

**BEFORE
MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION, SHILLONG**

**PETITION
FOR
REVIEW OF
TARIFF ORDER DATED 25THMARCH 2021
FOR
MULTI YEAR AGGREGATE REVENUE REQUIREMENT OF
GENERATION BUSINESS FOR FY2021-22 TO FY 2023-24
&
GENERATION TARIFF FOR FY 2021-22**

FILED BY



**MEGHALAYA POWER GENERATION CORPORATION LTD.
LumJingshai, Short Round Road, Shillong - 793 001**

**BEFORE THE HON'BLE MEGHALAYA STATE ELECTRICITY
REGULATORY COMMISSION AT SHILLONG**

Lower Lachumiere, Shillong – 793001

FILE / PETITION NO.....

IN THE MATTER OF:

MEGHALAYA POWER GENERATION CORPORATION LIMITED, LUMJINGSHAI,
SHILLONG – 793001, MEGHALAYA

PETITIONER

AND IN THE MATTER OF

Review Petition filed under Clause 22 of the MSERC (MULTI YEAR TARIFF) REGULATIONS, 2014, Clause 21 of MSERC (Conduct of Business) Regulations 2006 and section 94 and 181 of Electricity Act 2003, in respect of order of this Hon'ble Commission dated 25th March 2021 in relation to determination of Multi-Year Aggregate Revenue Requirement of Meghalaya Power Generation Corporation Limited (MePGCL) for control period of 2021-2022 to 2023-2024 and determination of Generation Tariff of MePGCL Order for Financial Year 2021-22

To,

Hon'ble Chairman and Members of this Hon'ble Commission

PETITION UNDER SECTIONS 94(1)(f) OF THE ELECTRICITY ACT 2003, CLAUSE 21 OF MSERC (CONDUCT OF BUSINESS) REGULATIONS 2006 AND CLAUSE 22 OF MSERC (MULTI YEAR TARIFF) REGULATIONS, 2014, FOR INITIATIONS OF PROCEEDINGS BY THE HONORABLE COMMISSION FOR REVIEWING THE TARIFF ORDER OF MEGHALAYA POWER GENERATION CORPORATION LIMITED (herein after referred to as "MePGCL") DATED 25th March 2021

The Petitioner respectfully submits as under:

1. The Meghalaya Power Generation Corporation Limited, Shillong ('MePGCL' or 'Petitioner' in short) is filing the instant Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Rule 22 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 [MYT Regulations] and clause 22 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2006, beseeching

this Hon'ble Commission to Review its order dated 25.03.2021 determining the Aggregate Revenue Requirement (ARR) of the Petitioner for control period, i.e. FY 2021-2022 to FY 2023-2024 and the 'Generation Tariff' for FY 2021-2022, effective from 01st of April, 2021 as the same contains errors apparent on record and has legal inconsistencies which are detailed in present petition.

2. The Petitioner, Meghalaya Power Generation Corporation Limited is the Generation Utility constituted upon unbundling of the Meghalaya State Electricity Board and functioning under the holding Company viz. Meghalaya Energy Corporation Limited and is engaged in the business of generation of electricity in the state of Meghalaya.
3. Based on the MSERC (Multi Year Tariff) Regulations, 2014, MePGCL had filed petition for Multi Year ARR for the third Control Period (FY 2021-22 to FY 2023-24) and tariff determination for generation business for FY 2021-22 dated 04.12.2020.
4. After the filing of the above petition, the Hon'ble Meghalaya State Electricity Regulatory Commission (hereinafter referred to as 'MSERC' or 'the Hon'ble Commission') invited public comments and suggestions on the petitions, conducted a public hearing on 17.03.2021 and thereafter passed its order on 25th March 2021.
5. After analysis of the orders and examination of the same with respect to the latest relevant data and facts, MePGCL feels that there is a need to review the order dated 25th March 2021 based on the submissions, analysis and facts, which have been produced in this review petition, in the subsequent section.
6. MePGCL prays before the Honourable Commission to admit the Review Petition preferred on behalf of MePGCL in respect of the order dated 25.03.2021 of the Hon'ble Commission determining the Aggregate Revenue Requirement (ARR) of MePGCL for control Period of 2021-2022 to 2023-2024 and electricity Tariff for FY 2021-22.
7. The applicant, therefore, humbly prays before the Hon'ble Commission to pass appropriate order on the following:

- Admit the Review Petition on Tariff Order of the Hon'ble Commission dated 25th March 2021, as submitted herewith.
- Condone any inadvertent omissions/ errors/ shortcomings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date.
- Permit submission of any additional information required by the Hon'ble Commission during the processing of this petition.
- And pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case.

Superintending Engineer (PM)
O/O Director (Generation), MePGCL
For And On Behalf Of
Meghalaya Power Generation Corporation Limited

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2. Abbreviations

ARR	Aggregate Revenue Requirement
FY	Financial Year
GoM	Government of Meghalaya
kWh	Kilo Watt Hour
kV	Kilo Volt
kVA	Kilo Volt Ampere
kVAh	Kilo Volt Ampere Hour
MSERC	Meghalaya State Electricity Regulatory Commission
MU	Million Units (Million kWh)
MW	Mega Watt
MYT	Multi Year Tariff
O&M	Operation & Maintenance
MeECL	Meghalaya Energy Corporation Limited
MePDCL	Meghalaya Power Distribution Corporation Limited
MePTCL	Meghalaya Power Transmission Corporation Limited
MePGCL	Meghalaya Power Generation Corporation Limited
MYT Regulations 2014	MSERC (Multi Year Tariff) Regulation, 2014
RoE	Rate of Inter
RM&U	Renovation, modernization and uprating of hydro generating units

3. Introduction

- 3.1.** In exercise of its powers conferred under the section 131 and 133 of the Electricity Act 2003, the State Government of Meghalaya notified “The Meghalaya Power Sector Reforms Transfer Scheme 2010” on 31st March 2010 leading to restructuring and unbundling of erstwhile Meghalaya State Electricity Board (MeSEB) into four entities, the holding company and the Generation, Transmission and Distribution utilities. The present petitioner is the Generation Utility incorporated in pursuance of the aforesaid scheme and is still functioning under the aegis of the holding company, viz. the Meghalaya Energy Corporation Limited (MeECL).
- 3.2.** It is further submitted that even after the unbundling of MeSEB in 2010, the holding company - MeECL carried out the functions of distribution, generation, and transmission utilities from 1st April 2010 onwards. Thereafter, through notification dated 31st March 2012, State Government notified an amendment to The Power Sector Reforms Transfer Scheme leading to effective unbundling of MeECL into MeECL (Holding Company), MePDCL (Distribution Utility), MePGCL (Generation utility) and MePTCL (Transmission Utility) from 1st April 2012. As per the said notification issued by the Government of Meghalaya a separate corporation “Meghalaya Power Generation Corporation Limited” was incorporated for undertaking Generation Business. MePGCL has begun segregated commercial operations as an independent entity from 1st April 2013.
- 3.3.** The Meghalaya State Electricity Regulatory Commission (hereinafter referred to as “MSERC” or “the Hon’ble Commission”) is an independent statutory body constituted under the provisions of Part – X (Sections 76 to 109) of the Electricity Act (EA), 2003. The Hon’ble Commission is vested with the authority of regulating the power sector in the State, inter alia including determination of tariff for electricity consumers as per the provisions of the Electricity Act, 2003, the Rules and Regulations framed thereunder and the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014.
- 3.4.** That as stated above the MePGCL is filing the instant Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Rule 22 of the

Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2014 [MYT Regulations] and clause 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2006, beseeching this Hon'ble Commission to Review its order dated 25.03.2021 determining the Aggregate Revenue Requirement (ARR) of the Petitioner for control period, i.e. FY 2021-2022 to FY 2023-2024 and the 'Generation Tariff' for FY 2021-2022, effective from 01st of April, 2021 as the same contains errors apparent on record and has legal inconsistencies. Therefore, in humble prayer of MePGCL there is a need to review the order dated 25th March 2021 based on the submissions, analysis and facts, which have been produced in this review petition.

- 3.5.** The present petition is thus being filed as per Clause 22 of MSERC (Multi Year Tariff) Regulations 2014 and clause 21 of MSERC (Conduct of Business) Regulations 2006, both of which provide that a person aggrieved by an order of the Commission may file a review petition based on new facts and information, which was not considered during the time of issue of order or on account of apparent errors or mistakes. MePGCL, in this petition is requesting the Hon'ble Commission to review certain costs which were disallowed erroneously in order dated 25.03.2021 by not considering the facts and information submitted by the MePGCL which is thus an error apparent on record and also in view of the latest facts and information submitted in this petition by the MePGCL which justifies the need for a review of order dated 25.03.2021.
- 3.6.** It is most respectfully submitted that the Hon'ble Commission has already been pleased to extend the time for filing the review petition by MePGCL till the 25th June 2021 vide letter No. MCERC/MeECL-COR/2021/0018 dated 18th May 2021 in wake of the present pandemic situation and as such, the Review Petition is being filed within time permitted by the Hon'ble Commission.
- 3.7.** That even otherwise the Hon'ble Supreme Court has been pleased to extend all limitation period as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not till

further orders vide its order dated 27.04.2021 passed in M.A. No.665 of 2021 in Suo Moto Writ (C) No.2 of 2020. The relevant portion of the order is quoted hereunder for ready reference:

“We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 **direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.**

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.”

- 3.8.** That in view of the above, it is most respectfully submitted that this Hon’ble Commission may be pleased to admit the Review Petition and pass appropriate orders reviewing the order dated 25.03.2021 and allowing the ARR for control period of 2021-2022 to 2023-2024 and the Generation Tariff for FY 2021-2022, as projected in the present Review Petition.

Legal Regime and Submissions:

- 4.1.** That the relevant provisions of law which lays down the principles for determination of ARR under the MYT framework and the tariff are referred as under:

A. ELECTRICITY ACT, 2003:

The provisions of the Electricity Act, 2003, relevant for the present petition are quoted hereunder for ready reference:

“Section 7. (Generating company and requirement for setting up of generating station):

Any generating company may establish, operate and maintain a generating station **without obtaining a licence** under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the **generation, transmission, distribution and supply of electricity are conducted on commercial principles;**
- (c) the **factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;**
- (d) safeguarding of consumers' interest and at the same time, **recovery of the cost of electricity in a reasonable manner;**
- (e) the principles rewarding efficiency in performance;
- (f) multi-year tariff principles;
- (g) that the **tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies** in the manner specified by the Appropriate Commission;
- (h) the **promotion of co-generation and generation of electricity from renewable sources of energy;**
- (i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

Section 62. Determination of tariff:---

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) **supply of electricity by a generating company to a distribution licensee;**

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- (b) transmission of electricity ;
- (c) wheeling of electricity;
- (d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Section 64. (Procedure for tariff order): ---

(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such **abridged form** and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-

- (a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;
- (b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter- State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

Section 86. (Functions of State Commission): ---

(1) The State Commission shall discharge the following functions, namely:-

(a) **determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:**

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) **promote co-generation and generation of electricity from renewable sources of energy** by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) **adjudicate upon the disputes** between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) **specify or enforce standards with respect to quality, continuity and reliability of service by licensees;**

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall **advise the State Government** on all or any of the following matters, namely :-

(i) **promotion of competition, efficiency and economy in activities of the electricity industry;**

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) **The State Commission shall ensure transparency while exercising its powers and discharging its functions.**

(4) **In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.**

Section 181. (Powers of State Commissions to make regulations): --- (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely: -

...(zd) the terms and conditions for the determination of tariff under section 61;

...(ze) details to be furnished by licensee or generating company under sub-section (2) of section 62;

...(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;

...(zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;

...(zh) issue of tariff order with modifications or conditions under sub-section (3) of section 64; ...”

The intention of the Parliament is that the Generation Company and licensees are required not only to meet their cost but also earn some profit to build, augment, maintain and operate an efficient, co-ordinated and economical system which will be in the interest of all concerned. The aforesaid intent of the Parliament becomes clear from Section 61, which provides that the Commission shall be guided by certain commercial

principles while determining tariff such as; (i) **generation, transmission, distribution and supply of electricity are conducted on commercial principles**; (ii) the **factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments**; (iii) safeguarding of consumers' interest and at the same time, **recovery of the cost of electricity in a reasonable manner**; (iv) the principles rewarding efficiency in performance; (v) that the **tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies** in the manner specified by the Appropriate Commission.

Hon'ble Supreme Court, in the case of ***Punjab State Power Corporation Ltd. v. Punjab State Electricity Regulatory Commission & Ors.*** (2015) 7 SCC 387 has reiterated the position of law that highly subsidized power to a certain category of consumers by the erstwhile Electricity Boards have resulted into dire condition of the electricity sector and the Electricity Reforms, including establishment of Regulatory Commissions, were aimed at using commercial principles to gradually progress towards recovery of actual cost of electricity for the sector to sustain and provide better services.

In Section 62 of the Act, the Commission is to fix Tariff for the Generation Company and the Licensees as prescribed therein. Sub-Section (5) thereof provides that the Commission may require a generation company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which it is permitted to recover, i.e. the procedural aspect of recoverable charges.

Lastly, Section 86 of the Act prescribes the power and jurisdiction of this Hon'ble Tribunal which are as follows:

- (a) Determination of Tariff;
- (b) Regulate electricity purchase and procurement process of distribution licensees including the price thereof;
- (c) Facilitate intra-State transmission and wheeling;
- (d) Issue Licenses;
- (e) promote co-generation and generation of electricity from renewable sources of energy;

- (f) Adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;
- (g) Levy fee for the purposes of this Act;
- (h) Specify State Grid Code;
- (i) Specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
- (j) Fix the trading margin in the intra-State trading of electricity, if necessary.

The aforesaid powers of the Commission nowhere includes the policy decision with respect to day to day administration of the Generation Company such as salary structure and pension etc. of their employees. The only thing the Commission is to look into that the payments so made are reasonable and genuine, i.e. actual expense and not inflated figures while considering the said expense while determining tariff.

Therefore, a holistic reading of Section 86 with Sections 61 and 62 would show that policy decisions in respect of administration of Generation Company is not within the domain of this Hon'ble Commission. The decision as to payment of pension from a Trust Fund or from its own revenue is not within the domain and jurisdiction of this Hon'ble Commission and it is a policy decision which has to be taken by the Generation Company or its holding company or the State Government which is having pervasive control over the function of the Generation Company. It is the sole prerogative of the employer to either create a Pension Fund and pay the terminal benefits from the fund or to pay the terminal benefits directly to its erstwhile employees in accordance with its Rules and Regulations.

It is most respectfully submitted that this Hon'ble Commission has no power or jurisdiction to direct the Generation Company to pay salaries, pension and other terminal benefits in a particular manner or a particular source. The Hon'ble Commission is only to see whether these payments have actually been made as an expense of the Company and then it has to be considered as part of Operation and Management expenses of the Generation Company.

B. MSERC (MULTI YEAR TARIFF) REGULATIONS, 2014:

That in exercise of powers under 181 of the Electricity Act, 2003, the Meghalaya State Electricity Regulatory Commission (MSERC) framed the MYT Regulations in the year 2014 and the general provisions under the said Regulations, along with their interpretation, supported by law laid down by the Hon'ble Supreme Court, various High Courts, Appellate Tribunal for Electricity are referred as under:

“2. Definitions.-

(1) **“Accounting Statement”** means for each financial year, the following statements, namely:

- i. balance sheet, prepared in accordance with the form contained in Part I of Schedule VI to the Companies Act, 1956 as amended from time to time;
- ii. profit and loss account, complying with the requirements contained in Part II of Schedule VI to the Companies Act, 1956 as amended from time to time;
- iii. cash flow statement, prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) of the Institute of Chartered Accountants of India;
- iv. **report of the statutory auditors**;
- v. cost records prescribed by the Central Government under Section 209(1)(d) of the Companies Act, 1956 as amended from time to time;
- vi. together with notes thereto, and such other supporting statements and information as the Commission may direct from time to time;
- vii. Provided that in case of any local authority engaged in the business of distribution of electricity, the Accounting Statement shall mean the items, as mentioned above, prepared and maintained in accordance with the relevant Acts or Statutes as applicable to such local authority: Provided further that once the Commission notifies the Regulations for submission of Regulatory Accounts, the applications for tariff determination and truing up shall be based on the Regulatory Accounts.

(3) **“Allocation Statement”** means for each financial year, a statement in respect of each of the separate businesses of the Generating Company or Transmission Licensee or Distribution Licensee, showing the amounts of any revenue, cost, asset, liability, reserve or provision etc., which has been either:

- i. charged from or to each such Other Business together with a description of the basis of that charge; or

- ii. determined by apportionment or allocation between different businesses of the licensee including the Licensed Businesses, together with a description on the basis of apportionment or allocation:

Provided that for the purpose of this Regulation, the licensed business of the Distribution Licensee for an area of supply if separated as Distribution business:

Provided further that such allocation statement in respect of a generating station, owned and/or maintained and/or operated by the distribution licensee, shall be maintained in a manner so as to enable tariff determination, stage-wise, Unit wise and/or for the whole generating station.

(6) **“Aggregate Revenue Requirement”** means the **requirement of the Generation Company, Transmission Licensee or Distribution Licensee for recovery, through tariffs, of allowable expenses and return on equity pertaining to its Licensed Business**, in accordance with these Regulations;

(25) **“Expected Revenue from Tariff and Charges”** means the **revenue estimated** to accrue to the Generating Company or Transmission Licensee or Distribution Licensee **from the Regulated Business at the prevailing tariffs**;

(40) **“Non-Tariff Income”** means income relating to the regulated business other than from tariff, excluding any income from Other Business and, in case of the Retail Supply Business of a Distribution Licensee, excluding income from wheeling and receipts on account of cross-subsidy surcharge and additional surcharge on charges of wheeling;

(41) **“Operation and Maintenance expenses”** or **“O&M expenses”**:

1. 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;

2. 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 definition clauses show that “accounting statement” include the balance-sheet, profit and loss account, cash flow statement and statutory audit

report and as such these statements are sufficient proof of true and correct accounts of the Generation Company.

The 'Aggregate Revenue Requirement' has been defined to mean requirement of the Generation Company for recovery, through tariffs, of allowable expenses and return on equity pertaining to its Business. Thus, all allowable expenses, as shown in accounting statements and as projected under the business plan, shall have to be considered for calculating the Aggregate Revenue Requirement and shall be permitted to be recovered through tariff.

Another important definition for the present petition is the definition of "operation and management" expenses, which defines the O&M expenses to mean and include the expenditure incurred on operation and maintenance of the system by the Generation Companies and the Licensees, and **includes the expenditure on manpower**, repairs, spares, consumables, insurance and overheads. It is pertinent to note that the expenses of manpower is not qualified with currently employed manpower or retired manpower and all expenses on all manpower, currently employed or retired, incurred during the control period by the Generation Company shall have to be considered as Operation and Management expenses.

It has been held time and again by the Hon'ble Supreme Court and followed by various High Courts of the Country that the right to terminal benefits, such as pension and Gratuity etc., are not bounties but indefeasible constitutional right to property under Article 300-A of the Constitution and is a right which the employee has earned by dint of his long, continuous, faithful and unblemished service. Reference may be made to the following judgments:

"D.S. Nakara v. Union of India [(1983) 1 SCC 305- Constitution Bench:

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post

a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that **pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension.** It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh* [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377] .”

***State of Jharkhand v. Jitendra Kumar Srivastava*, (2013) 12 SCC 210**

“8. It is an accepted position that **gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service.** Conceptually it is so lucidly described in *D.S. Nakara v. Union of India* [(1983) 1 SCC 305 :1983 SCC (L&S) 145] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20)”

... ..

It is thus a hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

***Secy., ONGC Ltd. v. V.U. Warriar*, (2005) 5 SCC 245**

20. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide *Garment Cleaning Works v. Workmen* [(1962) 1 SCR 711 : AIR 1962 SC 673]). In *Calcutta Insurance Co. Ltd. v. Workmen* [(1967) 2 SCR 596 : AIR 1967 SC 1286] , after considering earlier decisions, this Court observed that “long and meritorious service” must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken,

so must the continuity of meritorious service be a condition for entitling the workman to gratuity.

Therefore, terminal benefits of an employee is not a mere incidence of his retirement but his actual earning during the course of service which becomes payable after his/her superannuation. Accordingly, the employer has a corresponding liability to pay the terminal benefits to his employee as incidence of service and not as a bounty after retirement. When considered by standard principles of accounting such expenditure by the employer of payment of terminal benefits, although relating to past service of employee, are payable and accounted for at the time when it is actually disbursed and as such would create a corresponding liability on the employer to pay the terminal benefits of the employee. This, in turn, means that the expenses made by the employer on payments made qua terminal benefits of the superannuated employees has to be accounted as expenses of the employee on manpower, which would include such expenses in the definition clause (41) of Regulation 2 of the MSERC (MYT) Regulations.

After the definition clauses, some other relevant provisions of the MSERC (MYT) Regulations, 2014 are discussed hereunder. Clause 3 of the MYT Regulations prescribe that the Commission shall determine tariff, inter-alia, for supply of electricity to a Distribution Licensee. The relevant portion of the provision reads as under:

“3. Scope of Regulations.

3.1 The **Commission shall determine tariff** within the Multi-Year Tariff framework, for all matters for which the Commission has jurisdiction under the Act, including in the following cases:

i. **Supply of electricity by a Generating Company to a Distribution Licensee:**

Provided that where the Commission believes that a shortage of supply of electricity exists, it may fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a Generating Company and a Distribution Licensee or between distribution licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- ii. Intra-State transmission of electricity and SLDC charges;
- iii. Intra-State Wheeling of electricity;
- iv. Retail supply of electricity:

Provided that in case of distribution :

Provided further that where the Commission has allowed open access to certain consumers under sub-section (2) of Section 42 of the Act, the Commission shall determine the wheeling charges, cross subsidy surcharge, additional surcharges and other open access related charges in accordance with these regulations and MSERC (Terms and Conditions of Open Access) Regulations 2012 as applicable and as amended through Orders issued by the Commission from time to time.

... ..”

Clause 4 prescribes the MYT Framework and clause 4.2 thereof categorically provide that the Generation Company shall submit the **forecast** of Annual Revenue Requirement (ARR) and **expected** revenue for determination of ARR for entire control period and determination of tariff for ensuing year. Therefore, the Commission has the discretion to determine ARR on basis of forecast and expected revenue which necessitates certain degree of assumption and presumption which is reasonable. While doing so, historical data will serve as a guiding factor as per Clause 5 of the Regulations but will not be a restriction in exercise of discretion if the request of the Generation Company considering its performance goals and projections are found reasonable and justified.

The proposition found further fortification from the reading of sub-clause 4.2(c) of the MYT Regulations which states that Truing up of previous year's expenses and revenue based on Audited Accounts vis-à-vis the approved forecast and categorization of variation in performance as those caused by controllable factors and those caused by uncontrollable factors, shall be undertaken by the Commission, i.e., the Commission has the power and occasion to correct any discrepancy in the tariff based on projected ARR vis-à-vis actual expenses and revenue on the basis of audited accounts.

Hence, some wriggle room to the Generation Company shall have to be allowed while fixing the ARR for full control period to accommodate performance based goals and augmentation of resources for providing better services to the consumers. The relevant provision reads as under:

“4. Multi-Year Tariff framework

4.1 The Commission shall determine the tariff for matters covered under clauses (i), (ii), (iii) and (iv) of regulation 3 above under **Multi- Year Tariff framework** with effect from April 01, 2015.

Provided that the **Commission may, either on suo-moto basis or upon application made to it by an applicant, exempt the determination of tariff of a Generating Company or Transmission Licensee or Distribution Licensee under the Multi-Year Tariff framework for such period as may be contained in the Order granting such an exemption.**

4.2 The **Multi-Year Tariff framework shall be based on the following elements, for determination of Aggregate Revenue Requirement and expected revenue from tariff and charges** for Generating Company, Transmission Licensee, and Distribution Business:

a) **A detailed Business Plan** based on the principles specified in these Regulations, for each year of the Control Period, shall be submitted by the applicant for the Commission's approval:

Provided that the performance parameters, whose trajectories have been specified in the Regulations, shall form the basis of projection of these performance parameters in the Business Plan:

Provided further that a Mid-term Review of the Business Plan may be sought by the Generating Company, Transmission Licensee and Distribution Licensee through an application filed three (3) months prior to the filing of Petition for truing-up for the second year of the Control Period and the tariff determination for the third year of the control period.

b) **Based on the Business Plan, the applicant shall submit the forecast of Aggregate Revenue Requirement (ARR) for the entire Control Period and expected revenue from existing tariffs for first year of the Control Period** and the **Commission shall determine ARR for the entire Control Period and the tariff for the first year of the control period** for the Generating Company, Transmission Licensee, Distribution Business;

c) **Truing up of previous year's expenses and revenue based on Audited Accounts** vis-à-vis the approved forecast and categorization of variation in performance as those caused by factors within the control of the applicant (controllable factors) and those caused by factors beyond the control of the applicant (uncontrollable factors), shall be undertaken by the Commission:

Provided that **once the Commission notifies the Regulations for submission of Regulatory Accounts, the applications for tariff determination and truing up shall be based on the Regulatory Accounts;**

(i) The mechanism for pass-through of approved gains or losses on account of uncontrollable factors as specified by the Commission in these Regulations;

(ii) The mechanism for sharing of approved gains or losses on account of controllable factors as specified by the Commission in these Regulations;

(iii) Annual determination of tariff for Generating Company, Transmission Licensee, Distribution Business, for each financial year within the Control Period, based on the approved forecast and results of the truing up exercise.

5. Determination of base line:

5.1 The **base line values** (operating and cost parameters) **for the base year of the control period shall be determined by the Commission based on historical data, latest audited accounts, estimates for the relevant year and prudence check as may be applied by the Commission.**

Provided that in case of substantial difference between the estimates earlier provided for determination of base lines values and the actual audited accounts, the Commission may re-determine the base line value for the base year *suo-moto* or on an application.

Clause 6 of the MYT Regulations prescribe for filing of MYT Petitions and its content, including the accounting statements. The provisions clarifies the requirement for filing separate accounting statements for fixation of tariff and that for truing-up because the requirements and standard of scrutiny of accounts are different for both purposes. Further, Clause 8 of the MYT Regulations prescribe the 'Business Plan' and Clause 9 of the said Regulation provides the content and supporting documents for MYT Application to be submitted by the Generation Company. Clause 11 prescribes for Truing-Up Exercise which shows that the Commission has ample powers to adjust the projections against actuals and any difference thereof can be adjusted in tariff of subsequent years. The relevant provisions read as under:

“6. Accounting statement and filing under MYT:

6.1 The filing under MYT by the Generating Company, Transmission Licensee, and Distribution Licensee, shall be done as per the timelines specified in these Regulations and in compliance with the principles for determination of ARR as specified in these Regulations, in such formats and at such time as may be prescribed by the Commission from time to time.

6.2 The filing of MYT Petition for the Control Period under these Regulations shall be as under:

a) MYT Petition shall comprise of:

- i. Multi-year Aggregate Revenue Requirement for the entire Control Period with year-wise details;
 - ii. Revenue from the sale of power at existing tariffs and charges and projected revenue gap, for the first year of the Control Period under these Regulations.
 - iii. Application for determination of tariff for first year of the Control Period.
- b) From the first year of the Control Period and onwards, the Petition shall comprise of:
- i. Truing Up for previous years under Meghalaya State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2011 in accordance with these Regulations;
 - ii. Revenue from the sale of power at existing tariffs and charges for the ensuing year;
 - iii. Revenue gap for the ensuing year calculated based on ARR approved in the Tariff Order or MYT Order and truing up for the previous year;
 - iv. Application for revision of tariff for the ensuing year.
- c) In case of Mid-term Review of Business Plan, the Petition shall comprise of:
- i. Truing Up for the previous year;
 - ii. Modification of the ARR for the remaining years of the Control Period, if any, with adequate justification for the same;
 - iii. Revenue from the sale of power at existing tariffs and charges for the ensuing year;
 - iv. Revenue gap for the ensuing year calculated based on ARR approved in the MYT order and truing up for the previous year;
 - v. Application for revision of tariff for the ensuing year.

6.3 The Generating Company, Transmission Licensee, and Distribution Licensee, shall file separate audited accounting statements with the application for determination of tariff and truing up:

In case complete accounting segregation has not been done amongst various Businesses of the restructured business, all business utilities shall have to do so within one year of notification of these Regulations. Till such time there is a complete segregation of audited accounts between Generation, Transmission, Distribution Businesses, the application for determination ARR and tariff and truing up for each Business shall be supported by an Allocation Statement that contains the apportionment of costs and revenues to that Business. The Allocation Statement shall also contain the methodology that has been used for the apportionment.

8. Business Plan:

8.1 The Generating Company, Transmission licensee, and Distribution Licensee for Distribution Business, shall file a Business Plan for the Control

Period of three (3) financial years from 1st April 2015 to 31st March 2018, which shall comprise but not be limited to detailed category-wise sales and demand projections, power procurement plan, capital investment plan, financing plan and physical targets, in accordance with guidelines and formats, as may be prescribed by the Commission from time to time:

Provided that a mid-term review of the Business Plan/Petition may be sought by the Generating Company, Transmission Licensee and Distribution Licensee through an application filed three (3) months prior to the specified date of filing of Petition for truing up for the second year of the Control Period and tariff determination for the third year of the Control Period.

8.2 The capital investment plan shall show separately, on-going projects that will spill over into the Control Period, and new projects (along with justification) that will commence in the Control Period but may be completed within or beyond the Control Period. The Commission shall consider and approve the capital investment plan for which the Generating Company, Transmission Licensee, and Distribution Licensee for the Distribution Business, may be required to provide relevant technical and commercial details.

8.3 The Distribution Licensee shall project the power purchase requirement based on the Merit Order Dispatch principles of all Generating Stations considered for power purchase, the Quantum of Renewable Purchase Obligation (RPO) under Meghalaya State Electricity Regulatory Commission (Renewal Energy Purchase Obligation and Compliance) Regulations, 2010 and the target set, if any, for Energy Efficiency (EE) and Demand Side Management (DSM) schemes.

8.4 The Generating Company, Transmission Licensee, and Distribution Licensee for the Distribution Business, shall get the Business Plan approved by the Commission.

9. Multi-Year Tariff Application:

9.1 The **applicant shall submit the forecast of Aggregate Revenue Requirement for the entire Control Period and tariff proposal for the first year of the Control Period**, in such manner, and within such time limit as provided in these Regulations and accompanied by such fee payable, as may be specified under the Meghalaya State Electricity Regulatory Commission (Fees, Fines and Charges) Regulations, 2009, as amended from time to time.

9.2 The **applicant shall develop the forecast of Aggregate Revenue Requirement using the assumptions relating to the behaviour of individual variables that comprise the Aggregate Revenue Requirement during the Control Period**.

9.3 The applicant shall develop the forecast of expected revenue from tariff and charges **based on the following:**

- a) In the case of a Generating Company, estimates of quantum of electricity to be generated by each Unit/Station for ensuing financial year within the Control Period;
- b) **In the case of a Transmission Licensee, estimates of transmission capacity allocated to Transmission System Users for ensuing financial year within the Control Period;**

- c) In the case of a Distribution Licensee, estimates of quantum of electricity to be supplied to consumers and to be wheeled on behalf of Distribution System Users for ensuing financial year within the Control Period;
- d) Prevailing tariffs as on the date of making the application.

9.4 Based on the forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges, the Generating Company, Transmission Licensee, and Distribution Licensee for the Distribution Business, shall propose the tariff that would meet the gap, if any, in the Aggregate Revenue Requirement.

9.5 The applicant shall provide full details supporting the forecast, including but not limited to details of **past performance, proposed initiatives for achieving efficiency or productivity gains, technical studies, contractual arrangements and/or secondary research**, to enable the Commission to assess the reasonableness of the forecast.

9.6 On receipt of application, the Commission shall either:

- a) issue an Order approving the ARR for the entire Control Period and the tariff for the first year of the Control Period, subject to such modifications and conditions as it may specify in the said Order; or
- b) reject the application for reasons to be recorded in writing, as the Commission may deem appropriate:

Provided that the applicant shall be given a reasonable time for being heard before rejecting their application.

11. Truing Up

11.1 Where the Aggregate Revenue Requirement and expected revenue from tariff and charges of a Generating Company or Transmission Licensee or Distribution Licensee **is covered under a Multi-Year Tariff framework**, then such Generating Company or Transmission Licensee or Distribution Licensee, as the case may be, **shall be subject to truing up of expenses and revenue** during the Control Period in accordance with these Regulations.

11.2 The Generating Company or Transmission Licensee or Distribution Licensee shall file an Application for Truing up of the previous year and determination of tariff for the ensuing year, within the time limit specified in these Regulations:

11.3 Provided that the Generating Company or Transmission Licensee or Distribution Licensee, as the case may be, shall submit to the Commission information in such form as may be prescribed by the Commission, together with the Audited Accounts including audit report by CA&G, extracts of books of account and such other details as the Commission may require to assess the reasons for and extent of any variation in financial performance from the approved forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges:

11.4 Provided further that once the Commission notifies the Regulations for submission of Regulatory Accounts applications for tariff determination and truing up shall be based on the Regulatory Accounts.

11.5 The scope of the truing up shall be a comparison of the performance of the Generating Company or Transmission Licensee or Distribution Licensee with the approved forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges and shall comprise of the following:

- a) **a comparison of the audited performance of the applicant for the previous financial year with the approved forecast for such previous financial year, subject to the prudence check including pass-through of impact of uncontrollable factors;**
- b) Review of compliance with directives issued by the Commission from time to time;
- c) Other relevant details, if any.

11.6 **In respect of the expenses incurred by the Generating Company, Transmission Licensee and Distribution Licensee during the year for controllable and uncontrollable parameters, the Commission shall carry out a detailed review of performance of an applicant vis-a-vis the approved forecast as part of the truing up.**

11.7 Upon completion of the truing up under Regulation 11.4 above, the **Commission shall attribute any variations or expected variations in performance for variables specified under Regulation 12 below, to factors within the control of the applicant (controllable factors) or to factors beyond the control of the applicant (uncontrollable factors):**

Provided that any variations or expected variations in performance, for variables other than those specified under Regulation 12.1 below shall be attributed entirely to controllable factors.

11.8 Upon completion of the Truing Up, the Commission shall pass an order recording:

- a) **the approved aggregate gain or loss** to the Generating Company or Transmission Licensee or Distribution Licensee **on account of controllable factors, and the amount of such gains or such losses that may be shared** in accordance with Regulation 14 of these Regulations;
- b) **Components of approved cost pertaining to the uncontrollable factors, which were not recovered during the previous year, shall be pass through** as per Regulation 13 of these Regulations;
- c) Tariff determined for the ensuing year.

Therefore, it is seen that if the Hon'ble Commission fixes the ARR for the entire control period absolutely and solely on the basis of historical data, the Generation Company will not have any wriggle room for making the expenditure proposed to be made for augmenting its infrastructure and resources and meeting the rapid inflation which will adversely affect the services of the Generation Company and resultantly the consumers. However,

if the projections of the Generation Company are reasonably allowed, the same will benefit in improving the performance of the Generation Company and thereby benefitting the consumers. Moreover, in the latter case, even if the projections of the Generation Company are found to be on a higher side, the Commission has the authority to pass the benefit to the consumer during the truing-up exercise and if required, reduce the tariff accordingly for ensuing year(s).

Clause 18 of the MYT Regulations provides the procedure for filing of MYT Application, approval of truing-up for previous year and for tariff of ensuing year in format as prescribed by the Hon'ble Commission, along with information and documents in support of the application. Further, it provides that information should be based on audited accounts and in case audited accounts of previous year is not available, audited accounts for the year immediately preceding the previous year along with the unaudited accounts for the previous year. After filing of the Application, it has to be published by the Generation Company for inviting objections/suggestion from public and has the right to respond to such objections, if any. The Hon'ble Commission also has the power to seek more information/document as may be required by the Commission. The relevant provision reads as under:

“18. Filing Procedure

18.1 The applicant shall file the petition for approval of truing up of previous year and tariff for ensuing financial year on or before 30th November each year provided that MYT petition for FY 2015-16 to 2017-18 shall be filed along with the business plan. The applicant shall provide, based on the Business Plan, as part of his application to the Commission, in such formats as may be prescribed by the Commission from time to time, **full details of his calculation of the Aggregate Revenue Requirement and expected revenue from tariff and charges**, and thereafter, he shall furnish such further information or particulars or documents as the Commission or the Secretary or any Officer designated for the purpose by the Commission may reasonably require to assess such calculation:

18.2 Provided that the **information should be based on audited accounts and in case audited accounts of previous year is not available audited accounts for the year immediately preceding the previous year should be filed along with the unaudited accounts for the previous year.**

18.3 Provided that the application shall be accompanied where relevant, by a **detailed tariff revision proposal showing category-wise tariff and how such revision would meet the gap, if any, in Aggregate Revenue Requirement** for the respective year of the Control Period:

18.4 Provided further that the Commission may specify additional/alternative formats for details to be submitted by the applicant, from time to time, as it may reasonably require for assessing the Aggregate Revenue Requirement and for determining the tariff.

Provided that a Commission may seek any further information, particular and documents including audited accounts to assess the petitioner's calculation.

Provided that in case of non-submission of tariff petition within the time allowed by the Commission the Commission may consider the matter *suo-moto*.

18.5 Upon receipt of a complete application accompanied by all requisite information, particulars and documents in compliance with all the requirements specified in these Regulations, the application shall be deemed to be received and the Commission or the Secretary or the designated Officer shall intimate to the applicant that the application is registered and ready for publication.

Provided that the Commission may reject the petition if such petition is not in accordance with the provision of the act, rules and regulations made there under in accordance with conduct of business regulation.

18.6 If the applicant fails to respond to any suggestion / objection within the given time, it will be construed that the applicant has no response / comments to offer and the Commission shall proceed to decide the matter in a manner as it deems fit and fair.

18.7 The Commission may consider granting extra time to the applicant to file their response / comments, provided the reasons for such extension of time are found reasonable.

Clause 22 of the MYT Regulations empowers the Hon'ble Commission to review its tariff order, either *suo-moto* or on an application made in that behalf and Hon'ble Commission may then initiate the process of Review. Further, clause 26 of the MYT Regulations prescribes the power of Commission to determine annual tariff based on the principles stated in the said clause and other parts of the Regulations. The relevant provisions read as under:

“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.

26. Annual determination of tariff:

26.1 The Commission shall determine the tariff of a Generating Company or Transmission Licensee or Distribution Licensee covered under a Multi-Year Tariff framework for each financial year during the Control Period, at the commencement of such financial year, having regard to the following:

26.2 The approved forecast of Aggregate Revenue Requirement including the incentive available for the Generating Company or Transmission Licensee or Distribution Licensee and expected revenue from tariff and charges for such financial year, including modifications approved at the time of mid-term review, if any; and

26.3 Approved gains and losses to be passed through in tariffs, following the Truing Up of previous year.”

5. Grounds for Review of Multi-Year ARR of MePGCL for FY 2021-22 to FY 2023-24

MePGCL has filed the petitions for approval of Aggregated Revenue Requirement for the Control Period FY 2021-24 and Generation Tariff for 2021-22 for old stations including Sonapani, MLHEP, NUHEP and Lakroh MHP before this Hon’ble Commission. For Lakroh MHP, the petition also included prayer for approval of capital cost of the project since the project was commissioned early in March 2019. It is submitted that the specific grounds on which the review is being sought have been identified against each aspect of the Order, and review is being sought in subsequent paragraphs.

5.1. Gross Fixed Assets:

This Hon'ble Commission has approved the opening GFA of Rs. 49.39 Crore for FY: 2018-19 (ie, GFA of Stage -IV HEP and Sonapani only) for old projects including Sonapani and has not considered the opening GFA claimed by MePGCL at Rs. 438.69 Crore for FY 2018-19 which appeared in the Statement of Accounts (SoA).

The reason given by the Hon'ble Commission for not considering MePGCL's claim is that all old station, except stage -IV and Sonapani, have crossed their useful life of 35 years. The fact that MePGCL has taken up 'Renovation & Modernization' works of Umiam Stage-I & II Power Stations during FY 2001-03 and FY 2011-12 respectively through Overseas Economic Cooperation Fund (OECF) and JBIC loans has missed the attention of this Hon'ble Commission while rejecting the genuine claim of the MePGCL. These loans were reclassified as State Govt Grant and State Govt Loan (**Annexure-I (a) & (b)**).

The opening GFA of Old Plants approved for FY 2021-22 is Rs. 78.86 Crore including subsequent additions while for MLHEP it was approved at Rs. 1287.01 Crore. The MSERC has considered the grants amounting to Rs. 210.67 Crore appearing in the Statement of Accounts for FY 2019-20 and has apportioned Rs.12.16 Crore out of this amount to Old Stations while the remaining Rs. 198.51 Crore is apportioned to MLHEP (*page-120 of the Tariff Order dated.25.03.2021*).

As stated in the preceding para, these grants belong mainly to Umiam Stage I & II power stations with subsequent additions and amortizations. Therefore, allocating this amount *to the GFA of Stage-IV, Sonapani and MLHEP* is an error apparent on record and which needs to be rectified in exercise of powers of Review by this Hon'ble Commission.

Thus, the revised calculations to be allowed as Gross Fixed Assets is tabulated as under:

Table 5.1.1: GFA of **old stations incl. Sonapani** claimed in Review vis-à-vis GFA Approved**Rs. In crore**

Revised GFA for review						
Particulars	FY 2018-19 (Actual)	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
		(Provisional)	(Estimated)	(Projected)	(Projected)	(Projected)
Opening GFA	438.69	441.03	441.24	468.16	520.83	1079.79
Additions during the year	2.48	0.21	26.92	52.67	558.96	96.66
Retirements during the year	0.14	0	0	0	0	0
Closing GFA	441.03	441.24	468.16	520.83	1079.79	1176.44
Average GFA in Review	-	-	-	494.50	800.31	1128.12
Closing GFA Approved in Tariff order	51.73	51.94	78.86	131.53	171.18	374.35

Table 5.1.2: GFA of **MLHEP** claimed in Review vis-à-vis GFA Approved**Rs. In crore**

Revised GFA for review						
Particulars	FY 2018-19 (Actual)	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
		(Provisional)	(Estimated)	(Projected)	(Projected)	(Projected)
Opening GFA	1285.86	1285.52	1285.52	1287.01	1289.99	1295.17
Additions during the year	-	-	1.49	2.98	5.18	6.66
Retirements during the year	0.34	-	-	-	-	-
Closing GFA	1285.52	1285.52	1287.01	1289.99	1295.17	1301.83
Average GFA in Review	1285.69	1285.52	1286.27	1288.50	1292.58	1298.50
NET GFA Approved after deduction of grants	-	-	1037.86	963.46	935.17	878.92

It may be mentioned that the grant component of Rs.198.51 crore belonging to Stage-I&II mentioned in the preceding paragraphs has been deducted from the GFA of MLHEP and is carried over till FY 2023-24 with subsequent additions.

It is seen that during FY 2021-22 the additional grant (beyond Rs. 198.51 crore) is Rs. (325.04-198.51) crore or Rs. 126.53 crore against a capital assets addition of Rs. 2.98 crore only. Similarly, the additional grant for the remaining years of the control period is much higher than the approved Capex during each year, **which is not possible** and as such is an error apparent on

record in the Tariff Order dated 25.03.2021 passed by this Hon'ble Commission which is required to be rectified in exercise of power of Review vested with this Hon'ble Commission.

Therefore, MePGCL prays before the Hon'ble Commission to kindly approve the GFA of MLHEP as claimed in the Table 5.1.2 above.

5.2. Return on Equity:

This Hon'ble Commission has considered the average GFA value of Old Projects and MLHEP for FY 2021-22. However, it has erroneously deducted the amount of grants which include Rs. 12.16 Crore for Old Stations and Rs. 198.51 Crore apportioned to MLHEP (page-120 of Tariff order). *These grants belong to Umiam Stage-I & II which were funded during RM&U of these power stations. The reduced GFA of these power stations was used to calculate for the RoE @14% on the net GFA value of these projects. Therefore, in view of the above, the RoE admissible to MePGCL has been reduced on account of this seemingly incorrect deduction. It is also observed that the grant component in each year is much higher than the value of asset addition during the year for MLHEP, which is an error apparent on record and which needs to be rectified in exercise of powers of Review by this Hon'ble Commission.*

Thus, the revised calculations to be allowed as Return on Equity is tabulated as under:

Rs. In crore

Table.5.2.1: Revised return on equity for review for Old Plants including Sonapani

Particulars	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Opening GFA	438.69	441.03	441.24	468.16	520.83	1079.79
Additions during year	2.48	0.21	26.92	52.67	558.96	96.66
Retirements during Year	0.14	0	0	0	0	0
Closing GFA	441.03	441.24	468.16	520.83	1079.79	1176.45
Average GFA	439.86	441.135	454.7	494.495	800.31	1128.12
Less: Govt. Grants		12.16	16.37	86.41	239.83	364.47
Net GFA				408.09	560.48	763.65
Equity at 30%				122.43	168.14	229.10
ROE @ 14%				17.14	23.54	32.07

Table 5.2.2: Return on Equity for Old Plants including Sonapani for FY 2021-22 to FY 2023-24**Rs. In crore**

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	0.79	7.19	15.72
Proposal for Review	17.14	23.54	32.07

It is prayed that the Hon'ble Commission kindly consider the Return on Equity for the 3rd MYT control period at Rs. 17.14 Cr. for FY 2021-2022, Rs. 23.54 Cr. for FY 2022-2023 and Rs. 32.07 Cr. for FY 2023-2024 for Old Plants including Sonapani.

Rs. In crore

Table 5.2.3: Revised Return on Equity for review for MLHEP						
Particulars	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Opening GFA for the Year	1285.86	1285.52	1285.52	1287.01	1289.99	1295.17
Additions	-0.34	-	1.49	2.98	5.18	6.66
Closing GFA for the Year	1285.52	1285.52	1287.01	1289.99	1295.17	1301.83
Average Assets Base for the Year	-	-	1286.265	1288.5	1292.58	1298.5
Less: Govt Grants				0	0	0
Net Average GFA				1288.5	1292.58	1298.5
Debt component (70%)				901.95	904.806	908.95
Equity component (30%)				386.55	387.774	389.55
RoE (%)				14%	14%	14%
Return on Equity (in Rs. Cr.)				54.12	54.29	54.54

Rs. In crore

Table 5.2.4: Return on Equity for MLHEP for FY 2021-22 to FY 2023-24			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	40.47	39.28	36.91
Proposal for Review	54.12	54.29	54.54

It is prayed that the Hon'ble Commission kindly consider the Return on Equity for the 3rd MYT control period at Rs. 54.12 Cr. for FY 2021-2022, Rs. 54.29 Cr. for FY 2022-2023 and Rs. 54.54 Cr. for FY 2023-2024 for MLHEP.

5.3. Depreciation:

The Hon'ble Commission has adopted the same method of allocating the above grants with subsequent additions to the GFA of Old Projects and MLHEP and has deducted the depreciation of grants (**pages 143 and 144 of the Tariff order**) from the total depreciation admissible to these projects. Therefore, this deduction of depreciation on the amount of grants which belong to Umiam Stage I & II projects is an error apparent on record and

which needs to be rectified in exercise of powers of Review by this Hon'ble Commission.

Thus, the revised calculations to be allowed as Depreciation is tabulated as under:

Rs. In crore

Table 5.3.1: Revised Depreciation for Review for Old Plants including Sonapani						
Particulars	Provisional			Estimated		
	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Opening GFA	438.69	441.03	441.24	468.16	520.83	1079.79
Addition	2.48	0.21	26.92	52.67	558.96	96.66
Retirements	0.14	0	0	0	0	0
Closing GFA	441.03	441.24	468.16	520.83	1079.79	1176.45
Average GFA	439.86	441.135	454.7	494.495	800.31	1128.12
90% of GFA	395.87	397.02	409.23	445.05	720.28	1015.31
Depreciation @5.28%	20.90	20.96	21.61	23.50	38.03	53.61
Govt Grants available				86.41	239.83	364.47
Less: Depreciation on Grants				4.56	12.66	19.24
Net Depreciation	20.90	20.96	21.61	18.94	25.37	34.36

Table 5.3.2: Depreciation for Old Plants including Sonapani for FY 2021-22 to FY 2023-24

Rs. In crore

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	0.44	6.87	15.86
Proposal for Review	18.94	25.37	34.36

It is prayed that the Hon'ble Commission kindly consider the Depreciation for the 3rd MYT control period at Rs. 18.94 Cr. for FY 2021-2022, Rs. 25.37 Cr. for FY 2022-2023 and Rs. 34.36 Cr. for FY 2023-2024 for Old Plants including Sonapani.

Rs. In crore

Table 5.3.3: Revised of Depreciation for Review for MLHEP							
Sl. No	Particulars	Provisional			Estimated		
		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening GFA	1285.86	1285.52	1285.52	1287.01	1289.99	1295.17
2	Addition	-0.34	0	1.49	2.98	5.18	6.66
3	Retirements	0	0	0	0	0	0
4	Closing GFA	1285.52	1285.52	1287.01	1289.99	1295.17	1301.83
	Average GFA	1285.69	1285.52	1286.265	1288.5	1292.58	1298.5
	90% of GFA	1157.12	1156.97	1157.64	1159.65	1163.32	1168.65
5	Depreciation @5.28%	61.10	61.09	61.12	61.23	61.42	61.70
	Govt Grants available				0	0	0

6	Less: Depreciation on Grants				0.00	0.00	0.00
7	Net Depreciation	61.10	61.09	61.12	61.23	61.42	61.70

Table 5.3.4: Depreciation for MLHEP for FY 2021-22 to FY 2023-24			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	38.1	38.1	35.42
Proposal for Review	61.23	61.42	61.7

It is prayed that the Hon'ble Commission kindly consider the Depreciation for the 3rd MYT control period at Rs. 61.23 Cr. for FY 2021-2022, Rs. 61.42 Cr. for FY 2022-2023 and Rs. 61.70 Cr. for FY 2023-2024 for MLHEP.

5.4. Operation and Maintenance (O&M) Expenses

The O&M expenses include three components as per clause 69 of MSERC MYT Regulations, 2014- (i) Employee Cost; (ii) Repairs and Maintenance; and (iii) Administration and General Expenses. The relevant provision is quoted hereunder for reference:

“69. Operation and Maintenance Expenses

69.1 Operation and Maintenance Expenses or O&M Expenses shall mean the total of all expenditure under the following heads:-

- (a) Employee Cost
- (b) Repairs and Maintenance
- (c) Administration and General Expenses.

69.2 The Licensee shall submit O&M expenses budget indicating the expenditure under each head of account showing actual of the last financial year, estimates for the current year and projections for the next financial year.

69.3 The norms for O&M expenses on the basis of circuit kilometers of transmission lines, transformation capacity and number of bays in substations shall be submitted for approval of the Commission.

69.4 The Commission shall verify the budget estimates and projections and allow the expenditure depending on its views about the reasonableness of the projections.

69.5 Increase in O&M expenses due to natural calamities or insurgency or other factors not within its control may be approved by the Commission.”

Employee Cost:

Insofar as employee cost is concerned, the Hon'ble Commission has allowed an increase of 27% in the Employee Cost due to Revision of pay in 2020 (w.e.f January, 2020). While it has correctly considered only three months for this increase in FY 2019-20 (i.e., Jan to March, 2020) it has considered only 9 (nine) months for FY 2020-21 (April 2020 to March 2021) for MLHEP instead of 12 (twelve) months (**Table 5.44, page-134 of the Tariff order**) Therefore, the Employee cost for FY 2020-21 got reduced. This reduced Employee cost is carried over to FY 2021-22 resulting in decrease of Employee Cost in FY 2021-22 also. Therefore, it is an error apparent on record and which needs to be rectified in exercise of powers of Review by this Hon'ble Commission.

Further, the Hon'ble Commission has not allowed the apportionment of holding expenses projected for computation of Employee expenses of MePGCL and observed as under:

“The apportionment of Holding Expenses projected in Table no.8 of the petition for Rs.67.19 Crore is not considered for FY 2020-21 **for now**.”

It is to be stated that any transaction related to the employee benefits made under provisions schedule (note) shall not be considered for determination of Tariff.

The Licensee is further informed that commission had notified in the Tariff Order for FY 2011-12 and FY 2012-13 (combined utility) that **as per the Govt. of Meghalaya notification 2010 in connection with the reforms and re organization of MeSEB, directed the MeECL to get complete the exercise of actuary and start funding the pension trust so that the liabilities towards pension etc., shall be discharged from the Trust fund and not from the Tariffs.**”

The Hon'ble Commission failed to take note of the actual expenses made by the MePGCL and the apportionment of expenditure made by the holding company on Pension and other terminal benefits. There is error apparent in the approach adopted by the Hon'ble Commission as the Board Resolutions of Meghalaya Energy Corporation Limited (MeECL) qua approval of transactions for approval of accounts for each financial year clearly provide that since the holding Company is incurring Employee costs on behalf of the subsidiaries, the same has been apportioned to the subsidiaries in the ratio 1:3:3:3 for the year concerned. The practice is continuing

since inception of the subsidiaries after unbundling of the Meghalaya Electricity Board and has been allowed in the past by this Hon'ble Commission.

Thus, the Apportionment of Employee Expenses of the Holding Company qua all heads including pension and terminal benefits pertains to the 30% of the employee costs of MeECL working in generation function. MePGCL has the policy to bear the Employees Cost of MeECL (Holding Company) to the tune of 30% of the total cost in a financial year for such staff (As stated in Note 27.2 of the FY 2019-20 accounts).

Further the same amount has been deducted from the MeECL employee expenses to arrive at MeECL employee costs (Note 21 of MeECL accounts FY 2019-20). Thus, there is no double counting of MeECL expenses and only 30% of the MeECL employee expenses is loaded in MePGCL employee expenses. Since 30% of employee expenses is loaded in MePGCL, MePTCL and MePDCL accounts, the apportioned portion is exactly the same in the employee expenses projections for MePTCL, MePDCL and MePGCL, as shown in their respective MYT petitions. Also, this element should not have been disallowed as it reflects the employee cost and whose costs have been earlier approved by the Hon'ble Commission also and is on actual expenditure basis. The details of the 1/3rd Apportionment of the Holding Company in Sl. 12 of Table 8 has been given in details as **Annexure-II (a) & (b)**.

Table-5.4.1: Apportionment of MeECL 's Expenses

Particular	Rs. In Crore					
	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
30% of apportionment for MeECL's	45.47	48.60	67.19	69.21	71.29	73.42
1/3 rd of remaining 10% apportionment of MeECL	5.07	5.45	7.10	7.39	7.69	8.00

In similar circumstances, the Delhi State Electricity Regulatory Commission (DSERC) has allowed inclusion of the contributions made by North Delhi Tata Power Limited and BSES Yamuna Power Ltd. to the Pension trust Fund of employees of erstwhile Delhi Vidyut Board for payment of pension and terminal benefits of retired employees of Delhi Vidyut Board in the O&M while fixing tariff and has also

permitted imposition of pensionary surcharge by BSES Yamuna Power Limited. The said tariff orders of the DSERC pertaining to years 2011-2012 till 2017-2018 were challenged by way of a Writ Petition (C) No.8653 of 2017 titled as *Sudhanshu Kumar v. Union of India & Ors.* before the Hon'ble High Court of Delhi. While dismissing the Writ Petition, inter-alia, on ground of maintainability because of existence of alternative remedy of Appeal under Section 111 of the Electricity Act, 2003, the Hon'ble High Court has observed in para 12 thereof that "Cost of the Distribution Company includes salary and other allowances to be paid to their employee and with that logic even pension can be included."

Even in tariff order of Financial Year 2020-2021 passed qua Licensees in Delhi, the DSERC has continued the practice of considering the contributions made by the Licensees towards pension trust fund of employees of erstwhile Delhi Vidyut Board and has also approved imposition of Pensionary Surcharge for covering the expenses incurred in revision of pension. The relevant portion of one of such order dated 26.08.2020 passed by the DSERC in respect of fixation of ARR of year 2020-21 of Tata Power Delhi Distribution Company Limited is reproduced hereunder for ready reference:

"COMMISSION'S VIEW

2.215 The Pension Trust was established as a part of Transfer Scheme Rules, 2001 framed under Delhi Electricity Reform Act, 2000 (DERA) and the Tripartite Agreement executed by the GoNCTD with unions of employees and Associations of officers of the erstwhile DVB. In terms of the aforesaid Rules and Tripartite Agreement, the Pension Trust was funded at the time of unbundling of the DVB by way of one lump sum payment by the GoNCTD. Subsequent contributions from the date of unbundling have to be made to the Pension Trust by the successor entities of DVB. The Commission has been releasing ad-hoc payments in the DTL Tariff orders from FY 2011-12 onwards up to FY 2015-16. Further, in the Tariff Order dated August'2017, the Commission has directed the DISCOM's for submitting the reconciliation statement and deposit the amount directly to the pension trust, instead of the past practice of routing it through DTL.

2.216 Section 86 of the Electricity Act, 2003, which defines functions of State Commission, does not provide for issuing Regulations of Pension Trust. The fact has also been appreciated by the Hon'ble APTEL in Appeal No. 238 of 2013 (*Mahendra Gupta & Others Vs DERC*), wherein it has held that "the learned State Commission has no jurisdiction to go into disputes between the Appellants and the Pension Trust with regard to release of terminal benefits in their favour. The grievances of individual employees/appellants relating to service matters relating to the terminal benefits including pension are not

under the jurisdiction of the State Commission”. The Commission reiterates its view that it is beyond its jurisdiction to regulate the Pension Trust or to frame Regulations in this regard.

2.217 The Commission vide letter no. F.17(44)/Engg./DERC/201213/C.F. No.3481/3320 dated 11/09/2012 has issued Statutory Advice under Section 86(2) of the Electricity Act, 2003 to Govt. of NCT of Delhi to constitute an Oversight Committee to look into the issues related to pensioners of erstwhile DVB. The subject matter is presently sub-judice before Hon’ble High Court of Delhi and the parties to the dispute should expedite the matter before the court and explore other avenues for settlement of the dispute.

2.218 The Commission has already made provision on the ad-hoc basis of Rs.150 Crore, Rs.160 Crore, Rs.400 Cr., Rs. 470 Cr., Rs. 573 Cr., Rs. 573 Cr., Rs. 694 Cr., Rs. 792 Cr. and Rs. 839 Cr. for FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16, FY 2016-17, FY 2017- 18, FY 2018-19 and FY 2019-20 respectively in applicable Tariff Orders for passing on to the Pension Trust to avoid undue hardship to the pensioners till all issues concerned with Pension Trust are settled by the Courts/Delhi Govt. 2.219 The Commission vide letter dated 08/12/2016 has requested GoNCTD for conducting a forensic audit of Pension Trust for authentication of the data of pension disbursement from FY 2002-03 to till date to ascertain the actual liability of Pension Trust. The Commission has considered the amount of Rs. 937 Crore sought for FY 2020-21 by the Pension Trust on an ad-hoc basis as recommended by GoNCTD vide its letter dated 13/03/2020.

2.220 The Hon’ble Supreme Court in the matter of NDPL Vs. GoNCTD&Ors. in Civil Appeal no. 4269 of 2006 (Judgment dated 03/05/2010) had inter alia held that any liability towards DVB employees and existing pensioners are the responsibility and liability of the successor utility or employer.”

The DSERC order cites the judgment of the Hon’ble Supreme Court in the case of *North Delhi Power Limited v. Govt. of National Capital Territory of Delhi &Ors.* (2010) 6 SCC 278, which inter-alia, has observed as under:

“2. Since a common question falls for consideration in both the appeals, the same are disposed of by this common judgment. The question can be framed as under:

“Whether the appellants are responsible for meeting the liabilities relating to employees who ceased to be the employees of the erstwhile Delhi Electricity Supply Undertaking (predecessor of the Delhi Vidyut Board—DVB) prior to 1-7-2002 on account of their retirement, removal, dismissal or compulsory retirement in accordance with the provisions of the Delhi Electricity Reforms Act, 2000?

51. Rules 6(9)(a) and (b) are also very significant and are as under:

“6. (9)(a) The Government shall make appropriate arrangements as provided in the tripartite agreements in regard to the funding of the terminal benefits to the extent it is unfunded on the date of the transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

For the purpose of this sub-rule, the term—

(a) ‘existing pensioners’ mean all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme; and

(b) ‘terminal benefits’ mean the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners.”

52. A glance at these sub-rules is sufficient to come to the conclusion that the liabilities have undoubtedly been transferred to the DISCOMS which include both NDPL as well as BSES. A feeble argument was raised that sub-rule (8) does not contemplate pension or any liability on account of the revised pay scale or interpretation of respective scheme of promotion so far as existing pensioners or the erstwhile DVB are concerned to the DISCOMS. Considering the broad language of the Rule, we do not think that such contention is possible.”

Similar provision is there in the Transfer Scheme of 2010 through which the erstwhile Meghalaya Electricity Board has been unbundled into MeECL, MePGCL, MePTCL and MePDCL and the relevant portion of the same reads as under:

(6) The transfer and further deputation of personnel shall be subject to the following conditions, namely, -

That the terms and conditions of the services applicable to personnel on the effective date of transfer shall not in anyway be less favourable than those applicable to them immediately before the said effective date of transfer. Accordingly the salary, allowances and other pecuniary benefits including terminal benefits applicable on the effective date of transfer shall be protected and shall not be adversely changed;

(a) All such personnel shall have continuity of service in all respects;

(b) All benefits of service accrued before the said effective date of transfer shall be fully recognised and taken into account for all purposes including the payment of terminal benefits;

(c) To any orders that may be passed by the Courts in the proceedings pending on the said effective date of the transfer in

regard to seniority or other matters concerning the service conditions of the Personnel; and

- (d) Subject to this Scheme, the personnel shall cease to be in the service of the Board and shall not assert or claim any benefit of service under the State Government.
- (7) Subject to the Act and this Scheme, the Transferee i.e. MeECL shall be entitled to frame regulations governing the conditions of personnel transferred to the Transferee under this Scheme and till such time the existing/ (as suggested for modification) service rules/regulations of the Board shall apply mutatis-mutandis.
- (8) Subject to sub- clause (6), in respect of all statutory and other schemes and employment related matters including the provident fund, gratuity fund, pension, leave encashment and any other Superannuation fund or any other special fund created or existing for the benefit of the personnel, the relevant Transferee i.e. MeECL shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of the Transferee concerned and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub- clause.
- (9) (i) The funds and trusts established for and existing on the date of transfer relating to pension, provident fund, gratuity, leave encashment and all other terminal benefits including for the retired Personnel of the Board shall be vested under the control of MeECL in such manner as the State Government may notify for the purpose.
 - (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.

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.

It is thus established from the above judgment of Hon'ble Supreme Court, followed by the approach of the DSERC and the Hon'ble High Court of Delhi that pension is part of pay structure and salary and thus forms part of O&M expenses of a Generation Company or a Licensee. Further, after the Electricity Reforms mandated the unbundling of unified State Electricity Boards into different entities carrying out generation, transmission and distribution business, the liability to pay pension of employees of the erstwhile Electricity Boards was transferred to the incumbent entities in proportionate share.

It is further clear that the observation of this Hon'ble Commission that once MeECL makes contribution to the Pension Trust Fund the said burden will not pass to consumers through tariff, as any such contribution made by the MeECL shall also be a part of O&M expenses and are to be recovered through tariff. So, there is no difference in situations where the MeECL is paying the pension and terminal benefits through Pension Trust Fund or directly to the concerned employees as it has to be recovered through Tariff.

It is also reiterated that a holistic reading of Section 86 with Sections 61 and 62 would show that policy decisions in respect of administration of licensees and Generation Companies is not within the domain of this Hon'ble Commission. The decision as to payment of pension from a Trust Fund or from its own revenue is not within the domain and jurisdiction of this Hon'ble Commission and it is a policy decision which has to be taken by the Generating Company, Licensee or its holding company or the State Government which is having pervasive control over the function of the company. It is the sole prerogative of the employer to either create a Pension Fund and pay the terminal benefits from the fund or to pay the terminal benefits directly to its erstwhile employees in accordance with its Rules and Regulations.

It is most respectfully submitted that this Hon'ble Commission has no power or jurisdiction to direct the Generation Company or its holding company to pay salaries, pension and other terminal benefits in a particular manner or from a particular source. The Commission is only to see whether these payments have actually been made as an expense of the Generation Company and then it has to be considered as part of Operation and Management expenses of the Generation Company.

Factual position in Meghalaya:

The factual position in Meghalaya is that the Pension Trust was created and registered vide Trust Deed dated 17.06.1998 in the name of MSEB Pension Trust. Accordingly, saving bank a/c in the name of trust has been created which account takes care of not only of investments but also the day-to-day transactions of the Pension Section, viz. Payment of Monthly Pension, Commutation etc.

It is submitted that the last contribution made by the MeECL to the Pension Trust Fund was in March 2013. The amount invested earlier has already been redeemed for payment of pension and terminal benefits of the employees. It is pertinent to mention that no separate balance-sheet of the Pension Trust is being prepared and maintained for the Pension Trust and the Trust is functioning only as drawing and disbursing authority for payment of pension and terminal benefits to superannuated employees. As no corpus fund is available with the Pension Trust, the payment of pension and other terminal benefits to superannuated employees is being made by the MeECL only, which is being apportioned, as per the decision of the Board of MeECL, to all its three subsidiaries equally.

It is an undisputed fact that all the officers, officials and workers of the Petitioner- MePGCL are factually employees of MeECL and working on deputation to MePGCL, and after retirement they shall be claiming terminal benefits from MeECL and not from MePGCL directly, thus, the same has to be apportioned to MePGCL. It is also known that the MeECL is only the holding Company of MePGCL, MePTCL and MePDCL and does not carry any other business/revenue generation commercial activity to incur its expenses out of its own resources. Therefore, the actual expenses incurred by the Petitioner as apportioned share of payment made qua pension and other terminal benefits by the MeECL are required to be considered in law as O&M Expenses of the Petitioner for the purpose of determination of ARR and fixation of tariff.

5.5 The petitioned apportioned amounts for the FY 2021-22 to FY 2023-24 has been calculated and shown above in Table 5.4.1. the O&M expenses proposed for review including MeECL's apportionment shown in Table 5.4.1 are also shown below:

(In Rs. Cr)

Table 5.5.1: Revised O&M expenses for Review for MePGCL old Plants including Sonapani

Particulars	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
	(Audited)	(Provisional)	(Estimated)	(Projected)	(Projected)	(Projected)
Employee Expenses of MePGCL (a)	94.61	103.81	135.70	145.01	155.92	167.91
R&M Expenses of MePGCL (b)	6.31	9.85	10.41	10.98	11.58	12.22
A&G Expenses of MePGCL (c)	5.63	12.20	13.27	13.94	14.63	15.36
O&M Expenses for MePGCL (d=a+b+c)	106.55	125.86	159.38	169.93	182.14	195.5
O&M Expenses for MLHEP (e)	33.96	35.91	48.21	50.97	53.88	56.96
O&M Expenses for NUHEP(f)	12.28	12.98	17.43	18.43	19.48	20.59
O&M Expenses for Lakroh HEP (g)	0.03	0.37	0.5	0.53	0.56	0.59
O&M Expenses for MePGCL old Plants including Sonapani (h=d-e-f-g)	60.28	76.60	93.24	100.00	108.22	117.36

(In Rs. Cr)

Table 5.5.3: O&M expenses for Old Plants including Sonapani

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	44.71	46.97	49.35
Proposal for Review	100	108.22	117.36

It is prayed before the Hon'ble Commission to kindly consider the O&M expenses for the 3rd MYT control period at Rs. 100.00 Cr. for FY 2021-2022, Rs. 108.22 Cr. for FY 2022-2023 and Rs. 117.36 Cr. for FY 2023-2024 for Old Plants including Sonapani.

(In Rs. Cr)

Table 5.5.4: Revised O&M expenses for Review for MLHEP

Particulars	Amount
Project Cost	1285.86
O&M Expenses for FY 2013-14 (2% of Project Cost)	25.72
O&M Expenses for FY 2014-15 (5.72% escalation over previous Year)	27.19
O&M Expenses for FY 2015-16 (5.72% escalation over previous Year)	28.74
O&M Expenses for FY 2016-17 (5.72% escalation over previous Year)	30.39
O&M Expenses for FY 2017-18 (5.72% escalation over previous Year)	32.13
O&M Expenses for FY 2018-19 (5.72% escalation over previous Year)	33.96
O&M Expenses for FY 2019-20 (5.72% escalation over previous Year)	35.91
O&M Expenses for FY 2020-21 (5.72% escalation over previous Year and ROP Impact) *	48.21
O&M Expenses for FY 2021-22 (5.72% escalation over previous Year)	50.97
O&M Expenses for FY 2022-23 (5.72% escalation over previous Year)	53.88
O&M Expenses for FY 2023-24 (5.72% escalation over previous Year)	56.96

(In Rs. Cr)

Table 5.5.5: O&M Expenses for MLHEP for FY 2021-22 to FY 2023-24			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	41.11	43.46	45.95
Proposal for Review	50.97	53.88	56.96

It is prayed before the Hon'ble Commission kindly consider the O&M expenses for the 3rd MYT control period at Rs. 50.97 Cr. for FY 2021-2022, Rs. 53.88 Cr. for FY 2022-2023 and Rs. 56.96 Cr. for FY 2023-2024 for MLHEP.

5.6 Interest on Working Capital

It is prayed to Hon'ble Commission to kindly approve the Interest on working capital for the control period as projected in review petition.

Table 5.6.1: Revised Interest on working capital for review for Old Plants Including Sonapani				
S.No.	Particulars	FY 2021-22	FY 2022-23	FY 2023-24
1	O&M Expenses	100.01	108.22	117.35
2	O&M Expenses for 1 Month (sl.no.1/12)	8.33	9.02	9.78
3	Maintenance Spares @15% of O&M (15% + 6%)	15.9	17.2	18.7
4	Receivables for 2 months	22.2	26.4	30.7
5	Total (Sl.no.2+3+4)	46.45	52.67	59.13
6	Interest on Working Capital @12.15%	5.64	6.4	7.18

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	2.19	2.77	31
Proposal for Review	5.61	6.4	7.18

It is prayed before the Hon'ble Commission to kindly consider the Interest on working capital for the 3rd MYT control period at Rs. 5.61 Cr. for FY 2021-2022, Rs. 6.40 Cr. for FY 2022-2023 and Rs. 7.18 Cr. for FY 2023-2024 for Old Plants including Sonapani.

Table 5.6.2: Revised Interest on Working Capital for Review for MLHEP

Rs. In crore

S.No.	Revised Interest on Working Capital for Review for MHEP			
	Particulars	FY 2021-22	FY 2022-23	FY 2023-24
1	O&M Expenses	50.97	53.88	56.96

2	O&M Expenses for 1 Month (sl.no.1/12)	4.25	4.49	4.75
3	Maintenance Spares @15% of O&M (15% + 6%)	8.1	8.6	9.1
4	Receivables for 2 months	36.9	36.2	35.5
5	Total (Sl.no.2+3+4)	100.27	103.09	106.23
6	Interest on Working Capital @12.15%	12.18	12.53	12.91

Table 5.6.3: Interest on Working Capital for MLHEP			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	4.33	4.43	4.43
Proposal for Review	12.18	12.53	12.91

It is prayed before the Hon'ble Commission to kindly consider the Interest on working capital for the 3rd MYT control period at Rs.12.18 Cr. for FY 2021-2022, Rs. 12.53Cr. for FY 2022-2023 and Rs. 12.91 Cr. for FY 2023-2024 for MLHEP.

6. Summary of the Claim:

Based on the above, MePGCL requests the Hon'ble Commission to allow an additional ARR amount of Rs. 93.61 crore for Old plants including Sonapani and Rs. 63.52 crore for MLHEP in the approved ARR of FY 2021-22. A summary of the review pleas made in the petition is tabulated below:

Table 6.1 (a): Summary of Revised Claim for Old Plants including Sonapani
Rs. In crore

Revised ARR for Old Plants including Sonapani			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Interest & Finance Charges	5.1	9.7	8.72
Depreciation	18.94	25.37	34.36
O&M Expenses	100.01	108.22	117.35
Interest on working capital	5.64	6.40	7.18
Return on Equity	17.14	23.54	32.07
SLDC Charges	1.85	1.94	2.04
Total Annual Fixed Cost	148.7	175.2	201.7
Less: Non-Tariff Income	9.78	10.08	10.38
Net Annual Fixed Cost	138.9	165.1	191.3

Table 6.1(b): Additional ARR claim for old plant including Sonapani
Rs. In crore

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	45.29	65.36	84.41
Proposal for Review	138.9	165.1	191.3
Additional Claim	93.61	99.74	106.89

Table 6.1(c): Net AFC for Old Plants including Sonapani**Rs. In crore**

Particulars	FY 2021-22
a. Annual Fixed Cost (AFC) Proposed for FY 2021-22 (a)	138.90
b. Revenue Gap from True Up of FY 2017-18 (INR Crs) as approved by Hon'ble Commission in the True Up order for FY 2017-18 (b)	-114.47
c. Revenue Gap from True Up of FY 2017-18 (INR Crs) for Old Plants* (c=b*177.5 MW /343.5 MW)	-59.15
Net AFC for computation of Tariff for FY 2021-22 (d=a+c)	79.75

Table 6.2(a): Summary of Revised claim for MLHEP**Rs. In crore**

Revised ARR for MLHEP			
Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Interest on Loan capital	32.71	34.71	33.42
Depreciation	61.23	61.42	61.7
O&M Expenses	50.97	53.88	56.96
Interest on working capital	36.9	36.2	35.5
Return on Equity	54.12	54.29	54.54
Total Annual Fixed Cost	221.71	216.95	212.84
Less: Non-Tariff Income	0.014	0.014	0.015
Net Annual Fixed Cost	221.69	216.94	212.83

Table 6.2(b): Additional ARR claim for MLHEP**Rs. In crore**

Particulars	FY 2021-22	FY 2022-23	FY 2023-24
Approved by Commission	158.17	159.97	156.12
Proposal for Review	221.69	216.94	212.83
Additional Claim	63.52	56.97	56.71

Table 6.2(c) : Net AFC for MLHEP

Particulars	FY 2021-22
Annual Fixed Cost (AFC) Proposed for FY 2021-22 (a)	221.69
Revenue Gap from True Up of FY 2017-18 (INR Crs) as approved by Hon'ble Commission in the True Up order for FY 2017-18 (b)	-114.47
Revenue Gap from True Up of FY 2017-18 (INR Crs) for MLHEP* (c=b*126 MW/343.5 MW)	-41.99
Net AFC for computation of Tariff for FY 2021-22 (d=a+c)	179.70

7. Generation Tariff

In view of the above submissions and revised ARR calculations, it is most respectfully submitted that the Generation Tariff Calculations for the Financial Year 2021-2022 shall be as under:

The station wise allotted Net Annual Fixed Cost proposed for recovery in FY 2021-22 is shown in the table below:

Table 7.1: Revised AFC, Capacity Charge and Energy Charge for Review for old stations & Sonapani						
Name of the Power Station	Installed Capacity (MW)	Gross Generation (MU) as approved in Business Plan	Net Generation (MU) as approved in Business Plan	Annual Fixed Charge (INR Crs)	Capacity Charge (INR Crs)	Energy Charge (Rs/Unit)
Umiam I	36	116	114.3	16.17	8.09	0.71
Umiam II	20	46	45.3	8.99	4.49	0.99
Umiam III	60	139	136.9	26.96	13.48	0.98
Umiam IV	60	207	203.9	26.96	13.48	0.66
Mini Hydel (Sonapani)	1.5	5	4.9	0.67	0.34	0.68
Total	177.5	513	505.3	79.75	39.88	0.79

Table 7.2: Revised AFC, Capacity Charge & Energy Charge for Review of MLHEP

Particulars	FY 2021-22
Net AFC for Computation of Tariff (INR Cr)	179.70
Gross Generation (MU) as approved in Business Plan	486
Less: Auxiliary Consumption @ 1%	4.86
Less: Transformation Loss @ 0.5%	2.43
Net Energy (MU)	481.14
Fixed Charge (INR Cr.)	89.85
Variable Charge (INR/kWh)	1.87

MePGCL submits before the Hon'ble Commission to kindly review its order and consider the changes proposed by the Generation Company in the chapters above.

8. Prayer before the Honourable Commission

The Meghalaya Power Generation Corporation Limited (MePGCL) humbly prays before the Honourable Commission to kindly allow the instant Review Petition filed by the Petitioner-MePGCL and accordingly pass an order incorporating the changes referred in the Petition above in the Aggregate Revenue Requirement for the entire Control Period of 2021-2022 to 2023-2024 and in the Generation Tariff for Financial Year 2021-2022 with effect from 01.04.2021, and pass such other or further order as this Hon'ble Commission may deem fit and proper.

It is prayed accordingly.