
**BEFORE
MEGHALAYA STATE ELECTRICITY REGULATORY
COMMISSION SHILLONG**

**PETITION
FOR
REVIEW OF ORDER DATED 18.10.2024 IN CASE NO.36 OF
2023 FOR TRUING UP OF DISTRIUTION BUSINESS OF
MEGHALAYA POWER DISTRIBUTION CORPORATION
LIMITED FOR FY 2022-23**

FILED BY



Lum Jingshai, Short Round Road, Shillong-793001

BEFORE THE HON'BLE MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

FILE/ PETITION NO.....

IN THE MATTER OF

REVIEW OF ORDER DATED 18.10.2024 IN CASE NO.36 OF 2024 FOR TRUING UP EXPENSES OF DISTRIBUTION BUSINESS FOR FY 2022-23 UNDER THE PROVISIONS OF REGULATION 21 OF MSERC (CONDUCT OF BUSINESS) REGULATIONS, 2007

AND IN THE MATTER OF

MEGHALATA POWER DISTRIBUTION CORPORATION LIMITED, LUMJINGSHAI, SHILLONG- 793001- MEGHALAYA.

..... PETITIONER

IT IS RESPECT SUBMITTED BY THE PETITIONER THAT:

1. In exercising the powers conferred to it under Section 131 and 133 of the Electricity Act 2003, the State Government of Meghalaya notified "The Meghalaya Power Sector Reforms Transfer Scheme 2010", notified on 31st March 2010. The Scheme paved path for the restructuring and unbundling of the erstwhile Meghalaya State Electricity Board (MeSEB). As per the provisions of the aforesaid transfer scheme MeSEB was un-bundled into four entities which are:
 - a) Meghalaya Energy Corporation Limited (MeECL) which is the holding company;
 - b) Meghalaya Power Distribution Corporation Limited (MePDCL) – Distribution Utility;
 - c) Meghalaya Power Generation Corporation Limited (MePGCL)- Generation Utility;
 - d) Meghalaya Power Transmission Corporation Limited (MePTCL)– Transmission Utility.
2. Though the transfer scheme was notified on 31st March 2010, the holding company MeECL continued to carry out the functions of distribution, generation and transmission utilities till 31st March 2012. After notification of amendment to the Power Sector Reforms Transfer Scheme by the State Government on 1st April 2012, the un-bundling of MeECL into MePDCL, MePGCL and MePTCL came into effect.
3. The Government of Meghalaya notified the vesting order of the Assets and Liabilities as on 1st April 2010, in the books of MeECL. Subsequently, the State Government notified the 4th amendment to the Notified Transfer Scheme on 29th April 2015, wherein the opening balances of assets and liabilities of all the four entities namely, MePDCL, MePGCL, MePTCL and MeECL as on 1st April 2012 were ascertained.
4. The instant Petition is being filed by MePGCL in under the Provisions of Regulation 21 of the MSERC (Conduct of Business) Regulations, 2007 for review of order dated 18.10.2024

issued by Hon'ble Commission against the Petition filed by MePDCL for truing up of expenses of distribution business for FY 2022-23.

5. The Petitioner, therefore humbly prays Hon'ble Commission to:

- a. Admit the Review Petition.
- b. To rectify the error in computation of AT&C losses and penalty thereof.
- c. To pass such order, as the Hon'ble Commission may deem fit and proper and necessary in view of the facts and circumstances of the case.

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For and behalf of
Meghalaya Power Distribution Corporation Limited

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1. BACKGROUND

1.1 Description of Parties

The Power Supply Industry in the state of Meghalaya has been under the governance of erstwhile Meghalaya State Electricity board (MeSEB) since 21st January 1975. The State Government on 31st March, 2010 notified "The Meghalaya Power Sector Reforms Transfer Scheme 2010" paving path for the un-bundling of the MeSEB into

- Meghalaya Electricity Corporation Limited (the holding company),
- Meghalaya Power Distribution Corporation Limited (Distribution Utility),
- Meghalaya Power Generation Corporation Limited (Generation Utility)
- Meghalaya Power Transmission Corporation Limited (Transmission Utility).

The aforesaid scheme was further amended on 31st March, 2012, which led to the transfer of assets and liabilities including all rights and obligation and contingencies with effect from 1st April, 2012 to the aforementioned four companies.

The MSERC is an independent statutory body constituted under the provisions of the Electricity Regulatory Commissions (ERC) Act, 1998, which was superseded by 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.

2. DETAILED ISSUE

1. By the present Review Petition, MePDCL seeks the review of the order dated 18.10.2024 passed by the Hon'ble Commission in Case No. 36 of 2023 in the matter of Truing Up of Expenses of Distribution Business for FY 2022-23 . A true copy of the order dated 18.10.2024 is appended herewith as Annexure P1.
2. Section 94 (1) (f) of the Electricity Act, 2003 provides that the Commission shall have the same powers of reviewing its decisions, directions and orders as are vested in a Civil Court under the Code of Civil Procedure, 1908 (CPC).
3. Under Order XLVII Rule 1 CPC, a Review Petition can be filed, inter-alia, on the ground that:
 - i) Order Suffers from an 'Error Apparent';
 - ii) For any other sufficient reason.
4. It has been held by the Hon'ble Supreme Court in the case of Indian Charge Chrome Ltd. Vs Union of India (2005) 4 SCC 67 that Non- Consideration of the contentions amounts to 'Error Apparent' and is ground for review. The relevant extracts from the Judgment Hon'ble Supreme Court are quoted below:

"13. To support the contention that there are errors apparent on the face of the record, we have been taken through the judgment to see that the aforesaid contention was urged. It appears clearly that contention was made but there has been omission to consider it. The approval was, inter alia, based on the clarification given in the letter dated 30-6-2001. At this stage, the only question is as to an error apparent on the face of the record having occurred in non- consideration of this nature of contention and not on its merit or demerit. The validity of the approval was in question in the transferred case as also in the civil appeals wherein reliance was sought to be placed on the invalidity of the approval as a subsequent event.

It is true, as contended by learned counsel opposing the admission of the review petitions that review petitions should not be lightly entertained and mere fact that there were two views, one in terms of the majority and the other dissenting, cannot be the basis for recalling the majority judgment and rehearing the matter, but that is not the ground for the conclusion we have

reached, as aforesaid, for admitting the review petitions. We have found errors apparent on the record, as noticed above, namely:

1. Non-consideration of the contention regarding illegality of the communication dated 30-6-2001.

2. Absence of opportunity to explain the order dated 14-1-1999.

16. These are manifest errors which have crept up in the judgment under review resulting in grave miscarriage of justice. Accordingly, we admit these petitions and recall the judgment dated 17-12-2002 [Indian Charge Chrome Ltd. v. Union of India, (2003) 2 SCC 533] and direct that the civil appeals and transfer case be listed for hearing. We make it clear that observations made in this order are only for the purpose of deciding the limited aspect of admission of the review petitions."

5. In the Case of Board of Control for Cricket vs. Netaji Cricket Club (2005) 4 SCC 741, Hon'ble Supreme Court has held as under:

"88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

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

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be

necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

6. In the Case of Lily Thomas vs. Union of India (2000) 6 SCC 224, Hon'ble Supreme Court has held as under:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844: AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

7. Further, as per the Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2006:

21. Review of the decisions and orders of the Commission

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

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

8. In light of the law as laid down by the Hon'ble Supreme Court in the aforesaid Judgements and provisions of MSERC (Conduct of Business) Regulations, 2006, MePDCL seeks review of the order dated 18.10.24 on the following grounds:

A. Computation of AT&C Losses

9. MePDCL would like to submit that at **Para 3.16.5 Table 39 Page No. 48** of the Order dated 18.10.2024 Hon'ble Commission has decided the following:

"3.16. Computation of AT&C losses

Commission's Analysis

3.16.4. The Commission observed the AT&C loss computation arrived at in the Format D2 (A) as submitted by the Petitioner in Additional Information 2.

xxxx

3.16.5. However, the Petitioner has failed to justify / substantiate the figures submitted in the Format D2 (A) and hence the Commission has recomputed the AT&C loss% in the following format as provided below:

Particular	Calculation	Unit	Current Year FY 2022-23
Input energy (metered import) received at interface points of DISCOM network	A	Mu	2862.14
Input Energy (metered Export) by the DISCOM at interface point of DISCOM network including balance surplus energy	B	MU	646.66
Total energy available for sale within the licensed area to the consumers of the DISCOM periphery	$C = (A-B) * (1-3.16\%)$	MU	2144.50
Energy billed to metered consumers within the licensed area of the DISCOM	D	MU	1781.35
Energy billed to unmetered consumers within the licenses area of the DISCOM	E	MU	0.00
Total Energy billed	$F = D + E$	MU	1781.35
Amount billed to consumer within the licensed area of DISCOM	G	Rs. Cr.	1093.51
Amount realized by the DISCOM out of the amount Billed	H	Rs. Cr.	878.18
Collection Efficiency	$I = (H/G) * 100$	%	80.31%
Energy Realized By DISCOM	$J = FXI$	MU	1430.57
T&D Losses	$K = \{(C - F) / C\} * 100$	%	16.93%
AT&C Losses	$L = \{(C - J) / C\} * 100$	%	33.29%

“

10. Further at Para 3.16.6 Table 40 Page No.49 of the order dated 18.10.2024 Hon'ble Commission has computed the collection efficiency as under:

"3.16.6. Accordingly, Commission approved the AT&C Loss (%) as shown in the table below,

Table 40: Approved AT&C Losses for FY 2022-23

S No	Particulars	Value (Approved)
1.	Opening balance of receivables as approved closing balance for FY 2021-22 (as per audited accounts of FY 2021-22)	689.98
2.	Revenue from Sale of Power Within the State in FY 2022-23 (Note 24 of SoA)	1093.51
3.	Total	1783.49
4.	Less: Closing Balance of Receivables as at Note 7 of SoA	905.32
5.	Revenue Realized in FY 2022-23 from Sale of Power Within the State (S No. 3-4)	878.18
6.	Collection Efficiency (%) $(941.34/1093.51*100)$	80.31%
7.	Distribution Losses Vide Table No.9(A)	16.93%
8.	AT&C Losses as Computed above	33.39%

11. MePDCL would like to submit that the Hon'ble Commission while computation of the AT&C losses has considered the entire receivables as per the Note 7 of State of Accounts which includes receivables against sale of power within the state as well as the receivable from sale of power outside the state.
12. Since, the AT&C losses is to be computed on all the parameters within the parameters, the receivables against sale of power outside the state are ought to be excluded while computing the collection efficiency.
13. The bifurcation of the receivables against the sale of power within the state and outside the state have been provided at Note.7.4 of Audited SoA. The details of the Note 7.4 have been reproduced in the table below:

Particulars	As at 31st March 2023	As at 31st March 2022 (Restated)
Receivables from Sale of Power, including FPPA (within the State)	5,93,46,29,806	4,44,68,11,796
Receivables from Sale of Power- Inter State (Assam)	72,139	72,139
Receivables from Sale of Power- Inter State (Mizoram)	13,68,746	13,68,746
Receivables from Sale of Power- Outside the State (Unscheduled Interchange and others)	76,82,74,556	55,50,04,359
Receivables from Sale of Power- Miscellaneous, including RRAS	1,91,78,86,692	1,57,31,77,103
Electricity Duties Receivable	43,09,19,768	32,34,08,324
Total	9,05,31,51,705	6,89,98,42,466

14. Thus it is clear from the table above that the opening and closing receivable against the sale of power within the state are Rs.444.68 Crore and Rs. 593.46 Crore respectively are to be considered while computation of AT&C losses.
15. In view of the above it is requested that there has been an error apparent on the face of records while computation of collection efficiency and AT&C Losses in the order dated 18.10.2024 in Case No. 36 of 2023.
16. In line with the above MePDCL would like to submit that correct computation of AT&C losses are tabulated below:

S No	Particular	Legend	Value
1	Input Energy (MU)	A	2257.33
2	Interstate Transmission Losses (MU)	B	42.87
3	Net Input Energy (MU)	$C=(A-B)$	2214.46
4.	Intra State Transmission Losses	C	69.98
5.	Net Input Energy (MU)		2144.49
6.	Energy Sold (MU)	D	1781.35
7.	Revenue from Sale of Power (Rs. Cr.)	E	1093.51
8.	Adjusted Revenue (Rs. Cr)	F	1093.51
9.	Opening Debtors (Rs Cr)	G	444.68
10.	Closing Debtors (Rs. Cr.)	H	593.46
11.	Collection Efficiency (%)	$I=(F+G-H)/E$	86.39%
12.	Units Realized (MU)	$J=I*C$	1538.98
13.	Units Un Realized (MU)	$K=C-J$	605.51
14.	AT&C Loss (%)	$L=K/C$	27.34%

17. Further, the Hon'ble Commission at Para 3.16.8 at Page no.49 of the Order dated 18.10.2024 in Case no. 36 of 2023 has computed the penalty for non-achievement of the target AT&C losses.

"3.16.8. Regulation 83.1 of MSERC MYT Regulations specifies that,

"(a) The licensee shall provide complete information of the total AT & C Losses during the previous year and that projected for th year for which the application is being made, including the basis on which such losses have been worked out.

Provided that it shall be obligatory on the licensee whose AT&C losses during the previous year are in excess of 30 percent, to project reduction of such losses by a minimum of 3 percent during the year for which a Tariff Application is made. Any shortfall in the projected level of AT&C losses for such year, in this regard, may be penalized by an amount equivalent to the cost of the quantum of energy to be lost due to inability of the licensee to plan and achieve reduction of AT&C losses by a minimum of 3 percent from the previous year's level as may be allowed. Such amount shall be calculated

at the average-over-all-unit-cost of sale of power, as approved by the Commission for such year.

Provided also that in the case of a licensee whose AT&C losses during the previous year were less than 30 percent, it would be obligatory for such licensee to reduce such AT&C losses by a minimum of 1.5 percent only during the year for which a Tariff Application is made. Failure to achieve this level of reduction may be penalized in the same manner as set out in clause (a) above. Further, provided that the overall penalty, of any, may be limited by relevant Central Guidelines, as may be notified from time to time

3.16.9. Accordingly, the Commission considers the AT&C loss penalty as detailed in the table below,

Table 41: Approved AT&C Loss Penalty for FY 2022-23

S No.	Particular	Unit	Value (Approved)
1	Actual AT&C Losses for FY 2021-22	%	25.95%
2	Target AT&C Losses for FY 2022-23	%	24.45%
3	Actual AT&C Losses for FY 20222-23	%	33.29%
4	Short Fall	%	8.24%
5	AT&C Losses in terms of Energy	MU	157.49
6	Average Billing Rate	Rs./kWh	6.14
7	Penalty	Rs. Cr.	96.68

18. In line with the computation of AT&C losses as shown above, the AT&C loss penalty is recomputed as under:

S No.	Particular	Unit	Value (Review)
1	Actual AT&C Losses for FY 2021-22	%	26.0%
2	Target AT&C Losses for FY 2022-23	%	24.5%
3	Actual AT&C Losses for FY 20222-23	%	27.3%
4	Short Fall	%	2.9%
5	AT&C Losses in terms of Energy	MU	51.54
6	Average Billing Rate	Rs./kWh	6.14
7	Penalty	Rs. Cr.	31.64

19. Based on the revised computation of the AT&C losses and Penalty as computed above the impact of the review is tabulated as below:

S No.	Particular	Amount (In Rs. Cr.)
1.	Penalty on non-achievement of the AT&C losses approved in order dated 18.10.2024	96.68

2.	Penalty on non-achievement of AT&C losses claimed in review petition	31.64
3.	Impact	65.04

20. This will also have impact on the overall gap allowed by the Hon'ble Commission in the order dated 18.10.2024. The same has been tabulated below:

S No.	Particular	Amount (In Rs. Cr.)
1.	Gap allowed by Hon'ble Commission in order dated 18.10.2024	140.09
2.	Additional Gap as per the review petition	65.04
3.	Total Gap	205.13

21. Review Petitioner would like to submit that since the Gao of Rs. 140.09 Crore has already been adjusted in the tariff order issued by the Hon'ble Commission for FY 2024-25 hence, it is humbly requested the additional gap of Rs. 65.04 Crore arising out of the instant review petition may please be adjusted in the tariff order for FY 2025-26.

22. The Review Petition is submitted for approval. Further, the Petitioner craves leave of this Hon'ble Commission to submit any additional information as directed by the Hon'ble Commission during the course of proceeding of the review petition.

AFFIDAVIT

I, Shri John Elton Marbaniang, s/o S. Lyngshing, aged about 52 years, the Superintending Engineer (RA), of Meghalaya Power Distribution Corporation Limited, Shillong having its registered office at MeECL Headquarters, Lumjingshai, Short Round Road, Shillong – 793001, do hereby solemnly affirm and state as under:-

1. That I am the Superintending Engineer (RA), of Meghalaya Power Distribution Corporation Limited, Shillong and in my official capacity I am conversant with the facts and records of the case and competent and duly authorized to swear this instant affidavit on behalf of Petitioner's company Meghalaya Power Distribution Corporation Limited.
2. That the statement made in this Affidavit are true to the best of my knowledge and belief which are borne out of the petitioner's company official record maintained in the ordinary course of business and I believe them to be true and the rest are my humble submission before this Hon'ble Commission.
3. And I sign this Affidavit on this the 19th day of December, 2024 at Shillong.

VERIFICATION:

Verified by me, the above named petitioner, Shri John Elton Marbaniang, S/o S. Lyngshing, aged about 52 years, the Superintending Engineer (RA), of Meghalaya Power Distribution Corporation Limited, Shillong on this 28th day of November, 2024 at Shillong that the content of the above affidavit is true and correct to the best of my knowledge and belief and information received and derived from the official records of the Petitioner's Company Meghalaya Power Distribution Corporation Limited and that nothing is false and nothing material has been concealed therefrom.

J.E.
DEPONENT
Superintending Engineer
Regulatory Affairs
Me.P.D.C.L, Shillong

J.E.
DEPONENT
Superintending Engineer
Regulatory Affairs
Me.P.D.C.L, Shillong

Solemnly Affirmed before me this day 19.12.2024 The deponent is identified
By Mrs A. Diangdoh, Advocate
Certify that the content of the Affidavit
are read over and Explained to the Deponent
who verified the same before me.

L.T.
Lakshmi Tiwari
Notary Public
Govt. of India

S L Instrument No 118
Date 19.12.2024

