

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 106 of 2015**

**In the matter of**  
**Petition of Reliance Infrastructure Ltd. (Distribution) for review of the Mid-Term**  
**Review Order dated 26 June, 2015 in Case No. 4 of 2015**

**Coram**

**Shri. Azeez M. Khan, Member**  
**Shri. Deepak Lad, Member**

Reliance Infrastructure Ltd.

....Petitioner

**Appearance**

For the Petitioner:

Shri. Vivek Mishra (Rep.)

**ORDER**

**Date: 29 January, 2016**

M/s Reliance Infrastructure Ltd. (Distribution Business) (RInfra-D) has filed a Petition on 5 August, 2015 under Section 94 (1) (f) of the Electricity Act (EA), 2003 for review of the Commission's Order dated 26 June, 2015 in Case No. 4 of 2015 ('the Impugned Order') on the Mid-Term Review (MTR) of Multi Year Tariff (MYT) Second Control Period, including truing up of FY 2012-13 and FY 2013-14, provisional truing up of FY 2014-15, and revised Aggregate Revenue Requirement (ARR) and tariff for FY 2015-16.

**2.** RInfra-D's prayers are as follows:

“

- a. *Review the order dated 26.06.2015 passed in Case No. 4 of 2015 and consider the issues addressed in paragraph 2 hereinabove;*
- b. *That this Hon'ble Commission be pleased to consider the actual T<>D metered energy for the purpose of computation of distribution losses, instead of deriving the same through reverse computation by grossing down the energy at G<>T interface;*
- c. *That this Hon'ble Commission be pleased to re-determine actual distribution losses of RInfra-D system for FY 2012-13 based on MSLDC certification of T<>D interface drawal of RInfra-D and re-compute the efficiency loss / gain thereon;*
- d. *That this Hon'ble Commission be pleased to allow RInfra-D to recover the adjustment, from consumers through the FAC mechanism, in order to prevent unnecessary accumulation of carrying cost on the same... ”*

**3.** The Petition states as follows:

- 3.1. The limited issue for review is regarding the computation of higher Distribution Loss for FY 2012-13 and Efficiency Loss thereon.
- 3.2. RInfra-D's Petition in Case No. 4 of 2015, submitted on February 13, 2015, contained the actual cost, revenue and performance data for FY 2012-13 and FY 2013-14, the estimated actuals of FY 2014-15 and the revised cost projections for FY 2015-16. On that basis, revised Tariffs and Charges for FY 2015-16 were proposed by RInfra-D.
- 3.3. That Petition contained specific submissions on the issue of Transmission Losses for FY 2012-13 and FY 2013-14 explaining why these, as derived by RInfra-D, are different from what was stated by the Maharashtra State Load Despatch Centre (MSLDC). The Petition contains detailed reconciliation of source-wise energy, T<>D interface energy, change-over consumption and Imbalance Pool increment/decrement between RInfra-D and MSLDC. Item-wise explanations of differences were provided in the reconciliation. It was also clearly stated that the difference in the Transmission Losses cited by RInfra-D and MSLDC is because the MSLDC statements of the Final Balancing and Settlement Mechanism (FBSM) are only provisional and that, when they are finalized, all source-wise differences would be reconciled and the Transmission Losses so computed would then match those determined by MSLDC.
- 3.4. During the course of proceedings in Case No. 4 of 2015, the Commission enquired about various issues and related data gaps, which were provided by RInfra-D. At the meeting held on March 16, 2015 in the Commission's office, RInfra-D representatives submitted that Transmission Losses shown in the Petition for FY 2012-13 and FY 2013-14 are as "derived" by RInfra-D considering its actual metered T<>D interface

and the actual purchase of energy, as per the bills raised by the Generators and considering the provisional Imbalance Pool increment as shown in the MSLDC bills. It was explained that the Transmission Loss difference is because the Imbalance Pool quantum shown in the MSLDC provisional bills is incorrect due to issues with MSLDC's accounting of source-wise energy, change-over consumption (considered by MSLDC on schedule basis as against actuals), RE (which is also considered in the provisional bills as per schedule instead of actual), etc. RInfra-D officers also stated that these differences will get reconciled after finalization of FBSM bills by MSLDC. No further explanation on this matter was sought by the Commission's office, and consequently no written response was submitted by RInfra-D.

- 3.5. In the Impugned Order, there is no mention of the reconciliation statement, which was submitted in the Petition, nor is there any deliberation on it. Further, in the Impugned Order, the Commission has "derived" the input energy at T<>D interface by working backwards from energy at the G<>T interface and Transmission Losses as reported by MSLDC. In the process, the T<>D energy so derived by the Commission is much more than the actual metered T<>D energy reported by RInfra-D in its Petition, thereby increasing the Distribution Losses.
- 3.6. The Distribution Losses so computed by the Commission are then compared with the approved Distribution Losses in the MYT Order, and Efficiency Loss of approximately Rs. 38 crore has been determined for FY 2012-13, and reduced from the ARR of RInfra-D for FY 2012-13.
- 3.7. A similar issue arose during the provisional truing-up of FY 2010-11 (Case No. 126 of 2011), and thereafter during truing-up of FY 2011-12 as well. During the truing-up of FY 2010-11, the Commission enquired about the difference between Transmission Losses derived by RInfra-D and those reported by MSLDC. RInfra-D had provided a similar reconciliation statement explaining the source-wise difference in energy between RInfra-D and MSLDC. The explanation was accepted by the Commission, and actual T<>D interface energy as metered was taken by the Commission for computation of the Distribution Loss.
- 3.8. During the final true-up of FY 2010-11 and FY 2011-12 (Case No. 124 of 2012), however, the Commission again considered the Transmission Losses as reported by MSLDC and reworked the energy at G<>T interface (purchased energy) of RInfra-D, ruling that RInfra-D had purchased excess energy. In its Order on these true-up petitions, the Commission disallowed the cost of "excess" energy so worked out by it, resulting in a disallowance of approximately Rs.50 crore. RInfra-D filed a Review

Petition on the issue (Case No. 69 of 2013). It explained that the difference in Transmission Loss arose only as a result of discrepancies in the provisional FBSM statements of MSLDC, which would get settled in future as the statements are gradually finalized by MSLDC and the additional credit / debit to/from the pool would be adjusted accordingly and passed on to consumers in the Fuel Adjustment Charge (FAC). In its Order on that Review Petition, the Commission accepted the arguments of RInfra-D and reversed its decision of disallowance of Power Purchase Cost.

- 3.9. At the time of assessment of actuals (during true-up stage), the actual losses in the network of a Distribution Licensee can only be determined as the difference between the energy input into and the energy output from the network, i.e., the difference between the energy as actually recorded at T<>D interface of the Licensee and the energy as recorded at consumer points of supply (including all consumers connected to the network).
- 3.10. In its Petition in Case No. 4 of 2015, RInfra-D had presented the actual metered energy at T<>D interface for FY 2012-13 as 10,313.36 MU (i.e., the Input Energy) and the actual Metered Energy at consumer points of supply as 9,335.13 MU (including own sales, change-over sales and OA sales). The difference was computed as Distribution Loss, which was 978.23 MU or about 9.485% of Input Energy.
- 3.11. The treatment of the migrated consumer consumption sales is as per the energy accounting methodology defined by the Commission in Case No. 50 of 2009. As per that methodology, the energy consumed by change-over consumers (as per meter readings) is grossed up by the wheeling losses of the RInfra network at HT and LT levels (to arrive at the energy requirement at RInfra-D's T<>D interface) and totaled. This total grossed up change-over energy at the T<>D interface corresponding to change-over consumers is then subtracted from the total T<>D recorded energy to determine net energy at T<>D interface attributable to the requirement of RInfra-D's own supply customers. This energy is then grossed up by Transmission Losses to determine the energy required to be purchased by RInfra-D for its own consumers.
- 3.12. For arriving at the requirement of each Distribution Licensee at the G<>T interface as described above for (n+1)<sup>th</sup> day, MSLDC considers the actual "Transmission Loss" of the previous one year (or for whichever latest period actuals are available) as the difference between the actual G<>T net purchase (net of sale or banking) and the actual T<>D drawal by all Distribution Licensees put together in that period. Because Maharashtra follows State-wide Merit Order Despatch, the total G<>T requirement of all Distribution Licensees put together arrived in this manner is then compared with the

total supply side (long-term, medium-term, and short-term contracts) to work out the Day-Ahead Generation Demand-balanced Schedule for the State as a whole. The MSLDC does this exercise on a daily basis.

3.13. However, during actual operation on any given day, there are mismatches between forecast demand and supply and that actually realized, causing Imbalance between demand and supply for all Distribution Licensees. This Imbalance, for each Distribution Licensee, is reflected as an increment or decrement from the State Imbalance Pool. This exercise of determination of the G<>T requirement of each Licensee and thereafter the computation of the Imbalance quantum for each is mathematically represented as shown below:

*Ex-post (determination of Imbalance Pool increment / decrement) for RInfra-D*

- Actual G<>T interface requirement for D1 = (Actual metered T<>D drawal of RInfra-D – Change-over consumption) / [1-Tx loss% determined ex-ante, as explained above]
- Imbalance by D1 = (Actual G<>T interface Purchase by D1 – Sale of Surplus) – (Actual G<>T interface requirement for D1 as determined above)

3.14. The above mechanism makes the following clear about Transmission Losses, imbalance pool accounting and Distribution Losses:

- a) The above computation of Transmission Losses and imbalance pool quantum has no relevance to Distribution Losses, which are only dependent on the actual T<>D interface drawal and the actual consumption of consumers;
- b) The Imbalance Pool computation of RInfra-D depends on the following variables –
  - (1) T<>D interface drawal,
  - (2) change-over consumption,
  - (3) G<>T interface injection, including Renewable Energy (RE) power.

Hence, differences in these readings as considered by MSLDC at the provisional bill stage and actuals as per the Distribution Licensee's meter reading (or actual billing of RE power by Generators to Distribution Licensee), would make the Imbalance quantum as appearing in provisional bills incorrect. This is important in order to

understand the differences between the data presented by the Distribution Licensee at the time of true-up and the data as considered by the MSLDC for energy accounting in its provisional bills.

3.15. In FY 2011-12, the Interim Balancing and Settlement Mechanism (IBSM) was in vogue till July, 2011 whereas, from August, 2011 onwards, the FBSM was implemented by MSLDC. The transition to FBSM entailed a large amount of data, communication procedures, AMR and other metering infrastructure and software for computation and analysis. However, even though MSLDC was not ready with all the systems and infrastructure required for FBSM billing, the system was implemented from August, 2011.

3.16. Considering the non-availability of metering infrastructure and data submission modalities (essential requirements under FBSM), it was decided that MSLDC would issue provisional energy accounting bills. These would be validated by the Utilities and the required changes incorporated in subsequent revisions to the bills. Differences between Utility data and MSLDC provisional Imbalance data arise for the following reasons:

- a) meter reading differences at G<>T and T<>D interfaces;
- b) communication issues with meters;
- c) MSLDC considering scheduled RE instead of actual;
- d) MSLDC considering change-over and Open Access (OA) energy as scheduled, instead of actual meter readings;
- e) Software issues with FBSM scheduling software, etc.

3.17. These differences get settled over time as MSLDC revises its FBSM bills from provisional to final. Presently, provisional bills up to September, 2012 have been revised to final, and the remaining are under process. As these bills get revised and changes are incorporated by MSLDC, the energy at various interface points undergoes change and additional credit from or debit to the Pool is then reflected in the bill, and the receivable or payable thereon is passed on in FAC. Thus, the adjustments on account of bill revision by MSLDC are advised by MSLDC in due course and reflected in the respective months' FAC accordingly.

3.18. The difference in Transmission Losses between RInfra-D's derivation and MSLDC's computation is a result of the issues with FBSM. For any year, this gets sorted out gradually as bills are revised by MSLDC. The impact of revision in bills is reflected in changes in the Imbalance Pool quantum and, consequently, any payables or receivables

by a Distribution Licensee are then reflected in such months' FAC whenever the change is advised by MSLDC.

- 3.19. In the Impugned Order, the Commission has, apparently, considered the source-wise energy as per RInfra-D's submission, including Imbalance Pool quantum as per MSLDC's provisional bills, and has then worked backwards by considering Transmission Losses of 4.17% to arrive at a theoretical quantum at T<>D interface attributable to RInfra-D. From this energy, the energy requirement of change-over and OA consumers is then added to determine total T<>D interface energy of 10,399.59 MU. The T<>D interface energy is actual and metered. At the truing-up stage, only actual metered energy has to be accepted, instead of deriving a theoretical quantum. Losses in a distribution system are only dependent on input and output energy of such system and have no relation with Transmission Losses. Transmission Losses cannot be used to theoretically determine the Energy Input to a distribution system, when the same is metered and actual energy is available as recorded.
- 3.20. Pursuant to the Commission's Impugned Order, RInfra-D requested MSLDC to provide it with its actual T<>D interface energy for FY 2012-13. In response, MSLDC has provided a Certificate of T<>D interface drawal for RInfra-D for FY 2012-13 to FY 2014-15. The Certificate clearly demonstrates that the actual T<>D interface drawal of RInfra-D for FY 2012-13 is 10,313.32 MU as against 10,399.59 MU derived in the Impugned Order.
- 3.21. Thus, it will be seen that, when the Imbalance Pool quantum of RInfra-D gets fully adjusted as a result of gradual changes in MSLDC bills, the Transmission Losses as computed between T<>D drawal attributable to RInfra-D and the G<>T interface energy of RInfra-D would also match the Transmission Losses computed by MSLDC for the State. The finalization of bills is completed up to September, 2012 and the additional debit/credit so advised by MSLDC has been passed on in FAC. Further, as bills for the period from November, 2012 to March, 2013 are finalized by MSLDC, additional debit / credit will be passed on to consumers in subsequent months' FAC.
- 3.22. The difference in Transmission Loss numbers only arises as a result of the timing difference between when RInfra-D closes its accounts with provisional FBSM figures and when MSLDC finalises its FBSM statements. In any event, since the energy as recorded at the T<>D interface of RInfra-D is 10,313.32 MU, as also certified by MSLDC, the Commission may consider the same for measuring the Distribution Losses of RInfra-D and re-determine the Efficiency Loss for FY 2012-13.

4. At the hearing on 21 October, 2015, RInfra-D made a presentation, and reiterated its contentions regarding the methodology adopted by the Commission while computing Distribution Losses at the time of truing up of FY 2012-13. It requested the Commission to review and re-compute Distribution Losses for FY 2012-13 based on MSLDC certification of T<>D interface drawal of RInfra-D, and the Efficiency Loss/gain thereon. RInfra-D submitted that the Commission has applied a methodology for computation of Distribution Losses different from that applied to other Distribution Licensees, and from that adopted in the past. In any event, the methodology is not correct. The deviation from the standard methodology constitutes an error apparent justifying review of the Impugned Order. Moreover, the Commission did not explain why it followed a different approach, nor did it address RInfra-D's submissions. In Case No. 69 of 2013, the Commission had reviewed an earlier Order on the same grounds (though the issue there was somewhat different).
5. In its additional submission dated 26 October, 2015, RInfra-D elaborated its claim that the Petition met the requirements for review as follows:

- 5.1. Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 specifies as follows:

*“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.”*

- 5.2. Thus, an Order can be reviewed in the following circumstances:

- a) New and important matter or evidence which, after exercise of due diligence, was not within the knowledge or could not be produced by the Petitioner when the Order was passed;
- b) Mistake or Error apparent on the face of record;
- c) Any other sufficient reasons in the nature of (a) and (b) above.



New or important information or evidence, which could not be presented when the Impugned Order was passed:

- 5.3. The Certificate of Energy Input from MSLDC was not available when the Impugned Order in Case No. 4 of 2015 was passed. Even though the actual metered reading of 10,313.3 MU at T<>D interface was provided by RInfra-D in its Petition in that Case, the evidence to back it from MSLDC, i.e., the Energy Input Certificate, could not be produced at that time because providing such a Certificate is not the regular practice of MSLDC. A request was made by RInfra to MSLDC when the present Review Petition was being filed so as to back its claim that the actual metered Energy Input at T<>D interface in FY 2012-13 was approximately 10,313 MU.
- 5.4. The MSLDC Certificate establishes that the figure of around 10,399 MU considered by the Commission in the Impugned Order as Energy Input to RInfra's Distribution System is incorrect, and is actually 10,313.3 MU as indicated in the MSLDC Certificate. This certification of MSLDC is important evidence which, being available after the issue of the Order, should be taken cognizance of and the Review Petition admitted accordingly.

Mistake or Error apparent on the face of the record:

- 5.5. The Impugned Order disregards actual metered Energy Input to RInfra's distribution system, which was the basis of its original Petition (whose veracity was not in question and is now supported by a Certificate of SLDC), and derives it instead by working downwards from power purchase. Losses in the distribution system are simply the difference between Energy Input to and Energy Output from the system. Both quantities are metered and the energy so recorded is available.
- 5.6. The actual Energy Input to the system is factual information (metered, recorded and also certified by MSLDC). It cannot be substituted by a derived or assumed figure of Energy Input, as in the Impugned Order. Disregarding a fact and working with a fictitious figure is not just a mistaken approach, but an error apparent on the face of the record.
- 5.7. RInfra-D is not challenging the approach adopted by the Commission for working out Distribution Losses. It is seeking review since an important performance parameter such as Distribution Loss has been worked out using a derived and/or assumed figure of Energy Input quantity, while disregarding factual energy supported by meter readings, which show that what has been assumed differs considerably from such actual figures.

5.8. Regulation 85 (a) does not describe the scope of the term “error” or “mistake”. It only mentions that such “error” or “mistake” should be apparent from the face of record. An error or mistake apparent from the face of the record cannot be a simply arithmetic or mathematical error. Even very basic conceptual errors are also fairly apparent, which are immediately visible just by looking at the record. The error of not considering actual Input Energy to the distribution system while determining Distribution Loss and linking Transmission Loss with Distribution Loss is obvious from the face of record. A similar error apparent was earlier set right by the Commission by its Order dated 16 August, 2013 in Case No 69 of 2013.

5.9. Any other sufficient reasons:

a) Approach in Tariff Orders of other Distribution Licensees: Analysis of the MTR Order of The Tata Power Company - Distribution (TPC-D) and that of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) shows the following:

- i. *TPC-D - Case No. 18 of 2015* : The Commission’s Order does not consider the actual T<>D interface energy as submitted by TPC-D, but derives it by working backwards from power purchase, just as has been done in case of RInfra-D in the Impugned Order. The Commission worked out a higher Distribution Loss for the TPC-D system of 1.35% as against 1.07% worked out by TPC-D. However, the Commission did not compute any Efficiency Loss for TPC-D due to such “higher” Distribution Loss, unlike in case of RInfra-D where Efficiency Loss of Rs. 38.30 crore was worked out as loss to be absorbed by RInfra-D.
- ii. *MSEDCL’s truing-up of FY 11-12 and FY 12-13 in Case No. 38 of 2014* : MSEDCL had determined the Distribution Loss of 14.67% for FY 12-13 as the difference between metered energy at the distribution periphery and metered sales at consumer end. Further, MSEDCL had considered Intra-State Loss of 4.24% as approved in the Intra-State Transmission System (InSTS) Tariff Order in Case No. 51 of 2012. The Inter-State loss (of 4.25%) presented by MSEDCL, however, was a derived figure. The Commission accepted MSEDCL’s computation of Distribution Loss of 14.67% and worked out Efficiency Gains for MSEDCL. It did not derive Energy Input to MSEDCL’s system as was done in case of RInfra-D and TPC-D, but accepted the actual Energy Input and Output as presented by MSEDCL.

- iii. This indicates that the approach adopted by the Commission in case of RInfra-D and TPC-D was the same, while a different approach has been adopted for MSEDCL. Further, since no Efficiency Loss was worked out for TPC-D in its Order, TPC-D has no grievance, unlike RInfra which has been levied a penalty of Rs. 38.30 crore due to the mistake in the Order.
  - iv. The fact that different Distribution Licensees have reported different levels of Transmission Losses indicates that there are issues with energy accounting systems and processes in the InSTS. This is evidence enough that MSLDC's Transmission Loss figures cannot be relied upon until all provisional FBSM billing issues are completely sorted out.
  - v. In any event, the "error" pointed out by RInfra-D remains an error regardless of whether or not it is committed in any other Orders. Regulation 85(a) does not say that a mistake or error in a decision or Order will not be considered as one if it is also committed in other Orders issued at the same time. Thus, the approach adopted in other Licensees' Orders is not relevant for evaluating whether or not the present Review Petition should be admitted.
- b) Without prejudice to the above, even though RInfra-D had explained the issues with MSLDC's provisional FBSM bills and the Transmission Loss anomaly thus appearing in its Petition, the Impugned Order only reproduces in brief the submissions of RInfra, without any analysis, discussion or finding on them.
- c) The Impugned Order also does not provide any reasons, basis, rationale or justification as to why actual Energy Input to the distribution system was disregarded or not considered and why it was, instead, derived. The Impugned Order also does not mention Case No. 69 of 2013, even when the issue before the Commission was exactly the same and it had exercised its review powers in that Case.
- d) An error has been committed in the Impugned Order and, in the process, RInfra has been penalised wrongly. The Transmission Loss anomaly appears due to issues with provisional FBSM billing. As FBSM bills are gradually finalised (at present final bills only till September, 2012 have been issued by MSLDC), the Imbalance Pool quantum of RInfra will change such that, after all bills are finalised, the Transmission Losses in case of RInfra-D would match that of MSLDC. RInfra-D has demonstrated that the finalisation of bills till September, 2012 alone has resulted in a net additional Pool Credit of about 67 MU, thus reducing the net power

purchase of RInfra-D for FY 2012-13. With reduction of power purchase quantum, the Transmission Loss determined as the difference between power purchase and T-D interface quantum also reduces. The adjustment due to additional Pool Credit gets passed on to consumers in FAC as and when the final bill is issued by MSLDC to RInfra-D.

- e) The above issues have been examined in detail by the Commission in Case No. 69 of 2013, when it accepted the issues with the Provisional FBSM accounting of MSLDC. The Commission has, therefore, accepted that Transmission Losses as measured for different individual Licensees would be different and not match with overall Transmission Losses as reported by MSLDC, till such time as the issues with FBSM billing are not sorted out.
6. At the hearing on 3 December, 2015, the Commission informed the Petitioner that, since the Order in this Case could not be issued before the Chairperson demitted office on 9 November, 2015, the Case was scheduled for re-hearing. As recorded in the Daily Order, RInfra-D requested the Commission to take on record its earlier submissions and consented to hearing of the matter as in continuance of the earlier proceedings. RInfra-D made a brief presentation to reiterate and stress the difference in the approach followed by the Commission with regard to Distribution Loss determination in respect of other Distribution Licensees (particularly MSEDCL). If an actual value is available, there is no need to derive a figure, and such derivation constitutes an error apparent. RInfra-D also reiterated that the MSLDC certification was not available at the time of the Impugned Order. Hence, it constitutes new evidence which needs to be taken into account and the Order reviewed accordingly.

### **Commission's Analysis and Ruling**

7. Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 regarding review reads as follows:

*“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.”*

8. The ambit of review is, therefore, limited. This review provision is similar to the provisions of Order 47 of the Civil Procedure Code. In the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission ((2009) 10 SCC 464), the Supreme Court has held as follows:-

*“Roman Catholic Mission ((2r Rule of Order 47, CPC for permissibility of review must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, the review will lie. Under the guise of review, the parties are not entitled to re-hearing of the same issue but the issue can be decided by the perusal of the records and if it is manifest. It can be set right by reviewing the Order.”*

The present Petition for review has to be evaluated against the principles set out above.

9. **In Section 4.4 (on Distribution Losses and Energy Balance) of the Impugned Order dated 26 June, 2015 in Case No. 4 of 2015, the Commission ruled as follows:**

***“Commission's Analysis***

***The Commission has considered the actual Transmission Losses of 4.12% for FY 2012-13 based on MSLDC submissions. The energy quantum added by RInfrac-D into the State Imbalance Pool has been considered as per the actual Gross Energy consumption in the suo- motu Order in Case No. 183 of 2013 on verification of RPO compliance by RInfrac-D cumulatively for FY 2010-11, FY 2011-12 and FY 2012-13.***

***As regards RInfrac-D's request for review of the metering philosophy and related activities by Supply Licensees from the next Control Period onwards, this may be considered appropriately by the Commission in the final protocol for change-over and switch-over of consumers from one Licensee to another in the context of ATE directions in Appeal No. 246 of 2012 and related matters***

***The Commission has considered the losses for change-over HT and LT consumers as 1.94% and 9.00%, respectively, as considered by MSLDC for Pool settlement for FY 2012-13. The change-over sales have been considered as reported by RInfrac-D. Accordingly, the Distribution Losses and Energy Balance as approved by the Commission for FY 2012-13 are given in the Tables below:***

**Table 4.7: Energy Balance for FY 2012-13 approved by the Commission**

<b>Particulars</b>	<b>UoM</b>	<b>MYT Order</b>	<b>RInfra-D Petition</b>	<b>Approved in this Order</b>
<i>Sales (Own)</i>	<i>MU</i>	<i>6192.32</i>	<i>6,207.18</i>	<i>6,207.18</i>
<i>Sales (change-over)</i>	<i>MU</i>	<i>3090.69</i>	<i>3,114.37</i>	<i>3,114.37</i>
<i>Consumption by OA consumers</i>	<i>MU</i>	<i>0.00</i>	<i>13.58</i>	<i>13.58</i>
<b>Total</b>	<b>MU</b>	<b>9283.01</b>	<b>9,335.13</b>	<b>9,335.13</b>
<b>Distribution Loss</b>	<b>%</b>	<b>9.46%</b>	<b>9.49%</b>	<b>10.24%</b>
<i>Energy Input to the Distribution System</i>	<i>MU</i>	<i>10252.94</i>	<i>10313.36</i>	<i>10,399.59</i>

*The higher Distribution Loss of 10.24% computed by the Commission, as compared to 9.49% computed by RInfra-D, is on account of the lower InSTS losses considered by the Commission, as shown in the Table below:*

**Table 4.8: Energy Requirement for FY 2012-13 approved by the Commission**

<b>Particulars</b>	<b>UoM</b>	<b>MYT Order</b>	<b>RInfra-D Petition</b>	<b>Approved in this Order</b>
<i>Migrated HT sales + OA consumption</i>	<i>MU</i>	<i>862.13</i>	<i>886.05</i>	<i>886.05</i>
<i>HT Loss</i>	<i>%</i>	<i>1.94%</i>	<i>1.94%</i>	<i>1.94%</i>
<i>HT grossed up energy at T-D boundary</i>	<i>MU</i>	<i>879.19</i>	<i>903.58</i>	<i>903.58</i>
<i>Migrated LT sale</i>	<i>MU</i>	<i>2228.55</i>	<i>2241.90</i>	<i>2241.90</i>
<i>LT loss</i>	<i>%</i>	<i>9.00%</i>	<i>9.00%</i>	<i>9.00%</i>
<i>LT grossed up energy at T-D boundary</i>	<i>MU</i>	<i>2448.96</i>	<i>2463.62</i>	<i>2463.62</i>
<i>Total T-D energy attributable to TPC-D sale &amp; OA consumption</i>	<i>MU</i>	<i>3328.14</i>	<i>3367.20</i>	<i>3367.20</i>
<i>Net T-D energy attributable to RInfra- D sale</i>	<i>MU</i>	<i>6924.80</i>	<i>6946.15</i>	<i>7032.38</i>
<i>InSTS losses %</i>	<i>%</i>	<i>5.59%</i>	<i>5.18%</i>	<i>4.12%</i>
<i>Total requirement of RInfra-D (MU) at G-T</i>	<i>MU</i>	<i>7334.57</i>	<i>7325.95</i>	<i>7334.57</i>

*It will be seen from the above Tables, the actual Distribution Loss of RInfra-D for FY 2012-13 works out to 10.24%, which is significantly higher than the target Distribution Loss of 9.46%. The Commission has undertaken the sharing of efficiency losses on account of higher Distribution Losses subsequently in this Section...*

**10. While dealing with the Efficiency Gain/Loss on account of deviation in Distribution Losses for FY 2012-13 in Section 4.18 of the Impugned Order, the Commission has stated as follows:**

*"Commission's Analysis*

*The Commission has not accepted the proposal to consider Distribution Loss as an uncontrollable parameter, as RInfrac-D has not been able to establish the precise contribution of the defective meters installed by TPC-D to the total Distribution Loss in RInfrac-D's system.*

*The Commission has accordingly considered the Distribution Loss for RInfrac-D for FY 2012-13 as a controllable parameter, in accordance with the provisions of the MYT Regulations, and has computed efficiency loss on that account as against the target Distribution Loss approved in the MYT Order. The Commission has computed the sharing of efficiency loss on account of higher Distribution Loss in accordance with the approved Energy Balance, sales and revenue. The Average Billing Rate (ABR) has been computed by the Commission by dividing the actual total revenue from RInfrac-D's own consumers by the quantum of sale to such consumers. Accordingly, the Commission approves the sharing of efficiency loss on account of higher than target Distribution Loss as shown in the following Table:*

*Table -1: Sharing of Efficiency Loss on account of higher Distribution Loss as compared to target Distribution Loss for FY 2012-13 approved by the Commission*

<i>Particulars</i>	<i>RInfrac-D Petition</i>	<i>Approved in this Order</i>
<i>Energy Input at T&lt;&gt;D (MU)</i>	<i>10313.36</i>	<i>10399.59</i>
<i>Distribution Loss target (%)</i>	<i>9.46%</i>	<i>9.46%</i>
<i>Distribution Loss – Actual (%)</i>	<i>9.49%</i>	<i>10.24%</i>
<i>Total energy sales with target loss (MU)</i>	<i>9337.71</i>	<i>9415.79</i>
<i>Less: Change-over and OA sales (MU)</i>	<i>3127.95</i>	<i>3127.95</i>
<i>Net energy sales with target loss (MU)</i>	<i>6209.77</i>	<i>6287.84</i>
<i>Sales to own consumers (MU)</i>	<i>6207.18</i>	<i>6207.18</i>
<i>Reduction in sales (MU)</i>	<i>2.58</i>	<i>80.66</i>
<i>Average Billing Rate (Rs/kWh)</i>	<i>7.14</i>	<i>7.12</i>
<i>Efficiency Gains/(Loss) (Rs. crore)</i>	<i>(1.85)</i>	<i>(57.46)</i>
<i>Efficiency Gain/(loss) to be passed on to the consumers (1/3<sup>rd</sup> of total Efficiency Gain/(loss)) (Rs. Crore)</i>	<i>(0.62)</i>	<i>(19.15)</i>
<i>Efficiency Gain/(loss) to be absorbed by RInfrac-D (2/3<sup>rd</sup> of total Efficiency Gain/(loss)) (Rs. Crore)</i>	<i>(1.23)</i>	<i>(38.30)</i>

**11. Thus, it will be seen that the issues involved had been considered and extensively addressed in the Impugned Order. As regards RInfrac-D's contention regarding the non-computation of Efficiency Loss in TPC-D's MTR Order in Case No. 18 of 2015, the Commission has clearly set out the reasons for not giving the Efficiency Gains in that Order as follows:**

*"Commission's Analysis*

*TPC-D has proposed sharing of Efficiency Losses on account on reduction in Distribution Loss, to the extent of Rs. 0.32 crore, with consumers in FY 2012-13. However, for FY 2013-14, TPC-D has proposed sharing of Efficiency Gains on account of lower than normative Distribution Loss. In the MYT Order, the Commission had allowed an increase in the Distribution Losses annually by 0.10% considering the projected increase in the LT distribution network by TPC-D and lower HT: LT ratio. However, TPC-D has not expanded the LT distribution network as anticipated. Therefore, there is no merit in its contention that it is entitled to a share of the 'Efficiency Gains' due to lower than normative Distribution Losses in FY 2013-14.*

*At the same time, the total Distribution Losses of TPC-D, at 1.35%, are on the lower side. Hence, no sharing of Efficiency Losses has been considered on this count for FY 2012-13."*

12. As regards the contention of RInfra-D that the Commission had accepted the Intra-State Losses as computed by MSEDCL and has, thus, computed the Distribution Loss in respect of RInfra-D in a different manner, the fact is that that the Commission adopted the same approach for MSEDCL also in Case No. 38 of 2014, and accepted the MSLDC figures of InSTS Loss, as recorded in that Order:

*"The Commission observes that MSEDCL has considered intra-state transmission loss in FY 2011-12 at 4.29%. However, the SLDC's report on State grid losses for FY 2011-12 shows the same at 4.25%. The Commission has considered the loss level for intra-state transmission as per SLDC's report..."*

*The Commission observes that MSEDCL has considered intra-state transmission loss in FY 2012-13 at 4.24%. However, the SLDC's report on State grid losses for FY 2012-13 shows the same at 4.12%. The Commission has considered the loss level for intra-state transmission as per SLDC's report. "*

13. From the foregoing, and the extracts of the relevant Orders quoted above, it will be seen that the Commission has clearly enunciated the rationale adopted for computing the Distribution Loss; and also that the Commission has adopted the same approach for all Distribution Licensees. Hence, the Commission finds no mistake or error apparent on the face of the record in the computation of Distribution Loss in the Impugned Order.

14. As far as the MSLDC statement regarding Energy Input of RInfra-D is concerned, the basis on which RInfra-D had derived the loss was known to the Commission while issuing the Impugned Order. The statement by MSLDC is documentary support and not a new fact now brought out by RInfra-D. Hence, reopening or



**revisiting the matter is beyond the limited scope of review, nor can the Commission find any error apparent in the Impugned Order that would warrant such review.**

The Petition of M/s Reliance Infrastructure Ltd. (Distribution) in Case No. 106 of 2015 stands disposed of accordingly.

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**