incl. MeECL exp	1.22	2.44	0.12	5.72
Total				58.46
Approved in the MYT Order dated 25.03.21				60.04

Commission’s Analysis

Commission considered O&M expenses towards holding company (MeECL) estimating the projections made by the MePTCL after analysis of breakup figures for pay and allowances and approved Rs.60.04 Crore including MePTCL O&M expenses notified in the MYT Order dated 25.03.2021.

These estimates are however subject to true up on filing the petition by MePTCL.

Petitioner’s Submission

9. At the outset, the reference may straightway be drawn to the provisions of the MYT Regulations 2014 which is applicable for all existing and future Generating Companies, Transmission Licensees and Distribution Licensees and their successors. The relevant abstract of the MYT Regulations 2014 is reproduced below:

“1.5 They shall be applicable to all existing and future Generating Companies, Transmission Licensees and Distribution Licensees and their successors, if any;”

It is submitted that the Cost approved by the Commission for Holding Company is not within the framework of the MYT Regulations 2014.

Commission's Analysis

MeECL holding company has been notified by the Govt. of Meghalaya to oversee the functions of Generation, Transmission and Distribution utilities.

The holding company (MeECL) was not provided with the Regulatory obligations for the expenditures incurred on behalf of the subsidiary corporations in the Reforms notifications 2010.

Commission considers that apportionment/sharing of holding company expenses (MeECL) is established practice right from the date of re-organization of MeSEB effective from 01.04.2013 and therefore Transmission cost considered for ARR of FY 2023-24 do not require any review.

Petitioner's Submission

10. In furtherance of the above argument, it is relevant to go through the provisions of the MYT Regulations 2014 which defines Operations and Maintenance Expenses (O&M Expenses) as under:

"2 Definitions

41) "Operation and Maintenance expenses" or "O&M expenses":

a. In relation to a Generating Company, the expenditure incurred on operation and maintenance of the project of a Generating Company, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;

*b. In relation to a **Transmission Licensee** or **Distribution Licensee**, the expenditure incurred on operation and maintenance of the system by the Transmission Licensee or Distribution Licensee, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;"*

The highlighted text from the above duly indicates that the Expenses by the Transmission Licensee or the Distribution Licensee would comprise O&M Expenses. Merely booking a part of Holding Company O&M Expenses in the Books of Accounts of the Respondent

does not enable the Respondent to recover the Holding company expenses as the same do not fall within the purview of MYT Regulations 2014.

Commission's Analysis

As already analyzed for paragraph 9, the holding company (MeECL) O&M expenses to the extent of apportionment considered in the ARR shall be met from the Tariffs.

Commission considers no review is required in respect of O&M expenses approved in the Tariff Order for FY 2023-24.

Petitioner's Submission

11. Thirdly, it is mentioned that the National Tariff Policy 2016 as notified by the Ministry of Power, Government of India vide Resolution dated 28.01.2016 also provides for the pass through of prudent recovery of costs through Tariff. The relevant abstract the National Tariff Policy 2016 is reproduced below:

"5.10 Consumer interest is best served in ensuring viability and sustainability of the entire value chain viz., generation, transmission and distribution of electricity, while at the same time facilitating power supply at reasonable rate to consumers. The financial turnaround/restructuring plans are approved by the Appropriate Government from time to time to achieve this objective. The Appropriate Government as well as the Appropriate Commission while implementing such plans shall ensure viability of the generation, transmission and distribution in terms of recovery of all prudent costs."

In view of the above, neither the observation of the Commission nor the claims made by the Respondent in the Transmission Tariff proceedings for the FY 2023-24 lay emphasis as to how the claims made towards Holding company are prudent. The special emphasis on this aspect arises from the fact that the Respondent on year-on-year basis has been spending significant sums towards the fulfillment of Holding company expenses which is not corroborated in terms of the above provisions of the National Tariff Policy 2016.

Commission's Analysis

The paragraph 5.10 of the National Tariff Policy 2016 referred to by the petitioner BIA is self explanatory.

As already notified for paragraph 9 & 10, Commission considers Regulation of Holding Company expenses through the Tariffs is appropriate and the ARR considered for FY 2023-24 including the Holding company (MeECL) O&M expenses requires no review.

Petitioner's Submission

12. In the Impugned Order, the Commission has approved the O&M Expenses to the tune of Rs. 60.04 Crore which is based on the provisional approval accorded by the Commission in the MYT Order dated 25.03.2021 for FY 2021-24 period. The O&M Expenses approved by the Commission are also inclusive of the O&M Expenses towards Pensioners of the Holding Company, the liabilities towards which are to be borne by the Holding company itself and not the Respondent. However, pass through of such expenses are erroneous in view of not only the MYT Regulations but also the transfer scheme prevalent in the state.

Commission's Analysis

The claim of the petitioner BIA as to the inclusion of pension liabilities as O&M expenses in the MePTCL ARR for FY 2023-24 is not True.

Commission had not passed O&M expenses towards pension benefits claimed by Holding Company (MeECL) for ARR of FY 2023-24 and it is notified in the Tariff Order vide page no.51 dated 30.03.2023 that DCRG and Pension liabilities shall be met from the Trust funds.

Commission considers no review is required in this aspect for MePTCL ARR of FY 2023-24.

Petitioner's Submission

13. The above fact is corroborated by the provisions contained in the Sub- clause 9 of Clause 6 of the Meghalaya Power Sector Reforms Transfer Scheme 2010 (Transfer Scheme Notification) issued by the Power Department, Government of Meghalaya on 31.03.2010 wherein MeECL (Holding Company) has been assigned the responsibility of ensuring the Terminal Benefits Trusts including Pension, Gratuity, and Leave encashment, etc of the Board personnel are progressively funded and also ensuring that the contribution to the

Trust relating to personnel related funds, for the services after the effective date of transfer, of their respective personnel are made as required from time to time.

Additionally, as per Sub-clause (iii) of Clause 6, in the event of shortfall of funds with the trusts at any point of time relating to period to the Date of transfer, the State Government should pay the shortfall of the required funds to meet the ongoing outflow.

The relevant abstract of the Transfer Scheme is reproduced below:

(ii) MeECL shall be responsible to ensure that the Terminal Benefit Trusts including Pension, Gratuity and Leave encashment, etc. of the Board personnel are progressively funded in regard to the unfunded part to meet the pension, gratuity and leave encashment payments pertaining to the years of service rendered by the personnel of the Board including retired personnel in the Board as determined as per actuarial valuation to be done for the purpose or;

(iii) In the event of any shortfall of funds with the trusts at any point of time relating to the period prior to the Date of Transfer, the State Government shall pay the shortfall of the required funds to meet the ongoing outflow on annual basis;

(iv) MeECL shall be responsible to ensure that the contribution to the Trusts relating to personnel related funds, for the services after the effective date of transfer, of their respective personnel are made as required from time to time.

Commission's Analysis

As per the Meghalaya Power Sector Reforms Transfer Scheme 2010, the personnel working in the MeECL holding company are deputed from three subsidiary corporations to discharge duties and Responsibilities related to Generation, Transmission and Distribution activities as part of the Holding company functions.

Therefore, the O&M expenses of those deputation employees shall be met through the Tariffs equally apportioned in the respective ARR's of the utilities.

Commission has been notifying as to, all the pension liabilities shall be met from the Trust funds in every True up orders/Tariff orders.

Commission considers no review is required in this aspect in the ARR/Tariff of FY 2023-24.

Petitioner's Submission

14. Further, as per Sub-clause (10) of Clause 6 of the Meghalaya Power Sector Reforms Transfer Scheme 2010, all obligations in respect of pension, gratuity, leave encashment and other retirement benefits including provident fund, superannuation and gratuity to the personnel, who have retired from the services of the Board before the effective date of transfer, shall be discharged by MeECL. The relevant abstract of the Transfer Scheme is reproduced below:

(10). All obligations in respect of pension, gratuity, leave encashment and other retirement benefits including provident fund, superannuation and gratuity to the personnel, who have retired from the services of the Board before the effective date of transfer, shall be discharged by MeECL.

The Petitioner submits that the Respondent has been booking the O&M Expenses of the Pensioners of the erstwhile MSEB (Meghalaya State Electricity Board) in its Books of Accounts by way of apportioning O&M Expenses of Holding Company which is in contravention to the provisions contained in the Transfer Scheme Notification.

Commission's Analysis

As already notified in the foregoing paragraphs 9 to 13, the liabilities of pensioners are not considered in the ARR for FY 2023-24 and the utilities are advised to meet the pension liabilities from the Trust funds as provided in the power sector reforms Transfer scheme 2010.

Commission considers no review is required in this aspect in the ARR/Tariff of FY 2023-24.

Petitioner's Submission

15. In-view of the above, it is the responsibility of the Holding Company to ensure the Contribution to the Trust fund and ensure that the Pension of the erstwhile MSEB pensioners is met through the same only. Even seen otherwise, it is pertinent to point-out that the erstwhile MSEB pensioners never did form the part of Transmission, Distribution,

or Generation companies i.e. MePTCL, MePDCL, and MePGCL. The responsibility of discharging the liabilities of Pensioners lied with the Holding company only. In view thereof, passing such burden on to the ARR of Transmission Company is on erroneous grounds and merits Review.

Commission's Analysis

As already notified in the foregoing paragraphs 9 to 14, the liabilities of pensioners are not considered in the ARR for FY 2023-24 and the utilities are advised to meet the pension liabilities from the Trust funds as provided in the power sector reforms Transfer scheme 2010 and no errors are crept in the ARR for FY 2023-24.

Commission considers no review is required in this aspect in the ARR/Tariff of FY 2023-24.

Petitioner's Submission

16. In-view of the above, the Petitioner submits that allowance of Holding Company expenses i.e. MeECL is outside the purview of the applicable MYT Regulations 2014, National Tariff Policy 2016 and Transfer Scheme Notification 2010 and must therefore not be allowed. This Commission may exercise its power of review and accordingly revise the tariff by disallowing the holding company expenses as part of transmission tariff.

Commission's Analysis

As already notified in the foregoing paragraphs 9 to 15, the Holding company (MeECL) expenses are allowed in the ARR for FY 2023-24 to the extent chargeable in the Tariffs, excluding the pension and terminal liabilities.

Commission considers no review is required in this aspect in the ARR/Tariff of FY 2023-24.

Erroneous consideration of Energy wheeled by the Transmission system

Petitioner's Submission

17. It is stated that the Transmission Tariff determined by the Commission in the Impugned Order is Rs. 0.74/ unit by considering the Energy wheeled to be as 1,491.97 Mus. It is submitted that the Commission for the determination of Transmission Tariff has erroneously considered Energy Sales data (1491.97 Mus) as approved in the Tariff Order dated 11.04.2023 for Distribution Licensee instead of considering Energy wheeled through Transmission system (which is Energy at Distribution periphery (1695.42 Mus). The relevant abstract of Order dated 11.04.2023 in Case No. 25 of 2022 (MePDCL) and the Impugned Order is reproduced below:

Abstract of MSERC Order dated 11.04.2023

Table 5.9 : Energy Balance approved for FY 2023-24

(in MU's)

Sl No	Particulars	Calculation	FY 2023-24
1	Energy purchase from Eastern Region (ER)	A	0
2	Inter-State Transmission Loss in ER	B	1.80%
3	Net Power purchased from ER	C=A(1-B%)	0
4	Power purchase from North Eastern Region (NER)	D	1071.32
5	Inter-State Transmission Loss in NER	E	3%
6	Net Power available at state bus from external sources on long term	F=(C+D)*(1-E%)	1039.18
7	Power purchase from generating stations within the state	G	1089.96
8	Power purchase from other sources	H	386.63
9	Total energy available	I=F+G+H	2515.77
10	Total availability at MePDCL periphery	J=I	2515.77
11	Power to be sold to consumers within the state	K	1491.97
12	Distribution Loss (%)	L	12%
13	Distribution loss in MU	M= K*L	203.45
14	Net Power requirement at MePDCL periphery for sale of power within the state	N=K+M	1695.42
15	Energy Requirement for Sale within the State at State Bus	O = N/1-4%	1766.06
16	Surplus of power	P=I-O	749.71

Abstract of MSERC Order dated 30.03.2023

Table 6.3 : Determination of Transmission Tariff for FY 2023-24

Sl.No	Particulars	Transmission ARR Projected	Approved by Commission
1	MePTCL ARR (Rs.Cr.)	401.59	110.99
2	Average Load in (MW)	283	283
3	Units to be Handled (MU)	1627.37	1491.97
4	Transmission Tariff (1/3)	2.47/kwh	0.74 ps/Kwh
5	Open Access Charges(1/2/365)	Rs.38878/MW per day	Rs. 10745/MW per day

Commission's Analysis

Regulation 21 of MSERC (Terms and Conditions of Open Access) Regulations, 2012 specify as below;

“Open Access customer using transmission system shall pay the charges as stated hereunder:

(1) For use of inter-State transmission system – As specified by the Central Commission from time to time.

(2) For use of intra-State transmission system and associated facilities – Transmission charges payable to State Transmission Utility/ transmission licensees by an open access customer for usage of their system shall be determined as under:

Transmission Charges = ATC/(ALST X365) (in Rs./MW-day) Where, ATC= Annual Transmission Charges determined by the Commission for the State transmission system & associated facilities for the concerned year. ALST= Average load projected to be served by the State transmission system in concerned year. Provided that transmission charges shall be payable on the basis of contracted Capacity/Scheduled Load or actual power flow whichever is higher.”

Accordingly the Transmission Tariff applicable for Open access customers has been computed in the Table no.6.3 of Tariff Order for FY 2023-24 as shown below

Table 6.2 : Determination of Transmission Tariff for FY 2023-24

Sl.No	Particulars	Transmission ARR Projected	Approved by Commission
1	MePTCL ARR (Rs.Cr.)	401.59	110.99
2	Average Load in (MW)	283	283
3	Units to be Handled (MU)	1627.37	1491.97
4	Transmission Tariff (1/3)	2.47/kwh	0.74 ps/Kwh
5	Open Access Charges(1/2/365)	Rs.38878/MW per day	Rs. 10745/MW per day

Since the Energy handled cannot be assessed before commencement of the Tariff year, the Energy approved for Distribution sales is considered applicable for open access consumers for the convenience of billing.

The Transmission tariff for open access consumers shall be considered after completion of the Tariff year with the actual Energy flow during the FY 2023-24.

Petitioner's Submission

18. It is mentioned that the provisions of the MYT Regulations 2014 as well as Meghalaya State Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2012 (Open Access Regulations 2012) do not allow for computation of Transmission Charges based on Energy wheeled by the Distribution Licensee instead the recovery of Transmission charges for Long term beneficiaries and Open Access consumers is on Rs./ MW/ month or Rs./MW/day basis. In view of the above, the Transmission tariff (Rs./unit) approved by the Commission do not fall within the framework of the Regulations notified by the Commission. It is respectfully submitted that this Commission erred by not considering the energy wheeled by the Respondent to calculate the Transmission Tariff.

Commission's Analysis

The Scope of the (Terms and Conditions of Open Access) Regulations 2012 specifies that *“These Regulations shall apply to open access for use of Intra-state Transmission system and distribution systems in the State, including when such system is used in conjunction with Inter-state transmission system.”*

Regulation 21 (Terms and Conditions of Open Access) Regulations 2012

The recovery of charges from open access consumers shall be done on the basis of contracted Capacity/Scheduled Load or actual power flow whichever is higher, at the rate determined by the Commission. This has been notified in the Tariff Order vide page no.56 for FY 2023-24.

Accordingly, the Transmission Tariff has been determined by the Commission as shown in the table no.6.3 of Tariff Order for FY 2023-24.

Commission considers no error crept-in in the determination of Transmission Tariff for FY 2023-24.

Petitioner's Submission

19. To draw an equivalent comparison, the Petitioner perused through the methodology adopted by other SERCs for the computation of Transmission Tariff (Rs. /unit) for Open Access Consumers. It could be observed that other SERCs consider Energy wheeled through Transmission system (or Energy at Distribution periphery) for determination of Transmission tariff for Open Access consumers.

Commission's Analysis

MSERC has notified terms and conditions for open access consumers for determination of Transmission Tariff vide (Terms and Conditions of Open Access) Regulations 2012.

The open access consumers in the State of Meghalaya are liable to pay the Transmission Tariff as determined by the competent Regulatory Commission.

Commission considers no review is required in this aspect for FY 2023-24.

Petitioner's Submission

20. For the ease of convenience, the Petitioner reproduces the methodology adopted by other SERCs in their respective Tariff Order vis-à-vis provisions contained in the respective state Regulations.

Commission's Analysis

MSERC has notified terms and conditions for open access consumers for determination of Transmission Tariff vide (Terms and Conditions of Open Access) Regulations 2012.

The open access consumers in the State of Meghalaya are liable to pay the Transmission Tariff as determined by the competent Regulatory Commission.

Commission considers no review is required in this aspect for FY 2023-24.

Petitioner's Submission

21. Based on the above arguments, it is submitted that the Energy at Distribution periphery (i.e. Energy wheeled through Transmission system) should be considered for the determination of Transmission Tariff. In the instant case, instead of 1,491.97 Mus

considered, 1695.42 Mus (which is Energy at MePDCL periphery as shown below) should be considered for Transmission Tariff determination for the FY 2023-24.

Commission’s Analysis

Regulation 21 (Terms and Conditions of Open Access) Regulations 2012 specifies that;

“The recovery of charges from open access consumers shall be done on the basis of contracted Capacity/Scheduled Load or actual power flow whichever is higher, at the rate determined by the Commission.” This has been notified in the Tariff Order vide page no.56 for FY 2023-24.

Since the Energy handled cannot be assessed before commencement of the Tariff year, the Energy approved for Distribution sales is considered applicable for open access consumers for the convenience of billing.

Commission considers no review is required in this aspect for FY 2023-24.

Jurisdiction of this Honorable Commission

Petitioner’s Submission

- 22. It is respectfully submitted that the present review petition is under Section 94(1)(f) of the Electricity Act, 2003 and as such well within the jurisdiction of the Commission. Section 94 (1) (f) of the Electricity Act 2003 allows the Appropriate Commission to review its own decisions, directions and orders. The relevant clause is reproduced below for reference:

“94. Powers of Appropriate Commission

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--

.....

(f) reviewing its decisions, directions and orders;

.....”

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

- 23.** The Petitioner also has the power of review under Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007 (read with amendments) which provides for as under:

“21. Review of the decisions and orders of the Commission

(1) A person aggrieved by a decision or order of the Commission from which no appeal is preferred, or is not allowed to be preferred, **can seek a review of the order** if new and important facts which, after the exercise of due diligence, were not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or **error apparent on the face of record** or for **any other sufficient reason**, by making an application within 60 days of the date of the order.

(2) The procedure for filing a review application shall be the same as in case of filing of a petition.”

Commission's Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner's Submission

- 24.** Reference may also be made to Regulation 22 of the MYT Regulations, 2014:

“22 Review of Tariff Order

22.1 All applications for the review of tariff shall be in the form of petition accompanied by the prescribed fee. A petition for review of tariff can be admitted by the Commission under the following conditions:

a) the review petition is filed within sixty days for the date of the tariff order, and / or b) there is an error apparent on the face of the record.

22.2 On being satisfied that there is a need to review the tariff of any generating company or the licensee, the Commission may on its own initiate process of review of the tariff of any generating company or the licensee. The Commission may also, in its own motion review any tariff order to correct any clerical error or any error apparent of the face of the record.”

Commission’s Analysis

It is the Matter of Record, anything stated therein contrary to record is denied as incorrect.

Petitioner’s Submission

25. It is submitted that the present review petition is limited to the aforementioned errors on the face of record, which requires to be corrected by this Commission. It is a settled principle of law, as held by the Honorable Supreme Court in *Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands [(2005) 13 SCC 289]*, that the power of review extends to correct all errors to prevent miscarriage of justice, and that the courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. In accordance with the above principle, it is stated that the aforementioned error is apparent on the face of record, and but for the said error, the order under review would not have been passed in its present form.

Commission’s Analysis

The Transmission Tariff has been determined by the Commission on the projected estimates by the MePTCL subject to True up after completion of the Tariff year FY 2023-24.

Commission considers that no error was crept-in in determination of ARR and Transmission Tariff for FY 2023-24.

Petitioner’s Submission

26. In a series of judgment, the Honorable Supreme Court while determining the scope of review jurisdiction has held as follows:

Green View Tea & Industries v. Collector, Golaghat, (2004) 4 SCC 122

“14. Turning to the merits of the matter, it appears to us that the High Court has declined the review application by taking the view that there was no error apparent on the face of the record and that the considerations enumerated in Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) were absent in the case. The learned Additional Solicitor General contends that, whatever the grievance of the appellant against the judgment of the High Court dated 24-6-1998, it could not have been brought before the High Court by way of review. He urges that the court's power of reviewing a judgment, under Order 47 Rule 1 CPC is extremely limited. He referred to the observations of this Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715], SCC at p. 719, paras 9 and 10 and has contended that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be an “error apparent on the face of the record” justifying the court's exercise of its power of review under Order 47 Rule 1 CPC. He urges that, in exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected” since a review petition has a limited purpose and cannot be allowed to become “an appeal in disguise”. After having perused the record, we are satisfied that there are mistakes apparent on the face of the record and it is a fit case for review for the reasons that follow.

15. *Before we look at the facts of the case, we wish to emphasise the approach to be adopted by the court while administering justice. This Court in S. Nagaraj v. State of Karnataka [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320: (1994) 26 ATC 448] , at SCC p. 630, para 36 observed:*

“It is the duty of the court to rectify, revise and recall its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of court should prejudice none. ‘Of all these things respecting which learned men dispute’, said Cicero, ‘there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature’. This very idea was echoed by James Madison (The Federalist, No. 51, p. 352). He said:

'Justice is the end of government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit.' ”

...

24. *Unfortunately, the High Court while considering the question of initial compensation amount fixed by the State Government as Rs. 55,000 per bigha, has treated it as an issue of promissory estoppel and has held against the appellant. Irrespective of whether it is a situation of promissory estoppel or not, the fact that the State Government itself had accepted Rs. 55,000 per bigha of tea class land as appropriate compensation ought to have been a factor which would have influenced the fixing of compensation for the land. The letter written by the Deputy Commissioner referring to an earlier order dated 20-6-1990, fixing category wise valuation of different categories of land was just brushed aside on the ground that it did not amount to evidence under Section 3 of the Indian Evidence Act, 1872. Having lost sight of the material on record, the High Court concluded, “there is no material available on record to hold that the land in question falls within a rural area with paddy field and tea cultivation area”, which is directly contrary to the jamabandi report, which classified the land as “tea class land”.*

25. The cumulative effect of all this evidence is that, we are satisfied that the High Court, in fairness and in the interest of justice, ought to have given a second look to its own judgment dated 24-6-1998.”

Board of Control for Cricket in India v. Netaji Cricket Club, (2005) 4 SCC 741

“89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason there for. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words

“sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.

91. It is true that in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [(1955) 1 SCR 520: AIR 1954 SC 526] this Court made observations as regards limitations in the application of review of its order stating: (SCR p. 529)

“Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words ‘any other sufficient reason’ must mean ‘a reason sufficient on grounds, at least analogous to those specified in the rule’.”

but the said rule is not universal.

...

93. *It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”*

Commission's Analysis

Commission considers that the ARR and Transmission charges/open access charges has been determined on the estimates projected by the Licensee MePTCL for FY 2023-24, subject to True up after completion of the Tariff year.

The citations of Honorable Supreme Court Judgments filed in the petitions may be considered during the True up exercise after the results of the statutory audit are received.

Petitioner's Submission

27. The present Petition is bonafide and Review Petitioner craves leave to add to the grounds mentioned above and states that the contentions are in the alternate and without prejudice to one another.

Commission's Analysis

Commission admitted the petition provisionally on 30th May 2023 and registered as Case No. 7 of 2023.

Petitioner's Submission

28. In light of the submissions made above the Review Petitioner prays that the Commission may kindly be pleased to:
- (i) Allow the present petition and review the Order dated 30.03.2023, passed by this Commission in Case No. 26 of 2022, to the extent set out in the present Petition, as summarized in paragraph 1 herein above;
 - (ii) Condone any inadvertent omissions, errors, short comings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date; and
 - (iii) Pass such Order as the Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.

Commission's Analysis

Commission considers that BIA has filed petition for Review of ARR and Tariff Order for FY 2023-24 notified on 30.03.2023 vide case no.26 of 2022 of MePTCL, and sought for review against the approved provisions therein.

Thus the Review Petition Stands disposed off

Sd/-

**R.K. Soni, District Judge (Retd.),
(Member)**

Sd/-

**P.W. Ingty, IAS (Retd)
(Chairman)**