

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 159 of 2011**

**Dated: 28<sup>th</sup> February, 2012**

**Present: HON'BLE MR. JUSTICE P S DATTA, JUDICIAL MEMBER**  
**HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,**

Shankarbhai Dhavlu Waghmare  
President District Panchayat,  
New Collectorate Building,  
Dadra & Nagar Haveli,  
Silvassa-396230

...Appellant

Versus

1. Joint Electricity Regulatory Commission for UT and Goa  
2<sup>nd</sup> Floor, HSIIDC Office Complex,  
Vanijya Nikunj Complex, Udyog Vihar, Phase-V,  
Gurgaon, (Haryana)- 122016
  2. Electricity Department  
Union Territory of Dadra & Nagar Haveli,  
Silvassa, Amli, Silvassa-396230
- .....Respondents

Counsel for Appellant(s): Mr. Rohit K Singh

Counsel for Respondent(s): Mr. Dinesh Kapoor R-1  
Mr Sakesh Kumar for R-2

**JUDGMENT**

**MR. V J TALWAR TECHNICAL MEMBER**

- 1 The appellant is the President of the District Panchayat of the Union Territory of Dadra, Nagar and Haveli (UT) and as such is a public representative. Further, the Appellant is also a domestic as

well as agricultural consumer. The Joint Electricity Regulatory Commission for UTs and Goa is the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent Electricity Department is Distribution Licensee in the Union Territory of Dadra, Nagar and Haveli.

2 Aggrieved by the State Commission's Tariff Order dated 30.9.2011 for financial year 2011-12, the Appellant has filed this Appeal.

3 The short facts of the case are as under:

- a. The 1<sup>st</sup> Respondent, Joint Electricity Regulatory Commission (Commission) for all Union Territories and State of Goa was established on 30<sup>th</sup> May, 2008 under Section 83 of Electricity Act 2003 (Act). Chairman of the Commission assumed charge on 21.10.2008 and one Member assumed Charge on 21.8.2008. Presently the Commission is a two Member Commission.
- b. 2<sup>nd</sup> Respondent, Electricity Department of UT of Dadra Nagar & Haveli in the deemed Distribution Licensee under 3<sup>rd</sup> Proviso to Section 14 of the 2003 Act.
- c. The Commission has framed JERC (Terms and Conditions for Determination of Tariff) Regulation 2009 in accordance with the provisions of Section 61 of the 2003 Act after meeting the requirement of previous publication as per Section 181(3) of the 2003 Act.
- d. The 2<sup>nd</sup> Respondent, Electricity Department had filed its petition for ARR and determination of retail tariff for FY 2010-11 on 6.4.2010 in petition no. 14 of 2010. Accordingly, the petition was admitted on 7.6.2010 and on 1.11.2010 the

Commission passed First Tariff Order for UT of Dadra Nagar Haveli approving ARR and Retail Tariff for FY 2010-11.

- e. The 2<sup>nd</sup> Respondent, Electricity Department filed petition for Annual Revenue Requirement and determination of retail Tariff for FY 2011-12 on 8.3.2011. The petition was admitted on 5.4.2011 vide petition no. 32 of 2011 and the 2<sup>nd</sup> Respondent was directed to publish the ARR and tariff petition in abridged form as per requirement of Section 64 of the Act. Accordingly, the 2<sup>nd</sup> Respondent published a Public Notice on 10.5.2011 in seven Newspapers having wide circulation in its area of supply inviting comments from all the stake holders on its ARR and Tariff proposals.
- f. The Commission also published a Public Notice in Seven Newspapers on 17.6.2011 informing all the stake holders about public hearing which was held in Silvassa on 28.6.2011.
- g. However, in the mean time the 2<sup>nd</sup> Respondent filed a rejoinder to the original petition and on the direction of the Commission published the contents of the rejoinder in two Newspapers on 29.6.2011. The Commission issued another public notice informing the stake holders about another public hearing which was held on 18.7.2011 at Silvassa.
- h. On 13.9.2011 the Commission, after thorough examination of the proposals of the Appellant and considering the written comments received and observations made by during public hearings by the stake holder, passed the impugned Order.

- i. Aggrieved by the impugned Order, the Appellant has filed this Appeal challenging the increase in the tariff of the subsidized categories.
- 4 The learned Counsel for the Appellants has urged the following contentions challenging the impugned order passed by the Central Commission:-
- a. The UT of Dadra & Nagar Haveli is a small UT ensconced between the State of Maharashtra in the South and Gujarat in the North with a geographical area of only 491 Sq. Kms. out of which 40% is under Reserve Forest.
  - b. Majority of the population in the Territory is very poor and backward. Considering the backwardness of this Union Territory, the Government of India had declared a Tax Holiday during the late 80's and therefore the Territory has seen tremendous industrial growth during the last two decades.
  - c. Due to industrial development, the consumption of the Electricity in this territory arose drastically and the industrial consumption amounted to around 97%, whereas the consumption of electricity by the Domestic and Agriculture Sector together is not more than 3% of the total consumption.
  - d. Considering the consumption level of domestic and agricultural categories, the 2<sup>nd</sup> Respondent did not propose any hike in either of the categories and the Public Notices issued by him also did not reflect any increase in tariff for

these categories. As such the consumers of these categories did not submit their comments on the tariff proposals.

- e. However, the State Commission, in complete reversal from the proposals made public by the 2<sup>nd</sup> Respondent, ordered a massive hike in the tariff for the domestic & agriculture categories. On the other hand the tariff for Industrial category, which consumes the maximum power, has not been left untouched by the Commission.
- f. The tariff for BPL Consumers have been revised from Rs 5/month to Rs 24/month which is all most 5 times. Similarly the tariff for agricultural consumers having connected load upto 10 HP has been increased from 55 Ps/kwh to 250 Ps/kwh (i.e. five times) and for the consumers having connected load above 10 HP, the tariff has been increased from 85 Ps/kwh to 265 Ps/kwh which is almost 300% (i.e. 3 times the existing tariff). The Commission has also increased the tariff by 60 paise to 1 Rupee in different slabs of consumption for domestic consumers and 25 paise to 65 paise for commercial consumers.
- g. The Commission has failed to give justification for such a huge rise and which has resulted into tariff shock for the BPL, Domestic and the Agricultural categories.
- h. The Electricity Act 2003, the National Tariff Policy and Commission's own Tariff Regulations provide that cross subsidy should be reduced gradually so as not give tariff shock to any category of consumers. However, in this present case, tariff rates have been increased to the extent

that it has given a shock to the local people who are mostly tribal and agriculturists.

- i. The Commission has failed to recognize the fact that the territory was surplus in energy till eighties and cheaper power from NTPC stations was adequate to meet its requirement. During last two decades there has been abnormal industrial growth in the territory as a result of which the allocated power from CPSUs became inadequate and territory had procure power from new expensive sources to meet ever increasing demand by Industrial Category. Thus the increase in power purchase costs is only due to abnormal growth of Industrial Category which accounts for 97% of power consumption in the territory. Thus, due to the impugned order, the Domestic Consumers shall now be subsidizing the Industrial Consumers; whereas in other states, the Industrial Consumers subsidize the Agricultural and Domestic Consumers.
5. The learned Counsel for the 2<sup>nd</sup> Respondent Distribution Licensee supported the contentions of the Appellant and further submitted the following:-
- a. The 2<sup>nd</sup> Respondent Distribution Licensee is a small department of administration of Union Territory looking after the Distribution activity of power within the territory.
  - b. The Union Territory of Dadra Nagar & Haveli does not have its own power generating stations and the power demand of the territory being met from the allocation of power from the Central Sector Generating Stations of Western Region and

NTPC-SAIL Bhilai power plant. The firm allocation from the central sector generating stations is only 57 MW and the rest of allocation is from unallocated quota as on 1<sup>st</sup> Oct, 2011.

- c.** The present allocation of power to this territory is 564.13 MW during peak hours and 481.44 MW during off peak hours. The allocation of power from NTPC-SAIL Bhilai Power Plant is 100 MW firm and 64 MW unallocated. The allocation of RGPPL is 38 MW.
- d.** Due to various liberalised policies of Government of India over the periods for the development of this tribal dominated territory, large numbers of industrial units have established their industries in these territories.
- e.** The consumption pattern in this UT is different from the rest of the country. The 97 % consumption of power belongs to industrial consumption and rest of 3 % consumption covers all the other categories like Domestic, Commercial, Agricultural, and Public Lighting etc.
- f.** Due to heavy industrialisation the power demand of the territory dominated to the industrial consumption only compared to that of other categories and increase in power purchase cost over the period dominantly involved exorbitant industrial development of the territory.
- g.** Dadra Nagar & Haveli is a pre-dominantly a Union Territory inhabited by the Tribal and Poor people. The Government of India had declared Tax Holiday and various other incentives to attract industries to be setup in the UT so that the tribal

and poor people get job and earn livelihood. The dominant users of total power consumption are industries and are solely responsible for increase in power purchase cost over the years due to tremendous industrialisation taking place in the UT.

- h.** The Commission vide its Tariff Order dated 13<sup>th</sup> September, 2011 in respect of ARR petition and Tariff proposal filed by the 2<sup>nd</sup> Respondent has increased the tariff for domestic consumers by 60 Paise to Rs 1 in its four slabs of energy charges. As results of which tariff for consumption more than 200 units per month is even more than tariff for Industrial Consumers.
  - i.** The Impugned Order mainly effects the Domestic category including BPL category and the Agricultural category which contributes only 1.4% and 0.05% of power consumption in the territory. The abnormal increase in tariff for these categories is a tariff shock and is against the principle of National Electricity Policy and the Electricity Act, 2003. These Statutory Provisions provides that the cross subsidy needs to be reduced gradually.
- 6.** In reply to the above contentions, the learned counsel the Commission have made the following submissions:-
- a.** The Commission has determined tariff in accordance with the provisions of the Electricity Act, 2003 and the Tariff Policy and has given detailed reasons for arriving at the tariff of different categories. The Commission, while deciding the

tariff for various categories, has been guided by Clause 8.3 of the Tariff Policy.

- b. The one of important mandate given by the Tariff Policy is that by the end of year 2010-11, the tariffs for all categories of consumers are to be within  $\pm 20\%$  of the average cost of supply and also that the tariff of consumers below poverty line should be at least 50% of the average cost of supply.
- c. The Commission has decided the tariff for all categories keeping in the mind the above mandate of the Tariff Policy and has brought the level of cross subsidy within the permitted range of  $\pm 20\%$  for all the categories of consumers except BPL consumers whose tariff has been fixed at 50% of average cost of supply also as per the above mandate.
- d. The tariff for all the categories has been fixed in accordance with the statutory provisions and any action done in consonance with the statutory provisions cannot to be held bad or void in law. Thus Tariff fixed in accordance with the statutory provisions cannot be said to have given tariff shock to consumers.
- e. In view of these it cannot be said that the Commission has increased tariff without any justifiable reasons. It cannot be said that the Commission is oblivious to the difficulties and other categories of consumers. But the Commission is bound to follow the mandate of the Act and The Tariff Policy and to see that equitable balance is maintained between prudent cost of supply and the interest of the Consumers.

- f. It is within the domain of the Appropriate Government under Section 65 of the Act read with the Tariff Policy to provide direct subsidy to support poor categories of the consumers.
7. In the light of the rival contentions urged by the Learned Counsel for the parties, the only question would arise for our consideration as to Whether the Commission has determined tariff for various categories in accordance with the provisions of the Act, its own Tariff Regulations and National Electricity Policy and Tariff Policy.
8. The learned Counsel for the Commission relied heavily on the provisions of Act, the National Electricity Policy and the Tariff Policy notified by the Government of India under Section 3 of the Act. It would be, therefore, desirable to examine various provisions of the Act. Part VII of the Act deals with Tariff. Sections 61, 62 and 64 are relevant sections in the present context. Section 61 of the Act is reproduced below:

**“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)...

(b)...

(c)...

(d)...

(e)...

(f)...

(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) ...

(i) *the National Electricity Policy and tariff policy:*

....”

9. Bare reading of this section would reveal that the Commission has to frame Regulations specifying terms and conditions for determination of tariff and while framing such Regulations the Commission is required to be guided by, inter alia, National Electricity Policy and Tariff policy. Once the Commission has framed the Tariff regulations taking in to account the provisions of these policies, it has to determine tariff in accordance with such Regulations only. Section 61(g) also requires the Commission to indicate in the Regulations, the manner by which the cross subsidies would be reduced.
10. Now let us examine the various provisions of the National Electricity Policy and Tariff Policy framed by the Government of India under Section 3 of the Act. National Electricity Policy was notified by the Government on 12<sup>th</sup> Feb 2005 and the Tariff Policy was notified by the Government on 6<sup>th</sup> Jan 2006. Clause 5.5 of National Electricity Policy read as under:

**“5.5 RECOVERY OF COST OF SERVICES & TARGETTED SUBSIDIES**

*5.5.1 There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector sustainable.*

*5.5.2 A minimum level of support may be required to make the electricity affordable for consumers of very poor category. Consumers below poverty line who consume below a specified level, say 30 units per month, may receive special support in terms of tariff which are cross-subsidized. Tariffs for such designated group of consumers will be at least 50 % of the average (overall) cost of supply. This provision will be further re-examined after five years.*

**5.5.3 Over the last few decades cross-subsidies have**

**increased to unsustainable levels. Cross-subsidies hide inefficiencies and losses in operations. There is urgent need to correct this imbalance without giving tariff shock to consumers. The existing cross-subsidies for other categories of consumers would need to be reduced progressively and gradually.**

5.5.4 *The State Governments may give advance subsidy to the extent they consider appropriate in terms of section 65 of the Act in which case necessary budget provision would be required to be made in advance so that the utility does not suffer financial problems that may affect its operations. Efforts would be made to ensure that the subsidies reach the targeted beneficiaries in the most transparent and efficient way.* {emphasis added}

11. Clause 8.3 of Tariff Policy deals with reduction of cross subsidy and has been relied upon by the Commission. The Clause is reproduced below:

**“8.3 Tariff design: Linkage of tariffs to cost of service**

*It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources.*

*In terms of the Section 61 (g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.*

***The State Governments can give subsidy to the extent they consider appropriate as per the provisions of section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross-subsidizing the tariff across the board. Subsidies should be targeted effectively and in transparent manner. As a substitute of cross-subsidies, the State Government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targetting subsidies effectively.***

*Accordingly, the following principles would be adopted:*

1. In accordance with the National Electricity Policy, consumers below poverty line who consume below a specified level, say 30 units per month, may receive a special support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply. This provision will be re-examined after five years.

2. 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.**

*For example if the average cost of service is Rs 3 per unit, at the end of year 2010-2011 the tariff for the cross subsidised categories excluding those referred to in para 1 above should not be lower than Rs 2.40 per unit and that for any of the cross-subsidising categories should not go beyond Rs 3.60 per unit.*

12. Perusal of these provisions reproduced above would indicate that the policies have laid down following broad principles in regard to necessity of reduction of cross subsidies.
- a. Cross-subsidies hide inefficiencies and losses in operations. There is urgent need to correct this imbalance without giving tariff shock to consumers. The existing cross-subsidies for other categories of consumers would need to be reduced progressively and gradually.
  - b. **The State Commissions were required to notify Roadmap within six months (from date of notification of the Policy i.e. by 6<sup>th</sup> June 2006) with a target that latest by the end of year 2010-2011 tariffs are within  $\pm 20$  % of the average cost of supply. The Roadmap would also have intermediate**

milestones, based on the approach of a gradual reduction in cross subsidy.

- c. The State Governments can give subsidy to the extent they consider appropriate as per the provisions of section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross-subsidizing the tariff across the board. Subsidies should be targeted effectively and in transparent manner.
13. It is reiterated that the Commission was required to be guided by these policies as per Section 61(i) of the Act while framing Tariff Regulations. Section 61(g) also requires the Commission to specify (through Regulations) the manner in which cross subsidies are to be reduced. In terms of National Electricity Policy the cross subsidies are required to be reduced progressively and gradually and Tariff Policy mandates the Commission to lay down a Roadmap by 6<sup>th</sup> June 2006 indicating intermediate mile stones for reduction of cross subsidies which were required to be brought within  $\pm 20\%$  of average cost of supply by the end of year 2010-11. In the light of these provisions and the guiding principles of the Policies, let us now examine as to whether the Commission has incorporated these in its Tariff Regulations framed and notified on 9<sup>th</sup> Feb 2010. Regulation 6 of these Regulations deals with cross subsidy and reduction thereof.

### **6. Cross-Subsidy**

*(1) "Cross-subsidy for a consumer category" in the first phase (as defined in subregulation 2 below) means the difference between the average realization per unit from that category and the combined average cost of supply per unit expressed in percentage terms as a proportion of the*

*combined average cost of supply. In the second phase (as defined in sub-regulation 2 below) means the difference between the average realization per unit from that category and the combined per unit cost of supply for that category expressed in percentage terms as a proportion of the combined cost of supply of that category.*

***(2) The Commission shall determine the tariff to progressively reflect the cost of supply of electricity and also reduce cross subsidies within a reasonable period. To this purpose, in the first phase the Commission shall determine tariff so that it progressively reflects combined average unit cost of supply in accordance with National Tariff Policy. In the second phase, the Commission shall consider moving towards the category-wise cost of supply as a basis for determination of tariff.***

14. Bare reading of this Regulation 6 reproduced above would reveal that the Commission has neither specified the manner in which cross subsidies are to be reduced and nor has indicated any Roadmap with intermediate mile stones for reduction of cross subsidies. The Sub-regulation (1) of Regulation 6 provides the methodology to evaluate cross subsidy and Sub-regulations (2) states that cross subsidy would be reduced within 'reasonable' period. It is important to note that the Tariff Policy was notified in January 2006 and it required cross subsidies to be reduced gradually and brought within  $\pm 20$  % of average cost of supply by the end of year 2010-11. Thus the policy makers gave a transition period of 5 years to bring down the cross subsidies within reasonable and sustainable levels so as to reduce it gradually without giving 'Tariff Shock' to any category. However, the Commission in this case brought down the same by a single stroke by substantially increasing the tariff for subsidized categories giving 'Tariff Shock' to these consumers. By doing so, the

Commission has followed the 'letter' and not the 'Spirit' of the Policy.

15. It is to be noted that Section 61 (g) of the original Electricity Act 2003 as approved by the Parliament provide for elimination of Cross Subsidies. However, the legislature realised that complete elimination of cross subsidies may not be desirable due to certain social obligations and therefore decided to eliminate the word 'eliminate' from Section 61 of the Act. Original Section 61(g) of the Act and amended Section are reproduced below:

**Original Section 61 of the Electricity Act 2003 as passed by the Parliament and notified on 10<sup>th</sup> June 2003.**

**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:—*

...

*(g) that 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;*

**Section 10 of Electricity (Amendment) Act 2007 provide as under:**

*10 In Section 61 of the principle Act, for clause (g), the following clause shall be substituted.*

*(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;*

16. Clause 5.5.3 of National Electricity Policy stressed upon the need of reduction of cross subsidies as over the last few decades cross-subsidies had increased to unsustainable levels. It further states that the Cross-subsidies hide inefficiencies and losses in

operations of licensees and therefore there is an urgent need to correct this imbalance without giving tariff shock to consumers. The existing cross-subsidies for categories of consumers would need to be reduced progressively and gradually. Conjoint reading amendment to Section 61(g) with Clause 5.5.3 of National Electricity Policy would make it clear since the cross subsidies hide the inefficiencies and true losses in the operation of the licensees, these need to be reduced gradually without giving tariff shock to subsidized category of consumers. In the present case the distribution losses are around 6-7% only, which are one of the minimum in the country. Therefore, it cannot be held that distribution licensee is inefficient and prevailing cross subsidies are hiding its inefficiencies and system losses. The cross subsidies in this case are present to meet other social obligations. The consumer mix in this UT is highly skewed in favour of industrial consumers with about 97% of total sale of power in the area of supply. With this consumer mix, 1% cross subsidy provided by the subsidising category would result in 32% cross subsidy to subsidized category. Conversely, restricting cross subsidy to subsidized category within 20% would mean 0.6 % cross subsidy from subsidizing category i.e. virtually eliminating cross subsidy from subsidizing consumers. Provision of restricting cross subsidy to +/- 20% in Tariff Policy is applicable to areas where proportion of both the categories, subsidizing and subsidized, are comparable. The same yard stick cannot be applied in areas where consumer mix is highly biased in favour of one category.

17. In view of our findings elaborated above, we are of the opinion that the Commission has not determined the tariff in accordance with

the provisions of the Act, its own Tariff Regulations and Policies for the following reasons:

- I. The Commission was required to be guided by the National Electricity Policy and Tariff Policy while framing Tariff Regulations under Section 61 of the Act and principles of these policies are to be incorporated in the Regulations itself. Once the Regulations have been framed, the Commission is bound to follow its own Regulations.
  - II. Tariff Regulations framed by the Commission did not take in to account the important features of the Policies viz., the cross subsidies are to be reduced gradually and brought down to a level of +/- 20% within five years. For which the Commission was required to lay down Roadmap with intermediate Mile Stones.
  - III. The Commission has followed the provisions of Tariff Policy by 'Letters' and not by 'Sprit' of these Policies and that too while determining the tariff under Section 62 of the Act and not while framing the Regulations as required of it under Section 61 of the Act.
  - IV. Therefore, it cannot be held that since the Commission has followed statutory provisions of the Act, tariff increase cannot be said to give tariff shock.
18. Now let us look at the Tariff Order, the tariff proposal of the 2<sup>nd</sup> Respondent and the Tariff Approved by the Commission. In this context it would be important to examine the Tariff Order issued by

the Commission for the Year 2010-11 also. First let us see the impugned Tariff Order for FY 2011-12.

19. The Commission has approved the total Annual Revenue Requirement of the 2<sup>nd</sup> Respondent at Rs 1364.40 Crores. The expected revenue at existing tariff for total sales of 4225 MU was determined by the Commission at Rs 1358.51 Crores. Thus the expected revenue gap at the existing tariff was only Rs 5.89 Crores. To fill this gap of Rs 5.89 Crores, the Commission revised the Tariff for subsidized categories only. Category wise tariff as proposed by the 2<sup>nd</sup> Respondent Licensee and as approved by the Commission is shown in Table below:

Category/slab	Consumption (MU)	Energy charges			Increase (%)
		Existing Ps/kWh	Proposed Ps/kWh	Approved Ps/kWh	
<b>Domestic</b>					
Up to 50	12.37	100	100	160	60.00
51-200	21.16	160	160	225	40.63
201-400	8.97	200	200	300	50.00
Above 400	16.56	225	225	325	44.44
BPL (Rs /month)		5	5	24	380.00
Total	59				
<b>Commercial</b>					
0-100	4	205	250	225	9.76
above 100	20	270	270	325	20.37
<b>Public lighting</b>	3	120	120	323	169.17
<b>Agriculture</b>					
upto 10 HP		55	55	250	354.55
above 10 HP	2	85	85	250	194.12
<b>Industrial LT</b>					
Upto 20 HP		240	255	250	4.17
above 20 HP		240	275	250	4.17
Total	154				
<b>Industrial HT</b>					
0-50000		295	320	295	0.00
50001-500000		310	345	310	0.00
above 500000		315	360	315	0.00
Total	3656				
<b>Power Intensive</b>					

0-300		205	280	205	0.00
301-500		305	315	305	0.00
above 500		355	355	355	0.00
Total	326				

Note: The Commission did not change the fixed charges levied to various categories. Therefore, the same has not been reflected in the table above

20. Perusal of above table would reveal that where as the tariff of subsidized categories has increased substantially, the tariff for main subsidizing category viz., HT Industrial Category has not been touched at all. It is also noted that the 2<sup>nd</sup> Respondent had proposed increase in tariff for subsidizing categories only and had published public notice accordingly. In these notices there was no mention of impending substantial increase in tariff for Domestic and Agricultural Categories. Obviously when their tariff was not proposed to be enhanced, the consumers of these categories would not participate in the process. The Commission, however, totally disregarded the proposals of the 2<sup>nd</sup> Respondent which had been published and determined tariff giving tariff shock to subsidized categories of consumers. We are not conveying or suggesting that the Commission is bound by the proposals of the licensee. We are just expressing that the final approved tariff should have some semblance with the proposals which were published by the licensee or the Commission.
21. Interestingly, perusal of the Commission's Tariff Order for FY 2010-11 would reveal that the Commission had left a surplus of Rs 35.88 Crores. The Commission has neither touched this surplus in the present order nor carried out any Review or Trueup as per its own Tariff Regulations, 2009. Majority of current gap of Rs 5.89 Crores could have been adjusted against the carrying cost of the

surplus of Rs 35.88 Crores itself without giving tariff shock to the consumers.

22. In the light of our findings above, we deem it fit to remand back the impugned Tariff Order with the direction to redetermine the tariff for all the categories in view of our observations given above.
23. The Appeal is allowed with no order as to costs.

**(V J Talwar )**  
**Technical Member**

**(Justice P S Datta)**  
**Judicial Member**

Dated: 28<sup>th</sup> February, 2012

REPORTABLE/~~NOT REPORTABLE~~