

**In the Appellate Tribunal for Electricity,  
New Delhi**

**(Appellate Jurisdiction)**

**Appeal No. 134 of 2015 &  
IA Nos. 212 & 213 of 2015**

**Dated: 9<sup>th</sup> January, 2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I. J. Kapoor, Technical Member**

**In the matter of**

**Spentex Industries Limited  
A-60, Okhla Industrial Area, Phase-II,  
New Delhi - 110 020**

**...Appellant**

**Versus**

- 1. Madhya Pradesh Electricity Regulatory  
Commission  
5<sup>th</sup> Floor, Metro Plaza,  
E-5, Arera Colony, Bittan Market,  
Bhopal , Madhya Pradesh**

**...Respondent No 1**

- 2. Madhya Pradesh Poorv Kshetra Vidyut  
Vitaran Company Ltd.  
Block No.7,  
Shakti Bhawan, Vidvut Nagar.  
Jabalpur, Madhya Pradesh**

**...Respondent No 2**

- 3. Madhya Pradesh Paschim Kshetra  
Vidyut Vitaran Company Ltd.  
GPH, Polo Ground,  
Indore, Madhya Pradesh**

**...Respondent No 3**

4. **Madhya Pradesh Madhya Kshetra  
Vidyut Vitaran Company Ltd.  
Nishtha Parisar, Biljee Nagar Colony,  
Govindpura, Bhopal, Madhya Pradesh**

**...Respondent No.4**

5. **Madhya Pradesh Power Management  
Company Limited  
Block No.11, Shakti Bhawan,  
Vidyut Nagar, Jabalpur,  
Madhya Pradesh**

**...Respondent No.5**

**Counsel for the Appellant(s): Mr. Ritesh Singh  
Mr. Sayam Ray  
Mr. Vishal Balecha**

**Counsel for the Respondent(s): Ms. Mandakini Ghosh  
Ms. Ritika Singhal  
Mr. Saramesh Shah  
Mr. Saransh Shaw for R-1**

**Mr. G. Umapathy  
Ms. R. Mekhala  
Mr. Aditya Singh for R-2 to R-5**

## **JUDGMENT**

### **PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER**

1. The present Appeal is being filed by M/s. Spentex Industries Limited (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the legality, validity and propriety of the Impugned Order dated 17.04.2015 passed by the Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as

the “**State Commission**”) in Petition No. 30 of 2014 filed by Respondent Nos. 2, 3, 4 and 5 for determination of Aggregate Revenue Requirement (ARR) and Retail Supply Tariff for FY 2015-16.

2. The Appellant, M/s. Spentex Industries Limited is one of the H.T Industrial consumers and is a member of the Madhya Pradesh Textile Association. The Appellant is a company engaged in the business of manufacturing of 100% cotton yarn, cotton viscose, cotton blended yarn, 100% polyester yarn, poly blended yarn, etc.
3. The Respondent No 1 is the Electricity Regulatory Commission for the State of Madhya Pradesh exercising jurisdiction and discharging functions in terms of the Electricity Act 2003. The Respondent No 2 to 4 are the Distribution Licensees in the State of Madhya Pradesh having specific area of Supply. Respondent No 5 is Madhya Pradesh Power Management Company Limited (“**MPPMCL**”), a company incorporated under the Companies Act, 1956.
4. Aggrieved by the Order dated 17.04.2015 passed by the State Commission, the Appellant has preferred the present appeal challenging the legality, validity and propriety of the tariff Order dated 17.04.2015.
5. **Facts of the present Appeal:**
  - a) Respondent No 2, 3, 4 and 5 jointly filed the Petition with State Commission on 19.12.2014 (Petition No. 30 of 2014) for

determination of Aggregate Revenue Requirement (ARR) and Retail Supply Tariff for FY 2015-16. The Petition was subsequently revised on 02.02.2015 after incorporating the information as desired by the State Commission.

- b) The said Petition was admitted by the State Commission on 10.02.2015
- c) Public Notice comprising the gist of tariff applications and tariff proposals and seeking objections/comments/ suggestion from the Stakeholders was published on 13.02.2015. Stakeholders were required to submit their objections/comments/ suggestions by 09.03.2015.
- d) The Madhya Pradesh Textile Mills Associations filed its objection to the State Commission on 03.03.2015.
- e) The State Commission on 17.04.2015 passed the Impugned Order in the Petition No. 30 of 2014 filed by Respondent Nos. 2, 3, 4 and 5 after conducting the due process of consultation through public hearing for determination of ARR and Retail Tariff.
- f) Aggrieved by the provisions of cross subsidy surcharge, the Appellant has filed the present Appeal and sought relief from this Tribunal while setting aside the Impugned order and giving directions to the State Commission to :

- (i) Determine the cross subsidy for each consumer category after working out the voltage-wise cost of supply;
- (ii) Calculate the cross subsidy for each consumer category on the basis of difference between the average tariff realization for that category of consumer and the cost of supply of electricity for that consumer category based on voltage-based cost of supply after hearing all concerned;
- (iii) First approve the current level of cross subsidy in order to stipulate the cross subsidy surcharge;
- (iv) Issue a Road Map for reduction of cross subsidy and cross subsidy surcharge and thereafter to stipulate the cross subsidy surcharge;
- (v) Determine the variation in tariff of each consumer category/sub-category with respect to average cost of supply to ensure the mandate of the Tariff Policy of having tariff within +20% of the average cost of supply.

## **6. Questions of Law**

As per Appellant, following questions of law arise in the present Appeal:

- I. Whether the State Commission has committed a grave error by passing the Impugned Order without considering the proper data and account?**
- II. Whether the Impugned Order is in violation of Section 61 of the Act which provides that appropriate commission is required to encourage efficiency, competition and economical use of resources?**

- III. **Whether the Impugned Order is in violation of Section 64 of the Act as all suggestions and objections of the public were not considered by the State Commission?**
- IV. **Whether the State Commission has erred by not considering the fact that the distribution losses as submitted by Discom are on higher side?**
- V. **Whether the Impugned Order violates the principal of natural justice as objections raised by the public were not considered by the State Commission?**
- VI. **Whether the State Commission has erred by fixing the cross subsidy charge without determining the actual cost of supply at various voltage levels?**
- VII. **Whether the State Commission has given a complete go bye to the object of the Act while determining the retail tariff and ARR as it promotes the violation of guidelines of the policy by the Discoms?**
- VIII. **Whether the retail tariff determined in the Impugned Order is against the tariff policy for the reason that the cost of the supply is not within +/- 20% of the average cost of supply?**
- IX. **Whether the State Commission has erred while determining the cross subsidy charge for open access consumer as the cross subsidy charge does not reflect the difference between the applicable tariff and the cost incurred by the distribution licensee in supply of the electricity for that specific class of consumer?**
- X. **Whether the State Commission has acted contrary to the law laid down by this Tribunal in Siel Ltd. Vs. Punjab State Electricity Regulatory Commission and others ( 2007 APTEL at Para 107)?**
- XI. **Whether the State Commission has erred in considering the Impact of True up for Discoms as all these True up (for financial year 2008-09, 2009-10 and 2010-11) are pending for**

adjudication before this Tribunal?

- XII. Whether the State Commission has made the tariff for the Appellant so burdensome, which is an open access consumer, that it has the effect of eliminating competition?**
- XIII. Whether the State Commission ought to have considered the significant surplus/profit being earned by the trading company, which can be ploughed back to the accounts of the holding company (Respondent No. 5) for reducing the tariff burden on the consumers like Appellant?**
- XIV. Whether the State Commission erred in determining the retail tariff and cross subsidy on the basis of average cost of supply in violation of Section 61 of the Act and para 8.3 (2) of the tariff policy read with tariff regulation, as enunciated in a series of judgment of this Tribunal, which require computation of tariff on the basis of voltage wise cost of supply?**
- XV. Whether the State Commission is justified in increasing the cross subsidy surcharge for the Appellant in violation of third proviso to section 42(2) of the Act?**
- XVI. Whether the State Commission was justified in passing the Impugned Order without fixing the cost of supply at various voltage levels and also indicating the cost for each category and indicating the extent of cross subsidy existing and the plan of action to reduce it over a period of time as envisaged in the 2003 Act and the Regulations?**
- XVII. Whether the State Commission should have considered the fact that Discom have shown inflated domestic consumption so as to increase retail tariff for consumer like Appellants?**
- XVIII. Whether the State Commission has erred in assuming 50% loss as commercial loss at all voltage levels as such commercial losses are usually less than 10% of total losses?**

**XIX. Whether the State Commission has erred by not considering the essential fact that sale forecast given by the Discom is on the basis of the compound annual growth rate, which has never been accurate?**

**XX. Whether the State Commission should have directed the Discom to find out better option of selling the surplus energy so as to reduce the ARR?**

**7. We have heard at length Mr. Ritesh Singh, the learned counsel for the Appellant, Ms. Mandakini Ghosh learned counsel for the State Commission and Mr. G. Umapathy learned counsel for Respondent No 2 , 3, 4 & 5 and considered the arguments put forth by the parties and their respective written submissions on various issues identified in the present Appeal.**

**8. The learned counsel for the Appellant has made following submissions on the various issues raised in the Appeal for our consideration;**

**a. The Impugned Order is in violation of the basic principles set in Section 61 of the Act, which provides that while determining the Retail Tariff and ARR, the appropriate commission is required to :**

- Encourage efficiency, competition, economical use of resources, good performance and optimum investment;**
- Rewarding efficiency in performance; and**
- Tariff should progressively reflect the cost of supply of electricity and also reduces cross-subsidy in the manner specified by the Appropriate Commission**



- b. The State Commission is rewarding inefficiency while allowing higher distribution losses, as shown by Discoms, in computation of ARR and Retail Tariff.
- c. The State Commission has ignored the essential fact that cross subsidy could not be determined without a road map for such reduction. The cross subsidy charge was fixed without fixing the actual cost of supply at various voltage levels and without indicating the cost for each category or indicating the extent of such cross subsidy for different class of consumers.
- d. The retail tariff determined in the Impugned Order is against the tariff policy for the reason that the cost of supply is not within  $\pm 20\%$  of the average cost of supply:
- e. The State Commission has not considered and dealt with all suggestions and objections received from the public while passing the Impugned Order. This is in violation of Section 64 of the Act. This also violates the principle of natural justice. Some of the essential suggestions which were not considered include:
  - i. Impact of True up cost should not be considered as it is sub-judice;
  - ii. Consumption for domestic consumer projected by Discom is highly inflated;
  - iii. Investment plan submitted by Discom is imaginary as the plan for financial year 2015-16 shows a jump of 51.5% which is

- unrealistic; and
- iv. Cross subsidy charge has increased for open access consumer.
- f. The State Commission has passed the Impugned Order without prudence check and without considering the fact that there is no proper data and account given by Respondent Nos. 2, 3 and 4. It is evident from the Para 1.17, Para 1.27 and Issue No.2 of Para 6.8 of the Impugned Order. Para 1.17 of the Impugned Order states that *"The Commission had emphasized the importance of energy accounting and meterisation from time to time including in previous tariff orders. Need for proper Energy Accounting and Energy Audit at various levels such as sub-stations, distribution feeders and distribution transformers as well as at the consumer end was also impressed upon the Discoms so as to provide reliable data about the actual level of distribution losses - technical and other."* Similarly Para 1.27 of the Impugned Order states as : *"It may be mentioned here that the data/ information for working out the voltage wise cost of supply needs to be further validated to get a fair and correct picture. The voltage wise cost of supply vis-a-vis cross subsidy percentage worked out in this tariff order is only indicative in nature in the absence of requisite data."* Further at Issue No.2 of Para 6.8 it was observed that *'In absence of requisite data, only indicative VCoS cross subsidy percentages have been worked out based on available information. These may have to be further validated in due course of time when requisite data/information are available.'*
- g. The State Commission should have considered the fact that the

surplus profit which is being earned by the trading company can be ploughed back to the accounts of holding company (Respondent No. 5) for reducing the gap between ARR and revenue, which will eventually lessen the retail tariff for all consumers.

- h. The increase in the cross subsidy charge for the Appellant is in complete violation of proviso third of the Section 42 (2) of the Electricity Act, 2003. The said proviso is reproduced as under:

"Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:"

- i. The State Commission has erred while determining the cross subsidy charge for the open access consumer as the cross subsidy charge does not reflect the difference between the applicable tariff and the cost incurred by the distribution licensee in supply of electricity for that specific class of consumer. The relevant extract is reproduced below:

*"Accordingly, when open access is allowed the surcharge for the purpose of sections 38, 39, 40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC*

*adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges.*

*Surcharge formula:*

*$S = T - [C (1+000) + D]$  Where*

*S is the surcharge*

*T is the Tariff payable by the relevant category of consumers;*

*C is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power*

*D is the Wheeling Charge*

*L is the system Losses for the applicable voltage level, expressed as a percentage".*

- j. The State Commission has acted contrary to the law laid down by this Tribunal in *Siel Ltd. vs. Punjab State Electricity Regulatory Commission and others* (2007 APTEL 931). The relevant extract of this judgment is reproduced

*"109. According to Section 61(g) of the Act of 2003, the Commission is required to specify the period within which cross subsidy would be reduced and eliminated so that the tariff progressively reflects the cost of supply of electricity. Under Section 28 (2) of the Act of 1998, the Commission while prescribing the terms and conditions of tariff was required to safeguard the interests of the consumers and at the same time, it was to ensure that the consumers paid for the use of the electricity in a manner based on average cost of supply. The word "Average" preceding the words "cost of supply" is absent in Section 61 (g) of the Act of 2003. The omission of the word "Average" is significant. It indicates that the cost of supply means the actual cost of supply, but it is not the intent of the legislation that the Commission should determine the Tariff based on cost of supply from the date of the enforcement of the Act of 2003. Section 61 (g) of the Act of 2003 envisages a gradual transition from the Tariff loaded with cross subsidies to a Tariff reflective of cost of supply to various class and categories of consumers. Till the commission progressively reaches that stage, in the interregnum, the roadmap for achieving the*

*objective must be notified by the Commission within six months from January 6, 2006, when the Tariff policy was notified by the Government of India i.e. by July 6, 2006. In consonance with the Tariff policy, by the end of the Year 2010-11, tariffs are required to be fixed with  $\pm 20\%$  of the average cost of supply (pooled cost of supply of energy received from different sources). But the policy has reached only to average cost of supply . As per the Act, tariff must be gradually fine tuned to the cost of supply of electricity and the Commission should be able to reach the target within a reasonable period of time to be specified by it. Therefore, for the present, the approach adopted by the Commission in determining the average cost of supply cannot be faulted. We, however, hasten to add that we disapprove the view of the Commission that the words "Cost of Supply" means "Average Cost of Supply."*

*110. Keeping in view the provisions of Section 61 (g) which required tariff to ultimately reflect the cost of supply of electricity and the National Tariff Policy, which requires Tariff to be within +/- 20% of the average cost of supply, it seems to us that the Commission must determine the cost of supply, as that is the goal set by the Act. It should also determine the average cost of supply. Once the figures are known, they must be juxtaposed, with the actual tariff fixed by the Commission. This will transparently show the extent of cross subsidy added to the tariff, which will be difference between the tariff per unit and the actual cost of supply.*

*111. From above it would be noted that the word "Average Preceding cost of supply is absent in Sec-61(g) of the Act and it "indicates that the actual cost of Supply", which a consumer must pay, but after a reasonable period. For this, the tariff policy provides that the SERCs may draw roadmap to reach the transmission from Average cost of supply to actual cost of supply. It further says that "the Commission should be able to reach the target within a reasonable period of time to be specified by it". But the Bihar Commission has failed to take any action in this regard and the licensee (i.e. Board) is allowed to fix the appellant's tariff on the basis of overall (pooled) Average cost of supply, which is complete violation of provisions of the Act as well as the Tariff Policy, 2006."*

- k. The State Commission has erred in considering the impact of True up

for Discoms for the reason that there is already a litigation pending with respect to True up (for financial year 2008-09, 2009-10 and 2010-11) of the Discom before this Tribunal. It would have been apt on the State Commission to not include True up of those financial year for determination of ARR for Discoms. Therefore, the impact of True up cost on ARR should be considered again so as to determine the correct ARR. The impact of True up for Discoms financial year 2009-10, 2010-11, 2011-12 and 2012-13 increases the gap in ARR and revenue by 7.4%. Further, True up of Discom for a financial year 2008-09 was already considered and allowed in the ARR approved for 2014-15. Therefore, at least the True up for 2008-09 should be withdrawn while calculating the ARR for 2015-16.

- I. The State Commission has failed to consider the fact that Discoms have shown inflated domestic agriculture consumption so as to increase the gap between the revenue and ARR. The unrealistic high domestic and agriculture consumption lead to the following:
  - (i) Increases the gap of revenue and ARR as realization of revenue for domestic and agriculture consumption is less than average cost of supply;
  - (ii) Increases the distribution losses; and
  - (iii) Increases the capital investment plan as such capital investment plan are based on load projection.
  
- m. Further, the State Commission has also overlooked that Section 65 of the Electricity Act, 2003 requires that no direction of the State

Government regarding grant of subsidy to the Consumer shall be operated unless the payment on account of such subsidy is decided by the State Commission and such payment is made to the utilities.

- n. The State Commission has erred in assuming 50% loss as commercial loss at all voltage level because commercial losses are usually not more than 10% of total loss. In this regard no efforts have been made by the Respondents to appoint the consultant so as to work out the cost at different voltage level. There is deliberate attempt to deny due benefit to EHT and HT consumer by delaying the appointment of consultant to work out the cost at various voltage levels.
  - o. The State Commission has erred by overlooking the fact that the sale forecast given by the Discom is on the basis of compound annual growth rate. Discoms have never been able to submit accurate sale forecast on the basis of compound annual growth rate. A better method for predicting the sale forecast is to link the growth with financial indices. The State Commission should also have considered the fact that gap between the ARR and revenue can be curtailed if Respondents Nos. 2, 3, 4 and 5 sell the surplus energy in open market through trading companies and through agreements with those states, which are power deficit.
- 9.** The learned counsel for the State Commission has made following submissions on the various issues raised in the Appeal for our consideration:



- a. The provisions of Section 61 (g) of the EA 2003 require tariff to ultimately reflect the cost of supply of electricity and the Tariff Policy requires tariff to be within  $\pm 20$  per cent of the average cost of supply. Section 61 of the EA 2003 specifies the principles that shall guide the Appropriate Commission in tariff determination. Section 61 is as below:

*“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

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



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

- b. This Tribunal while discussing voltage-wise cost of supply has held the following in its judgment dated 30.05.2011 in Tata Steel v. OERC, Appeal No. 102,103 and 112 of 2010:

*"31. We appreciate that the determination of cost of supply to different categories of consumers is a difficult exercise in view of non-availability of metering data and segregation of the network costs. However, it will not be prudent to wait indefinitely for availability of the entire data and it would be advisable to initiate a simple formulation which could take into account the major cost element to a great extent reflect the cost of supply. There is no need to make distinction between the distribution charges of identical consumers connected at different nodes in the distribution network. It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system. Since the State Commission has expressed difficulties in determining voltage wise cost of supply, we would like to give necessary directions in this regard.*

*32. Ideally, the network costs can be split into the partial costs of the different voltage level and the cost of supply at a particular voltage level is the cost at that voltage level and upstream network. However, in the absence of segregated network costs, it would be prudent to work out the voltage-wise cost of supply the tariff, apportioning the power purchase cost at different voltage levels taking into account the distribution losses at the relevant voltage level and the upstream system will facilitate determination of voltage wise cost of supply, though not very accurate, but a simple and practical method to reflect the actual cost of supply.*

33. *The technical distribution system losses in the distribution network can be assessed by carrying out system studies based on the available load data. Some difficulty might be faced in reflecting the entire distribution system at 11 KV and 0.4 KV due to vastness of data. This could be simplified by carrying out field studies with representative feeders of the various consumer mix prevailing in the distribution system. However, the actual distribution losses allowed in the ARR which include the commercial losses will be more than the technical losses determined by the system studies. Therefore, the difference between the losses allowed in the ARR and that determined by the system studies may have to be apportioned to different voltage levels in proportion to the annual gross energy consumption at the respective voltage level. The annual gross energy consumption at a voltage level will be the sum of energy consumption of all consumer categories connected at that voltage plus the technical distribution losses corresponding to that voltage level as worked out by system studies. In this manner, the total losses allowed in the ARR can be apportioned to different voltage levels including the EHT consumers directly connected to the transmission system of GRIDCO. The cost of supply of the appellant's category who are connected to the 220/132 KV voltage may have zero technical losses but will have a component of apportioned distribution losses due to difference between the loss level allowed in ARR (which includes commercial losses) and the technical losses determined by the system studies, which they have to bear as consumers of the distribution licensee.*

34. *Thus Power Purchase Cost which is the major component of tariff can be segregated for different voltage levels taking into account the transmission and distribution losses, both commercial and technical, for the relevant voltage level and upstream system. As segregated network costs are not available, all the other costs such as Return on Equity, Interest on Loan, depreciation, interest on working capital and O&M costs can be pooled and apportioned equitably, on prorata basis, to all the voltage levels including the appellant's category to determine the cost of supply. Segregating Power Purchase cost taking into account voltage wise transmission and distribution losses will be a major step in the right direction for determining the actual cost of supply to various consumer categories. All consumer categories connected to the same voltage will have the same cost of supply.*

*Further, refinements in formulation for cost of supply can be done gradually when more data is available."*

In the above judgment, this Tribunal has recognized the difficulty of deriving voltage wise cost of supply in view of non-availability of metering data and segregation of the network costs. However, this Tribunal directed that it will not be prudent to wait indefinitely for availability of the entire data and it would be advisable to initiate a simple formulation which could take into account the major cost element to a great extent to reflect the cost of supply. There is no need to make distinction between the distribution charges of identical consumers connected at different nodes in the distribution network. It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system. Therefore the above judgment laid down the principles regarding the main features of the calculation of voltage-wise cost of supply which have been subsequently reiterated by this Tribunal in its judgment dated 18.02.2014 in Appeal No. 152 of 2014, Kalyanpuri Cements Limited v. Bihar State Electricity Regulatory Commission.

- c. Accordingly, the State Commission vide letter no. MPERC/RE/ 2013/ 2780 dated 25.10.2013, directed the state distribution licensees to determine the voltage wise cost of supply for compliance of the directives given in the judgment passed by this Tribunal in Appeal No. 103 of 2010 & IA Nos. 137 & 138 of 2010. The above-mentioned

judgments elaborate the methodology to be adopted as a first step to calculate voltage wise cost of supply on approximate basis till the requisite data is available to work out voltage wise cost of supply. These judgments further provide that the tariff of consumer categories is kept within  $\pm 20\%$  of the overall average cost of supply except in case of consumers below the poverty line and that the cross subsidies be reduced gradually. The State Commission has endeavoured to work out approximate category wise cross subsidy based on voltage wise cost of supply in spite of constraints in segregation of voltage wise cost of losses and capital expenditure related costs. The State Commission has recognized in the Impugned Order that the determination of voltage wise cost of supply is required to enable the State Commission to evaluate cross subsidies prevalent at various voltages. The State Commission is thus guided by the voltage wise cost of supply in seeking to gradually reduce cross subsidies at various voltage levels.

- d. The State Commission has followed this Tribunal's advise that in the absence of requisite data, the power purchase cost which is the major component of the Discoms' costs can be apportioned to different voltage levels in proportion to the sale and losses at the respective voltage levels. As regards the other costs such as Return on Equity, Interest on Loan, depreciation, Interest on Working Capital and O&M costs, these costs can be pooled and apportioned equitably, on pro-rata basis to all voltage levels. In the Impugned Order, the State Commission has calculated voltage wise cost of supply in a manner which has already been approved by the State Commission in the tariff

order dated for FY 2014-15 dated 24.05.2014. This methodology has not been challenged so far and has attained finality.

- e. While calculating the cross subsidy surcharge, the State Commission has worked out the component 'C' indicated in the formula for computing the cross subsidy surcharge in Tariff Policy, pertaining to the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power strictly as per the provisions of the Tariff Policy by considering cost incidental upon the distribution licensees of the State for top 5% power at margin as per merit order approved by the State Commission for the distribution licensees.
  
- f. Further, this Tribunal has directed, that the cross subsidy will be the difference between the average revenue realization per unit from a consumer category and the voltage-wise cost of supply for that category. Accordingly, the State Commission has worked out component "T" rightly as average tariff for a particular category or subcategory of consumers for which the cross subsidy surcharge is to be determined on the basis of the admitted sale of electricity to that category or subcategory of consumers and revenue expected from that category or subcategory of consumers from the tariffs specified in the tariff order for FY 2015-16.
  
- g. The State Commission vide notification dated 06.10.2007 has already notified a road map for progressive reduction of the cross subsidy wherein the State Commission proposed to achieve tariffs within  $\pm 20$

% of the average cost of supply by FY 2010-11. In the notification, the State Commission has also stated that since the average realization depends on sales mix and cost structure of the Discoms the targets indicated therein would likely undergo changes but the State Commission shall try to keep the changes minimal. Since the targets envisaged in the aforesaid notification for FY 2010-11 for different categories of tariff were in the range of  $\pm 20$  % of the average cost of supply, the State Commission continued with the same for subsequent years till date. Accordingly, the State Commission has been determining tariff with the intention of keeping it within the  $\pm 20$  % of the average cost of supply for all the different categories of consumers and has been making sincere efforts to achieve the same.

- h. Section 64 of the Electricity Act provides that the State Commission requires the tariff application to be published inviting objections and suggestions from the public at large. An opportunity of hearing is also one of the basic tenants of the principle of natural justice. The State Commission while determining the Impugned Order has followed the procedure prescribed in Section 64 of the EA 2003. The State Commission had considered all the comments/suggestions/objections (total 129 numbers) received within the stipulated time specified by the State Commission i.e. by 9.03.2015. The public hearings were held on 17th, 20th and 24th March 2015 at Indore, Bhopal and Jabalpur respectively. The list of the objectors has been indicated in Annexure I of the Impugned Order. The issues raised by the stakeholders along with the response of the Discoms and views of the State Commission are elaborated in "Chapter A - 6" of the Impugned Order. Further, the

contention of textile mills and the fact that Madhya Pradesh Textile Mills Association (of which the Appellant is a member) was heard at the public hearing and is recorded in the Impugned Order.

- i. In the Impugned Order, the sale of energy to different categories of consumers was considered on the basis of the filing of distribution licensees since the sale of energy as envisaged by a licensee is its business proposition. The State Commission took due cognizance of the increase in sale as projected by the distribution licensees. The distribution licensees in the Petition had proposed sale of energy under LV-1 Domestic and LV-5 Agriculture with a view to achieve their feeder separation programme in FY 2015-16. This would lead to an increase in demand of electricity in the rural area of the State. The State government and the distribution licensees are aiming to provide unrestricted 24 hours supply of electricity throughout the state. The State Commission being supportive of this goal admitted the projected increase in sale as shown by the distribution licensees. Further, the State Commission altered the sale projections for the domestic and agriculture category on observing that even after the implementation of feeder separation system the supply to agriculture sector would not increase to the extent as projected in the Petition while the sale to domestic category would be more than the projected sales.
- j. For the determination of power purchase requirement and power purchase cost, the State Commission has considered the normative distribution losses as specified in the Tariff Regulations, 2012.



- k. With respect to the distribution companies, the energy availability from each of the generating station has been considered on the basis of actual availability for the preceding three years in case of existing generating stations and for new generation station as per the norms prescribed by the Central Electricity Regulatory Commissions (CERC) and the regulations enacted by the State Commission. The fixed cost in power purchase cost has been considered on the basis of last generation tariff orders of the appropriate Commissions and variable charges on the basis of bills raised by the generators in the last 12 months. The transmission costs of PGCIL and MP Power Transmission Company are based on the transmission tariff orders issued by CERC and the State Commission. Further, since the Operation and Maintenance (O&M) expenses were allowed/calculated as per the Tariff Regulations, 2012, there is no question of the State Commission rewarding the inefficiency of the distribution licensees. All the other items of ARR such depreciation, interest and finance charges, return on equity, bad debts and other income were allowed in the Impugned Order on the basis of the audited accounts of the distribution licensees.
- l. Although, at the time of passing the Impugned Order, the True up Orders for FY 2009-10, 2010-11 and 2011-12 dated 12.06.2014, 19.06.2014 and 22.07.2014 respectively (collectively True-up orders) had been challenged by the distribution licensees under Appeal No. 271, 270 & 234 of 2015 respectively before this Tribunal, the implementation of these True up Orders were not stayed by this Tribunal. Accordingly, the State Commission was correct in



considering the impact of the True-up orders during the course of the tariff determination process for FY 2015-16.

- m. The true-up costs for the past years have been adjusted in the present FY as the methodology employed by the State Commission for determining the retail tariff was being challenged in various appeals before this Tribunal. The true up for the earlier years i.e. FY 2006-07 and FY 2007-08 were pending adjudication before this Tribunal by way of Appeal No. 145 of 2009 and Appeal No. 150 of 2010 respectively. This had created an impasse and the truing up of ARR for 2008-09 onwards were put on hold. Subsequently, this Tribunal passed orders dated 19.05.2010 and 04.03.2010 in the matter of Appeal No. 145 of 2009 and order dated 04.11.2011 in the matter of Appeal No. 150 of 2010. Thereafter, the State Commission, in accordance with this Tribunal's aforementioned orders, while truing up for FY 2007-08 and 2008-09 directed the distribution licensees to submit information to support their claim for supply to un-metered agricultural consumers. This was a common issue in the subsequent years as well. It was observed that while truing-up for FY 2008-09 onwards, despite specific directives, the Discoms did not submit the details required which would aid the State Commission in validating the claims with regard to establish the quantum of sale in excess of the prescribed benchmarks for unmetered connections.
- n. Therefore, the State Commission was delayed in the process of true-up and finally vide order dated 09.04.2013 decided to proceed for true up of the ARR for FY 2008-09 and onwards on the basis of the

information available and filed on record. The orders on true up of ARR for the distribution licensees for FY 2009-10, 2010-11 and 2011-12 were determined by orders dated 12.06.2014, 19.06.2014 and 22.07.2014 respectively after detailed scrutiny and deliberations. The true up for FY 2012-13 for the transmission licensee of Madhya Pradesh was decided on 21.08.2014 and the true up for FY 2011-12 for MP Power Generating Company was decided on 1.10.2014. All the true-up orders were passed in 2014 post the issuance of the retail tariff order for FY 2014-15. Accordingly, the effect of true-ups from 2009-13 were considered with the ARR for FY 2015-16 wherein the generation true up was negative in nature ((-) Rs. 188 Crore). The transmission true up and the generation true up were of routine nature and had to be passed through with the ARR of 2015-16

- o. It is to further state here that Clause 8.3 of the Tariff Regulations provides that - "in case the Tariff already recovered is less than the Tariff determined after true up, the Distribution Licensees shall recover from the consumers, the under recovered amount in the manner as may be decided by the Commission subject to adhering to the timelines specified by the Commission for filing of True-up Application. The decision of the Commission on the mechanism of recovery of balance amount due to under recovery shall be final". Hence, the Tariff Regulations provide for mechanism of recovery of the true up costs as deemed appropriate to the State Commission.

- p. The delay in truing up the costs for the years 2009-10 to 2011-12 was due to the methodology for calculating unmetered sales being challenged by the distribution licensees before this Tribunal.
  - q. The State Commission has taken full cognizance of the surplus power in the state and issued directions to the distribution licensee to sell the same on power exchange or bilateral route to maximize the revenue earned from sale of surplus energy, The revenue to be earned from such sale has also been balanced in the ARRs of the distribution licensee.
- 10.** The learned counsel for the Respondent No 2 to 5 has made following submissions on the various issues raised in the Appeal for our consideration:
- a. On the issue of lack of Data, the State Commission has finalised the data / information in the tariff order after scrupulous and independent scrutiny of the data filed in the petition from the audited balances, generation and transmission tariff orders of CERC and MPERC and other relevant information available on records.
  - b. The Impugned Order was issued by the State Commission as mandated in Section 61 and in accord with Section 64 of Act 2003. The due process of Public Notice, getting suggestions/objections from stakeholders and conductance of Public hearing has been followed during issuance of Impugned Order.

- c. While determining the tariff, the State Commission has considered the various factors involved in the tariff order, such as :-
- i. Sales:- The sale of the energy of different categories of consumers was duly checked by State Commission .
  - ii. Revenue:- On the basis of the projected sale the revenue was calculated as per the tariff existing at the time of filing the Petition.
  - iii. Distribution losses: - The losses as per the norms prescribed in MPERC (Terms and Conditions for determination of Tariff for supply and wheeling of electricity and methods and principles for fixation of charges) Regulations 2012 were considered and not the actual losses of the Discoms.
  - iv. Power purchase cost:- The energy availability from each of the generating stations was considered on the basis of actual availability for the last three years in case of new generating stations and fixed cost in power purchase cost has been considered from the latest generation tariff order of the appropriate Commission and variable charges from the last 12 months bill raised by the generators. The transmission cost of PGCIL system and MP Power Transmission Company system have been considered from the transmission tariff orders issued by CERC & MPERC.
  - v. O&M expenses:- MPERC Regulations 2012, norms of O&M expenses for each Discom has been provided and thus the question of allowing/rewarding inefficiency does not arise.
  - vi. Depreciation / Interest & Finance charges RoE / Bad debts / other income: - These items have been admitted on the basis

of financial statements of the Companies. MPERC has discussed the same in Chapter 3 of the Tariff order.

vii. Cost Of Supply And Cross Subsidy : The submission of the Appellant that MPERC ignored the essential fact that cross subsidy could not be determined without a road map and that the impugned order is in complete disregard to the NTP is wholly untenable.

viii. In view of the above, the State Commission has determined the Voltage wise cost of supply for the year 2015-16 for EHT system as Rs 4.71 per unit and average cost of supply of Rs 5.29 per unit.

d. The computation of cross subsidy surcharge has been carried out in the manner specified in the Tariff Policy. The tariffs have been determined keeping the tariffs for different categories of consumers with in  $\pm 20$  % of the average cost of supply.

**11. After having a careful examination of all the issues brought before us, our observations on the various issues raised in the present Appeal under the questions of law are as follows:-**

**12. On question no 1 i.e. Whether the State Commission has committed a grave error by passing the Impugned Order without considering the proper data and account?, our observations are as follows:**

a. The Appellant has contended that the State Commission has passed the Impugned Order without considering the fact that no proper data

and account have been given by Respondents. Reference has been made to the observations of the State Commission in para 1.17, para 1.27 and Issue 2 of para 6.8 where State Commission has mentioned “need to provide reliable data”, “absence of requisite data” and “indicative data” while addressing the issues regarding actual distribution losses and voltage wise cost of supply .

- b. As per Respondents, the State Commission has finalised the data/information in the tariff order after scrupulous and independent scrutiny of the data filed in the petition from the audited balances, generation and transmission tariff orders of CERC and MPERC and other relevant information available on records.
- c. Regulation 7.7 of the Tariff Regulations 2012 states that The Applicant shall furnish to the Commission all such books and records (or certified true copies thereof), including the Accounting Statements, operational and cost data, as may be required by the Commission for determination of Tariff.
- d. Regarding estimation of sales, the Regulation 24.1 of the Tariff Regulations 2012 states as :

*“Estimation of sales*

*24.1. The estimation of the sale for each year of the Tariff period shall be based on the category wise and slab wise actual / audited data of the sale of electricity, number of consumers, connected / contracted load, etc. of the preceding three years as well as considering any other relevant factors or studies carried out that may result in to variance in estimation of sale to that of based on actual / audited data. Reasons for variance with the historical trends shall be*

*submitted by the Licensee with due justifications for consideration of the Commission. The year wise projections of the aforementioned parameters for the tariff period shall also be provided along with the tariff petition.”*

- e. We have observed that the State Commission has considered the data used for issuance of Impugned Order which has been submitted by Discoms, State Planning Cells, CERC/NLDC/RLDC sources etc. However the State Commission has observed that voltage level loss level has been assumed because of non-availability of required reliable data with the Discoms. Further the State Commission in the Impugned Order has stated that the voltage wise cost of supply vis-a-vis cross subsidy percentage as worked out is only indicative in nature in the absence of requisite data.
- f. While ensuring the determination of cost reflective tariff as well as protecting the interest of end consumers as key responsibilities of the State Commission, they may have to make reasonable assumption / take indicative figures. The State Commission has mentioned this particular fact also in the Impugned Order.
- g. Going through the impugned Order and considering the view taken by State Commission while passing the Impugned Order, we do not find any infirmity in the approach of the State Commission.
- h. Hence this issue is decided against the Appellant.

**13. On question no 2 i.e. Whether the Impugned Order is in violation of Section 61 of the Act which provides that appropriate commission is required to encourage efficiency, competition and economical use of resources?, our observations are as under;**

- a. Section 61 of the Electricity Act requires that the Appropriate Commission to specify terms and conditions of tariff regulations and specifies certain guiding factors which includes the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments.
- b. As per the Appellant, the State Commission, by allowing higher distribution losses, as shown by Discoms, is rewarding inefficiency.
- c. As per the State Commission, only normative distribution losses in accordance with the Tariff Regulations, 2012 have been considered for the purpose of determining energy requirement and cost of power purchase in the Impugned Order.
- d. Regulation 8.13 of Tariff Regulations 2012 states that the Commission shall determine average per unit cost of supply of energy to be recovered from the consumers duly giving consideration to the distribution losses allowed to the particular licensee for the Tariff Period.
- e. Regulation 25.1 of Tariff Regulations 2012 specifies the normative distribution loss of 18%, 16% and 19% for East Discom, West Discom



and Central Discom respectively. Further Regulation 25.2 of Tariff Regulations 2012 states that If the Distribution Licensee is able to achieve a faster reduction in losses and thus able to save expenses on power purchase, the gains thus made shall be allowed to be retained by the licensee to incentivise their operations.

- f. As per Impugned Order para 1.16 it is clear that the Commission has determined the ARR and tariffs for FY 2015-16 for the Discoms of the State on the basis of the distribution loss trajectory as specified in the Regulations. Table – 9 of the Impugned Order clearly indicates the use of Distribution loss figures for all the three Discoms strictly as per the Tariff Regulations 2012 only. Hence we are in conformity with the action taken by the State Commission in this regard.
- g. Hence this issue is also decided against the Appellant.

**14. On question no 3 i.e. Whether the Impugned Order is in violation of Section 64 of the Act as all suggestions and objections of the public were not considered by the State Commission? ,our observations are as follows:**

- a. Section 64 of the Electricity Act describes the procedure for tariff order. Subsection (3) of section 64 specifies that the Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) of section 64 and after considering all suggestions and objections received from the public issue, a tariff order accepting the application or reject the application

for reasons to be recorded in writing.

- b. We have observed that the State Commission has admitted the revised Petition filed by the Respondents on 10<sup>th</sup> February 2015 and issued directions to publish the notice for inviting objections /comments / suggestions from the stakeholders on the subject petition latest by 13th February, 2015.
- c. The direction of the State Commission was followed by the Respondents. On 13.02.2015, Public Notice comprising the gist of tariff applications and tariff proposals were published by the Respondents in the Hindi and the English Newspaper. The said Public Notice also required the Stakeholders to submit objections/ comments/suggestion by 09.03.2015. One hundred and twenty nine Written Objections were received by the State Commission from various stakeholders. On 03.03.2015, the Madhya Pradesh Textile Mills Associations filed its objection to the State Commission and highlighted numerous anomalies in the Petition of the Respondent Nos. 2, 3, 4 and 5.
- d. Public hearing for determination of ARR and retail tariff was held for Respondent No.3 at Indore on 17.03.2015. Similar Public hearings were conducted for Respondent No.4 at Bhopal on 20.03.2015, and for Respondent No.2 at Jabalpur on 24.03.2015.
- e. On 17.04.2015, the State Commission passed the Impugned Order in the Petition No. 30 of 2014 filed by Respondent Nos. 2, 3, 4 and 5.

- f. The Appellant has contended that the State Commission has not considered and dealt with all suggestions and objections received from the public while passing the Impugned Order and this is in violation of Section 64 of the Act. This also violates the principle of natural justice. Some of the essential suggestions which were not considered includes:
- i. Impact of True up cost should not be considered as it is sub-judice;
  - ii. Consumption for domestic consumer projected by Discom is highly inflated;
  - iii. Investment plan submitted by Discom is imaginary as the plan for financial year 2015-16 shows a jump of 51.5% which is unrealistic; and
  - iv. Cross subsidy charge has increased for open access consumer.
- h. As per the State Commission, the True-up orders which are stated to be sub-judice, and have not been stayed by this Tribunal and hence the True-up costs have been considered in the Impugned Order. Further there is a mechanism to consider past period true-up cost adjustment, hence in future if these costs need adjustment, the same shall be done in subsequent years.
- i. As per the State Commission, the consumer mix, load density and geographical diversity would also play vital role in deciding the tariffs. Hence the State Commission has to strike a balance among the different categories of consumers in order to avoid tariff shocks. Further regarding increased projected domestic consumption, the

State Commission has accepted the projected figures due to implementation of feeder separation scheme and the State Government's initiative to ensure providing 24x7 supply across the State.

- j. We are in agreement with the submissions of the State Commission and the view taken by the State Commission while considering the objections/suggestions raised by the Stakeholders in passing the Impugned Order. Maintaining a balance between the interest of consumers and other stakeholders while achieving the benchmarks set for overall improvement is a critical task assigned to the State Commission.
- k. Hence this issue is decided against the Appellant.

**15. On question no 4 i.e. Whether the State Commission has erred by not considering the fact that the distribution losses as submitted by Discom are on higher side?, we observe as follows;**

- a. On this issue, we have already observed earlier in this judgment that the State Commission has taken normative distribution losses as per the trajectory identified in the Tariff Regulations 2012.
- b. The Impugned Order, while mentioning the concerns raised by stakeholders on levelization of distribution losses for all Discoms, states that the Discoms have submitted that they are adopting various measures to curb the losses and also for meterisation. The tariff petition is always filed as per the provisions of the regulations which

prescribe benchmark loss levels. Any increase in the benchmark loss level by the distribution licensee results in the financial loss as no compensation for increased loss level is given to the distribution licensee by the Commission. Therefore as such there is no implication on consumer tariff because of losses higher than benchmark level. Burden on account of any losses in excess of normative level is not passed on to the consumers and such excess losses are borne by the licensees.

c. Hence this issue is also decided against the Appellant.

**16. On question no 5 i.e. Whether the Impugned Order violates the principal of natural justice as objections raised by the public were not considered by the State Commission?, our observations are as follows;**

a. On this issue also, we have observed earlier in this judgment that the provisions of Section 64 of the Electricity Act have been duly followed by the State Commission as well as Respondent Discoms during the process of finalization of ARR and tariff determination.

b. Considering this, there is no point of violating the principle of natural justice by the State Commission in the present case.

c. Hence this issue is also decided against the Appellant.

**17. On question no 6 i.e. Whether the State Commission has erred by fixing the cross subsidy charge without determining the actual cost of supply at various voltage levels?, we observe as follows;**

- a. As alleged, the State Commission has not followed the direction given by this Tribunal in its judgment dated 23.9.2013 in Appeal No. 52, 67-69 of 2012, while dealing with the issues regarding determination of cross subsidy, determination of tariff with respect to Average Cost of Supply and reduction in cross subsidy have been dealt in detail. According to this:
- The state Commission is required to determine voltage wise cost of supply.
  - The cross subsidy is to be calculated on the basis of cost of supply to consumer category/ Voltage wise cost of supply.
  - The Cross subsidy is not to be increased but reduced gradually.
  - The tariff of each of the consumer categories is to be within +-20% of the average cost of supply.
- b. This position has also been given by this Tribunal in its judgment dated 30.05.2011 in Tata Steel v. OERC in Appeal No. 102, 103 and 112 of 2010, wherein it is laid down that while calculating the cost of supply at various voltage level, discoms and commission must take into account distribution losses at various voltage levels and the upstream system.
- c. As per the State Commission, the methodology adopted for

computing voltage-wise cost of supply is as per this Tribunal's judgment dated 30.05.2011. In the absence of requisite data, only indicative voltage -wise cost of supply and cross-subsidy percentages have been worked out based on available information. The State Commission has applied the following methodology in determining the voltage-wise cost of supply:

- (a) Voltage wise cost of supply has been computed for above 33 kV and below 33 kV and 11 kV (inclusive of LT) categories only.
- (b) Sales as admitted by the Commission for above 33 kV and below 33 kV and 11 kV (inclusive of LT) categories have been considered.
- (c) Total technical and commercial losses of the petitioners have been considered the same as specified in the Tariff Regulations for FY 2014-15.
- (d) Total losses as admitted by the Commission have been segregated voltage wise for above 33 kV, 33 kV and 11 kV (inclusive of LT) in the same proportion as submitted by the petitioners.
- (e) Power purchase costs at the Discom periphery for above 33 kV, below 33 kV and 11 kV (inclusive of LT) based on the voltage-wise input energy have been considered. All other costs of the Discom are allocated based on the sales to each voltage-level.
- (f) Voltage wise total cost derived has been divided by voltage wise sales for working out the voltage wise cost of supply."

d. Based on the above methodology, the State Commission has worked

out voltage wise cost of supply and commensurate cross-subsidy. Therefore, it is established that the State Commission has worked out the voltage-wise cost of supply based on the available data which is evident from the Table 92: Computation of voltage-wise cost of supply for the State and Table 93- Cross-subsidy based on voltage wise cost of supply for FY 2015-16 for the State of the Impugned Order.

- e. The State Commission has stated in the Impugned Order that the voltage-wise cost of supply has to be further validated in due course of time when requisite data/information is available. We are in agreement with the approach taken by the State Commission in this regard.
- f. Hence this issue is also decided against the Appellant.

**18. On question no 7 i.e. Whether the State Commission has given a complete go bye to the object of the Act while determining the retail tariff and ARR as it promotes the violation of guidelines of the policy by the Discoms?, our observations are as follows;**

- a. The Appellant has raised the issue regarding violation of the basic principles of Sec 61, 64, 65 and 42 of the Act and provisions of Tariff Policy by the State Commission, while issuing the Impugned Order.
- b. While going through the Impugned Order, we have found that the State Commission has not violated any of the provisions of the



Electricity Act, 2003. The impugned order was issued in spirit of the Section 61 of the Act and provisions of the Tariff Policy. The State Commission has duly examined all the objections received during the stipulated time and also during the public hearings with regard to determination of the ARR and tariffs.

c. Hence this issue is also decided against the Appellant.

**19. On question no 8 i.e. Whether the retail tariff determined in the Impugned Order is against the tariff policy for the reason that the cost of the supply is not within +/- 20% of the average cost of supply?, we observe as follows;**

a. As per the Appellant, the Impugned Order does not follow the guiding principle of National Tariff Policy of maintaining tariff within +/- 20 % of average cost of supply.

b. Clause 8.3(2) of the Tariff Policy gives the principle for cross subsidization in the tariff structure as given below:

*"For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within  $\pm 20$  % of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy."*

- c. Section 42(2) of the EA 2003 provides for a progressive reduction in surcharge and cross subsidies in the manner provided by the appropriate commission.
- d. The State Commission has submitted that though it has made sincere efforts to bring down the tariffs for different categories within +/- 20% of average cost of supply, however, the specified targets could not be achieved as the State Commission is bound by certain constraints, such as consumer mix, load density and geographical diversity, which play an important role in tariff determination exercise in a vast state like Madhya Pradesh. The State Commission has to strike a balance among the different categories of consumers so as the revenue requirement could be achieved through tariffs for different categories. If the tariff for the categories having tariffs well below 20% range of the average cost of supply is increased arbitrarily to bring within the requisite range, it would be a tariff shock for those categories. The Impugned Order for FY 2015-16 shows that the consumption of domestic and agriculture categories of consumers was 25% and 40% of the total consumption respectively. Average realization as percentage of average cost of supply for these categories is 97% and 81% respectively. The total consumption of the HT category is only 24%. The State Commission has been able to achieve the tariffs for all categories above (-) 20% range since the minimum tariff for agriculture is 81% of the average cost of supply.
- e. We tend to accept the submissions made by the State Commission in this regard. The cost structure has undergone a change during the

year 2015-16 as explained in Impugned order. The State Commission has achieved the level of cross subsidy in terms of the Tariff Policy and the relevant provisions of the Act to the extent possible in the given circumstances. Further there is change in the sale vis-a-vis total load of various categories and also change in sales mix of categories/sub-categories. While State Commission should try to achieve the guidelines as per Tariff Policy, at the same time ground realities and difficulties are also to be looked into by them. It is evident that the State Commission has been continuously moving towards achieving the target.

f. Hence on this issue we decide against the Appellant.

**20. On question no 9 i.e. Whether the State Commission has erred while determining the cross subsidy charge for open access consumer as the cross subsidy charge does not reflect the difference between the applicable tariff and the cost incurred by the distribution licensee in supply of the electricity for that specific class of consumer?, our observations are as follows;**

a. As per the Appellant, the State Commission has erred while determining the cross subsidy charge for the open access consumer as the cross subsidy charge does not reflect the difference between the applicable tariff and the cost incurred by the distribution licensee in supply of electricity for that specific class of consumer.

b. The State Commission has submitted that while calculating the cross

subsidy surcharge, the State Commission has worked out the component 'C' indicated in the formula for computing the cross subsidy surcharge in Tariff Policy, pertaining to the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power strictly as per the provisions of the Tariff Policy by considering cost incidental upon the distribution licensees of the State for top 5% power at margin as per merit order approved by the State Commission for the distribution licensees. The component " T" has been worked out considering the direction of this Tribunal that the cross subsidy will be the difference between the average revenue realization per unit from a consumer category and the voltage-wise cost of supply for that category. Accordingly, the State Commission has worked out component "T" rightly as average tariff for a particular category or sub-category of consumers for which the cross subsidy surcharge is to be determined on the basis of the admitted sale of electricity to that category or subcategory of consumers and revenue expected from that category or subcategory of consumers from the tariffs specified in the tariff order for FY 2015-16.

- c. While determining the cross subsidy surcharge, the State Commission at Para 4.24 of the Impugned Order has stated as below:

*“4.24 In accordance with the above, the total cost ( Rs/unit) for various categories of HT consumers having contract demand of 1 MW or above at 132 kV/33 kV under various scenario are worked out as detailed in the table below (“scenario wise cost”). The Cross-Subsidy Surcharge shall be the difference of average tariff and the*

*total cost (Rs/unit) for the particular category at particular voltage. The category wise average tariff as per tariff order for FY 2015-16 is given in the table below (“category wise average tariff”). For example, for Railway Traction at 132 kV the average tariff for FY 2015-16 as per tariff order works out to Rs. 6.41 per unit and total cost works out to Rs. 4.59 per unit. Therefore, Cross-Subsidy Surcharge shall be Rs. 6.41 - Rs. 4.59 = Rs. 1.82 per unit. However, in case where cross-subsidy surcharge, based on above methodology, works out as negative, the same shall be considered as zero for billing purposes.”*

Hence the State Commission has determined the Cross-Subsidy Surcharge as the difference of average tariff and the total cost (Rs/unit) for the particular category at particular voltage.

d. In view of the above, we decide this issue against the Appellant.

**21. On question no 10 i.e. Whether the State Commission has acted contrary to the law laid down by this Tribunal in Siel Ltd. Vs. Punjab State Electricity Regulatory Commission and others (2007 APTEL at Para 107)?, our observations are as follows;**

a. As per the Appellant, the State Commission has acted contrary to the law laid down by this Tribunal in Siel Ltd. Vs. Punjab State Electricity Regulatory Commission and others (2007 APTEL 931 at para 107). The relevant extract of the said judgment is reproduced herein as under:

"The cross subsidies have to be brought down by degrees without giving a tariff shock to the consumers As long as cross-subsidy is not increased and there is a roadmap for its gradual reduction in

consonance with Section 61(g) of the Act of 2003 and the National Tariff Policy, determination of tariff by the Commission on account of the existence of cross subsidy in the tariff cannot be flawed".

- b. We have already deliberated this issue in the para no 19 while deliberating the question No 8 regarding cross subsidy.
- c. Hence this issue is also decided against the Appellant.

**22. On question no 11 i.e. Whether the State Commission has erred in considering the Impact of True up for Discoms as all these True up (for financial year 2008-09, 2009-10 and 2010-11) are pending for adjudication before this Tribunal?, we observe as follows;**

- a. As per the Appellant, the State Commission has erred in considering the impact of True up for Discoms for the reason that there is already a litigation pending with respect to True up (for financial year 2008-09, 2009-10 and 2010-11) of the Discom before this Tribunal. It would have been apt on the State Commission to not include True up of those financial year for determination of ARR for Discoms. Therefore, the impact of True up cost on ARR should be considered again so as to determine the correct ARR. The impact of True up for Discoms financial year 2009-10, 2010-11, 2011-12 and 2012-13 increases the gap in ARR and revenue by 7.4%. Further, True up of Discom for a financial year 2008-09 was already considered and

allowed in the ARR approved for 2014-15. Therefore, at least the True up for 2008-09 should be withdrawn while calculating the ARR for 2015-16.

- b. The State Commission has passed the orders for true up of ARR for Discoms for FY 2009-10, (Rs. 494.00 Crore), FY 2010-11 (Rs. 318.00 Crore) and FY 2011-12 (Rs.932.00 Crore), true-up of ARR for MPPTCL for FY 2012-13 (Rs. 174.00 Crore) and true-up of ARR for MPPGCL for FY 2011-12 {(-) Rs. 188.00 Crore} after the issuance of Retail Supply tariff order for FY 2014-15. This would result in an impact of Rs. 1730.00 Crore. Discoms have been allowed to recover these costs from ARR for FY 2015-16.
- c. We have observed in Para 14 while deliberating on the Issue No. 3 that the past year true-up orders which are stated to be subjudice have not been stayed by this Tribunal. Hence we do not find any infirmity in the approach adopted by the State Commission in considering the impact of past period True-up in the Impugned Order.
- d. Hence this issue is also decided against the Appellant.

**23. On question no 12 i.e. Whether the State Commission has made the tariff for the Appellant so burdensome, which is an open access consumer, that it has the effect of eliminating competition?, we observe as follows;**

- a. The State Commission has determined the Tariff as per the Tariff

Regulations 2012 and the directions of Tariff Policy and this Tribunal with regard to determination of voltage-wise cost of supply and cross subsidy and cross subsidy surcharge.

- b. Regulation 43.1 of Tariff Regulations 2012 specifies the need for cross-subsidy while considering the objectives of the tariff Policy.

*“43.1: The overall process of determining tariff shall ensure that prudent costs are passed on to consumers. However, aspect of meeting the social objective of providing affordable power to all groups of users without an unbearable tariff shock needs to be considered. Therefore there is a need for cross subsidization while determining tariff for individual category keeping in view the provisions of Tariff policy. The cross-subsidy may be shown in the tariff determined for consumer categories and shall be worked out in such manner so as to meet the objectives of the Tariff policy.”*

- c. It has been already discussed that this year State Commission could achieve to bring the tariff within (-) 20% of the average cost of supply for Agriculture consumers.
- d. While determining the tariffs for FY 2015-16, the State Commission has given due consideration to the requirement of the Electricity Act, 2003 that consumer tariffs should reflect the cost of supply. The average cost of supply for the year FY 2015-16 has been determined by the State Commission as Rs 5.29 per unit as against Rs 4.84 per unit for FY 2014-15. Hence we do not find any substance in the contention of the Appellant that the State Commission has made the tariff for the Appellant so burdensome, which is an open access



consumer, that it has the effect of eliminating competition.

e. Hence this issue is also decided against the Appellant

**24. On question no 13 i.e. Whether the State Commission ought to have considered the significant surplus/profit being earned by the trading company, which can be ploughed back to the accounts of the holding company (Respondent No. 5) for reducing the tariff burden on the consumers like Appellant?, our observations are as follows;**

- a. As per Appellant, had the surplus energy been sold at higher rates by Holding company/ Discoms, it would have helped to reduce the distribution licensee's ARR and hence the tariff.
- b. In the Impugned Order, the State Commission has after allowing long term purchases from Discoms and MPPMCL allocated generating stations as per merit order principle, observed that there is a surplus of 17,305 MU from conventional sources during FY 2015-16. Further the State Commission has approved the additional renewable energy purchase of 2287 MU for fulfilling the RPO compliance. Thus additional energy of 2287 MU from conventional sources was identified to be available to Discoms for sale outside the state. Accordingly, the total surplus energy available with the Discoms was assed as 19,592 MU for FY 2015-16.
- c. This surplus energy was proposed to be sold through the power exchange by Discoms. The State Commission observed that Short-

term average bilateral rate for calendar year 2014 was Rs. 4.28 per unit, the average rate of IEX and PXIL for W1 region for the last 12 months from February 2014 to January 2015 was Rs.3.16 per unit and Rs.3.35 per unit, respectively. Hence the State Commission has considered the rate of Rs.3.16 per unit for sale of surplus power through IEX, PXIL and bilateral contracts. Accordingly, the Commission worked out the revenue from sale of power. Revenue earned from sale of surplus energy has been used to balance the ARR of Discoms.

- d. Further the State Commission in the Impugned Order observed that the Commission is of the view that if surplus energy can be sold at higher rate through bilateral contracts or through PXIL, the Discoms should manage to sale surplus energy in such a way that the revenue from surplus energy be maximized.
- e. In any case the quantum and rate at which surplus energy was actually sold during the FY 2015-16, shall be taken care of by the State Commission at the time of True-up of FY 2015-16.
- f. Hence this issue is also decided against the Appellant

**25. On question no 14 i.e. Whether the State Commission erred in determining the retail tariff and cross subsidy on the basis of average cost of supply in violation of Section 61 of the Act and para 8.3 (2) of the tariff policy read with tariff regulation, as enunciated in a series of judgment of this Tribunal, which require**

**computation of tariff on the basis of voltage wise cost of supply?, we observe as follows;**

- a. We have observed that the retail tariff has been determined by the State Commission after having given due consideration to the relevant provisions of the Electricity Act, 2003, National Tariff Policy and relevant Regulations. The Aggregate Revenue Requirement is determined on the basis of distribution loss level trajectory specified in the Tariff Regulations. Further uniform retail supply tariffs have been continued during the FY 2015-16 after giving due consideration to the advice of GoMP and the submissions made by Discoms, objectors and all other relevant material while determining tariff for various consumer categories.
- b. This approach is consistent with the approach adopted by the State Commission during past years also. In fact the determination of ARR and retail supply order for FY 2014-15 was also based on the same principles. In the Chapter: Retail Tariff design, the State Commission has deliberated at length about the voltage-wise cost of supply, and its linkage to cross-subsidy and also Comparison of tariff v/s overall average cost of supply.
- c. In view of the above, we decide this issue against the Appellant.

**26. On question no 15 i.e. Whether the State Commission is justified in increasing the cross subsidy surcharge for the Appellant in violation of third proviso to section 42(2) of the Act?, our**

**observations are as follows;**

- a. As per the Appellant, the increase in the cross subsidy charge for the Appellant is in complete violation of proviso third of the Section 42 (2) of the Act.
  
- b. Electricity Act, 2003 does not provide for elimination of cross subsidy but provides for reduction in the cross subsidy as per the third proviso of section 42 (2) of Act. Considering the need to continue with the scheme of cross subsidy, the third proviso to section 42 (2) of the Act 2003 has been amended by the Act 26 of 2007 w.e.f. 15-06-2007 as under:-  

"Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:"
  
- c. The computation of the cross subsidy surcharge has been made by the State Commission in line with the formula prescribed by the National Tariff Policy (“**NTP**”). The top 5% margin on the power purchase cost (Component 'C'), was computed by the State Commission in accordance with Merit Order of the Distribution Companies, as decided in the Tariff Order and therefore, is in accordance with NTP. The formula specified in the NTP policy also relates to the computation made as per the Merit Order. As per Tariff Policy the cross subsidy surcharge has to be computed for a category of consumers; and Tariff Policy requires computation of average tariff for a particular category of consumers.

- d. The State Commission has observed in the Impugned Order that :
- “The Commission has determined voltage wise cost of supply vis-a-vis cross subsidy percentage of the consumer categories on that voltage based on the proposals submitted by the Discoms. It may be mentioned here that the data/ information for working out the voltage wise cost of supply needs to be further validated to get a fair and correct picture. The voltage wise cost of supply vis-a-vis cross subsidy percentage worked out in this tariff order is only indicative in nature in the absence of requisite data. This is in compliance of directives given in the judgment of APTEL on this issue as a first step in this direction.”
- e. The State Commission has observed in the Impugned Order that it is consciously making efforts over the past several years to reduce the cross subsidy levels across all consumer categories. However, while doing so it has also kept in mind that any category of consumers is not put to tariff shock by a sudden steep hike. It may also be seen that although there is no change in the tariff for any category of consumers, however, the percentage cross subsidy vis-a-vis overall average cost of supply has undergone a marginal change. We are in agreement with the views of the State Commission in this regard. However it has been brought to our notice that the cross subsidy surcharge for some category of consumers like the Appellant has gone up substantially. The State Commission is required to prepare a road-map for reduction of cross subsidies amongst the various categories of consumers.

f. Hence this issue is decided accordingly.

**27. On question no 16 i.e. Whether the State Commission was justified in passing the Impugned Order without fixing the cost of supply at various voltage levels and also indicating the cost for each category and indicating the extent of cross subsidy existing and the plan of action to reduce it over a period of time as envisaged in the 2003 Act and the Regulations?, we observe as follows;**

a. We have already observed that the State Commission in the Chapter - A 7 Retail Tariff Design, has already dealt with the issue of determination of voltage-wise cost of supply, indicating cost of each category. Similarly Consumer category wise approximate cross-subsidy has been worked out based on voltage wise cost of supply for FY 2015-16 as shown in the table 93 of the Impugned Order.

b. Regarding plan of action for reduction of cross subsidy, the State Commission has mentioned that it has been consciously making efforts over the past several years to reduce the cross subsidy levels across all consumer categories. However, while doing so it has also kept in mind that any category of consumers is not put to tariff shock by a sudden steep hike. State Commission has observed at para 7.5 of the Impugned Order that  
“In view of the above, the Commission has endeavoured to work out approximate category wise cross subsidy based on voltage wise cost of supply in-spite of constraints in segregation of voltage wise cost of

losses and capital expenditure related costs. As can be seen from the foregoing, the Hon'ble APTEL has concluded that the mandate of the Tariff Policy to limit cross subsidies within (+/-) 20% of the overall average cost of supply can be applied to determine the category wise retail tariff. However, determination of voltage wise cost of supply is required to enable the Commission to evaluate cross subsidies prevalent at various voltages. The Commission would thus be guided by the voltage wise cost of supply in seeking to gradually reduce cross subsidies at various voltage levels.”

- c. We would like to put a remark on this count that the State Commission while issuing the Retail Supply Tariff orders and avoiding tariff shock to consumers should also identify the road map for reduction of cross subsidy.
- d. Hence we decide this issue accordingly.

**28. On question no 17 i.e. Whether the State Commission should have considered the fact that Discom have shown inflated domestic consumption so as to increase retail tariff for consumer like Appellants?, we observe as follows;**

- a) As per the Appellant, the State Commission has considered inflated domestic and agricultural consumption so as to increase retail tariff;
- b) The State Commission in the Impugned Order has considered the

sales projection based on the data submitted by the Discoms.

- c) The Sales projection have been increased by the Discom considering the fact with respect to implementation of RGGVY/ DDUGJY, Feeder separation scheme, 24x7 Power for All scheme etc which will result in increased electricity supply in the State and hence domestic consumption.
- d) Hence we decide this issue against the Appellant.

**29. On question no 18 i.e. Whether the State Commission has erred in assuming 50% loss as commercial loss at all voltage levels as such commercial losses are usually less than 10% of total losses?, we observe as follows;**

- a. As per the Appellant, the State Commission has erred in assuming 50% loss as commercial loss at all voltage level because commercial losses are usually not more than 10% of total loss. In this regard no efforts have been made by the Respondents to appoint the consultant so as to work out the cost at different voltage level. There is deliberate attempt to deny due benefit to EHT and HT consumer by delaying the appointment of consultant to work out the cost at various voltage levels.
- b. In the Impugned Order, the State Commission stated that the Petitioners have submitted that the Tariff Regulations do not provide segregation of normative losses for the Distribution Licensees into



voltage wise normative losses in respect of technical and commercial losses and have further submitted that determination of voltage-wise losses would require detailed technical studies of the Distribution network. Therefore, for the purposes of illustrative computation of voltage wise cost of supply, the petitioners' have assumed voltage-wise losses; the data therein is not duly verified and so, should not be relied upon.

- c. The State Commission in the Impugned Order has stated that :

*“The Commission agrees with the petitioners’ submission that determination of voltage- wise losses would require detailed technical studies of the distribution network. As a first step in the direction of working out category wise cross subsidy based on voltage wise cost of supply, the Commission has attempted to determine the same based on the methodology proposed by the petitioners. The category wise cross subsidy so worked out is indicative in nature and not accurate, as the base data for the same need to be duly culled out on actual.”*

Having observed that the Petitioners have submitted assumed figures regarding voltage-wise losses for the purposes of illustrative computation of voltage wise cost of supply, the State Commission has taken the same methodology as proposed by the Respondents/ Discoms with the observation that the category wise cross subsidy so worked out is indicative in nature and not accurate. This has been done by the State Commission considering the directions received

from this Tribunal in Judgment dated 30.05.2015 in Tata Steel v. OERC in Appeal No. 102, 103 and 112 of 2010 that in the absence of requisite data, the power purchase cost which is the major component of the Discoms' costs, can be apportioned to different voltage levels in proportion to the sale and losses at the respective voltage levels. The State Commission has assumed Commercial loss as 50% of 11kV and LT overall losses and Balance 50% commercial losses for all voltage i.e. EHT, 33 KV, 11 KV+LT system in proportion to sales. We are in agreement with the approach of the State Commission in this regard.

d. Hence this issue is also decided against the Appellant.

**30. On question no 19 i.e. Whether the State Commission has erred by not considering the essential fact that sale forecast given by the Discom is on the basis of the compound annual growth rate, which has never been accurate?, we observe as follows;**

- a. As per the Appellant, the State Commission has considered the sale forecast on the basis of distribution licensee's inaccurate compounded annual growth rate. A better method for predicting the sale forecast is to link the growth with financial indices.
- b. Section 24 of the Tariff Regulations 2012 provides mechanism for estimation of sales. The provision states as

*“24. Estimation of sales*

*24.1. The estimation of the sale for each year of the Tariff period shall be based on the category wise and slab wise actual/audited data of the sale of electricity, number of consumers, connected/contracted load, etc. of the preceding three years as well as considering any other relevant factors or studies carried out that may result in to variance in estimation of sale to that of based on actual/audited data. Reasons for variance with the historical trends shall be submitted by the Licensee with due justifications for consideration of the Commission. The year wise projections of the aforementioned parameters for the tariff period shall also be provided along with the tariff petition.*

*24.2. The reasonableness of growth in number of consumers, consumption, demand of electricity and trend of reduction of losses in previous years and anticipated growth in the next years and any other factor, which the Commission may consider relevant, would be examined and subsequently approved by the Commission for determining the estimated quantum of electricity required by the Licensees on the basis of normative loss level for determination of tariff with such modifications as deemed fit.*

*24.3. For the purpose of such estimation Distribution Licensee shall also indicate:*

*a. Category wise open access consumers, traders and other Distribution Licensees using its system. The demand and energy wheeled for them shall be shown separately in respect of consumers;*

- i. within the area of supply and*
- ii. outside the area of supply.*

*b. Sale of electricity, if any, to electricity traders or other distribution licensees shall be separately indicated.*

*24.4. The Distribution Licensee shall have to establish consumption of un-metered consumer categories through feeder as well as DTR metering through representative sampling /audit etc. In the absence of such energy audit / representative samples / DTR metering, etc. the Distribution Licensees' claim may not be accepted and the estimation of consumption in such cases shall be based on the benchmarks as the Commission may consider appropriate.*

*24.5. The Commission may direct the distribution licensee to conduct an independent study for (i) validation of status of meters, load of metered consumers and category classification of consumers; (ii) to assess consumption of power by un-metered consumers' segments based on random sampling basis; (iii) assessment of consumption on agricultural feeders based on meters installed at each DT in the sample area and (iv) segregated agricultural feeders by installing meters at input points of the feeder at the sub-station and based on load flow studies to determine technical losses and thereby agricultural consumption.*

*24.6. The Commission may direct the manner and the methodology of the studies to be conducted for the purpose of establishing/validating metered and unmetered consumption. The Commission may accordingly review the benchmarks for unmetered consumption and may direct the distribution licensee to take further action as may be considered appropriate.”*

Hence as per Regulation 24.2, the reasonableness of growth in number of consumers, consumption, demand of electricity and trend of reduction of losses in previous years and anticipated growth in the next years and any other factor, which the Commission may consider relevant, would be examined and subsequently approved by the State Commission.

- c. As per Impugned Order, the Discoms have followed the approach for sale forecast as to analyse the Compound Annual Growth Rates

(CAGRs) of each category and its subcategories in respect of urban and rural consumers, separately. After analysis of the data, appropriate/reasonable growth rates have been assumed for future consumer/ sale forecasts from the past CAGRs of the Category/Sub-category. The forecast also considers the impact of Capex schemes/ plans of licensees on account of Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY)/Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY), future meterization plan of domestic consumers and separation of feeders of agriculture and other categories of consumers as well as increase in supply hours in the rural areas.

- d. While approving the projected sales, the State Commission in the Impugned Order has reviewed the sales forecast and compared the same with past trends. The State Commission has taken due cognizance of various submissions made by Discoms for projecting increase in sales. The State Commission has mentioned that it is supportive of the Discoms endeavour to provide unrestricted supply to all the consumers, therefore, the Commission considers it prudent to accept the total quantum of energy sale as filed by the petitioners. However, the analysis of the sale filed in the petition in the consumer categories LV- 1 domestic and LV 5.1 agriculture indicated that the sale filed by the petitioners in these two consumer categories has not been appropriately projected. The Commission observed that the projection of sale in domestic category is not supportive to the fact that the feeder separation programme is presently undergoing, at a large scale. This would yield in further increase in the sale of domestic consumer category. On the other hand, the sale for the agriculture

category has been projected on higher side when compared with the trend observed in past few years. Hence the Commission accordingly appropriately realigned the projections of sale in these two consumer categories.

- e. We are in agreement with the approach followed by the State Commission in this regard.
- f. Hence this issue is also decided against the Appellant.

**31. On question no 20 i.e. Whether the State Commission should have directed the Discom to find out better option of selling the surplus energy so as to reduce the ARR?, we observe as follows;**

- a. As per the Appellant if surplus energy should have been sold at higher rates by Discoms, it would have helped to reduce the distribution licensee's ARR and hence the tariff.
- b. We have already discussed this issue at Para 24 of this judgment while deciding the Question No 13. We are in agreement with the approach adopted by State Commission in the Impugned Order.
- c. Hence this issue is also decided against the Appellant.

**ORDER**

We are of the considered opinion that the issues raised in the present Appeal are liable to be dismissed as devoid of merit.

Accordingly, the Appeal is hereby dismissed. The Impugned Order dated 17.04.2015 passed by the State Commission is hereby upheld. However, the State Commission is hereby directed to prepare in a time bound schedule a road-map for reduction of cross subsidies amongst the various categories of consumers as remarked by us while deciding the Question No.15 and Question No. 16 as above.

In view of above, I.A. Nos. 212 and 213 of 2015 do not survive and are disposed of as such.

No order as to costs.

Pronounced in the Open Court on this **9<sup>th</sup> day of January, 2017.**

**(I.J. Kapoor)**  
**Technical Member**

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**(Mrs. Justice Ranjana P. Desai)**  
**Chairperson**

**REPORTABLE/NON-REPORTABLE**

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