IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 8 of 2018

Dated: 03.11.2026

Present: Hon'ble Mr. Virender Bhat, Judicial Member
Hon'ble Mr. Ajay Talegaonkar, Technical Member

IN THE MATTER OF:

The Tata Power Company Limited
Bombay House,
Homi Modi Street, Fort,
Mumbai – 400 001. **…Appellant**

Versus

Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No. 1
13th Floor, Cuffe Parade,
Mumbai – 400 005. **…Respondent**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Amit Kapur

Counsel for the Respondent(s) : Ms. Pratiti Rungta

JUDGEMENT

PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER

Background and Factual Matrix

1. This Appeal has been filed by The Tata Power Company Limited (Transmission) ("TPC-T"/ "Appellant") challenging the Tariff Order dated 30.06.2016 passed by the Maharashtra Electricity Regulatory Commission

("MERC"/ "Respondent"/ "State Commission") in Case No. 22 of 2016 and the Review Order dated 19.07.2017 in Case No. 110 of 2016, to the extent of disallowance of capitalisation for the IXORA Sub-station and eight bays at Parel, and Operation and Maintenance ("O&M") expenses of unutilised bays.

2. The Appellant was granted a licence on 14.08.2014 by MERC for transmission lines and Receiving Stations in and outside Mumbai, Maharashtra for 25 years commencing from 16.08.2014.

3. On 02.02.2016, TPC-T filed its petition seeking truing-up of ARR for FY 2014-15, provisional truing-up for FY 2015-16 and approval of ARR for the third Control Period from FY 2016-17 to FY 2019-20. MERC passed the Impugned Tariff Order on 30.06.2016. TPC-T thereafter sought review in Case No. 110 of 2016 which was disposed of on 19.07.2017.

4. The disputed claims concern capitalisation and O&M expenditure governed by the MERC Multi Year Tariff Regulations, 2011 ("MERC MYT Regulations, 2011"). IXORA Construction Pvt. Ltd. ("IXORA"), subsequently renamed Nidar Utilities Panvel LLP ("NUPLLP") was the co-developer providing infrastructure facilities in the Multi Services Special Economic Zone ("SEZ") at Panvel and a deemed distribution licensee. On 23.07.2010, IXORA requested transmission connectivity from TPC-T, indicating an anticipated Phase-I load of approximately 45 MW by 2015. On 07.03.2011, it appointed TPC-T as consultant for providing EHV connectivity.

5. The State Transmission Utility ("STU") approved the DPR for the 110/33 kV IXORA Receiving Station on 14.12.2011, followed by MERC's in-principle approval dated 16.03.2012 at an estimated cost of ₹ 34.30 Crores. The project

was intended to meet the immediate and long-term requirements of IXORA SEZ, improve reliability of supply and provide feeder outlets to other distribution licensees including MSEDCL.

6. Development of the SEZ stopped in May 2013, and IXORA did not develop its distribution network for taking HT outlets. On 16.12.2013, TPC-T requested the STU to advise MSEDCL regarding taking 33 kV outlets from the station. TPC-T reported completion of construction on 25.03.2014; the installation was tested on 31.03.2014 and inspected on 26.09.2014. Following submission of test reports and compliance, final charging permission was granted on 18.02.2015. On 30.05.2016, Hiranandani Communities informed TPC-T that the SEZ project had been acquired by Persipina Developers Pvt. Ltd. under the SARFAESI Act and that power flow was tentatively expected from 01.10.2016.

7. In its MTR Order dated 26.06.2015 in Case No. 5 of 2015, MERC disallowed capitalisation of ₹ 26.54 Crores towards the IXORA Sub-station for FY 2013-14 including the corresponding 35 bays on the ground that the asset had not been put to use.

8. The Parel scheme was approved by the STU on 27.10.2009 and received MERC's in-principle clearance on 13.05.2010. It is submitted by TPC-T that the scheme was intended to cater to BEST's load, facilitate shifting of its existing 22 kV load to 33 kV through the requested 21 outlets and meet anticipated load growth. Eight 33 kV AIS bays, involving capitalisation of ₹ 1.83 Crores were commissioned during FY 2014-15. By letter dated 15.04.2015, the STU communicated allocation of two bays to BEST and six to Tata Power-Distribution ("TPC-D"). The bays were kept charged pending interconnection.

9. MERC disallowed capitalisation of the IXORA and Parel assets under the proviso to Regulation 27.1 of the MERC MYT Regulations, 2011 on the ground that they had not been put to use.

10. It also disallowed O&M entitlement of ₹ 10.66 Crores for 91 unutilised bays for FY 2014-15.

11. Aggrieved by the above disallowance, the Appellant has prayed for the following relief before us:

> *"(a) Allow the Appeal;*
> *(b) Set aside the Impugned Order dated 30.06.2016 passed by Ld. Maharashtra Commission in Case No. 22 of 2016 on Truing up of ARR for FY 2014-15, Provisional Truing up for FY 2015-16 and approval of Aggregate Revenue Requirement for the MYT Third Control Period from FY 2016-17 to FY 2019-20 to the extent challenged hereinabove;*
> *(c) Set aside the Impugned Order dated 19.07.2017 passed by Ld. Maharashtra Commission in Case No. 110 of 2016 in Review Petition filed by the Appellant to the extent challenged hereinabove; and / or*
> *(d) Pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

Analysis and Conclusion

12. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondent at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, we note that the two issues for our consideration in the present Appeal can be identified as under:

i. Issue No. 1: Whether the State Commission was justified in disallowing capitalisation of the IXORA Sub-station and eight 33 kV AIS bays at Parel on the ground that the assets had not been put to use?
ii. Issue No. 2: Whether the State Commission was justified in disallowing O&M expenses of ₹ 10.66 Crores for 91 unutilised bays for FY 2014-15?

Issue No. 1: Whether the State Commission was justified in disallowing capitalisation of the IXORA Sub-station and eight 33 kV AIS bays at Parel on the ground that the assets had not been put to use?

Submissions of the Appellant, TPC-T

13. The Appellant submitted that the disputed capitalisation comprised ₹26.54 Crores for FY 2013-14 and ₹4.86 Crores for FY 2014-15 towards the IXORA Project, aggregating to ₹31.40 Crores and ₹1.83 Crores towards eight 33 kV bays at Parel.

14. The Appellant submitted that both projects were constructed at the specific request of the distribution licensees and after approval by the STU and MERC. Their charging and commissioning stood completed during FY 2014-15. Non-utilisation arose from the distribution licensees' failure to take outlets and was beyond TPC-T's control. It further submitted that during the final hearing on 07.07.2026, MERC admitted that any delay in commissioning was irrelevant since the distribution licensees would not have utilised the assets even had they been commissioned on time.

15. The Appellant contended that Regulation 27.1(a), read with its proviso, requires "put to use" in the context of transmission assets to be understood as

charging and commissioning. The proviso excludes an uncharged or uncommissioned asset or element forming part of a project; it does not authorise exclusion of a charged and commissioned project merely because the downstream licensee has not utilised it.

16. The Appellant submitted that consumer benefit had already been evaluated under MERC's "Guidelines for in-principle clearance of proposed investment scheme 2005" (Guidelines, 2005) when the projects were approved. The stipulation that in-principle clearance was not final approval for ARR purposes permitted scrutiny of the prudence of actual expenditure; it did not permit reconsideration of consumer benefit after implementation. Denial of capitalisation on that basis would strand assets constructed pursuant to the approvals.

17. Relying on Section 61(d) of the Electricity Act, 2003, the Appellant submitted that consumer protection must be balanced with reasonable recovery of electricity costs. A transmission asset can benefit consumers only when the upstream or downstream entities are ready. Their failure to utilise an approved and commissioned asset cannot be imposed upon the transmission licensee. It also referred to the STU's responsibility under Sections 39(2)(b) and (c) for planned and coordinated development of an efficient and economical intra-State transmission system.

18. The Appellant submitted that the MERC MYT Regulations, 2011 did not expressly address deemed commissioning where upstream or downstream entities were not ready. The second proviso to Regulation 3(12)(c) of the CERC Tariff Regulations, 2009 and the second proviso to Regulation 4(3) of the CERC Tariff Regulations, 2014 recognised commissioning where regular service was prevented for reasons not attributable to the transmission licensee. These principles ought to have guided MERC under Section 61(a) of the Act. Further,

Regulation 2.1(23) of MERC's MYT Regulations, 2015 expressly recognised such commissioning while Regulation 23.1 retained the capital-cost provision corresponding to Regulation 27.1 of the 2011 Regulations.

19. While responding to the objection of *res judicata*, the Appellant relied on ***Uttar Pradesh Power Corporation Ltd. v. National Thermal Power Corporation Ltd. & Ors., (2009) 6 SCC 235***, to submit that tariff determination is a continuous process and the earlier unchallenged disallowance did not bar consideration of its claim in the subsequent proceedings.

20. Regarding Parel sub-station, the Appellant explained that the bays had been commissioned and kept charged while outgoing cable connections were either under execution or yet to be executed. Since the distribution licensees had not intimated their utilisation dates, TPC-T could not specify when the bays would be used.

21. The Appellant also relied on MERC's subsequent Order dated 12.09.2019 in Case No. 204 of 2017. That order recorded absence of demand from NUPLLP in FY 2015-16 and absence of service to consumers up to FY 2017-18. Following approval of NUPLLP's PPA on 03.08.2018 and grant of grid connectivity by the STU, MERC considered the IXORA scheme for capitalisation in FY 2018-19 at a depreciated cost of ₹ 29.99 Crores against the claim of ₹ 36.66 Crores. Five of the eight Parel bays were similarly capitalised in subsequent years at depreciated cost upon utilisation.

22. The Appellant submitted that its responsibility ended with keeping the assets ready for use by the distribution licensees which it had done by commissioning the IXORA and Parel Projects. Once constructed and

commissioned pursuant to the STU's and MERC's approvals, these assets ought to be treated as deemed "put to use" where the upstream or downstream entities were not ready.

23. Finally, the Appellant contended that allowing capitalisation of unutilised GIS bays while denying capitalisation of AIS bays on the same ground rendered the impugned treatment contradictory.

Submissions of the Respondent, MERC

24. The State Commissions' Guidelines, 2005 prescribed a two-stage approval process; in-principle clearance followed by final approval during tariff determination or ARR review. The evaluation included consumer benefit, justification of investment, recurring costs and the results achieved. The licensee was required to implement the scheme according to the approved expenditure, capitalisation and utilisation plan.

25. The in-principle clearance expressly reserved scrutiny of actual expenditure, scope and objectives achieved after implementation. It also required TPC-T to report the completion date, actual cost, escalation with reasons and the extent to which the scheme's objectives had been achieved. Consequently, STU approval and in-principle clearance did not confer an unconditional entitlement to capitalisation.

26. The Commission relied on the proviso to Regulation 27.1 *"Provided that the assets forming part of the project but not put to use or not in use, shall be taken out of the capital cost."* It submitted that completion of erection or readiness for use could not be equated with being put to use where consumers received no benefit. The IXORA scheme was commissioned only in FY 2014-15 against the

approved completion by FY 2013, remained unutilised and had no certain utilisation date.

27. The Commission further submitted that its MTR Order dated 26.06.2015 had already disallowed ₹ 26.54 Crores towards IXORA, including 35 bays comprising eight bays above 66 kV and below 400 kV and twenty-seven bays of 33 kV and below. That order approved total capitalisation of ₹ 260.77 Crores against ₹ 311.08 Crores claimed, after disallowing, *inter alia*, ₹ 21.56 Crores towards land capitalisation and ₹ 26.54 Crores towards the unutilised sub-station. Since TPC-T did not challenge the IXORA disallowance, the State Commission contended that it had attained finality and the claim was barred by *res judicata*.

28. The State Commission relied on this Tribunal's judgment dated 06.09.2013 in ***Haryana Vidyut Prasaran Nigam Ltd. v. Haryana Electricity Regulatory Commission, Appeal No. 2 of 2013***, concerning servicing of capital deployed in assets commissioned and put to use and protection of consumers from return on unutilised assets. It also relied on ***PTC India Ltd. v. CERC, (2010) 4 SCC 603***, submitting that Regulation 27.1 had not been challenged and MERC was bound by its Regulations.

29. In response to reliance on the CERC Regulations, the Commission submitted that the provision used "may", rather than "shall", and therefore did not mandate approval of commercial operation before the element entered regular service. Such approval required scrutiny.

30. The State Commission defended the disallowance of ₹ 1.83 Crores for the eight Parel AIS bays on the same basis. The scheme had neither been completed

within the stipulated time nor achieved its intended benefits after erection; prior approval alone was insufficient to justify capitalisation.

Our Analysis and Conclusion

31. TPC-T is aggrieved that capitalisation towards certain assets was disallowed in FY 2013-14 and 2014-15. The order Impugned in the present appeal, relates, *inter-alia* to the FY 2014-15.

32. First, we would like to examine disallowance of capitalisation towards IXORA sub-station. The operative part of the Impugned Order regarding disallowance of capitalisation in case of IXORA sub-station is extracted below:

> *"4.3.19 As regards the capitalisation on this scheme, TPC-T has referred to the CERC Regulations and an ATE Judgment. However, the Commission notes that the assets have still not been put to use, and TPC-T has admitted that it cannot say when they would be. The proviso to Regulation 27.1 (quoted at para. 4.3.13 above) specifies that the project assets not put to use or not in use shall be removed from the capital cost.*
>
> *4.3.20 Hence, the Commission has not considered the capitalisation of Rs. 26.54 Crore for the 145 kV Receiving Sub-station at Panvel (Ixora, and no additional impact has been considered in FY 2013-14."*

33. It has been pointed that this capitalisation was claimed in 2013-14 also and MERC had disallowed the same vide order dated 26.06.2015 in Case No. 5 of 2015 on the ground that the asset was not put to use. We note that the final charging approval was granted by the Electrical Inspector only on 18.02.2015. Since TPC-T could not have charged the sub-station before approval of Electrical Inspector, the sub-station was ready for use only in FY 2014-15. Thus, in our opinion, the MERC was right in disallowing the capitalisation claimed for this sub-station for 2013-14 in its order dated 26.06.2015 in Case No. 5 of 2015, which preceded the Impugned Order. However, a thorough analysis of the information

available would have shown that the appropriate basis for rejecting the claim was that the sub-station was not yet ready for use and, therefore, the expenditure continued to be in the nature of capital work-in-progress, rather than that the sub-station had not been put to use.

34. Therefore, the only question that now needs to be examined is whether the same claim for capitalisation can also be rejected for 2014-15, the period covered by the Impugned Order.

35. Before proceeding further on the merits of the aforesaid and other claims of capitalisation during 2014-15, we would like to examine the contention of MERC that the Appellant's claim is barred by *res judicata* because the same had already been disallowed with the same reasoning in the MTR Order dated 26.06.2015, Case No. 5 of 2015, and this order remained unchallenged. First of all, we note that in the Impugned Order, MERC itself has not used the argument of *res judicata* as additional ground to disallow the claim of TPC-T in respect of IXORA sub-station. Further, in this context, we would like to refer to this Tribunal's judgment dated 13.01.2009 in ***Delhi Transco Ltd. v. Delhi Electricity Regulatory Commission & Ors., Appeal No. 133 of 2007***. In paragraph 15 thereof, this Tribunal recognised that "each assessment year of a tariff order gives rise to a fresh cause of action and can be challenged separately" and further held that the non-challenge to earlier tariff orders did not preclude examination of the treatment adopted in the subsequent tariff year. This judgement has attained finality as the Civil Appeal Nos. 5863-5864 of 2009 preferred against the said judgment were dismissed by the Hon'ble Supreme Court by order dated 16.02.2016.

36. Applying the aforesaid principle, the non-challenge to the disallowance made while truing-up FY 2013-14 cannot, by itself, foreclose examination of the

Appellant's entitlement for FY 2014-15 under the Impugned Order dated 30.06.2016.

37. In case of Parel sub-station, TPC-T has claimed that the 8 bays of the sub-station with capital cost of ₹ 1.83 Cr were commissioned in 2014-15. STU had allocated 6 bays to TPC-D and 2 bays to BEST. TPC-T has admitted that these bays could not be used in FY 2014-15 since downstream system of TPC-D and BEST were not ready. In this case also, the capitalisation was disallowed by the MERC on the ground that these bays have been idle since their commissioning in FY 2014-15.

38. The Regulation 27.1 of the MERC MYT Regulations, 2011 is extracted below for ready reference:

> *"27.1 Capital cost for a project shall include :*
> *(a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation on the loan during construction up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;*
> *(b) capitalized initial spares subject to the ceiling rates specified in this Regulations; and*
> *(c) additional capital expenditure determined under Regulation 28'*
>
> *Provided that the assets forming part of the project but not put to use or not in use, shall be taken out of the capital cost."*

39. MERC has disallowed capitalisation in case of IXORA sub-station and 8 bays at Parel sub-station on the basis of proviso to the above extracted Regulation 27.1. MERC has disregarded the contention of TPC-T that non-

utilisation of assets is attributable to entities concerned, which had failed to construct their outlets, and that non-utilisation is beyond the control of TPC-T.

40. We are of the opinion that there is clearly a void in the regulations of MERC which do not provide for a commonly encountered situation, particularly in case of transmission system that though the system may be ready for use, it may not get used because the upstream or downstream systems to be constructed by other entities are not ready. Rather than rejecting the claim for capitalisation of such assets on this technical ground, MERC should have attempted to fill the gap in the Regulations with a view to ensure fairness and justice.

41. As pointed out by TPC-T, CERC had issued Tariff Regulations, 2009 for the period of 2009-2014, which *inter-alia* provided for payment of transmission charges from the date of commercial operation, and the date of commercial operation, 3 (12) (c) was defined as follows:

> *"(12)* ***'date of commercial operation' or 'COD'*** *means*
>
> *…*
>
> *(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:*
>
> *Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:*
>
> *Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service."*

42. Thus, it is clear that CERC Regulations envisaged declaration of commercial operation and hence recovery of transmission charges by the

transmission licensee even if the asset could not be put to use for the reasons not attributable to the transmission licensee.

43. Section 61 of the Electricity Act, 2003 provides that an Appropriate Commission while specifying the terms and conditions for the determination of tariff shall *inter-alia* be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees. Since the definition of date of commercial operation ("DOCO") specified in the CERC Regulations was already available for reference, it was expected that MERC would have adopted the same suitably in their MYT Regulations. However, it is noted that such provision is reflected neither in Regulation 27.1 nor in the definition of the DOCO in the MERC MYT Regulations. Intriguingly, in the MERC MYT Regulations, 2011, the DOCO is defined only for thermal and hydro generating stations, and these Regulations are totally silent about DOCO of transmission systems.

44. The fundamental principles of fairness and justice also require that an entity which has completed the work entrusted to it should not be penalised by way of denial of capitalisation of asset (which in turn will lead to non-recovery of transmission charges) merely because other entities have failed to perform the tasks assigned to them. In ***Nuclear Power Corporation of India Ltd. v. Central Electricity Regulatory Commission & Ors., Appeal No. 332 of 2016***, decided on 18.01.2019, and in subsequent judgments, this Tribunal has recognised the principle that, in the absence of specific provisions in the applicable Regulations, the entity responsible for the delay preventing a commissioned transmission system developed through the TBCB route from being put to use is liable to pay the transmission charges for the corresponding period. This principle has also been considered by the Hon'ble Supreme Court in ***Power Grid Corporation of***

India Ltd. v. Madhya Pradesh Power Transmission Company Ltd., (2025) 8 SCC 705.

45. Applying the underlying principle of fairness to the present case, the mere fact that the asset in question was not put to use cannot, by itself, justify denial of capitalisation as the asset was ready for use, since such non-utilisation was alleged to be attributable to the failure of IXORA and Discoms concerned to complete the associated works. In the circumstances, we have come to the conclusion that the MERC erred in disallowing capitalisation solely on the ground that the assets were not put to use, without analysing as to whether other entities were responsible for the situation.

46. It is admitted position that TPC-T had constructed sub-station at Panvel on the request of IXORA. Also, out of 8 bays at Parel sub-station, STU had allocated 6 bays to TPC-D and 2 bays to BEST. The construction of these assets was started by TCT-T after validation and verification of Detailed Project Report (DPR) by STU and in-principal approval of MERC. It appears that the entities responsible for downstream assets could not complete construction of their systems in time, which lead to non-utilisation of the assets constructed by TPC-T.

47. Further, there is need to examine as to whether STU had performed its duties. In accordance with the Section 39 of the Electricity Act, 2003, it is a function of STU to discharge all functions of planning and coordination relating to intra-state system and to ensure development of efficient network and intra-state transmission line. Prima facie, it appears that the STU failed to coordinate with all the entities involve to avoid mismatch in commissioning of the relevant assets.

48. It is clear from the Impugned Order that the aspects mentioned in the preceding two paragraphs were not examined by the MERC.

49. In their submission, MERC has brought forward additional grounds to support their decision in the Impugned Order:

(i) The in-principle approval itself mentioned that it is not final approval for ARR purpose and that the scheme will be open for scrutiny during tariff determination process. The extract of such in-principle approval is extracted below:

> *" 2. Please note that this in-principle clearance should not be construed as final approval for ARR purpose and the Scheme will be open for scrutiny during the tariff determination process/ARR review, particularly in the context of actual cost incurred, scope and objective achieved etc. ex post after implementation of the scheme. TPC will be required to submit the status of implementation of the scheme with cost incurred till date likely completion date etc along with their ARR petition or during the tariff determination process at the appropriate time.*
>
> *….4. Immediately after completion/commissioning of the Scheme. TPC should communicate to the Commission the date of completion of the Scheme, actual cost incurred, escalation in cost, if any with reasons, the scope and objectives of the Scheme and to what extent they have been achieved etc so as to facilitate a comparison between the in-principle clearance and the actuals."*

(ii) The objective of the scheme was not achieved as the consumers were not benefitted.

50. We are not persuaded by these arguments. It is evident that the purpose of the in-principle clearance was to authorise TPC-T to proceed with the construction of the asset. Since cost is a key consideration at the ARR stage, the final approval at that stage was intended, *inter alia*, to compare the actual cost of completion with the approved cost and to undertake a prudence check. The interpretation advanced by the State Commission could result in the denial of the entire cost

incurred, rather than merely subjecting such cost to a prudence check. Such an interpretation would undermine regulatory certainty and could adversely affect future investment by transmission licensees.

51. Similarly, the review of the scheme upon its completion, including an assessment of the extent to which its objectives had been achieved, was, perhaps, intended to inform future action and improve the planning and implementation of similar schemes. Such a review cannot be used as a ground to deny transmission charges merely because the objectives of the scheme have not been fully or partly achieved. What is material is that the scheme was entrusted to the transmission licensee for implementation and that the licensee duly completed the work assigned to it. Section 61 of the Electricity Act, 2003, requires the Appropriate Commission, while specifying the terms and conditions for determination of tariff, to be guided not only by the need to safeguard consumer interests but also by the need to ensure recovery of the cost of electricity in a reasonable manner, and to ensure that the activities of generation, transmission, distribution and supply of electricity are conducted on commercial principles.

52. The reliance of MERC on judgment dated 06.09.2013 of this Tribunal in ***Haryana Vidyut Prasaran Nigam Limited v Haryana Electricity Regulatory Commission, Appeal No. 02 of 2013*** is misplaced. That judgement dealt with capital works which were in progress and had not been completed, whereas in the present case assets were completed and were ready for charging.

53. In view of the foregoing, we are of the opinion that the MERC has erred in disallowing the capitalisation of assets at IXORA sub-station and 8 bays at Parel sub-station for the FY 2014-15 without analysing the extent to which other entities

were responsible for such a situation. Accordingly, the expenditure disallowed in 2013-14 and 2014-15 in respect of IXORA sub-station shall be allowed with effect from the date on which final charging permission was granted by the Electrical Inspector. In respect of 8 bays at Parel sub-station, the capitalisation shall be allowed from their date of charging. Further, we remand the matter to the MERC for undertaking an analysis as to which entities were responsible for non-utilisation of the aforesaid assets and accordingly fix liability to pay transmission charges. Needless to add that these proceedings shall be carried out in accordance with law, after following due process and affording the concerned parties an opportunity of hearing. The MERC shall pass a reasoned order based on such analysis.

Issue No. 2: Whether the State Commission was justified in disallowing O&M expenses of ₹ 10.66 Crores for 91 unutilised bays for FY 2014-15?

Submissions of the Appellant, TPC-T

54. The Appellant submitted that the 91 bays were kept charged and maintained in readiness for use when the upstream or downstream facilities became available. The expenditure incurred to maintain these assets ought therefore to be allowed.

55. It further pointed out that O&M had been denied for both AIS and GIS bays despite capitalisation having been allowed for the latter. Further, MERC's MYT Regulations do not provide for denial for O&M expenses merely because transmission assets are not 'put to use'.

Submissions of the Respondent, MERC

56. The State Commission submitted that O&M entitlement of ₹10.66 Crores was disallowed for 91 bays, comprising 57 bays not put to use, including 35 bays at the IXORA Sub-station and 34 bays which had been capitalised but remained unutilised by the beneficiaries.

57. Answering the Appellant's objection regarding different treatment of GIS and AIS bays, the State Commission submitted that capitalisation of unutilised GIS bays had been consciously allowed after considering the technical difficulties associated with their erection and subsequent extension. Switchgear was of a standardised design accommodating a particular number of bays which could exceed immediate requirements. Providing additional GIS bays avoided cumbersome future extensions and additional capital expenditure. Land constraints in Mumbai were also considered since failure to acquire land when available could affect establishment of Receiving Stations in future.

58. The State Commission further referred to TPC-T's explanation that unoccupied bays constituted approximately 4% of the total and were necessary for long-term transmission planning to ensure that power off-take was not delayed. These considerations justified allowing capitalisation of GIS bays despite non-utilisation. The Commission therefore denied that it had adopted a pick-and-choose approach and submitted that disallowance of capitalisation of unutilised assets particularly AIS switchgear, had been applied across utilities.

59. Regarding the 34 capitalised bays, the Commission submitted that the proposal to construct bays exceeding immediate requirements had not been disclosed at the in-principle approval stage. The difficulties concerning their construction and utilisation were presented only after completion, while claiming

ARR. Had the excess provision been disclosed earlier, the Commission could have disallowed it at the in-principle approval stage.

60. The State Commission submitted that in paragraph 4.3.22 of the Impugned Order, MERC has taken note of 108 unutilised bays with an aggregate cost of ₹49.18 Crores, commissioned between 2011 and 2016. It submitted that O&M expenses on bays erected long ago but remaining unutilised could not be allowed, particularly in the absence of a utilisation plan.

61. The Commission contended that passing through capital cost and corresponding O&M expenditure without any benefit accruing to consumers would increase tariff and burden consumers. It had adopted the same approach towards O&M charges for unutilised bays of other transmission licensees.

Our Analysis and Conclusion

62. TPC-T is aggrieved by the fact that MERC has disallowed O&M expenses for 91 bays. TPC-T has mentioned that out of these 91 bays, 57 bays were not capitalized (which included 35 bays at IXORA sub-station) and 34 bays were capitalized but were unused by the beneficiaries.

63. TPC-T has contended that O&M expenses should be allowed even in respect of assets that have not been capitalized, on the ground that the MERC MYT Regulations, 2011 contain no express provision prohibiting such allowance.

64. We are unable to accept this contention. It is no doubt true that certain activities may require expenditure even in respect of works in progress, such as patrolling an unfinished transmission line to prevent theft, deploying manpower for the security of a sub-station, and monitoring the execution of works. However, expenditure incurred on such activities prior on such incomplete assets forms part

of the expenditure incurred up to date of commercial operation [Regulation 27.1 (a)] and is required to be capitalized. The absence of an express provision prohibiting the allowance of such expenditure as O&M expenses does not justify its separate recovery under that head when it is attributable to the construction phase.

65. The position is different once the assets are ready for charging and have been put under commercial operation. From that stage onwards, the assets qualify for consideration as commercially operational assets, and the admissible O&M expenses form part of the costs recoverable through transmission charges in accordance with the applicable Tariff Regulations. Accordingly, where assets have been put under commercial operation but remain unutilized for reasons not attributable to the transmission licensee, the licensee cannot be denied recovery of admissible O&M expenses merely because the assets are not being put to actual use. The rationale for allowing O&M expenses of such assets is on same lines as for allowing capitalisation, as concluded by us under Issue No. 1.

66. We find no merit in the MERC's submission that, had the Appellant disclosed at the stage of seeking in-principle approval that it proposed to install more bays than were required, the Commission could have disallowed the excess bays.

67. The MERC, while considering the capitalisation claim, was required to examine all relevant facts and circumstances, including the status of the bays and the reasons for their non-utilisation, and to determine the claim in accordance with the applicable Regulations. It cannot now seek to justify the denial of O&M expenses on the ground that capitalisation might not have been allowed had the position regarding non-utilisation been known to it earlier. As already held by us, non-utilisation of an asset, by itself, does not justify denial of capitalisation where

the asset is otherwise eligible for capitalisation, nor does it justify denial of O&M expenses once the asset has been put under commercial operation. The relevant question is whether the bays satisfy the applicable requirements for capitalisation and recovery of O&M expenses, and not whether they were actually being utilized.

68. The contention of MERC that similar treatment has been accorded to the assets of other licensees is of no consequence. In the present case, TPC-T has challenged the disallowance of O&M expenses, and we have allowed the appeal on this issue on its merits. The treatment accorded to other licensees cannot, by itself, justify sustaining the impugned disallowance.

69. In view of the foregoing analysis, we remand this issue also to the MERC for reconsideration. The MERC shall first undertake the analysis directed by us under Issue No. 1 and determine as to which of the entities were responsible for non-utilisation of the aforesaid assets and accordingly fix liability to pay transmission charges of the assets in question. The transmission charges will obviously include O&M expenses in accordance with the applicable Regulation, in respect of those assets. As regards the 34 bays that had already been capitalized, admissible transmission charges including O&M expenses shall be allowed in accordance with the applicable Regulations.

ORDER

For the foregoing reasons as stated above, the captioned Appeal No. 8 of 2018 is partly allowed. The Impugned Order dated 30.06.2016 passed by MERC in Case No. 22 of 2016 and Review Order dated 19.07.2017 in Case No. 110 of 2016 are set aside to the extent indicated below.

We uphold MERC's decision to disallow the capitalisation of ₹ 26.54 Crores of the IXORA Sub-station for FY 2013-14. However, we allow the capitalisation of the entire expenditure of ₹31.40 Crores for the aforesaid sub-station for the FY 2014-15 with effect from the date when final charging permission was granted by the Electrical Inspector. Capitalisation of the eight bays at Parel also stands allowed from their date of actual charging.

The matter is remanded to MERC to determine the responsibility for non-utilisation of the assets and fix liability for payment of transmission charges, including admissible O&M expenses.

Admissible transmission charges, including O&M expenses, for the 34 bays already capitalised shall also be allowed in accordance with the applicable Regulations.

PRONOUNCED IN THE OPEN COURT ON THIS 3rd DAY OF NOVEMBER, 2026.

(Ajay Talegaonkar)
Technical Member

(Virender Bhat)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~

kns/mg/mkj/kks