

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

Dated: 10<sup>th</sup> April, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,  
Hon'ble Mr.Rakesh Nath, Technical Member

**Appeal No.194 OF 2011 &**  
**IA No.295 OF 2011**

**In the Matter of:**

**Delhi Jal Board**  
**Varunalaya Phase-II,**  
**Jhandewalan**  
**New Delhi-110005**

**.....Appellant**

**Versus**

**1. Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan**  
**C Block, Shivalik**  
**Malviya Nagar,**  
**New Delhi-110017**

**2. North Delhi Power Limited**  
**Sub Station Building**  
**Hudson Lines, Kingsway Camp**  
**Delhi-110 009**

**.....Respondents**

**Counsel for the Appellant :Mr. Suresh Chandra Tripathy**

**Counsel for the Respondent :Mr.Meet Malhotra,Sr Adv for R-1**  
**Mr. Ravi S.S Chauhan for R-1**  
**Mr. Ranjan Mukherjee for R-1**  
**Mr. Kapil Gupta for R-2**

**Appeal No.195 OF 2011 &**  
**IA No.296 OF 2011**

**In the Matter of:**  
**Delhi Jal Board**  
**Varunalaya Phase-II,**  
**Jhandewalan**  
**New Delhi-110005**

**.....Appellant**

**Versus**

**1. Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan**  
**C Block, Shivalik**  
**Malviya Nagar,**  
**New Delhi-110017**

**2. BSES Yamuna Power Limited**  
**Shakti Kiran Building**  
**Karkardooma**  
**Delhi-110 032**

**.....Respondents**

**Counsel for the Appellant :Mr. Suresh Chandra Tripathy**

**Counsel for the Respondent :Mr. Meet Malhotra,Sr Adv for R-1**  
**Mr. Ravi S.S Chauhan for R-1**  
**Mr. Ranjan Mukherjee for R-1**  
**Mr. Amit Kapur for R-2**  
**Mr. Anupam Varma for R-2**  
**Ms. Suganda Somani for R-2**

**Appeal No.196 OF 2011 &**  
**IA No.297 OF 2011**

**In the Matter of:**  
**Delhi Jal Board**  
**Varunalaya Phase-II,**  
**Jhandewalan**  
**New Delhi-110005**

**.....Appellant**

**Versus**

**1. Delhi Electricity Regulatory Commission  
Viniyamak Bhawan  
C Block, Shivalik  
Malviya Nagar,  
New Delhi-110017**

**2. BSES Rajdhani Power Limited  
BSES Bhawan, Nehru Place  
New Delhi-110 019**

**.....Respondents**

**Counsel for the Appellant :Mr. Suresh Chandra Tripathy**

**Counsel for the Respondent : Mr.Meet Malhotra,Sr Adv for R-1  
Mr. Ravi S.S Chauhan for R-1  
Mr. Ranjan Mukherjee for R-1  
Mr. Amit Kapur for R-2  
Mr. Anupam Varma for R-2  
Ms. Suganda Somani for R-2**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. All these three Appeals are being disposed of through this common judgement as the issue raised in the three tariff orders dated 26.8.2011 is the same which has been challenged in these Appeals. The short facts are as follows:

- (a) Delhi Jal Board is the Appellant herein.
- (b) The Appellant under the Delhi Water Board act, 1988 is charged with responsibilities of providing basic services of water supply, sewage collection

sewage disposal besides drainage to the residents of NCT of Delhi.

- (c) To achieve this object, it uses number of Treatment Plants, pumping stations and tube wells etc.
- (d) The Appellant is thus catering to the needs of the society as a public utility service. It does not have any profit or commercial motive. The Appellant is supplying water to most of the categories of consumers below the cost of supply.
- (e) For availing power, the Appellant's facilities are connected to Transmission system and Distribution systems at various points of supply. The Appellant consumes powers at different voltage segments i.e. Low Tension supply and Mixed Load High Tension Supply on 11 KV and 440 Volts (LT).
- (f) The supply made available to the Appellant from the sub-station which has been constructed on the land by the Appellant at his own cost. The cost for infrastructure was paid by the Appellant to the three distribution Companies. According to the Appellant, since the associated expenditure

involved for the Distribution Companies is relatively quite less, the Appellant could not be asked to pay high fixed/demand charges. Moreover, the technical losses at such high voltage are much lower. Therefore, the tariff for the Appellant ought to have been determined by the actual cost of supply without taking into account the cross subsidy of any other class or category of consumers. In its earlier tariff orders even the State Commission has recognised that the Appellant deserves a separate category. The tariff fixed for the Appellant is higher than the industrial category.

- (g) In response to the comments invited by the State Commission for the tariff finalisation for the year 2011-12 on the applications filed by the Distribution Companies, the Appellant filed a petition requesting for rationalisation of tariff. The request made by the Appellant were that its tariff should be equal or less than that fixed for Delhi Metro Rail Corporation and should not be more than the cost of supply.
- (h) However, the impugned order dated 26.8.2011 although recognised the fact that the Appellant is

a public utility, the State Commission determined the Appellant's tariff at more than the industrial tariff.

- (i) Aggrieved over the impugned order dated 26.8.2011, these 3 Appeals have been filed in respect of the 3 distribution Companies.

2. The Learned Counsel for the Appellant has raised the following contentions:

- (a) The Appellant being a public utility engaged in providing public utility service like water supply, sewerage, pumping and treatment facilities to the State of Delhi is eligible to be treated with the privileged functions in terms of the tariff determination. The tariff applicable to it shall be fixed on the basis of the actual cost of supply without any cross subsidy for any other customer category. Cross subsidy is sought from commercial entities. The Appellant, Delhi Jal Board cannot be treated as such commercial entity.
- (b) The Appellant is entitled to tariff concession on the ground that the commercial/distribution losses

which arise out of the connection granted to it are minimal or negligible.

- (c) The Appellant has subsidised the cost which is otherwise to be incurred by the electricity distribution licensee by way of providing necessary infrastructure and land to the distribution licensee.
  - (d) The Appellant ought to be treated at par with the Delhi Metro Rail Corporation with regard to concessional tariff. The treatment provided to the Appellant compared to Delhi Metro Rail Corporation is discriminatory.
  - (e) The tariff applicable to the Appellant should not be higher than the industrial tariff.
3. In reply to the above submissions, the Learned Counsel for the Respondents including the State Commission submitted that the Appellant and Delhi Metro Rail Corporation are distinct type of consumers of electricity in terms of Section 62 (3) of the Act, 2003 and merely because the Appellant is engaged in public utility and providing essential services of water supply etc., cannot per se be the criteria for the favourable tariff determination and merely because the Appellant has provided the requisite infrastructure and land

for installation of sub stations cannot preclude the Distribution licensee to charge such consumers for all the components since the same has come through the statutory mandate being brought into force by the State Commission by way of tariff orders and therefore, there is no infirmity in the impugned order.

4. In the light of the above submissions, the questions that arise for consideration in these Appeals are as follows:

(a) “Whether the State Commission has adopted the discrimination towards the Appellant since the principles on which the tariff was fixed by it for Delhi Metro Rail Corporation were equally applicable to the Appellant?

(b) Whether the State Commission is obliged to fix the tariff of the Appellant on the principle of the actual cost of supply?

(c) Whether the State Commission is justified in fixing the tariff of the Appellant higher than the industry?

5. Let us now discuss the issues one by one raised by the Appellant in these Appeals.

6. The Appellant’s main contention is that the Appellant being a public utility should be treated with the privileged position in



terms of the tariff Regulations and the tariff to be fixed on the basis of the actual cost of supply.

7. At the outset, it shall be stated that Section 62 (3) of the Act, confers the powers upon the State Commission to classify the consumers in different categories according to consumer's load factor, power factor, voltage, total consumption of electricity during any specific period, geographical position of the area, nature of supply and the purpose for which the supply is required. Therefore, merely because the Appellant is engaged in public utility service and providing essential services of water supply, sanitation etc. that itself cannot be taken as a criteria for the concessional tariff determination.
8. It cannot be denied that the Appellant had been established in order to provide public services and accordingly it has been functioning. However, the Appellant cannot claim any special exemptions or concession on this ground.
9. As pointed out by the Learned Counsel for the Respondents, if the Appellant desires to avail any special dispensation or concession in relation to the applicable tariff, the Appellant could have approached the Government of NCT of Delhi in the light of the provisions of the Section 65 of the Electricity Act, 2003. Section 65 of the Electricity Act, 2003 confers the powers to the State Government for provision and

subsidy by giving appropriate directions under Section 108 to the State Commission that the State Government will pay in advance to compensate the person affected by the grant of such subsidy. Therefore, the Appellant cannot seek any concession either before the Commission or before this Tribunal on the reason that the Appellant is engaged in public utility service. In fact, the tariff increase for the Appellant in the current tariff order as against the last tariff order has been one of the least as compared to other categories referred to by the Appellant.

10. According to Learned Counsel for the State Commission the average across board tariff hike for the FY 2011-12 has been about 22%; for DMRC it is 30% and for DJB only about 19%.
11. The Power of the State Commission to classify the consumers for tariff purposes on the basis of the criteria stipulated under Section 62 (3) of the Act has been recognised by this Tribunal in the Judgment in Tata Steel Limited v. Orissa Electricity Regulatory Commission 2011 ELR (APTEL) 1022. The relevant observations is as follows:

*“18. Section 62 (3) 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 factors to differentiate the tariffs.*

....

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

*(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 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."*

12. So, the tariff can be differentiated as provided in Section 62 (3) according to the consumer's load factor, power factor, voltage etc.,

13. The Appellant nextly contended that the Appellant ought to be treated at par with the Delhi Metro Rail Corporation to the concessional tariff.
14. In this context, it has to be pointed out that the Appellant Delhi Jal Board and Delhi Metro Rail Corporation are distinctly different type of consumers of electricity and can be differentiated for the purpose of tariff determination under Section 62 (3) of the Electricity Act, 2003.
15. As indicated above, section 62 (3) of the Act empowers the State Commission to differentiate among consumers on the basis of the consumer's load factor, power factor, voltage, etc.,
16. It is pointed out by the Learned Counsel for the Respondent(BYPL) that the Jal Board and Delhi Metro Rail Corporation are different from each other on the factors given in the following table:

S.N	Parameters	DMRC	DJB	Remarks
1.	Voltage level at which supply is taken	Typically 66 KV	Connections detail: Supply on LT (400 V)-3223 Connections Supply on HT (11 KV)-52 Connections	Typical technical loss level: 66 KV....0.5% 33KV....1.2% 11 KV....2.5 ~3% LT.....5% DJB supplies are on lower Voltage level, i.e., 11 KV and 400 Volts as compared to DMRC which are at Extra High Voltage. Losses in the DJB supplies are, therefore, much higher.
2.	Power Factor	Average Power factor 0.99	Average power	DJB can save a lot in the form of lower energy consumption by

		Closer to unit and ideal situation	factor: HT Supplies- 0.87. Several installations with power factor lower than 0.8	improving the power factor of their installations. Poor Power factor adversely impacts technical loss and network capacity.
3.	Daily Load Profile	Almost uniform throughout the year. Few uncertainties	Pumping station loads not same through out the year	Uneven load profile of DJB does not help in proper forecasting of such loads. Lots of DJB loads need power supply for few hours of the day. May be they can consider switching their load to non-peak hours as also directed by DERC.
4.	Site Conditions	DMRC installations are properly manned with adequate protection and manpower	Large number of unmanned installations. Need for better protection and monitoring	DJB installations are prone to loss of property and faults can affect the main feeder circuits causing disruption of supply
5.	Cost of Supply	DMRC is a bulk consumer as average energy consumption per connection is very high. Supply EHV minimal loss so lower cost of supply	Supply at 400 V/11 KV higher losses so higher cost of supply	Average energy consumption per connection is comparatively low. There is additional cost qua DJB since servicing large no of connections (meter reading, billing etc.) increases the cost of supply.

17. Thus, the Delhi Metro Rail Corporation (DMRC) and Delhi Jal Board (DJB) in nature and character of supply are vastly different consumers of electricity on account of multiple parameters.

18. The DJB's electricity consumption pattern is so vastly different from DMRC with regard to electricity tariff. Higher the voltage level, lesser is the technical loss. Since the

voltage at which the Delhi Jal Board (DJB) consumes electricity i.e 400 volts and 11 KV, is substantially lower than the Delhi Metro Rail Corporation (DMRC) which consumes at 66 KV and 220 KV, as such, the loss levels of the Appellant (DJB) are much higher than the Delhi Metro Rail Corporation. Therefore, the Delhi Jal Board cannot seek parity of treatment with DMRC.

19. There is a marked difference between the case of the Appellant and that of DMRC whereby the Appellant draws energy at Low Tension and High Tension but DMRC draws energy at Extra High Tension supply level as a result of which the technical losses associated for the DMRC are at much lower level than that of the Appellant.
20. Even in the case of supply of energy to Delhi Metro Rail Corporation, different rates are being charged as far as the traction and operational requirements of Delhi Metro Rail Corporation are concerned. Delhi Metro Rail Corporation is being charged at the commercial rates at the rate of Rs.5.90 /kvah for the energy consumed towards its operational requirements as against the privileged rate which is limited only for the traction purposes.
21. By following section 62 of the Electricity Act, 2003, the State Commission has determined the existing tariff rates for the Appellant in its wisdom after proper consideration of the

factors influencing the tariff determination. As a matter of fact, the statute does not mandate either differential or uniform tariff to all the consumers. However, the same permits variation on certain specified criteria as provided under Section 62 (3) and Tariff Regulations. On that basis, the State Commission has determined the tariff fixation for the power being consumed by both the entities at different voltage levels. As such the different tariff fixed for these utilities as per the provision of the Act as well as the Regulations cannot be found fault with.

22. Let us now compare with the tariff determined by the State Commission between the Delhi Jal Board, the Appellant and Delhi Metro Rail Corporation (DMRC) for the Financial Year 2008-2009, 2009-2010 and for the Financial year 2011-2012:

(a) For the FY 2008-09, the tariff determined by Ld. Delhi Commission in its Order dated 23.02.2008 for DJB and DMRC along with revenue gap and cost of supply of BRPL is as under:

**Tariff Order Dated 23.2.2008 (FY 2008-2009)**

	<b>FY 2008-09</b>
Revenue (Gap)/Surplus (Rs. In Crores)	<b>107.29</b> Table 156 @ Page 192 of Tariff Order dated 23.02.2008
Cost of supply @ 11 KV level	<b>372.98/ unit</b> Table 167@ page 198 of the Tariff Order dated 23.02.2008

DJB Tariff	33KV	<b>Fixed Charges:Rs.150/kVA/month;Energy Charge:495P/kVAh</b> Page 206 of the Tariff Order Dated 23.02.2008
	11KV	<b>Fixed Charges:Rs.150/kVA/month;Energy Charge:495P/kVAh</b>
	400 V	<b>Fixed Charges:Rs.200/kVA/month;Energy Charge:569P/kVAh</b>
DMRC	220KV	<b>Fixed Charges:Rs.75/kVA/month;Energy Charge:300P/kVAh</b> Page 206 of the Tariff Order Dated 23.02.2008
	66KV	<b>Fixed Charges:Rs.75/kVA/month;Energy Charge:300P/kVAh</b>

- (b) For the FY 2009-10, the tariff determined by Ld. Delhi Commission in its Order dated 28.05.2009 for DJB and DMRC along with revenue gap and cost of supply of BRPL is as under:

**Tariff Order Dated 28.05.2009 (FY 2009-2010)**

		<b>FY 2009-2010</b>	<b>Cost of supply at LT level</b>	<b>Average cost of supply</b>
Revenue (Gap)/Surplus (Rs. In Crores)		<b>168.88</b> Page 133 of Tariff Order dated 28.05.2009		
Cost of supply @ 11 KV level		<b>317.8 per unit</b> Page 138 of the Tariff Order dated 28.05.2009		
DJB Tariff	33KV	<b>DJB removed from this category</b>		
	11KV	<b>Retail Supply Charge: 415P/kVAh</b> (Reduced by 80 P per kVAh= 16.2%) Page 154 of the Tariff Order dated 28.5.2009		
	400 V	<b>Retail Supply Charge: 386P/kVAh</b> (Reduced by 183 P per kVAh= 32.16%) Page 154 of the Tariff Order dated 28.5.2009		
DMRC	220KV	<b>Retail Supply Charge: 278P/kVAh</b>		



		(Reduced by 22P per kVAH= 7.3%) Page 154 of the Tariff Order dated 28.5.2009		
	66KV	<b>Retail Supply Charge: 270P/kVAh</b> (Reduced by 30 P per kVAH= 10%) Page 154 of the Tariff Order dated 28.5.2009		

(c) For the FY 2011-2012, the tariff determined by Ld. Delhi Commission in its Order dated 26.08.2011 for DJB and DMRC along with revenue gap and cost of supply of BRPL is as under:

**Tariff Order Dated 26.08.2011 (FY 2011-2012)**

		<b>FY 2011-2012</b>
Revenue (Gap)/Surplus (Rs. In Crores)		<b>(617.63)</b> Table 225 @ Page 256 of Tariff Order dated 26.08.2011
Cost of supply @ 11 KV level		<b>460.07/unit</b> Page 261 of the Tariff Order dated 26.08.2011
DJB Tariff	33KV	<b>Fixed Charges:Rs.150/kVA/month;Energy Charge:560P/kVAh</b> Page 267 of the Tariff Order dated 26.08.2011
	11KV	
	400 V	
DMRC	220KV	<b>Fixed Charges:Rs.100/kVA/month;Energy Charge:380P/kVAh</b> Page 267 of the Tariff Order Dated 26.08.2011
	66KV	

23. The perusal of the above table would show the following factors:

(a) In the FY 2010, when the Cost of supply of BRPL was reduced to 317.88P/unit from 372.98P/unit in

FY 2009, there was reduction in the energy charges of both DJB and DMRC. However, the tariff reduction for DJB was much higher as compared to DMRC:

- (i) Tariff in case of DJB for 11 KV was reduced by 80P/kVAh (i.e. 16.2%) and for 400 Volts by 183/kVAh (i.e. by 32.16%).
  - (ii) Tariff in case of DMRC for 220 KV was reduced by 22P/kVAh (i.e 7.3%) and for 66 KV by 30P/kVAh (i.e. by 10%).
- (b) In the FY 2011-12, since there was no surplus available with the Discoms, the cost to serve escalated and BRPL's cost of supply increased to 460.07P/unit. Accordingly, there was an increase in tariff across the board for all categories of consumers. The status of DJB as a public utility was recognised and the percentage of increased in tariff applicable to DJB in the Impugned Order was the lowest, i.e., 19.5% as compared to other consumer Categories e.g. Railways 25%, DMRC 26.6%; Industrial 21.84%.

24. So the comparison of the tariff order dated 28.5.2009 and the impugned order dated 26.8.2011 would show that the

State Commission has been taking steps towards reducing the cross subsidy and has been attempting to attain the objective of determining the tariff at cost to serve. This can be done only gradually.

25. The Appellant has nextly contended that the Appellant is entitled to tariff concessions on the ground that the distribution losses which arise on the connection granted to it are only negligible.
26. It is noticed that the Appellant is being provided by the Distribution licensees, the voltage levels of 11 Kv and 440 Volts. Admittedly, no connections have been provided to the Appellant at the levels of 33/66 KV and above. On the other hand, the supply to Delhi Metro Rail Corporation is made available at the level of 66/220 KV as a result of which, the technical losses are at much lower level in the case of DMRC than of the Appellant, the Delhi Jal Board. The technical losses associated with supply of electrical energy are at higher levels in relation to supply at lower level of voltage.
27. Even the commercial losses associated with the billing and collection of energy bills for DMRC are lower than the Appellant, the Delhi Jal Board. This is on account of the fact that the supply to Delhi Metro Rail Corporation is available at three points as against the huge numbers of connection

provided to the Appellant, the Delhi Jal Board. The associated cost and expense for collecting the dues from a spectra of contact points entails much more administrative costs and delay as against the collection from three specific points. As such, the collection efficiency is higher in the case of the Delhi Metro Rail Corporation as against the Appellant.

28. The state Commission in the impugned order has indicated the cost of supply at different voltage levels computed on the basis of some assumptions. The table below gives the voltage-wise cost of supply as computed in the impugned orders.

	NDPL	BRPL	BYPL
Above 66 KV	434.52	-	-
At 33/66 KV	453.33	443.83	441.54
11 KV	503.16	460.07	456.35
LT	576.64	600.53	619.52
Avg.	562.40	575.15	600.80

29. The table indicates that the cost of supply at LT is about 27 to 40% higher than the cost of supply at 33/66 KV. Similarly

cost of supply at 11 KV is higher by that at 33/66 KV by about 3 to 11%. Cost of supply at 11 KV is higher by about 16% than at above 66KV. The State Commission has, however, noted that the voltage-wise distribution losses considered in the computation are estimates and may not reflect the actual picture. The Commission has also directed all the distribution licensees to immediately carry out energy audit of the sales at HT level and submit the report to the Commission so that the actual data of distribution losses at different voltage levels could be used to calculate cost of supply in the subsequent tariff order. Thus, the State Commission is conscious of improving data base for cost of supply which could be used for tariff design.

30. That apart, supply to the Appellant is provided by Distribution licensees through various connections which are distantly located. The supply arrangements made for connection all these connections is through feeder. It cannot be disputed that longer the feeder cable, more is the associated technical losses and higher is the maintenance costs. Therefore, the comparison of the Appellant of its own position with that of Delhi Metro Rail Corporation and claiming the concession on that ground is misconceived.
31. Further the supply of power through the dedicated feeder lines is not restricted to the Appellant alone. There are

several consumers with tariffs as applicable to the Appellant. Therefore, claiming that the Appellant must be put in a special pedestal is unwarranted as there is no substantial justification for the same.

32. It is contended by the Appellant that it has provided the requisite infrastructure and land to the distribution licensees for the purpose of establishing sub stations and thus it is entitled to concessional tariff. This contention also is untenable. This aspect would not preclude the distribution licensee to charge such consumers for all the components. All the consumers taking connection of more than 100 kW (at 11kV/HT/EHT) are required to share the cost of HT cables/lines etc and to provide and maintain sub-stations space. The said space is required to meet consumer's supply requirements. If cost of the same is borne by the distribution licensee, the capital cost of the distribution licensee will automatically increase resulting in burdening all the consumers.

33. The next contention of the Appellant is that the supply should be provided by the Distribution companies on the cost to serve basis for utilities engaged in public services like the Appellant. If this is accepted considering the same ideology, the cost to serve comes out to be higher for the Appellant when compared to the Delhi Metro Rail

Corporation. That apart, the Appellant is also enjoying the benefit of availing alternate and timely supply from more than one dedicated feeders for supply at 11 kv which goes to ensure that the functions of the Appellant are not restricted owing to the normal outages and shut downs. As a matter of fact, the distribution licensee incurs additional cost for such feeders and the Appellant is the beneficiary of the same is obliged to bear the burden of the same as well.

34. The Appellant being the beneficiary of such preferential treatment ought to share the cost of the additional expenditure incurred for ensuring such standards of back up supply.
35. As per Section 62 (1) (d) of the act, tariff determination for retail supply of electricity in the NCT, is the sole prerogative of the State Commission. The tariff so determined has to be on the basis of the methodologies and guidelines mandated by Section 62 of the Electricity Act, 2003. This section mandates that the tariff must progressively reflect the cost of supply of electricity and also reduce cross subsidies.
36. Reduction of cross subsidy is a progressive and gradual process and cannot take place over night. The gradual reduction is envisaged to avoid tariff shock to subsidized categories of the consumers. In this regard, the reliance is placed upon the observations of this Tribunal in Tata Steel

Limited v. Orissa Electricity Regulatory Commission (2011 ELR (APTEL) 1022), relevant extracts of which are being reproduced hereunder:

*“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 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 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.*

.....

*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 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 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.”*

37. The Appellant is claiming for concession in tariff since it is not being able to work efficiently (with losses reportedly over

50%) when its revenue does not cover for its own costs. The Appellant's power factor is as indicated above, is 0.87% as compared to 0.99% of the Delhi Metro Rail Corporation. Inefficiencies of one sector utility cannot be allowed to burden another sector utility. In fact, directions have been given in the earlier tariff order dated 29.5.2009 to improve its efficiency level but the same has not been complied with by the Appellant. With reference to this, the State Commission has observed as follows:

***“ Commission’s View***

*2.100. On being enquired by the Commission, DJB informed that majority of its pumping stations have been metered and the remaining would be metered by the first quarter of FY 09-10. The Commission acknowledged that the DJB is carrying out a crucial activity for the society at large. DJB is presently charged MLHT tariff, for which certain rebates are also provided. As a first step towards cost to serve, the energy charges for DJB excluding offices and domestic connections are reduced to the level indicated in the tariff schedule for all metered connections. Wherever meters are not installed, they shall be installed within two months time. So far as the concessional tariff is concerned, it is the considered view of the Commission that it would be ideal to fix electricity tariff for all consumers on cost to serve basis and any subsidy based on socio-economic factors or otherwise should be extended by the State Government and electricity tariff is not the medium to promote social causes.”*

38. When no steps have been taken by the Appellant to optimize its energy consumption, the Appellant cannot seek concessional tariff much less than the tariff of Delhi Metro Rail Corporation when the latter is running much more efficiently.
39. The Appellant has pleaded that since the cost for land on which most of the sub stations of the distribution companies have been made and for cables and other infrastructure had been paid by it, the Distribution companies should not be allowed to levy any fixed cost on it.
40. The fixed charges are required to be paid by the consumers for the reservation of the capacity made by the licensee for the consumers and to insulate the licensee from the risk of financial uncertainty due to non utilisation of contracted capacity by the consumers. The licensee is obliged to maintain the facilities for supply of electricity to the consumers to the extent of the contract demand all times. The licensee is therefore, required to ensure that the supply lines are fully functional and the infrastructural facilities are available to consumers to take electricity supply at any time. The concept of two part tariff is therefore, followed to have tariff rationalised to provide for fixed charges and energy charges. Therefore, the fixed charges are required by utilities to ensure revenue stability and to pay for the fixed

costs/liabilities including fixed charges to be paid to generators. This principle has been laid down by this Tribunal as well as the Hon'ble Supreme Court in following judgements:

- (a) M/s. Raymond Limited & Anr V. Madhya Pradesh Electricity Board & Ors (2001) 1 SCC 534.
- (b) BBN Industries Association and Ors V. H.P Electricity Regulatory Commission and Himachal Pradesh Electricity Board 2007 ELR (APTEL) 806

41. There is definite basis and justification for the determination of differential tariff in respect of Delhi Metro Rail Corporation and Delhi Jal Board, the Appellant. This has been followed in the earlier tariff orders. The same principle of charging from the Appellant is being continued in the present tariff order for the Financial Year 2011-12 in view of the nature of the consumption of the Appellant. The relevant portion of the tariff order for the Financial year 2011-12 is being reproduced as under:

“ .....

*2.256. The Commission acknowledges the important public utility role performed by DJB. Historically, cross subsidy has been there in the electricity sector since time immemorial. The Commission is taking gradual steps to reduce the cross subsidy....”*

.....

*6.65 In the Tariff Order for FY 2009-10, the Commission had decided to depart from the earlier practice of charging DJB consumption at MLHT tariff by creating a special category for DJB which provides an important public utility service. The special category created is being continued in view of the nature of consumption of DJB.*

*6.66 For the purpose of conversion of kW to KVA, the actual power factor of the relevant billing cycle shall be considered for the computation of fixed charges.*

*.....”*

42. As a matter of fact, the issue of giving preferential treatment to Delhi Metro Rail Corporation has been challenged by Northern Railway before this Tribunal in Appeal No.268 of 2007. This Tribunal through its judgement dated 13.3.2007 upheld the finding of the State Commission and dismissed the Appeal.
43. As correctly pointed out by the Learned Senior Counsel for the Commission, the State Commission while determining the tariff is guided by the principles laid down in Section 61 and 62 of the Electricity Act and in effect has to balance/regulate the conflicting interests/claims of the various stake holders. The State Commission while determining the tariff shall not show any due preference to any consumer to fix a differential tariff keeping in view 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.

44. According to the Appellant, tariff rates of the Appellant engaged in Public Utility Service should not be higher than the Industry. Regarding this aspect, the Learned Senior Counsel for the state Commission submitted that this was never the case of the Appellant before the State Commission and the scope of the Appeal is being enlarged which should not be considered. The Industrial Tariff compared with the DJB tariff is as under:-

Small Industrial Power Grater than 100 KW/108 KVA(415 Volts)	Fixed charges Rs.150/KVA/month Energy charges 650p/KVAh
Large Industrial Power Supply at 11 KV & above	Fixed charges Rs.125/KVA/month Energy charges 530p/KVAh
DJB	Fixed charges Rs.150/KVA/month Energy charges 560p/KVAh

Thus, the tariff of DJB is lower than LT Industrial Tariff for Loads > 100 KW and higher than Large Industrial Power at 11 KV.

45. We notice that historically the Appellant was categorised under the non-domestic category i.e. commercial connection. Accordingly, the Appellant was getting the supply at 11 KV and LT under non domestic-mixed load high Tension Category. However, in the tariff order for the Financial Year 2009-10, the State Commission reduced the tariff substantially by treating it as a separate category. The same category has been continued. The Learned Senior Counsel for the State Commission has submitted that the issue regarding comparison with industrial tariff was not raised by the Appellant before the State Commission. The fact remains that this aspect has not been considered by the State Commission. As this issue has not been dealt with by the State Commission, we deem it appropriate to remand the matter to the State Commission for consideration of the same in the light of the point raised by the Appellant.
46. Further, we notice that while the impugned orders contain the requisite information regarding average cost of supply, voltage-wise cost of supply, category-wise tariff, etc, it does not provide the computation regarding consumer category-wise cross subsidy, percentage variation in cross subsidy and tariff compared to the previous year, category-wise variation from average cost of supply etc. Some of these figures have been computed by the Respondents in their submissions before the Tribunal. We would advise the State Commission to include such computation in future tariff orders for more transparency.

**47. Summary of Our Findings**

- i) Section 62(3) of the Act empowers the State Commission to differentiate the tariff among consumers on the basis of the Consumer's load fact, power factor, voltage, etc.**
- ii) The Appellant and Delhi Metro Rail Corporation are vastly different in nature and character of supply on account of multiple parameters.**
- iii) In the tariff order for the FY 2009-10, the Appellant was shifted from Non-Domestic mixed Load Category and a separate tariff category was constituted in view of its nature of supply. The tariff was also reduced substantially. The same separate categorisation has been continued in the FY-2011-12. During the year 2011-12, as against across the board tariff hike of 22%, the increase for the Delhi Metro has been 30% and for the DJB only 19%, the least amongst the various consumers.**
- iv) We remand the matter regarding parity of DJB tariff with respect to Industrial tariff to the State Commission for consideration in the light of the point urged by the Appellant on this issue.**



v) **The State Commission may consider our advice and observation contained in paragraph- 46 for necessary action.**

48. Accordingly, we remand the matter regarding parity of tariff of DJB with Industrial tariff for consideration. The State Commission is directed to pass the consequential order within 90 days of the date of this judgement. Appeals are partly allowed.

49. There is no order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 10<sup>th</sup> April, 2012

√ ~~REPORTABLE/NON-REPORTABLE~~