

Before the Appellate Tribunal for Electricity

(Appellate Jurisdiction)

APPEAL No. 11 of 2011

Dated : 17th January, 2012

Coram; HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

In the matter of :

Northern Railway Head Quarters Office,

Baroda House, New Delhi- 110 001 Appellant

Versus

1. Haryana Electricity Regulatory Commission
Having Its Office at Bays 33-36 ,
Sector 4 Panchula, Haryana- 134 112

2. Uttar Haryana Bijli Vitran Nigam Limited
Having its Office at Vidyut Sadan,
Plot No. C- 16, Sector -6, Panchkula
Haryana-134 109

3. Dakshin Haryana Bijli Vitran Nigam Limited
Having its Office at Vidyut Sadan, Vidyut,
Vihar, Hisar, Haryana -25 005 ... Respondents

JUDGMENT

HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

Northern Railways, the appellant herein challenges the tariff order dated 13th. September,2010 passed by the Haryana State Electricity Regulatory Commission, the respondent no1,in respect of Uttar Haryana BijliVitrان Nigam Limited and Dakshin Haryana BijliVitrان Nigam Limited, the respondent no.2&3 respectively whereby it is alleged that there has been unrealistic hike in railway traction tariff and bulk supply category with no grant of HT rebate to this important segment of the Government utility.

2. The Government of India in the Ministry of Energy had as far back as 01.05.1991 issued a circular to all the State Governments and the State Electricity Boards on the necessity of providing electricity for railway traction at reasonable price so that electric traction does not prove to be costlier than diesel traction. The

recommendation of the Public Accounts Committee was that “railways are provided electricity at a reasonable price so that the service cost of electric traction do not artificially become costlier than diesel traction and with a view to reap benefit of the electrification and reduce consumption of precious diesel oil.

3. The National Tariff Policy dated January 6, 2006 mandates that the tariff must be linked to cost of service. The State Commissions were directed that they would notify roadmap within six months with a target that latest by the end of the year 2010-2011 tariff remains within +/-20% of the average cost of supply. In spite of that the Commission has not worked out the consumer category wise cost of supply and cross subsidy loaded in case of railway traction tariff continues to be unreasonably high.

4. In this connection, the appellant refers to a decision of this Tribunal dated 2nd March, 2006 passed in Appeal No.79 of 2005 (Union of India Vs. APERC & Others). We will have occasion to reproduce the extract of the decision as will be relevant for the purpose.

5. Now it is contended that the respondent nos. 2 & 3 in their tariff application and ARR for FY 2010-11 did not put forward any proposal for increase in tariff. Yet, increase in traction tariff and

tariff applicable for non-traction under bulk supply category without any tariff hike proposal by the respondents is prejudicial to the appellant.

6. The appellant contended in its objection that the appellant is a public utility without any profit motive , that higher tariff for the Railways will be ultimately burdensome on rail users , that the appellant has been drawing electricity at high voltage involving negligible T&D loss ,pilferage etc., that the Railways bear extra cost of infrastructure including transmission lines and substations , and that the two distribution companies have not chalked out any roadmap for gradual reduction of cross subsidy.

7. Railways should be allowed to avail itself of domestic tariff schedule for its domestic use, that the benefit of lower slab should be provided on domestic consumption taking average consumption per quarter into consideration , that rebate should be provided to the Railways @15% over total energy bills, that minimum charges should be levied on supply points connected to rural feeders, that railways should be allowed to have new connections under schedule domestic supply, that revision of contract demand should be made effective from the date of the application, that minimum

time should be fixed for replacement of defective meters , and that minimum time should be fixed for release of new connection.

8. Further, the appellant relies on the decision of this Tribunal in Appeal No.219 of 2006(Northern Railways Vs. UERC) where the Tribunal is said to have questioned the rationale of higher tariff than HT Tariff particularly when the Railways is having its own network of HT lines and transformers which substantially facilitates to reduce the cost to supply.

9. The Commission's reasoning that since the tariff was last revised a decade back the rising cost of power necessitated revision of demand charges from the current level is no ground for steeper rise. The appellant's tariff was heavily loaded by cross-subsidy and there has been no determination of category wise cost of supply.

10. When DMRC and The Railways both operate in transport sector there was no reason for higher tariff than the DMRC.

11. The impugned tariff order violates the provision of the Article 287 of the Constitution of India whereby the power tariff for the Railways should always be reasonable having regard to the fact the Railways contributed to the economic growth of the country

and is importantly a public utility catering to the needs of the common mass at large. Imposition of tax on Railways is not what is contemplated in the Constitution.

12. The Commission overlooked these points which are there the grounds of the instant appeal .

13. The respondents 2 &3 filed a joint counter affidavit urging the following points:-

- a) The revenue gap including return on equity for the respondent no 2 was Rs.3279.68 crore for FY 2010-11, while for the respondent no 3 the figure stood at Rs. 2316.97 crore
- b) b) There was no tariff increase since the financial year 2000-01.
- c) c)The power purchase cost has been on increase.
- d) d)Operation & Maintenance expenses has been on increase.
- e) e)There has been inadequate subsidy and equity infusion from the Government.
- f) In terms of the spirit of the law revision of the tariff was a dire necessity to keep in track with the cost of service.

g) The existing tariff was below the average cost of supply of Rs. 4.93 per unit. While inflation moved to over 4% per annum over the period 2000-01 to 2008-09 the retail tariff in Haryana moved up only at the rate of 0.28% per annum.

h) The Commission revised the electricity tariff after nearly a decade having regard to the increase in cost of supply to the consumers.

14. The Railways require uninterrupted and assured power supply and is not subjected to power supply regulatory measure, that no monthly minimum charges is applicable to them, that in case of shortage of power supply railway traction is given priority over the other consumers considering the essentiality of railway traction availability, and that traction tariff for Railway in Haryana is amongst the lowest in the country.

15. Section 45(4) of the Electricity Act prohibits a distribution licensee subject to section 62 to show undue preference to any person or class of persons or discrimination against any person or class of persons.

16. The Commission took a holistic view of the state of economy in Haryana and made a conscious effort to revise the existing tariff to align with the cost to serve

17. The recommendations of the Public Accounts Committee and the circulars quoted in the memorandum of the appeal are hardly any relevant in the year of 2010.

18. It is the mandate of the law that the tariff must progressively reflect the cost to supply and should be rationalized so as to be within +/- 20% of the average cost of supply.

19. The tariff existing in FY 2009-10 for all categories of consumers were at the lower level below -20% or below the average cost of supply of Rs. 4,93 per unit and the applicable tariff for railway traction in FY 2009-19 was only Rs. 3.85 per unit which was below the prescribed limit of the tariff policy of +/- 20% of the average cost of supply. The overall increase in the tariff for the FY 2010-11 was much below the upper limit of Rs.5.92 per unit and is only to the extent of 15-16% increase.

20. The two decisions of the Tribunal referred to by the appellant are completely misplaced and are factually distinguishable.

21. The Commission was well within its right to take suo motu action on tariff revision in view of the revenue gap as well as accumulated losses and huge revenue gap of the utilities occurring for over a decade.

22. Like the appellant the two contesting respondents are also state owned public utilities having responsibility to serve all the segments of the societies with no discrimination to any particular class of consumers and are required to ensure that in the interest of the public it is in a position to realize the cost of supply

23. The financial viability of the two respondents has also to be taken care of having regard to the fact that they also play a major role in the development of the State.

24. The consumption of the Railways has increased over the years, so that, the utilities have to purchase power from very costlier sources indeed to meet the increased demand of the Railways., that the supply to the Railways is done through the independent feeders, that unlike other domestic consumers the domestic consumption by the Railways in continuation to the power coming through the independent feeders ensures uninterrupted supply, that the appellant cannot be compared the position of the respondents with the private utilities operating with the urban

areas, that any consume desiring to be billed on a domestic tariff but remaining connected to the feeder supplying to the Railways may not be allowed a new connection because it would create a differential treatment amongst the consumers in the same areas., that any demand for revision of contract demand is subject to feasibility of the consumer's request and availability of spare transmission capacity in the system to cater to the consumer' s application, that the time incurred for the replacement of defective meters depends upon the availability of meters in the stores of the two respondents and the Commission also set a time frame for the replacement of defective meters.

25. The contention that the tariff for the railways traction is higher than the tariff for HT industries is not sustainable because this is practically so in many other States . But so far Haryana is concerned, the comparable energy actually billed to HT industries are 445 paisa/unit in comparison to energy charges of 431 paisa/unit billed to the railway traction, and that, as earlier stated, there has been a continuous increase in the revenue gap of the distribution licensee in Haryana and the object of the tariff increase is not linked to any particular consumer category.

26. So far as the current tariff structure is concerned the tariff of every consumer is below the average cost of supply (Rs. 4.93 /unit for FY 2010-11 determined by the Commission) and no consumer category is generating any cross- subsidy for the distribution licensees .

27. There cannot be any comparison between the Railways and the DMRC because unlike the latter the former is earning additional income by freight movements and the supply to the DMRC has not to be continuous unlike in the case of the railways. In many states the approved Railways tariff is higher than the tariff applicable to the state metro rail service .

28. The claim of the appellant for reduction in the tariff by virtue of the fact that the power is set at a higher voltage does not hold good since the power supply is favourably kept at higher voltage because a higher load is given at an elevated voltage level in order to maintain network stability and lower losses and the respondents also incur demand related fixed cost for maintaining an electrical system to meet each consumer's peak demand , that the demand charge represents the costs associated with the peak capacity that the customer has actually used and his actual contribution to the systems peak demand and that the respondents

are not charging any associated cost in respect of the capital investments made by the railway traction.

29. Rebate is given for availing supply at higher voltages and the tariff schedule will bear testimony to the fact.

30. The element of cross-subsidy is lower than the limit of 20% as envisaged in the tariff policy. The tariff for the railways has been increased keeping in mind the increase in the cost of service and the cross subsidy cannot be eliminated immediately resulting in abnormal tariff shock to other consumers

31. The study of cost of service has been outsourced to M/S ICRA Ltd. And the Commission suggested certain modification to the original report and the revised consolidated report on the cost of service shall be submitted to the Commission as and when completed.

32. The supply to the Railways is given through the specially established independent feeders to ensure uninterrupted power supply unlike HT Industrial consumers through urban and mixed feeders.

33. Importantly, the respondents have no liberty to disconnect supply in the event of default unlike in the encase of other HT Industrial consumers.

34. The distribution of electricity to all the consumers under its respective areas of jurisdiction is principally a social obligation and the respondents are under more pressure to serve people at large as compared to service rendered by the appellant Railways.

35. There has been an enormous increase in the prices of all petroleum products and fossil fuels for long long years.

36. The provision of open access is open to the railways in accordance with the Open Access Regulations,2005.

37. The respondents also incur heavy expenditure on account of short term power purchase in order to ensure an uninterrupted power supply to the Railways.

38. The tariff order has for the first time introduced two part tariff in the State of Haryana which in itself extends a rebate for consumers with a higher load factor which means that a consumer with higher load factor pays a lower per unit fixed charge and thus the overall per unit effective tariff reduces as the consumption increases.

39. In the context of the joint affidavit-in reply the appellant furnished a rejoinder which when necessary may be referred to but basically the rejoinder is but reiteration of what has been averred in the memorandum of the appeal.

40. The State Commission has not furnished any counter affidavit or any written note of arguments in support of the order impugned.

41. The above pleadings substantially raise the following points for consideration:-

a) Whether the tariff for the appellant has been unjustly higher, contrary to the law and the facts operating under the given circumstances?

b) Whether the appellant has been meted out a discriminatory treatment contrary to the law?

c) Whether the Commission has acted according to the provisions of the Electricity Act,, the National Tariff Policy and the Regulations framed by it while determining tariff for the appellant?

42. We have heard Ms. Gitanjali Mohan, learned counsel for the appellant, Ms Sikha Ohri, learned advocate for the State

Commission and Mr. Amit Kapoor and Mr. Vishal Anand, the learned counsels for the respondents 2 & 3.

43. A comprehensive treatment is called for to conveniently address the issues. Having read the contents of the memorandum of appeal of the Northern Railways it appears that the grounds are more generic than are based on specifics and the appeal raises a fundamental question whether the appellant, definitely a public utility directly under the control of the Government of India, deserves to be specially treated in view of the circular of the Ministry of Energy dated 1st of May, 2001 and the recommendation of the Public Accounts Committee. That the appellant caters to the needs of the general public, that it contributes to the growth of the economy of the nation, that it is not necessarily a commercial institution, that it has its own network and transmission lines, that it is not responsible for transmission and distribution losses which can be attributed to other consumers, that it receives electrical energy at high voltages to the advantage of the distribution companies fail to carry much force firstly because with the advent of economic reforms said to have been initiated by the Government in the early nineties the concept of what should be the attitude of the public utilities in its service to the society has

definitely undergone a change and the appellant cannot any longer say that since it serves the people without any profit motive it requires special treatment from the respondents nos. 2 and 3 because to say so is to forget that the respondent no. 2 & 3 are equally Government companies and they are right when they say that they are also equally public utilities and they cannot be asked to run on non-commercial principles, for to do so is to wind up their concerns. It is for the appellant to lay down its own policy, but the circular emphasized upon in the memorandum of appeal was dated much prior to the reforms in the electricity sector and similarly the recommendation of the Public Accounts Committee extracted in one sentence out of context has to be read in the context of the totalities of the factuality presented therein which we do not know. What is, important, therefore, is the law, and we are called upon to examine whether the facts have been appropriately appreciated by the State Commission and the law as it now stands has been properly applied.

44. The ground repeatedly canvassed by the appellant during the hearing of the appeal that in their tariff applications the two respondents did not make any proposal for increase of tariff particularly so far as the appellant is concerned is not legally

sustainable in as much as under the new enactment passed by the Parliament in the year 2003 specific duties , functions and powers of the State Commissions and the Central Electricity Regulatory Commission have been provided for and the statutory authority as the State Commission is is legally obligated upon to act in terms of section 86(1) of the Act which provides as follows:-

“The State Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation , supply, transmission and wheeling of electricity, bulk or retail, as the case may be, within the State:

provided that where open access has been permitted to a category of consumers under section 42 , the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating

companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) *facilitate intra- State transmission and wheeling of electricity;*

(d) *issue licenses to persons seeking to act as transmission licensees ,distribution licensees and electricity traders with respect to their operations within the State;*

(e) *promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify , for purchase of electricity from such sources , a percentage of the total consumption of electricity in the area of a distribution licensee;*

(f) *adjudicate upon the disputes between the licensees and the generating companies and to refer any dispute for arbitration;*

(g) *levy fee for the purposes of this Act;*

- (h) *specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;*
- (i) *specify or enforce standards with respect to quality, continuity and reliability of service by licensees;*
- (j) *fix the trading margin in the intra-State trading of electricity, if considered, necessary;*
- (k) *discharge such other functions as may be assigned to it under this Act.*
- (2) *The State Commission shall advise the State Government on all or any of the following matters, namely:-*

 - (i) *promotion of competition, efficiency and economy in activities of the electricity industry;*
 - (ii) *promotion of investment in electricity industry;***
 - (iii) *reorganisation and restructuring of electricity industry in the State;*
 - (iv) *matters concerning generation, transmission, distribution and trading of electricity or any other*

matter referred to the State Commission by that Government;

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions , the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3 .”

45. Further the regulation 6(3) of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of wheeling tariff and Distribution & Retail Supply Tariff Regulations, 2008 provides as under:-

“If the Commission is satisfied that the expected revenue of a distribution licensee(s) differs from the revenue it is permitted to recover, it may order the distribution licensee(s) to file an application within the time specified by the Commission to amend its tariffs appropriately failing which the Commission shall suo moto start the proceedings for determination of tariff.”

46. It is therefore, indubitably clear that it is the Commission alone that is vested with the statutory function to determine tariff of a utility strictly in the manner as laid down in the law, and we can conveniently remind ourselves of the provisions of section 61 which govern the principles for determination of tariff. The section reads as under:-

“61. Tariff Regulations:- 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 (54 of 1948), the Electricity Regulatory Commission Act, 1998 (14 of 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."

47. A provision in section 62(3) under which the appellant takes shelter and which again is taken resort to by the distribution licensees is important. This is :-

“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”

48. At the same time it is fair to note that subject to section 62 of the Act sub-section (4) of section 45 occurring in Part VI of the Act cautions a distribution licensee in these words that *“.....in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.”*

49. Determination of category wise cost of supply is what is contemplated in the Act, and definitely this has not been done by

the State Commission ; but for this the entire exercise done by the State Commission does not become illegal. In fact , following reforms initiated in the power sector there has been going on evolution and so far none of the State Commissions could be able to complete the task of determination of category wise cost of supply which does not necessarily mean average cost of supply but the processes have been launched to accomplish the job and we are told by the learned counsel for the State Commission that a study has been initiated for the purpose. In this connection it is profitable to reproduce what this Tribunal has said and ruled in the matter of determination of category wise cost of supply.

50. The issue of category-wise cost of supply was discussed by this Tribunal in a batch of 10 appeals being Appeal No. 04 of 2005 decided on 26th May, 2006 and it is profitable to reproduce the observations of the Tribunal as follows:

“114. For all consumers who are being cross-subsidized by the commission, a limit on consumption must be specified for which special support through cross subsidy may be given, but once the consumer exceeds that limit he should be charged at the normal tariff. In this regard, for the year 2007-

08, parameters shall be fixed by the Commission. To effectuate the order, we consider it necessary to press into service Section 55 of the Act of 2003. As per Section 55 of the Electricity Act, 2003, a licensee is required to supply electricity through installation of correct meters in accordance with the Regulations made by the concerned authorities. Therefore, metered supply of power shall be given to every consumer of electricity including those who are subsidized or cross subsidized. In order to give effect to this direction the work should commence within three months and completed by the end of March, 2007 by the Board/Discom.

115. Under Section 65, State Government can grant subsidy to any consumer or class of consumers in the tariff determined by the State electricity regulatory Commission under Section 62. The State government is required to pay subsidy in advance and in such manner as may be specified by the regulatory commission. If the payment is not made in advance and in such manner as may be directed by the State commission, the tariff fixed by the State Commission shall be applicable. As per para 8.3 of the National Tariff

*Policy, payment of direct subsidy is a better way to support the economically weaker sections of consumers than the mechanism of cross subsidizing the tariff across the Board. As a substitute of cross subsidy, the State government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. It is the option of the State government to** subsidise or not to subsidise. It is also the option of the State government, in case they decide to give subsidy, to determine** the extent to which the subsidy shall be given. In case the State Government decides to give subsidy as a substitute for cross subsidy, it will be a better way to support the poorer sections of the society, but as already pointed out, the option lies entirely in the hands of the state government.*

116. Keeping in view of the provisions of the Act, the Commission was bound to require the Government to pay the outstanding subsidy including Rural Electrification subsidy. The manner of payment was also to be specified under section 65 of the Act by the Commission and the State government would be bound by such specification. Section 29(2) (d) and (e) and Sub-section (5) of Section 29 of the

1998 Act is also to the same effect. It can not be left to the discretion of the State how the subsidy is to be paid to the Board. The State appears to be adjusting subsidy against the interest allegedly due from the Board on account of Government loans which is not permissible, as the Act provides for actual payment as a statutory obligation. Factually, subsidy has not been paid in cash and has merely been adjusted not against the principal but against interest. In any case, if subsidy would have been adjusted against the principal amount, the loans would have been substantially reduced and consequently, the interest payable by the Board would have come down drastically.

*117. In view of the aforesaid discussions, we direct that **the Commission shall determine the following:*

- i) What is the total amount of subsidy payable by the State to the Board including cash and RE subsidy without any adjustment of earlier loans or interest?*
- ii) What should be the mode of payment of subsidy?*

- iii) *To what extent the subsidy could be applied or adjusted towards the principal (loans)?.*
- iv) *What is the amount of interest payable by the Board to the State?*
- v) *What is the quantum of amount which the state has failed to disburse towards RE subsidy?*

118. It will be open to the Commission to call for the record of the Board and the State including their statement of Accounts to determine the issues. The Board and the State Government shall be duty bound to assist the Commission in coming to the right conclusion. In case the Commission is of the opinion that it would need the assistance of an expert or experts, it shall nominate the expert(s) in consultation with the Board, the State and representative of the consumers. Before relying upon the report of the expert (s), the same shall be furnished to the aforesaid parties and it will be open to them to respond. After considering all aspects of the matter, the Commission shall determine the aforesaid questions.

In case, if the Govt. fails to respond, the Commission may draw adverse inference and arrive at its own conclusion on the materials made available.

119. We further direct that:

- i) The Commission shall determine the cost of supply of electricity to different class and categories of consumers;*
- ii) The Commission shall also determine the average cost of supply;*
- iii) Once the figures of cost of supply and average cost of supply are known, the Commission shall determine the extent of cross subsidies added to tariff in respect of each class/category of consumers; and*
- iv) The consumers who are being cross subsidized by the Commission, a limit of consumption shall be specified for which special support through*

cross subsidy may be provided. Once the consumer exceeds the limit, he shall be charged at normal tariff. These directions shall be applicable from the next tariff year onwards.”

51. Further, in a batch of ten appeals being Appeal No. 57 of 2008 etc. decided on 11th January, 2012 this Tribunal observed as follows: -

“36. Having heard the learned counels for the parties, we must first point out what are inherent in the law and what are the ground realities:-”

(a) Sections 39, 42, 61(d) & (g) and Section 65 of the Electricity Act, 2003, National Electricity Policy and National Tariff Policy speak of cost of supply, cross-subsidy and subsidy which are co-related to one another.

(b) Where gradual reduction of cross-subsidy is what is contemplated in the law absolute elimination was at least inconceivable for the periods in respect of which the appeals are being heard.

(c) *The West Bengal case referred to by the learned counsel for the appellants is of no avail in view of the statutory provisions and the National Policies. The Act, 2003 clearly permits the Commission to provide for cross-subsidies between different classes and categories of consumers.*

(d) *In Appeal No. 4 of 2005 it has been laid down that the extent of cross-subsidy is commensurate with the extent of consumption.*

(e) *Tariff has to reflect the cost of supply progressively and the 2003 Act does not speak of “average” preceding the words “cost of supply” but the Act does not contemplate the eradication of cross-subsidy with the enforcement of the Act and tariff as per the National Tariff Policy has to be fixed within +/- 20% of the average cost of supply although cost of supply does not by itself mean average cost of supply.*

37. *It is true that in respect of the FY 2007-08, the Commission in the absence of relevant data determined the average cost of supply. For the year*

2009-09, the Commission went on determining the average cost of supply but it cannot be doubted that there has been reduction of cross-subsidy in real terms as against FY 2007-08. There has been gradual increase of tariff for the A.P. Consumers from 2.40 per unit to Rs. 2.85 per unit in the year 2009-10 and again the tariff for this category of consumers was further increased from 2.85 per unit to Rs. 3.20 per unit in FY 2010-11. The contention of the Government of Punjab that tariff for the FY 2010-11 in respect of the agricultural consumers should have been determined at not more than Rs. 2.13 per unit is not sustainable, for if this argument is to be accepted then the level of cross-subsidy cannot be arrested and kept at +/- 20% of the average cost of supply. It is apparent that increase of 35 paise per unit for the A.P. consumers resulted in reduction of cross-subsidy from (-) 25.74% in FY 2009-10 to (-) 21.39% in FY 2010-11. The learned advocate for the Commission has pointed out the Commission has adjusted an extra amount of Rs. 260.37 crore by the Government to the Board towards other payments. In the FY 2009-10 the cross-subsidy

level came down to 14.37% as against 16.21 % in the FY 2009-10. There has been a reduction in the cross-subsidy level of both the subsidized and subsidizing categories as compared to FY 2009-10. The combined average cost of supply was at 427.29 paise per unit as against 402.76 paise per unit in FY 2009-10. In absolute terms the quantum of cross-subsidy in FY 2010-11 was Rs. 558.14 crore as against Rs. 605.61 crore in FY 2009-10. Thus, a comparative study of four financial years clearly shows remarkable declining trend in the levels of cross-subsidy, although in the absence of complete data and particulars the Commission had to rely on the usual methodology of determination of average cost of supply.

38. Cross-subsidy is intrinsically related to the determination of cost of supply. It is the stand of the appellants that tariff is to be based on the cost of supply of electricity to each category of consumers receiving supply at a particular voltage level and there should be no cross-subsidy amongst the different consumer categories. In the order dated 26.5.2006, it

was made clear that there cannot be any quarrel with the proposition that the ultimate aim is to go by the concept of cost plus basis of supply to various categories and classes of consumers but this is impossible to achieve overnight and at one go. The spirit of the order was that the Commission was required to fix a road-map for achieving the objective to be notified by the Commission. Initially, the approach adopted by the Commission in determining the average cost of supply could not be necessarily faulted although it was made clear that the cost of supply does not mean average cost of supply. It has been contended in Appeal Nos. 155 of 2007 and 57 of 2008 that because of non-determination of category-wise cost of supply, cross-subsidy exceeded its limitation. It has been canvassed in Appeal No. 125 of 2008 that despite the direction of the Tribunal, actual cost of supply for different categories of consumers was not determined and in the absence thereof, the issue of working out of the actual amount of cross-subsidy paid by the Consumers was getting swept under the carpet. This was the issue two in Appeal No. 199 of 2009, 196

of 2009 and 40 of 2010. Some relevant observations of this Tribunal on this issue are:-

“104. The point for our consideration is whether cross subsidy has increased or reduced has to be determined with reference to the consumption of electricity by the subsidizing and the subsidized consumers or is it to be worked out on the basis of cost of supply of electricity per unit, to different categories of consumers. In case the cross subsidy is to be worked out on the basis of the consumption of electricity by the subsidized and subsidizing consumers, the amount of cross subsidy in that event would depend on the quantum of sale of energy to various categories of consumers. By employing this method, the quantum of cross subsidy will be directly proportionate to the increase or decrease in the consumption of electrical energy by various categories of consumers. For example when the consumption of energy by the industrial consumers goes down, the quantum of cross subsidies will decrease. But when the industrial consumers are consuming more, the cross subsidy will

go up. Again, when the sale of energy to the agricultural consumers goes up, the quantum of cross-subsidy will proportionately increase. Therefore, in case the quantum of cross subsidy is measured on the basis consumption, it will vary depending upon the quantum of consumption by the consumers of various categories. This is illustrated by figures given in the written submissions filed on behalf of the appellants in Appeal No. 35 of 2005. Therefore, in case the quantum of cross-subsidy is measured if this method is adopted, the cross subsidies between consumers may show inflated results even where the tariff for the industrial & commercial consumers and railways is reduced and tariff for the subsidized category is kept static or is increased, since, the calculations will depend on the consumption of electricity by the various categories. In the instant case, there has been a uniform increase of tariff for all categories by 10% but the quantum of cross subsidies considered from the point of view of consumption may have gone up. Basically, the distortions would disappear once the cross subsidies are eliminated. But this still seems to

be a far cry in view of the recent Electricity (Amendment) Bill, 2005, which has been tabled in the Parliament. Section 7 of the Amendment Bill seeks to substitute the following clause in place of Section 61(g) of the principal Act:

- (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,”*

For the present, however, the law is that eventually the cross subsidies are to be reduced and eliminated so that tariff progressively reflects the cost of supply.

*105. It appears to us that the question whether cross subsidies have increased or decreased should be considered with reference to the rate of supply of electricity per unit to different categories of consumers and not on vagaries of consumption, which are indefinite and cannot be controlled by the Commission or the Board. In two years viz. 2004-05 and 2005-06; there has been a 6 paise/unit** increase in tariff for the industrial consumers whereas there has been a 15 paise/unit** increase in tariff for the domestic*

consumers. This being so it cannot be said that there has been an increase in the cross subsidies.

*106. It is significant to note that in the year 2004-05, tariff for agricultural consumption was fixed at Rs. 2/- per unit. It is equally important to note that earlier electricity was being supplied to agriculturists free of cost. Therefore by applying the aforesaid ** method, it can be safely Stated that cross subsidy has been lowered during the year 2004-05 and was not increased during the year 2005-06. It may not be proper to consider the question whether cross subsidy has increased or decreased during the year 2005-06 by making a comparison with the tariff for the year 2004-05 as the tariff for the year, 2004-05 was reduced on the basis of an assumption that the Board will generate a surplus of Rs. 438.29 crores. Subsequently, after the truing up exercise, it was revealed that the Board has actually suffered a revenue gap of Rs. 305.24 crores on account of reduction in tariff. However, the Board had a surplus of Rs. 36.66 crores for the financial year 2003-04. Therefore, the revenue gap for the year 2004-05 was to the tune of Rs. 268.58 crores. This revenue gap had to be recovered during the year 2005-06*

and for that and other factors, the Commission in its wisdom increased the tariff of all categories of consumers by 10%. Therefore, cross subsidy for the year 2005-06 was not reduced as compared to the year 2004-05.

107. The cross subsidies have to be brought down by degrees without giving tariff shock to the consumers. Though it is desirable that cross subsidies are reduced through every tariff order but in a given situation, it may not be possible. 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, the determination of tariff by the Commission on account of existence of cross subsidy in the tariff can not be flawed.

108. The learned counsel for the Industrial Consumers canvassed that the Commission is required to safeguard the interests of the consumers by fixing a reasonable tariff, which should reflect the cost of supply of electricity. There cannot be any quarrel with the proposition that the ultimate aim is to go by the concept of cost plus basis of supply of electricity to various categories and classes of consumers, but this cannot

be achieved immediately in one go. This can be accomplished stage by stage over a period of time by reducing the cross subsidies etc. In case, the cost of supply of electricity is known the inefficiencies of the generator and the licensee cannot be hidden. This will tend to bring transparency and efficiency in the working of the utilities. It will also be conducive to the recovery of the cost of electricity by utility in a reasonable manner, giving boost to cost plus regime. We are conscious of the fact that at present, data on cost of supply has not been made available to the Commission. The data must be supplied by the utilities to the Commission. The cost of supply at different voltages is different. Therefore, data in this regard must be acquired with reference to cost of supply to the different class of consumers by calling upon the Board to furnish the same.

109. According to Section 61(g) of the Act of 2003, the Commission is required to specify the period within which till the Commission progressively reaches that stage, in the interregnum, the roadmap for achieving the objective must be notified by the Commission 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 when the tariff Policy was notified by the Government of India, within six months from January 6, 2006, 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 within + 20% of the average cost of supply (pooled cost of supply of energy received from different sources). But the policy has reached only up 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”. The Commission shall gradually move from the principle of average cost of supply towards cost of supply.”

52. Again in paragraph 40 onwards of the said judgment, this Tribunal held as follows:-

“40. It is relevant to note that the issue concerning extent of cross-subsidy and category-wise cost of supply has been discussed in this Tribunal’s recent decisions in Appeal Nos. 102, 103 and 112 of 2010 rendered on 30th May, 2011 which being relevant we quote:-

“17. Section 61(g) of the 2003 Act stipulates that the tariff should progressively reflect the cost of supply and cross subsidies should be reduced within the time period specified

by the State Commission. The Tariff Policy stipulates the target for achieving this objective latest by the end of year 2010-11, such that the tariffs are within $\pm 20\%$ of the average cost of supply. In this connection, it would be worthwhile to examine the original provision of the Section 61(g). The original provision of Section 61(g) “the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross subsidies within the period to be specified by the Appropriate Commission” was replaced by “the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies in the manner specified by the Appropriate Commission” by an amendment under Electricity (Amendment) Act, 2007 w.e.f. 15.6.2007. Thus the intention of the Parliament in amending the above provisions of the Act by removing provision for elimination of cross subsidies appears to be that the cross subsidies may be reduced but may not have to be eliminated. The tariff should progressively reflect the cost of supply but at the same time the cross subsidy, though may be reduced, may not be eliminated. If strict commercial principles are followed, then the tariffs have to be based on the cost to supply a consumer category. However, it is not the intent of the Act after the

amendment in the year 2007 (Act 26 of 2007) that the tariff should be the mirror image of the cost of supply of electricity to a category of consumer.

18. Section 62(2) provides for the factors on which the tariffs of the various consumers can be differentiated. Some of these factors like load factor, power factor, voltage, total electricity consumption during any specified period or time or geographical position also affects the cost of supply to the consumer. Due weightage can be given in the tariffs to these factor to differentiate the tariffs.

19. The National Electricity Policy provides for reducing the cross subsidies progressively and gradually. The gradual reduction is envisaged to avoid tariff shock to the subsidized categories of consumers. It also provides for subsidized tariff for consumers below poverty line for minimum level of support. Cross subsidy for such categories of consumers has to be necessarily provided by the subsidizing consumers.

20. The Tariff Policy clearly stipulates that for achieving the objective, the State Commission has not been able to establish that the tariff progressively reflects the cost of supply of electricity, latest by the end of the year 2010-11,

the tariffs should be within $\pm 20\%$ of the average cost of supply, for which the State Commission would notify a road-map. The road map would also have intermediate milestones for reduction of cross subsidy.

21. According to the Tariff Regulation 7 (c) (iii) of the State Commission the cross subsidy has to be computed as difference between cost-to-serve a category of consumer and average tariff realization of that category.

22. after cogent reading of all the above provisions of the Act, the Policy and the Regulations we infer the following:

- i) The cross subsidy for a consumer category is the difference between cost to serve that category of consumers and average tariff realization of that category of consumers. While the cross-subsidies have to be reduced progressively and gradually to avoid tariff shock to the subsidized categories, the cross-subsidies may not be eliminated.*
- ii) The tariff for different categories of consumer may progressively reflect the cost of electricity to*

the consumer category but may not be a mirror image of cost to supply to the respective consumer categories.

- iii) Tariff for consumers below the poverty line will be at least 50% of the average cost of supply.*
- iv) The tariffs should be within $\pm 20\%$ of the average cost of supply by the end of 2010-11 to achieve the objective that the tariff progressively reflects the cost of supply of electricity.*
- v) The cross subsidies may gradually be reduced but should not be increased for a category of subsidizing consumer.*
- vi) The tariffs can be differentiated according to the consumer's load factor, power factor, voltage, total consumption of electricity during specified period or the time or the geographical location, the nature of supply and the purpose for which electricity is required.*

Thus, if the cross subsidy calculated on the basis of cost of supply to the consumer category is not increased but

reduced gradually, the tariff of consumer categories is within $\pm 20\%$ of the average cost of supply except the consumers below the poverty line, tariffs of different categories of consumers are differentiated only according to the factors given in Section 62(3) and there is no tariff shock to any category of consumer, no prejudice would have been caused to any category of consumers with regard to the issues of cross subsidy and cost of supply raised in this appeal.”

“29. The State Commission has indicated in the impugned order that the voltage-wise cost determination is the first step in determining the consumer-wise cost of supply but has expressed difficulties in determination of voltage-wise cost of supply due to non-segregation of costs incurred by the licensee related to different voltage levels and determination of technical and commercial losses at different voltage levels due to non-availability of meters. The State Commission has also noted that the data submitted by the distribution licensee does not have technical or commercial data support.

30. It is regretted that even after six years of formation of the Regulations data for the distribution losses. The position of

metering in the distribution system of respondent no. 2 is pathetic. Only about 1/4th of 11 KV feeders have been metered and very small numbers of transformers have been provided with meters. Only 68% of the consumer meters are functional in the distribution system as indicated in Table-37 of the impugned order. It is also noticed that a large number of meters are old electro mechanical meter which are not functioning. This is in contravention to Section 55 of the Act. Section 55(1) specifies that no licensee shall supply electricity after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the Regulations of the Central Electricity Authority. According to Section 55(2) meters have to be provided for the purpose of accounting and audit. According to Section 8.2.1 (2) of the Tariff Policy, the State Commission has to undertake independent assessment of baseline data for various parameters for every distribution circle of the licensee and this exercise should be completed by March, 2007. In our opinion the State Commission can not be a silent spectator to the violation of the provisions of the Act. In view of large scale installation of meters, the State Commission should immediately direct the distribution

licensee to submit a capital scheme for installation of consumer and energy audit meters including replacement of defective energy meters with the correct meters within a reasonable time schedule to be decided by the State Commission. The State Commission may ensure that the meters are installed by the distribution licensee according to the approved metering scheme and the specified schedule. In the meantime, the State Commission should institute system studies for the distribution system with the available load data to assess the technical distribution losses at different voltage levels.

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 taking into account the distribution losses at different voltage levels as a first major step in the right direction. As power purchase cost is a major component of 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 pro-rata 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.”

53. On the question whether the Commission neglected in its functions to determine category-wise cost of supply this Tribunal in Appeal No. 5 of 2008 and 63 of 2008 observed as follows:

“17. The next issue is with reference to the determination of category-wise cost of supply and capping of consumption by subsidised category of consumers. In the remand order passed by the Tribunal, a specific direction had been issued by the State Commission to determine category-wise cost of supply and to ascertain the magnitude of cross subsidization from that level. It was also further directed that the State Commission shall put up a cap on the consumption of energy by subsidized category of consumers to be allowed at subsidized tariff. Without considering the same, the State Commission in the impugned order has simply mentioned that the directions of the Tribunal in the Remand order

pertained to the year 2007-08 and accordingly, the State Commission would deal with it only in Tariff Order for the year 2007-08. The State Commission has, however, not indicated any action plan or given any directions for carrying out studies and collection of data required for implementation of the directions of the Tribunal.

18. Further, in the Tariff Order 2007-08, the State Commission has not been able to determine category-wise cost of supply and resultant impact of cross subsidization. In fact, the State Commission has just expressed its inability to determine the same in the absence of data made available by the Electricity Board.

19. In respect of determination of normative level for consumption of energy in terms of directions given by this Tribunal in the Remand Order, the State Commission has again expressed its limitation in evolving normative levels of agricultural consumption in view of variations in agro climatic and differing crop pattern in the State. It is also observed by the State Commission that even if the normative level of consumption is evolved, they would not get monitored in the absence of complete metering of agricultural consumption.

Thus, by virtue of these observations, the State Commission has continued to allow agricultural consumption on actual basis casting additional burden of cross subsidization to be borne by the subsidizing category of consumers.

20. From the discussion made above, it is apparently clear that the State Commission has not complied with the directions issued by this Tribunal in Remand Order. That apart, the State Commission while passing the impugned order has not taken into consideration the various principles while dealing with the Tariff related issues in terms of Section 61 of the Act 2003. The State Commission being an independent regulatory authority is supposed to be guided by the following factors:

- i) The principles and methodology specified by the Central Commission for determination of tariff applicable for Generating Companies and Transmission Licensees;*
- ii) The generation, transmission, distribution of and supply of electricity are conducted on commercial principles;*

- iii) *The factors which should encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- iv) *The safeguarding of consumers' interests and the recovery of the cost of electricity in a reasonable manner;*
- v) *The tariff should progressively reflect the cost of supply of electricity and also should reduce the cross subsidy within the period to be specified by the State Commission;*

21. The State Electricity Boards are bound to function on commercial principles. They are supposed to safeguard the interests of the consumers while charging tariff which reflects cost of supply of electricity and reduce the cross subsidy.

22. The Electricity Board is bound to remain efficient and competitive while making economical use of resources and optimising through investment. Accordingly, the reasonable costs which are efficiently incurred in competitive environment by making optimum use of the investment by State Electricity Board can only be passed on to the

consumers. Thus, the State Commission is supposed to take into consideration all these principles while considering tariff related issues which should aim at passing on only reasonable and efficient cost to the consumers while making optimum use of the investment.

23. Thus, it is clear that the State Commission not only violated the specific directions issued by this Tribunal in the impugned order which are binding on the State Commission but also did not comply with the mandatory provisions contained in the Act.”

54. These discussions are sufficient guidelines for the Commission to undertake a serious exercise for determination of cost of supply and since this has not been reportedly done, we once again direct the Commission to go into the exercise and the two respondents to assist the Commission by furnishing all relevant and reliable data, which we think with the long passage of time the Commission might have been now enriched with the report of M/s ICRA Ltd.

55. Minus the point referred to above certain factors positively contribute to the raising of tariff, and these are:-

- a) For over a decade there has not been any tariff hike and it was incumbent upon the Commission to take into consideration of the fact that power purchase cost did not go down, rather it continued to rise uninterruptedly which definitely told upon the health of the public utilities. The State Advisory Committee expressed its concern in this respect in their report.
- b) The revenue gap of both the utilities were on the increase and there was no sign of recovery.
- c) As a corollary to the above the operation and maintenance expenses were on the increase.
- d) The appellant has not been subjected to any regulatory measures and no monthly minimum charges are levied upon the appellant.
- e) Unquestionably, so far as the appellant is concerned , supply has to be continuous and without interruption which definitely is a distinguishing feature not applicable to HT Industrial consumers who also according to their convenience maintain their transmission system to ensure supply at their delivery point.

- f) It has been demonstrated with data that the tariff in FY 2009-10 for all categories of consumers were below the average cost of supply of Rs. 4.93 per unit and the applicable tariff for railway traction in FY 2009-10 was only Rs. 3.85 per unit for supply at 66 KV or 132 KV and this is below +/- 20% of the average cost of supply .
- g) It could not be the case of the appellant that the tariff hike exceeded abnormally above +/- 20% of the average cost of supply which is in vogue.
- h) The increase has been in proportion to the cost of supply.
- i) According to the showing of the appellant, the composite traction tariff for the two respondents is much lower than the neighbouring State of Punjab and is not on abnormally higher plane than the other northern States of Delhi, UP, and Uttarakhand.
- j) Fuel surcharge at @30 paisa per unit as is ventilated in the appeal is unavoidable .
- k) It goes undisputed that the traction tariff is higher than HT Industrial tariff in some States

- l) The Distribution Utilities incur demand related fixed cost for maintaining a system so as to meet each customer's fixed demands and that this cost has to be born by the customers who demands such capacity.
- m) The very contention of the appellant that cross-subsidy so far as the appellant is concerned has become unreasonably high particularly when the appellant is not a profit oriented organization and that it caters to the needs of the common mass is hardly acceptable in view of the fact that the element of cross-subsidy has despite the tariff hike after a decade since the year 2001 has been kept below the limit of 20% as envisaged in the National Tariff Policy. It is true that cross-subsidy will be subject to variation to category-wise consumers when the cost of supply which is different from average cost of supply is determined for each category of consumers. In this appeal we have already directed the Commission to ensure determination of category-wise cost of supply in the light of the principles as laid down in the above decisions of this Tribunal. Still then it requires reiteration that in terms of the National Tariff Policy the element of

cross-subsidy in respect of the appellant has not gone above what has been prescribed. It is difficult to accept the proposition that so far as the appellant is concerned it must not bear the burnt of cross-subsidy and it overlooks the fact that it cannot be equated with DMRC.

56. Learned advocate for the appellant has drawn attention of this Tribunal to the two decisions of this Tribunal being Appeal No. 79 of 2005 (Union of India Vs. A.P.E.R.C. & Others) decided on 2nd March, 2006 and the decision in Appeal No. 219 of 2006 (Northern Railway Vs. U.E.R.C.) decided on 28th November, 2007. In the latter case the question was raised as to why tariff for the Northern Railway could be much more higher than HT tariff, while in the earlier case it was emphasized that since Railway is a public utility, there should be reasonable tariff railway traction. It bears recall that the facts in the two reported decisions are not at all similar to the present one and so far as the Haryana State Electricity Regulatory Commission is concerned, the economic scenario of Haryana has undergone a change since the year 2001 during which for some reason or the other the appellant has enjoyed no substantial tariff hike. The two distribution utilities have given in their counter affidavit a comparative chart showing that

both energy charges and fixed charges in respect of railway traction tariff at Haryana is much lower than the States of Gujrat, Bihar, Karnataka, Punjab, Maharashtra, Madhya Prades and Uttar Pradesh. It is only in Uttar Pradesh where energy charges at 132 KV is 76 paise lower than Haryana but so far as fixed charges are concerned Haryana still stands at the lowest amount.

57. In the impugned order the Commission has observed that as compared to rate of inflation that occurred between the year 2000-01 and 2008-09 the retail tariff in Haryana has moved only at the rate of 0.28% per annum. The Commission has further observed that the railway traction tariff in FY 2009-10 for supply at 66KV or 132 KV was at Rs. 3.85 per unit which was below the average cost of supply.

58. The demand of the appellant that it should be charged for the domestic consumption at a tariff equal to that of the independent consumer is grossly erroneous because the demand of the appellant has been on increase and other consumers who consume power from urban feeders may face outages because of

shortage of power. The supply to the railway is given through independent feeders.

59. It has been argued by the respondents without challenge that being a Government entity electricity duty is not charged upon the Railways and it gets 15 paise exemption.

60. The demand of rebate at 15% over total energy bill upon totality of consideration of the facts and circumstances of the appeal is not justifiable.

61. In ultimate analysis, the appellant does not appear to have any case and subject to the direction concerning determination of category-wise cost of supply which the Commission shall undertake and finish within a reasonable time frame, we dismiss the appeal but without costs.

(Justice P.S.Datta)
Judicial Member

(Rakesh Nath)
Technical Member

Reportable/Non-reportable

KS

