

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 29 of 2008

In the matter of
Petition filed by The Tata Power Company Ltd., seeking review of Order dated
2.04.2008 passed in Case No. 68 of 2007 in the matter of TPC-G's APR Petition.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: December 1, 2008

In exercise of powers vested under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and upon detailed scrutiny of various responses, objections, suggestions, comments made by consumers, The Tata Power Company Ltd.-Generation Business (TPC-G) and other key stakeholders as part of their written submissions as well as during the Public Hearing, the Commission passed an Order in Case No. 68 of 2007 in the matter of TPC-G's Annual Performance Review (APR) for FY 2007-08 and Tariff Determination for FY 2008-09, on April 2, 2008.

2. Subsequently, TPC-G filed a Petition under affidavit (listing specific grounds on which it sought review) before the Commission on May 20, 2008 under the provisions of Regulation 85 (a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking review of the Commission's Order dated April 2, 2008 passed in Case No 68 of 2007 in the matter of TPC- G's APR, regarding the Annual Fixed Charges (AFC) as allocated by the Commission amongst the thermal and hydro plants of TPC-G.

3. Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 stipulates:

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake



or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

4. The main prayers in the Review Petition filed by TPC-G are:
1. *“As can be seen from the above, there is an error apparent on the face of the records and hence requests the Hon’ble Commission to restate the table on page 75 of the APR order dated April 2, 2008 for Tata Power-Generation*
 2. *That this Hon’ble Commission may grant such further and other reliefs as may be necessary*
 3. *For ad-interim and interim reliefs in terms of prayers (1) and (2) above”*
5. Briefly, the contentions raised by TPC-G in its Review Petition are as under:
- a) **Allocation of AFC of TPC-G to Thermal and Hydel Stations:**
- i. TPC submitted that under the APR Order in Case No. 68 of 2007 dated April 2, 2008, the Commission approved Annual Fixed Charges (AFC) for thermal and hydel generating stations vide Para 5.18, which stipulates as below:

“5.18 STATION WISE/UNIT WISE FIXED COST

The above total Fixed Cost for TPC’s generation business has to be apportioned to the generation Stations/Units, to determine the Fixed Charge payable to each of the generating Stations/Units.

In case of hydel Stations, the fixed charges have been allocated station-wise, whereas the fixed cost of thermal Station at Trombay has been allocated to each Unit. TPC submitted the allocation of each element of fixed cost and the assumptions for the same in its Petition. The fixed costs have been allocated in the same proportion as considered by TPC in its Petition.

The summary of approved Annual Fixed Charges allocated to hydel stations and thermal units is given in the following Table:

Table: Station-wise/Unit-wise Annual Fixed Charges (Rs Crore)

	<i>Unit 4</i>	<i>Unit 5</i>	<i>Unit 6</i>	<i>Unit 7</i>	<i>Bhira</i>	<i>Bhivpuri</i>	<i>Khopoli</i>	<i>Total</i>
<i>O&M Charges</i>	16.91	127.55	105.04	38.49	7.09	7.24	26.29	328.62
<i>Interest on Debt</i>	0.88	15.24	2.36	4.02	5.96	1.04	4.19	33.68



	Unit 4	Unit 5	Unit 6	Unit 7	Bhira	Bhivpuri	Khopoli	Total
<i>Interest on Working Capital</i>	10.64	21.72	58.51	3.79	1.42	1.08	1.99	99.15
<i>Depreciation</i>	1.60	17.44	4.07	9.07	9.80	7.55	11.20	60.72
<i>ROE</i>	3.04	41.84	24.06	35.12	19.74	15.03	18.61	157.44
<i>Income Tax</i>	0.88	12.05	6.93	10.11	5.69	4.33	5.36	45.34
<i>Less Non Tariff Income</i>	0.19	2.75	1.48	2.36	0.75	0.58	0.89	9.00
<i>AFC for FY 2008-09</i>	33.75	233.08	199.50	98.24	48.94	35.68	66.75	715.94
<i>Provisional Truing up for FY 08</i>	(1.47)	(10.13)	(8.67)	(4.27)	(2.13)	(1.55)	(2.90)	(31.12)
<i>Net AFC for FY 2008-09</i>	32.29	222.95	190.83	93.97	46.81	34.13	63.85	684.83

- ii. TPC-G submitted that in the APR petition, it had submitted the AFC of Thermal and Hydro stations separately and except for Head Office (HO) and Support Service (SS) costs, there was no allocation of costs between hydro and thermal units as such in the Petition. TPC-G submitted that after the thermal cost determination, the individual heads of the AFC were allocated between various Units, viz., Unit-4, Unit-5, Unit-6 and Unit-7 on the basis as explained in the APR Petition. TPC-G also submitted that on a similar basis, after determination of the hydro costs, the individual heads of AFC were apportioned between the three hydro stations.
- iii. TPC-G submitted that the allocation in the APR Petition regarding the thermal and hydro costs was in line with the allocation done in Multi Year Tariff (MYT) Petition. TPC-G further submitted that the MYT Order also stipulates:
- “the fixed costs have been allocated in the same proportion as considered by TPC in its petition”.*
- iv. TPC-G further submitted that though the allocation of such fixed costs in the MYT Order were in the same proportion as considered by TPC-G, the allocation in the APR Order dated April 2, 2008 was not in line with the proportion considered by TPC-G in its APR Petition.
- v. TPC-G submitted that basis of allocation as considered by the Commission has skewed the AFC of TPC-G towards the thermal power plants. TPC-G submitted the summary of the allocation of AFC in the various Orders of the Commission (and corresponding Petitions) in the Table below:



	Total Approved	Thermal	Hydro	Thermal	Hydro
	Rs Crore			Percentage	
Petition for FY 2006-07	699	512	187	73	27
Tariff Order dated October 3, 2006 for FY 2006-07	593	435	159	73	27
MYT Petition for FY 2007-08	732	523	209	71	29
MYT Order for FY 2007-08	690	494	196	72	28
APR Petition	808	605	203	75	25
APR Order dated April 2, 2008	685	540	145	79	21

- vi. TPC-G submitted that the share of hydro in the total approved AFC has drastically reduced in the APR Order when compared to the approved AFC in the previous two Orders. TPC-G further submitted that the incentives payable for Capacity Index for hydro plants is dependent on AFC. Any reduction in the fixed charges reduces the incentive to that extent for the same level of performance.

b) Allocation of AFC of Hydel to each Hydel Generating Station

- i. TPC-G also submitted that the allocation of AFC amongst the three hydro stations is not in the same proportion as considered by TPC-G in its APR Petition, as shown in the Table below:

	Total	Station- Hydro and Thermal					
		Bhira		Bhivpuri		Khopoli	
		Amount (Rs Crore)	% of total Hydro	Amount (Rs Crore)	% of total Hydro	Amount (Rs Crore)	% of total Hydro
APR Petition	203	75	37	51	25	76	37
APR Order dated April 2, 2008	145	47	32	34	23	64	44

6. On the maintainability of the Petition, TPC-G submitted that the review has been sought due to the fact that there is an error apparent on the face of the record. TPC-G, in its Petition, prayed to the Commission to restate the Table on Page No. 75 of the APR Order dated April 2, 2008 for TPC-G.

7. The notice for the Hearing in Case No. 29 of 2008 was issued on July 08, 2008, to the Petitioner and four authorised Consumer Representatives. The Commission scheduled the hearing in the matter on July 23, 2008, at 11:00 hours at the Commission's office and directed TPC-G to serve the copy of the Petition to the four authorised Consumer Representatives.



8. During the Hearing held on July 23, 2008, no authorised Consumer Representative was present. During the Hearing, TPC-G submitted that the allocation of AFC in MYT Order was considered by the Commission in the same proportion as considered by TPC-G, while the allocation of AFC in the APR Order dated April 2, 2008 is not in line with the proportion considered by TPC-G in its APR Petition, leading to skewed fixed charges towards thermal stations as compared to hydro stations. TPC-G submitted that the effect of such allocation is on the incentive, which is payable for higher Capacity Index for hydro plants on the AFC. Thus, to that extent, the hydro charges have been reduced and TPC-G is affected and aggrieved. The Commission enquired of TPC-G as to the error apparent in the Order. TPC submitted that they had presented the hydro and fixed charges in a particular way, which has not been adopted by the Commission in the Tariff Order. This is an error apparent.

9. On first principles, a review of any Order, direction or decision is permitted under the MERC (Conduct of Business) Regulations, 2004, only upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons.

10. Having heard TPC-G and after considering the material placed on record, the Commission is of the view as under:

a) **Allocation of AFC of TPC-G to Thermal and Hydel:**

TPC-G, in its Petition in Case No. 68 of 2007, in the matter of TPC-G's APR for FY 2007-08 and Tariff Determination for FY 2008-09, submitted as under:

“3.3 Allocation of Assets and Costs

For the purpose of the filing, the functional segregation of costs is based on segregation of information currently available with TPC. TPC captures cost data across the Generation, Transmission Distribution, Supply, Head Office (HO) and Support Service (SS) functions (“Functional Areas”). Further TPC also maintains an Asset Register that gives the asset details existing on 31st March for these functional areas. (emphasis added)

The basis of allocation of the assets and costs for Head Office and Support Services to the Generation, Transmission and Distribution functions (“Basic Areas”) is same as that used for the MYT filing and is as explained below (emphasis added).....”



In Para 7.2.1 of its APR Petition, TPC-G submitted as under:

“7.2.1 Thermal-Hydro

“The Annual Fixed Charges for TPC-G for the FY 2008-09 are as given in the Section 6.5.8. The segregation between the Thermal and Hydro generation plants is as given in the table below ...”(emphasis added)

As observed from the above submissions, TPC-G in its APR Petition, submitted that it captures cost data across the Generation, Transmission Distribution, Supply, Head Office (HO) and Support Service (SS) functions (“Functional Areas”). However, TPC-G neither submitted that it captures cost data across thermal and hydel functions, nor did it submit any basis and assumptions for segregating total AFC of Generation Business between thermal and hydel stations. Further, in its Review Petition, TPC-G has submitted that except HO and SS costs, there has been no allocation of costs between hydro and thermal units as such.

In effect, TPC-G has submitted for the first time in its Review Petition that there has been no allocation of costs between hydro and thermal stations as such, which implies that it maintains the costs and asset details separately for thermal stations and hydel stations. Further, if TPC-G has been maintaining the costs of thermal and hydel stations separately, then the need of segregating the costs does not arise and TPC-G’s APR Petition clearly states that the total fixed costs have been segregated between thermal and hydro plants but at the same time the APR Petition does not provide any basis for segregation. TPC-G’s submissions in this regard are clearly inconsistent.

In the absence of this critical information in the APR Petition, the Commission after arriving at total AFC of TPC-G, has allocated the AFC between thermal and hydel stations.

As TPC-G has not categorically stated in its APR Petition that TPC maintains the cost and asset details separately for thermal stations and hydel stations separately and has on the contrary stated that the costs have been segregated between thermal and hydel stations, the Commission is of the view that there is no error apparent in allocation of AFC between the thermal and hydel stations in the APR Order. Moreover, this is only a matter of allocation between thermal and hydel stations and it does not affect the total Annual Fixed Charges of TPC-G. As there is no error apparent on the face of record, the Commission rejects TPC-G’s request for review of the Commission’s APR Order in this regard. However, in case TPC-G submits the actual cost details of thermal and hydel generating stations separately for FY 2008-09 along with supporting information during the truing up process, the Commission may consider the same at the time of truing up.



b) **Allocation of AFC of Hydel to each Hydel Generating Stations**

TPC-G, in its Petition in Case No. 68 of 2007, in the matter of TPC-G's APR for FY 2007-08 and Tariff Determination for FY 2008-09 vide Para 7.2.2 and 7.2.3 submitted as under:

“7.2.1 Thermal- Station-wise Allocation

The total fixed charges for the thermal stations have been further segregated as required.

The allocation and the basis for the same is as given below:

Table 7-4: Annual Fixed Charge – FY 2008-09: Thermal Unit-Wise Allocation

Sr. No.	Particulars	Total Thermal	Rs. Crores					Remarks
			Unit 4	Unit 5	Unit 6	Unit 7	Unit 8	
1	O&M Charges	293	18	119	96	35	15	Allocated in Proportion of Gross Generation
3	Interest on Normative Debt	71	1	23	4	6	37	Computed based on Unit Wise Capex.
4	Interest on Working Capital & Security Deposit	117	19	21	61	4	12	
5	Depreciation & Related Debits	57	2	20	5	10	20	
6	Return on Equity	140	3	46	27	39	24	Equity allocated to Units based on GFA for FY04.
7	Income Tax	36	1	12	7	10	6	Allocated on basis of RoE
8	Gross Fixed Charges	704	44	241	199	105	115	
9	Less:Non Tariff Income	5	0	2	1	2	-	Allocated on basis of GFA
10	Net Fixed Charges	699	44	239	198	103	115	

“7.2.3 Hydro-Station-wise Allocation

The total fixed charges for the hydro stations have been further segregated station-wise. The allocation and the basis for the same is as given below: (emphasis added)

Table 7-5: Annual Fixed Charge – FY 2008-09: Hydro Station-Wise Allocation

Sr. No.	Particulars	Total Hydro	Rs. Crores			Remarks
			Bhira	Bhivpuri	Khopoli	
1	O&M Charges	75	26	19	30	
2	Interest and Finance Charges	-	-	-	-	Allocated on Basis of GFAs
3	Interest on Normative Debt	17	9	2	6	Computed based on Unit Wise Capex.
4	Interest on Working Capital & Security	5	2	1	2	Allocated on the Basis of Annual Fixed before Working capital Interest
5	Depreciation & Related Debits	33	11	9	13	
6	Return on Equity	59	22	17	21	Equity allocated to Units based on GFA
7	Income Tax	15	6	4	5	Allocated on Basis of ROEs
8	Gross Fixed Charges	204	76	52	77	
9	Less:Non Tariff Income	2	1	0	1	Allocated on the basis of GFAs
10	Net Fixed Charges	203	75	51	76	



As observed from the above, TPC-G has not submitted any basis in its APR Petition for segregating the Operation and Maintenance (O&M) expenses of Hydro stations between the stations. Accordingly, the Commission has considered the allocation of O&M expenses on the basis of the gross generation as approved in its Order in Case No. 68 of 2007 in the matter of TPC-G's APR for FY 2007-08 and Tariff Determination for FY 2008-09. However, allocation of the O&M expenses of hydro business across each hydro station has been inadvertently mentioned incorrectly, which has been corrected considering the gross generation as approved for FY 2008-09 in the APR Order. The summary of the revised AFC as approved in this Order for hydro stations is shown in the Table below:

Rs Crore

Particulars	Hydel	Bhira	Bhivpuri	Khopoli
TPC-G	202.78	75.19	51.42	76.16
APR Order	144.79	46.81	34.13	63.85
Revised AFC for FY 2008-09 as approved in this Order	144.79	68.65	35.68	47.04

11. Accordingly, the Table under Para 5.18 on Page No. 75 of the Order, which gives the Station-wise/Unit-wise AFC as approved by the Commission for thermal and hydro power plants, should be read as under:

Table: Station-wise/Unit-wise Annual Fixed Charges (Rs Crore)

	Unit 4	Unit 5	Unit 6	Unit 7	Bhira	Bhivpuri	Khopoli	Total
O&M Charges	16.91	127.55	105.04	38.49	26.29	7.24	7.09	328.62
Interest on Debt	0.88	15.24	2.36	4.02	5.96	1.04	4.19	33.68
Interest on Working Capital	10.64	21.72	58.51	3.79	1.42	1.08	1.99	99.15
Depreciation	1.60	17.44	4.07	9.07	9.80	7.55	11.20	60.72
ROE	3.04	41.84	24.06	35.12	19.74	15.03	18.61	157.44
Income Tax	0.88	12.05	6.93	10.11	5.69	4.33	5.36	45.34
Less: Non Tariff Income	0.19	2.75	1.48	2.36	0.75	0.58	0.89	9.00
AFC for FY 2008-09	33.75	233.08	199.50	98.24	68.65	35.68	47.04	715.94
Provisional Truing up for FY 08	(1.47)	(10.13)	(8.67)	(4.27)	(2.98)	(1.55)	(2.04)	(31.12)
Net AFC for FY 2008-09	32.29	222.95	190.83	93.97	65.67	34.13	45.00	684.83

12. TPC-G may submit the details of the various cost elements separately for thermal and hydel stations at the time of truing up during the APR for FY 2008-09 and Tariff for FY 2009-10. Based on the details submitted by TPC-G, the Commission may consider the revision of the allocation of the AFC between thermal and hydel stations.



With this Order, the Commission disposes off TPC-G's Petition in Case No. 29 of 2008.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(Prafulla S. Varhade)
Secretary, MERC