

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

**Appeal No. 14 of 2011, Appeal No. 26 of 2011 and
Appeal No. 27 of 2011**

Dated: 10th May, 2012

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. P.S Datta, Judicial Member**

Appeal No. 14 of 2011

**Bihar Industries Association
Industry House
Sinha Library Road
Patna – 800 001**

.... Appellant(s)

Versus

**1. Bihar Electricity Regulatory
Commission
Ground Floor, Vidyut Bhawan-II
Jawahar Lal Nehru Marg
Patna – 800 001**

...Respondent(s)

**2. Bihar State Electricity Board
Ground Floor, Vidyut Bhawan-II
Jawaharlal Nehru Marg
Patna – 800 001**

Counsel for the Appellant(s):

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Ms. Swapna Seshadri
Mr. Anand K. Ganesan
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6. **Dina Mahabir Re-Rollers (P) Ltd**
Agam Kuan
Patna – 800 007, (Bihar)
7. **Bihar Industries Assoc.,**
Industry House, Sinha Library Road
Patna – 01, (Bihar)
8. **Bihar Chamber of Commerce**
Khem Chand Chaudhary Marg
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10. **Bihar Steel Manufacturers Association**
307, Ashina Tower, Exhibition Road
Patna – 1, (Bihar)
11. **Gangotri Iron & Steel Company Ltd.**
Bihta, Patna, 307, Ashina Towers
Exhibition Road
Patna – 1, (Bihar)
12. **Gangotri Iron & Steel Company Ltd.**
Phulwarishariff, Patna, 302, Ashiana
Towers, Exhibition Road
Patna – 1, (Bihar)
13. **M/s. Patwari Udyog**
D-7, Industrial Area
Patliputra
Patna – 13, (Bihar)
14. **M/s. Patwari Steels Pvt. Ltd**
Fatwa, G-1/11, Phase-III
Fatwah Industrial Area
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15. **M/s. Patwari Forgings Pvt. Ltd**
Patliputra Industrial Area
Patna – 13. (Bihar)
16. **Poddar Wires Industries Pvt. Ltd**
Sarifaganj, P.O. Box No.607, Patna City
Patna – 08, (Bihar)
17. **Lichehhwi Foods (I) P Ltd.,**
16, Ashiana Road
Patna – 14, (Bihar)
18. **Sh. Shambu Re-Rolling Mills, Indust. Area**
Bettiah – 845 438
West Champaran, (Bihar)
19. **Bihar & Jharkhand Motion Pictures Assoc.,**
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New Dak Bunglow Road
Patna – 1, (Bihar)
20. **Mahua Co-operative Cold Storage Ltd.**
Industrial Area, Hajipur, Distt. Vaishali
(Bihar) – 844 101
21. **Bholaram Steels Pvt. Ltd**
Nasriganj, Danapur
Patna – 12, (Bihar)
22. **State Bank of India**
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24. **Nagendra Singh**
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26. **Director**
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27. **Dina Iron & Steel Ltd.**
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Ms. Sneha Venkataramani
Mr. M.G. Ramachandran
Ms. Swapna Seshadri
Ms. Sugandha Somani

Appeal No. 27 of 2011

In the matter of:

**Kalyanpur Cements Limited
Maurya Centre
1, Fraser Road
Patna – 800 001**

.... Appellant(s)

Versus

**1. Bihar Electricity Regulatory
Commission
Vidyut Bhawan-II
Jawahar Lal Nehru Marg
Patna – 800 021**

...Respondent(s)

**2. Bihar State Electricity Board
Vidyut Bhawan-II
Jawaharlal Nehru Marg
Patna – 800 021**

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Ms. Shilpi
Mr. Kailash Vasdev
Mr. Abhas Parimal
Mr. T. Pandey
Mr. Safder Ali**

JUDGEMENT

MR. RAKESH NATH, TECHNICAL MEMBER

1. Appeal no. 26 of 2011 has been filed by Bihar State Electricity Board challenging the order passed by the Bihar Electricity Regulatory Commission ('State Commission') on 06.12.2010 in case No.T.P.3 of 2010 determining the Aggregate Revenue Requirement ('ARR') and retail supply tariff for the FY 2010-11.

2. Appeal No.14 of 2011 has been filed by Bihar Industries Association, an association of induction furnaces taking supply at 33 kV voltage under HTSS category from the Bihar State Electricity Board against the same the order of the State Commission dated 6.12.2010.

3. Appeal No.27 of 2011 has been filed by Kalyanpur Cements Ltd., a consumer taking power supply at 132 kV level from the Bihar State Electricity Board against the same order of the State Commission dated 6.12.2010.

4. The appellant in appeal No.26 of 2011 is the State Electricity Board responsible for generation, transmission, distribution and supply of electricity in the State of Bihar. The State Commission is the first Respondent. The respondent nos.2 to 27 are the consumers and their associations, including the appellants in appeal nos. 14 and 27 of 2011. The appellant Electricity Board is aggrieved by disallowances of expenditure under the Employees Expenses, Administration and General Expenses and Interest and Finance charges and revenue from sale of power as assessed by the State Commission.

5. Bihar Industries Association in Appeal No.14 of 2011 has raised the following issues relating to the retail supply tariff applicable to the HT consumers taking power at 33 kV level:
 - (i) Determination of tariff without consideration of cost to supply.

 - (ii) Differentiation in the manner and mode of billing between the appellant's category and other categories with respect to demand charges

- (iii) Imposing monthly minimum charges in addition to demand charges only for the appellant's category of consumers.
6. Kalyanpur Cements Industries availing electricity supply at 132 KV through the transmission system in appeal no.27 of 2011 had raised a number of issues but during the proceedings decided to press only the following two issues:
- (i) Procedural impropriety in determination of tariff by the State Commission.
 - (ii) Imposition of distribution expenses including distribution loss in the retail supply to the appellant availing power supply at 132 kV directly from the transmission system.
7. As the impugned order in the above appeals is the same and some of the issues raised by the appellants are also similar, a common judgment is being rendered.

8. The Electricity Board in Appeal no.26 of 2011 has made the following submission:

8.1 **Employees Expenses:** (i) The State Commission has erroneously approved only a sum of Rs.660 crores for the FY 2010-11 towards the Employees Expenses as against the Board's projection of Rs.821.22 crores. The State Commission has wrongly concluded that the projected employees cost has been mentioned as Rs.660.01 crores for the FY 2010-11 in the function-wise break up of expenses and without considering the fact that the same consists of salary, allowances and other employees cost of the serving employees along with contribution towards retiral dues of only the serving employees in respect of their services for the FY 2010-11. However, the said figure does not include the amount of terminal benefits which is to be paid to all the retired employees for their services prior to the FY 2010-11. The total amount of terminal benefits which is to be paid to retired employees as well as other employees cost is Rs.821.22 crores.

- ii) The Annual Accounts of the Board are prepared on mercantile basis, as such the revenue account showing the employees cost only consists of the expenditure due during the current year and therefore, the amount of terminal benefits/retiral dues payable to the retired employees is not treated as expenditure of the current year, rather the system is to make payment of the same out of the provision already made in the books of account for pension, gratuity and leave encashment. However, in view of severe financial crunch mainly on account of fixation of Tariff below average cost of supply, the BSEB has not been maintaining separate fund for retiral dues against provisions made in the annual accounts. Hence, it has been a practice in Electricity Board to meet such unfunded liability out of revenue realization from sale of energy during the period in which the incidence of payment of such liabilities lies. This fact is well known to the State Commission and it has also allowed such unfunded liability as a part of ARR of the Electricity Board in its previous tariff

orders dt. 29.11.2006 and 26.08.2008. In the impugned tariff order dt. 06.12.2010, the State Commission has deviated from its earlier yardstick and has failed to allow payment made to pensioners against unfunded liabilities.

- iii) The Appellant is likely to incur financial loss of Rs.161.22 crores during the FY 2010-11 due to non inclusion of the said legitimate expenditure under Employees Cost.

8.2 **Administration and General Expenses:** Administration and General Expenses have been reduced from Rs.55.61 crores to Rs.38.76 crores without any basis. The appellant had projected Administration and General expenses of Rs.55.61 crores taking into account various activities to check power theft as also increase efficiency in revenue collection for which purpose the Electricity Board has outsourced the work of meter reading and bill distribution. Hence, the extra expenditure cannot be said to be on higher side. The State Commission instead of taking into account the expenditure

incurred on account of outsourcing of meter reading and the bill distribution work to private agencies as well as initiation of various major measures for checking power theft has arbitrarily held that 8% escalation over the previous year's allowance would be sufficient.

8.3 Interest and Finance charges: The State Commission has approved a sum of Rs.184.13 crores as against the projected interest charges of Rs.364.15 as submitted by the appellant. The appellant had incurred a sum of Rs.371.75 crores as interest charges on different loans including plan loan received from the State Government during the FY 2009-10. The State Government has been providing support by way of grant to meet part of the expenditure on account of gap in revenue income and expenditure of the appellant. The State Government plan-loan is also utilized partly for the purpose of asset capitalization including capital works in progress. The State Commission, however, in the impugned order has restricted the interest on that portion of loan which have been converted into fixed assets without considering the fact that the said amount of loan has been received by the appellant

for the purposes of assets creation and some portion of it is in the form of capital works in progress for which the appellant has to pay interest. The State Commission has failed to consider that it has allowed interest for the assets capitalized during the FY 2009-10 whereas it has not taken note of interest which the Appellant has to pay for the outstanding loan amount against the assets already converted into fixed assets. The State Commission should have allowed the entire amount of interest charges on the plan loan.

8.4 Revenue from sale of power assessed by the Commission:

- i) The State Commission has assessed lower consumption of electricity for unmetered consumers in Kutir Jyoti (Rural), DS-I, NDS-I, IAS-I, IAS-II, in comparison to the norms fixed earlier on erroneous premise and wrong assumptions. In NDS-I category, the State Commission in the impugned order has reduced the consumption norm to 60 units per month as against 80 units taken in the previous tariff orders dated 29.11.2006 and 26.08.2008, without any basis.

- ii) In IAS-I category, the consumption norm has been arbitrarily reduced from 2000 units to 1485 units per KW per annum taking into account the period of only 270 days. Similarly in IAS-II category of consumers which is applicable to State Tubewells/State Lift Irrigation pumps/State Irrigation pumps used for large command areas, the State Commission appears to have clubbed the same with IAS-I category and appears to have reduced the consumption from 225 units per HP per month (2700 units per HP per annum) to 92.31 units per HP per month (1485 units per KW per annum) without giving any reason for the same.
- iii) In Kutir Jyoti (Rural) also the consumption norm has been reduced to 18 units per month per connection from the earlier norm of 30 unit per month per connection. The Commission has erred in assuming restricted hours of supply to Kutir Jyoti without any basis despite the fact that availability of power has increased substantially leading to more consumers of

electricity. The estimation of the State Commission that Kutir Jyoti services in rural areas are allowed only one light is far from reality in as much as there is no means for the appellant to check and restrict the Kutir Jyoti consumers from exceeding their consumption limit of 60 Watts.

9. Bihar Industries Association, the Appellant in Appeal no.14 of 2011 has made the following submissions:

(i) Cost of Supply: The tariff determined by the State Commission is not aligned to the cost of supply as per the provisions of the Electricity Act, 2003, Tariff Regulations, Policies notified by the Government of India under Section 3 of the Act and the binding precedents of this Tribunal. The loss level at 33 KV is 4% and at 11 KV it is 6%. However, the State Commission has bunched up all the expenses to determine the average cost of supply instead of giving voltage-wise adjustment. This is contrary to the principles laid down by the Tribunal in the judgments viz. i) dated 25.2.2011 in appeals no. 5 and 63 of 2011 in the matter of Steel Furnace

Association of India Vs. Punjab State Electricity Regulatory Commission etc, (ii) dated 30.5.2011 in the matter of Tata Steal Limited Vs. Orissa Electricity Regulatory Commission, and (iii) 2007 ELR (APTEL) 931 in the matter of SIEL Limited Vs. PSERC & Others.

ii) Mode of billing for demand charges: The State Commission has discriminated in the mode/basis of billing for demand charges decided for the HTSS category. The billing demand for HTSS category is considered as the maximum demand recorded during the month or the contract demand, whichever is higher. On the other hand, for other categories, the billing demand is the maximum demand recorded during the month or 85% of the contract demand whichever is higher. The above is discriminatory and without any rationale as consumption to the full extent of contract demand is not generally possible.

(iii) Levy of Monthly Minimum Charges: The State Commission has imposed only the appellant's consumer category a minimum monthly charges at the rate of Rs.1233

per KVA of contract demand per month which charge is in addition to the demand charges. As such, imposition of minimum monthly charges amounts to multiple charges being claimed towards meeting the fixed charges and has resulted increase in charges of the appellant's category of consumers in comparison to other categories of consumers.

10. Kalyanpur Cements Ltd. in appeal No.27 of 2011 has made the following submissions:

(i) Procedural impropriety: The impugned tariff order violates the applicable provisions of the Electricity Act, Tariff Regulations, 2007, Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, and also the principles of natural justice. The Tariff petition was filed by the Electricity Board in violation of Regulations 6 (1) of the Tariff Regulations read with Section 64 of the Act. The copy of the rejoinder filed by the Electricity Board in response to the objections filed by the appellant and other similarly placed consumers was denied to the appellant in violation of the Regulations and against the settled principles of transparency which the State Commission is required to adhere to as per

Section 86(3) of the Act. The Electricity Board being the integrated utility was required to file the tariff petition as per the Appendices A, C and D prescribed by the regulations. Non-filing of the tariff petition in the desired form is a clear violation of the Regulations and the State Commission should have rejected the tariff petition on this ground alone. The appellant relied on judgment of this Tribunal reported in 2010 ELR (APTEL) 1050 in the matter of Bihar State Hydro Electric Power Corporation Ltd. Vs. Bihar Electricity Regulatory Commission. He also placed reliance on the settled legal principles that if a statute provides for a thing to be done in a particular manner the thing has to be done in that manner or not at all. Non-filing of the tariff petition in the prescribed format acts as a hindrance in undertaking prudence check by the State Commission which is an essential element of tariff determination process.

(ii) Levy of distribution expenses on the EHT consumers: The Appellant is an Extra High Tension consumer getting supply at 132 KV through a dedicated primary transmission line. Thus the distribution expenses

including the distribution loss is not applicable to the appellant. The Electricity Board has wrongly determined the tariff on combined average cost of supply in violation of the provisions of the Act, the Tariff Policy, National Electricity Policy and the Tariff Regulations, 2007. The Appellant referred to the decisions of the Tribunal in the following cases:-

- (a) SIEL Limited, New Delhi Vs. The Punjab State Electricity Regulatory Commission reported in 2007 ELR (APTEL) 931.
- (b) Tata Steel Limited Vs. Orissa Electricity Regulatory Commission and North Eastern Electricity Supply Company reported in 2011 ELR (APTEL) 1022.
- (c) Judgment dated 12.9.2011 in East Coast Railways vs. OERC & Ors.

- (d) Judgment dated 02.09.2011 in Appeal Nos. 57 and batch in the matter of Vishal Ferro Alloys Ltd. & Ors. vs. OERC & Anr.
- (e) Judgment dated 28.07.2011 in Appeal No. 192/2010 in the matter of Tamil Nadu Electricity Consumers' Association vs. Tamil Nadu Electricity Board and Tamil Nadu Electricity Regulatory Commission.
11. We have heard the Ld. Senior Counsel for the Electricity Board and Ld. Counsel for the State Commission, Bihar Industries Association and Kalyanpur Cements Ltd.
12. On careful examination of the matter and considering the contentions of the parties, the following questions would arise for our consideration:-
- (i) Whether the State Commission has erred in allowing the Employees Cost without considering the expenditure on account of the terminal benefit?

- (ii) Whether the State Commission has determined the Administration and General Expenses correctly?
- (iii) Whether the State Commission has erred in allowing the interest and Finance charges without considering the interest on State Government plan loan part of which was utilized for creating new assets and interest on loan for capital works in progress?
- (iv) Whether the State Commission has erred in computing the revenue from sale of power by reducing the norms of energy consumption for the unmetered categories of consumers?
- (v) Whether the State Commission has committed any procedural impropriety in determining the ARR and tariff of the Electricity Board? Whether the State Commission had followed the transparent procedure in accordance with the principle of natural justice in determining the tariff?

(vi) Whether the State Commission has erred in determination of tariff without aligning it to the cost to supply, in violation of the provisions of the Act and Regulations, and the principles laid down by the Tribunal?

(vii) Whether the State Commission has wrongly differentiated in determination of tariff for HTSS category in the matter of demand charges and levy of monthly minimum charges?

13. Let us take up the first issue regarding the Employees Cost.

13.1 According to the Ld. Sr. Counsel for the Electricity Board, the State Commission erroneously did not consider the terminal benefits to be paid to the retired employees.

13.2 Ld. Counsel for the Kalyanpur Cements Ltd. has argued that the Electricity Board did not provide the requisite data.

13.3 The State Commission in its counter affidavit has submitted that as per the Tariff Regulations, 2007, the actual figures for the previous year i.e. the FY 2008-09 should have been submitted in the tariff petition. However, the Electricity Board submitted only the provisional figures for the FY 2008-09. The expenses estimated for the FY 2009-10 and 2010-11 had shown abnormal increase and when this was pointed out, the Electricity Board did not substantiate the abnormal increase in employees cost in their reply dated 25.02.2010. The State Commission again requested the Electricity Board to furnish the component-wise actual employees cost for the FY 2009-10 indicating the arrears separately. However, the Electricity Board vide letter dated 31.5.2010 only submitted the provisional employees cost including arrears for the FY 2009-10. Some objectors in the public hearing also pointed out that the projected employees cost was on the higher side considering that the number of employees had reduced from 12650 to 11506. In the absence of the requisite data, the State Commission estimated that the employees cost of Rs.660 crores for the FY 2010-11 after adding 10% escalation on the provisional employees cost net of capitalization of

Rs.583.71 crores for the FY 2009-10 and making some provision for the implementation of the Sixth Pay Commission recommendations.

13.4 The respondent no. 2 & 19, in their counter affidavit have contested allowance of 10% increase allowed by the State Commission for the FY 2010-11 over the provisional figures for the FY 2009-10, without any prudence check.

13.5 We notice from the impugned order that the Electricity Board had submitted the break up of Employees Cost for the FY 2008-09 (provisional), FY 2009-10 (estimated) and FY 2010-11 (projection). According to the State Commission, the Electricity Board should have submitted the actual audited figures for the FY 2008-09 instead of the provisional figures. The State Commission also sought the additional information relating to break up of actual expenses for the previous years and the justification for abnormal increase projected for the FY 2009-10 but the Electricity Board failed to provide the same. We also feel that the Electricity Board should have submitted the audited accounts for the previous year and the

projected expenditure for the current year based on the actual data for the part of the year. When the requisite data was not furnished by the Electricity Board, the State Commission could not be blamed for estimating the same on the basis of the available data. The State Commission has given detailed explanation in paragraph 4.8.3 of the impugned order to justify the allowance for the Employees Cost. We do not find any reason to interfere with the order. However, the State Commission shall true up the Employees Cost including the terminal benefits, for the FY 2010-11 on the basis of the audited accounts for the FY 2010-11 after prudence check. Accordingly directed.

14. The second issue is regarding Administration and General expenses.

14.1 According to the Electricity Board, the Administration and General expenses have been reduced arbitrarily without considering the expenses incurred for metering and billing activities which have been outsourced as well as other measures taken to check power theft.

14.2 Ld. Counsel for the State Commission argued that the Administration and General expenses were Rs.35.89 crores as per the provisional accounts for the FY 2009-10. Considering 8% escalation over the FY 2009-10, Rs.38.76 crores was allowed for the FY 2010-11, which is reasonable. Administration and General expenses are controllable and escalation has been allowed by the State Commission at inflation rate.

14.3 According to Ld. Counsel for the respondents 2 and 17, the Electricity Board had revised their claim towards Administration and General expenses to Rs.36.95 crores while furnishing functionwise break-up by their letter dated 19.3.2010 instead of Rs.55.61 crores initially claimed. The State Commission erroneously allowed Rs.38.76 crores against Rs.36.95 crores claimed by the Electricity Board.

14.4 We notice that the State Commission has analyzed the Administration and General expenses in the impugned order and the same is summarized below:-

- i) The Electricity Board had furnished the Administration and General expenses at Rs.40.59 crores for the FY 2008-09 while the actual expenses were Rs.33.66 crores as per the accounts.
- ii) As per provisional accounts for the FY 2009-10 the A & G expenses were Rs.35.89 crores.
- iii) A & G expenditure is controllable and the increase proposed should be to offset the inflation with 8% escalation over the provisional expenses for the FY 2009-10.
- iv) A & G expenses for the FY 2010-11 are approved at Rs.38.76 crores.

14.5 We do not find any fault with the findings of the State Commission in view of the data made available to the Commission. However, the Administrative and General expenses for the FY 2010-11 shall be trued up by the State

Commission on the basis of the audited accounts after prudence check. Accordingly directed.

15. The third issue is regarding Interest and finance charges.

15.1 According to Ld. Sr. Counsel for the Electricity Board, the State Commission should have allowed entire interest claimed including the interest on loan on works in progress and should have also made provision for repayment of loan.

15.2 According to Ld. Counsel for the State Commission, the interest on loan has been allowed as per the Regulations. The Regulations do not permit inclusion of interest on loan on works in progress and repayment of loan in the ARR.

15.3. According to Ld. Counsel for the respondent no.2 and 19, the State Commission has wrongly allowed interest on General Provident Fund, Consumer Security Deposit, working capital loans and other loans. GPF is managed by a Trust and it earns interest which is utilized for disbursement to employees in the form of loan and terminal benefits. Similarly, the

Consumer Security Deposit is also invested in long term securities and earns interest.

15.4 Let us first examine the Tariff Regulations. Regulation 85(ii) defines the expenditure. The allowable expenditure relating to interest and finance charges are as under:

*“85(ii) Definition of Expenditure:
Reasonable and required expenditure actually incurred on the following
.....*

- (5) financing cost excluding penal interest/charges;*
- (6) interest charges on loan(s) borrowed for capitalized assets;*
- (7) interest on temporary accommodation to the extent of approved unrealized arrears from the consumers;*
- (8) interest on working capital facilities which would include the following:
 - (i) operation and maintenance expenses for one month;*
 - (ii) maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation;*
 - (iii) receivables equivalent to two months' sales;**
- (9) financing charges applicable to operational account,*
- (10) interest on cash security deposits from consumers;*
- (11) interest on advance against sales from consumers, if any,”*

15.5 Thus, according to the Regulations the interest on loans for works in progress and repayment of loans are not admissible to be included in the ARR. This, in our opinion, is also based

on the sound accounting principles. However, interest on loan for works in progress could be capitalized as IDC on completion of the work when the asset is capitalized, subject to prudence check by the State Commission.

15.6 We notice that Electricity Board had projected a sum of Rs.364.15 crores towards interest and finance charges for the FY 2010-11 which included Plan and Non Plan Loan by the State Government. However, the State Commission allowed interest charges claimed on existing loans from financial institutions and commercial banks borrowed for the assets capitalized, interest on security deposit, etc. The interest charges on existing Government loans were not considered as these funds were not utilized for asset creation. The interest on loan on the assets capitalized during the FY 2009-10 was also allowed. Thus, the State Commission has allowed the interest and finance charges as per the Tariff Regulations.

15.7 The Ld. Counsel for respondent consumers in appeal no.26 of 2011, argued that interest on security deposit, GPF recovered from employees salaries is not admissible. Issue was also

raised regarding interest and finance charges under the head “others”. According to the Ld. Counsel for the State Commission, these charges have been allowed as per the Regulations.

15.8 Let us examine the points raised by the Respondent consumers regarding security deposit and GPF recovered. The explanation given by the State Commission in the impugned order is as under:-

“The rebate for prompt payment of current consumption bills is as per Tariff conditions. Interest on security deposits is covered under Tariff Regulations. Interest on GPF and GSS is on the subscriptions recovered from the employee salaries. These funds are not separately maintained by creating Trust etc., and utilized by the Board and they are considered”

We find that the interest on consumer security deposit is provided for in the Tariff Regulations. As far as GPF and GSS on the subscription recovered from the employees salaries are concerned, we notice that these funds are not separately maintained by creating a Trust, etc. and are utilized by the Electricity Board. The interest earned on all the bank deposits, etc., is included in non-tariff income and deducted

from total revenue requirement to work out the net revenue requirement.

15.9 Thus, we do not find any illegality in the order of the State Commission. However, the State Commission may look into improving the accounting practices adopted by the Electricity Board regarding creating separate fund for GPF and other deductions from the employees, salaries and terminal benefits for future and give necessary directions to the Electricity Board. The State Commission may also look into its Regulations regarding interest on consumer security to be included in the expenditure. The security deposit has been made by the consumer and it is not logical to include the interest on the same in the expenditure of the distribution licensee. The State Commission shall also give computation of interest on working capital and interest under the head 'others' at the time of truing up, as no explanation has been given under these heads in the impugned order.

16. The fourth issue is regarding revenue from sale of power.

16.1 According to the Ld. Sr. Counsel for the Electricity Board, the State Commission had revised the norms for consumption of unmetered categories with respect to the previous tariff orders.

16.2 Ld. Counsel for the State Commission has submitted that despite the directive from the State Commission since 2006-07 to provide meters and record the consumption, the Electricity Board has not taken effective steps in this regard and has allowed the unmetered connections to run. For unmetered agriculture service also the Electricity Board did not take any step to provide meters or make a pilot study for assessing the agriculture consumption. For service connections given in the recent years under RGGVY programme, the meters are being provided by the executing agency but the Electricity Board is not getting the meters read and service the bills as per actual consumption. Thus, the service connection provided with meters are also being treated as unmetered service connections. Kutir Jyoti consumers are allowed to have one 60 Watt bulb in their premises. Considering 60W load and poor availability of electricity in

rural area, consumption norm of 18 units per consumer per month was considered. In the tariff orders for the FY 2006-07 and 2007-08, the same norm of 18 units was considered.

16.3 We notice that the following categories of consumers are not metered.

- Kutir Jyoti in Rural areas
- Domestic consumers in rural areas
- Non-domestic consumers in rural areas
- Irrigation/agriculture pumpsets (private) and State Government owned.
- Street lights both in urban and rural areas

The Electricity Board proposed some norms for estimating the energy consumption of the above categories. The Electricity Board is aggrieved by the norms adopted by the State Commission for above categories except domestic consumers in rural areas and street lights.

16.4 Let us now examine the norms adopted for the above categories.

16.5 Regarding Kutir Jyoti (Rural), the Electricity Board proposed a norm of 30 units per month per service. The relevant findings of the State Commission in the impugned order are reproduced below:

“4.3.1 Kutir Jyoti (Rural and Urban)

BSEB has projected the sales for the Kutir Jyoti consumers in rural and urban areas at 375.70 MU during 2010-11. The consumption is arrived at 30 units / month / service.

Kutir Jyoti services in rural areas are allowed one light of 40 watt or 60 watt and urban services to have one bulb of 100 watts each.

With restricted hours of supply, it would be difficult to consume 30 units with 40 watt or 60 watt bulb in rural areas. In view of this, the Commission has approved consumption of 18 units per month per service in the rural areas and 30 units in the urban areas in the tariff order 2008-09.

Though the Kutir Jyoti consumers in urban areas are metered, the Board has not furnished the consumption based on meter readings. Hence the consumption for this category is assessed 30 units / month / service.

The Commission approves 18 units/service/month in rural areas and 30 units/service/month in urban areas. Based on this norm the Commission approves 230.63 MU to Kutir Jyoti (rural and urban) for 2010-11 as detailed below:

Details	No. of Consumers	Norm Adopted/month	Consumption for 2010-11(MU)
<i>Rural (metered)</i>	776400	18 units	167.70
<i>Rural (un-metered)</i>	265000		57.24
<i>Urban (metered)</i>	15800	30 units	5.69
Total	1057,200		230.63

The number of consumers as projected by the Board is accepted as large number of villages are being electrified and BPL households are connected under RGGVY.

The Board is directed to insist on the Kutir Jyoti consumer to provide 2 x 15 watt CFL, in place of one number 40/60 watt incandescent or fluorescent tube light. This gives substantial saving in the consumption of Kutir Jyoti consumers.”

Thus, the State Commission has assessed the energy consumption considering one light of 40 or 60 watt in Kutir Jyoti rural connection and restricted hours of supply made available in the rural areas.

16.6 The State Commission’s findings regarding consumption for Non-Domestic-I (unmetered Rural) are as under:

“4.3.4 Non-Domestic-I (Un-metered) - Rural

The Non-Domestic-I (Commercial) consumers are the consumers in the rural areas, who are not metered. The BSEB has projected the consumption of this category at

26.88 MU for the year. This is an assessed consumption at 80 units / month / connection.

The number of consumers, the energy consumption and the specific consumption over the last 4 years as submitted by BSEB are given below:

Year	No. of Consumers	Energy consumption (MU)	Specific consumption (kWh)
2006-07	17504	10.50	50.00
2007-08	22284	15.39	57.55
2008-09	19965	21.39	89.28
2010-11 (Projected)	28000	26.88	80.00

As mentioned above, this is an un-metered category in rural areas. It is seen that the specific consumption of this category has been absorbing about 50 units/month. They are all small consumers whose number is also in thousands. It is considered that specific consumption of about 60 units/month/service is considered reasonable. The growth of consumers also is only about 5700 over that of 2009-10.

The Commission approves the energy consumption of 20.16 MU for the year 2010-11, for these 28000 consumers of NDS-I against 26.88 MU projected by the Board.”

Thus, the State Commission approved consumption of 60 units/month/connection for NDS-I category as against 80 units claimed by the Electricity Board, considering that this category has been consuming about 50 units/month.

16.7 Regarding irrigation/agriculture pumpsets the State

Commission has given the following finding:

“4.3.8 Irrigation/agriculture Pumpsets

The BSEB has projected the energy consumption for the irrigation / agricultural pump sets as 655.69 MU for the year 2010-11, i.e. an increase of about 15.6% over the consumption of 2009-10. BSEB has considered a norm of 2000 units per kW per annum. As seen from table 4.1, the consumption of this category over the years is not consistent.

The number of installations, and the consumption over the last 4 years, the projected consumption for the year 2010-11 as submitted by BSEB are given below:

Year	No. of Consumers	Energy consumption (MU)	Specific consumption/ (kWh)
2006-07	17504	10.50	50.00
2007-08	22284	15.39	57.55
2008-09	19965	21.39	89.28
2009-10	53300	247740	567.00
2010-11 (Projected)	28000	26.88	80.00

As mentioned earlier the category is un-metered. Commission while assessing the consumption with a norm of 2000 units per kW per annum in the Tariff order for 2008-09, stated as follows:

“The norm is liberal, taking into consideration the number of hours of supply as made available to the pumpsets, rainy season and the duration between different crops, when no power is needed for pumpsets. The norm approved is for FY

2008-09 and will not be a precedent and the Commission may consider reviewing this in future”

The norm of 2000 units / kW / annum means that the agricultural pumpset runs at full load for about 5.5 hours per day on an average for all the 365 days in a year.

Based on the feedback obtained, Commission considers a norm of consumption of 1485 units / kW/annum for 2010-11 i.e. considering 5.5 hours of average utilization per day for 270 days in a year. Based on the norm of 1485 units / kW/ annum, the consumption for 2010-11 works out to about 428 MU with the connected load of 288100 kW.

The Commission approves the consumption of 428 MU for the irrigation / agricultural pump sets for the year 2010-11.”

16.8 We find that the State Commission has given reasons for adoption of norms for different categories of consumers. On the other hand, the Electricity Board has not furnished any authentic data in support of seeking higher consumption norms for the unmetered consumers.

16.9 According to Section 55 of the Electricity Act 2003, no supply is to be made by a distribution licensee except through installation of a correct meter, after expiry of two years from the appointed date. However, the Electricity Board has not taken effective steps to provide meters for the unmetered consumers, despite several directions by the State

Commission. The Electricity Board has also not carried out any pilot study for assessing agriculture consumption. Even for rural consumers where meters have been provided these are not being read by the Electricity Board.

16.10. In the impugned order the State Commission has dealt with the directions given to the Electricity Board regarding metering in the previous tariff orders of FY 2006-07 and 2008-09. In this connection the observations of the State Commission in the impugned order are reproduced below:

“There is no improvement in what was stated in the compliance report. It was stated that the Board has invited tenders for 4 lakh meters. Same thing is repeated again now. At present the number of un-metered consumers have gone up to about 12.80 lakh consumers against 8.80 lakh consumers during 2006-07. No action has been taken to meter the existing consumers who are being supplied electricity without meters. This gives an impression that the Board has no intention of providing meters to the consumers who are being supplied power without meters. This is gross violation of the provisions of the Electricity Act, 2003 and utter disregard to the direction of the Commission. Unless the Board initiates action and provide meters to about 4 lakh consumers by 31st March 2011 and provide a roadmap to meter the balance services, the Commission is constrained to take drastic action against the Board.”

“A directive had been issued in the tariff order 2006-07 to get all the agricultural services enumerated. Even after 4 years it is stated that the compilation of data from field

officers is in process. This type of attitude is not expected from the Board. The Board is directed to immediately take steps to get the number of agricultural consumers connected to the network and submit a report latest by February 2011.”

16.11 The State Commission has also directed the Board in the FY 2006-07 and 2008-09 to install meters on distribution transformer exclusively connected to agriculture consumers for assessment of agriculture consumption, as the installation of meters on individual consumers may take time. However, the Board has so far not complied with the same, so far.

16.12 In view of the above, we do not want to interfere with the order of the State Commission with regard to the assessment of consumption for unmetered categories. We also direct the Electricity Board to comply with the directions of the State Commission, regarding providing meters on the unmetered supply.

17. The fifth issue is regarding the legality of procedure followed by the State Commission in deciding the tariff.

17.1 Ld. Counsel for Kalyanpur Cements Industry in appeal no. 27 of 2011 has argued that the tariff petition ought to have been rejected for non-filing in the requisite Appendices A, C & D. The provisional accounts for the year 2009-10 were also filed by the Electricity Board behind the back of the consumers and the copies of rejoinders/comments on the objections filed by the Electricity Board during the tariff proceedings were not forwarded to them. This is contrary to and violative of Section 64, Section 86(3) read with the Regulations, the doctrine of transparency and the principle of natural justice.

17.2 According to Ld. Sr. Counsel for the Electricity Board, the Regulations provide for filing of the application by the integrated utility distribution licensee in ARR format in Appendix-D. Accordingly, the application has been filed in Appendix-D. The Bihar State Electricity Board is primarily a distribution utility as its generation is almost negligible. The generation contributes to only about 1.7% of the total expenditure. As far as the expenses are concerned, the same have been taken in consolidated form which have been duly scrutinized by the State Commission. Hence, no expense has

escaped prudence check. The procedure adopted for determination of tariff was as per the Regulations. The objectors/consumers never demanded copy of the rejoinder filed by the Board. In the previous years also the same format was used for filing the petition and same procedure was followed. This alleged irregularity does in no way cause any prejudice to the Appellants and touch upon the merit of the appeal.

17.3 According to Ld. Counsel for the State Commission, the integrated utility or distribution licensee has to file its ARR in format as per Appendix-D of the Regulations. Accordingly, the Board has submitted the ARR in Annexure-D format. Regarding separate charges in respect of generation and distribution, the function-wise break up of ARR for generation, transmission and distribution was furnished by the Board, which was considered by the State Commission under paragraph 4.13 of the impugned order.

17.4 As regards reply to the objections filed by the objectors, the Ld. Counsel for the State Commission has submitted that

total 26 numbers of objections and suggestions were received from the consumers and stakeholders on the tariff petition and the Board filed their reply. These objections/suggestions were also read out during the public hearing by the objectors and the Board's representative orally submitted their response during the public hearing. Further, the Annual Accounts adopted by the Board for the FY 2009-10 was taken into consideration in projecting and fixing various components of tariff for the FY 2010-11 which has been fully described in detail in chapter 4 of the impugned order.

17.5 We notice that the State Commission had followed procedure by giving public notice and inviting objections/suggestions as per Section 63 of the Act. Subsequently, public hearing was also held on 25th, 26th and 27th October, 2010 after giving public notice. As per paragraph 3.2 of the impugned order some of the objectors who had submitted their objections and suggestions in writing earlier presented their objections and suggestions personally before the State Commission. Other participants from the public who had not given their objections/suggestions in writing were also given opportunity

during the public hearing to present their views in the public hearing. The objections/suggestions have been dealt with in details in the impugned order. As per the Ld. Counsel for the State Commission, the Board's representative also orally replied to the objections/suggestions during the public hearing. We also notice from the Annexure 1.1 of the impugned order that representatives of M/s Kalyanpur Cements Ltd., Bihar Industries Association the appellants herein, had also attended the public hearings.

17.6 In view of the procedure followed in this case as described in the preceding paragraph we do not feel that any grave procedural impropriety has been committed by the State Commission in passing the impugned order.

17.7 Even though the Regulations do not provide for forwarding copies of the rejoinder filed by the Board to the objections/suggestions of the objectors, we would like to give certain directions to the State Commission in this regard for future. The State Commission shall ensure that in future, the copy of rejoinder if filed by the Electricity Board is made

available to the concerned objectors. The replies filed by the Electricity Board may also be put up on the Commission's Website.

17.8 Ld. Counsel for Kalyanpur Cements Ltd. has referred to the judgment of this Tribunal reported as 2010 ELR (APTEL) 1050 in the matter of Bihar State Hydro Electric Power Corporation Ltd. Vs. Bihar Electricity Regulatory Commission. In this matter the State Commission had rejected the application of the State Hydro Electric Power Corporation under Section 64 (3) for valid reasons recorded in writing. The Bihar Hydro Electric Power Corporation had not filed the annual audited accounts certified by CAG for past several years despite the directions of the State Commission. In the present case the State Commission on scrutiny of application filed by the Electricity Board observed a number of shortcomings of deficiencies which were subsequently filed by the Electricity Board which were taken on record by the State Commission. In our opinion the decision of the Tribunal in the above referred case is not relevant to the present case.

17.9 Ld. Counsel for the Kalyannpur Cements Ltd. has also referred to the decision of the Hon'ble Supreme Court in (2009) 2 SCC 192 in the matter of Kothari Filaments and Another Vs. Commissioner of Customs (Port), Kolkata and others. The findings in case are also not relevant to the present case as in the present case public hearing was held. There was no violation of the principle of natural justice. For the similar reason, the findings in Judgment of the Tribunal dated 8.3.2011 in IA no.264 of 2010 in Appeal no. 173 of 2010 in the matter of Hooghly Chamber of Commerce and Industry & Anr. Vs. WBERC & Anr. referred to by Kalyanpur Cements Ltd. will not be applicable to the present case.

17.10 In view of above, the contentions of the Kalyanpur Cements Ltd. regarding procedural impropriety are rejected. The principle of natural justice has not been sacrificed.

18. The sixth issue is regarding alignment of tariff to cost of supply.

18.1 According to Ld. Counsel for Bihar Industries Association, the State Commission has wrongly determined the tariff on the basis of average cost of supply instead of giving voltage-wise adjustment, contrary to the principle laid down by the Tribunal in the various judgments.

18.2 According to Ld. Counsel for Kalyanpur Cements Ltd., the distribution expenses of the licensee including the distribution losses should not be applicable to the tariff of the EHV consumers obtaining supply at 132 kV and above voltage directly from the transmission system without the use of the distribution system.

18.3 According to Sr. Counsel for the Electricity Board, the Board is an integrated utility having generation, transmission and distribution and, therefore, the overall transmission, distribution and commercial losses have to be taken into consideration in the ARR. As per the Tariff Policy, the cross subsidization within the limit of + 20% is permissible over the average cost of supply. As such, the tariff order is in consonance with the Tariff Policy. In the present order, the

tariff rate of the industrial consumers has remained unaltered as far as demand charges are concerned and energy rate has been increased by only 5 paise per kWh over the previous tariff rates determined in the year 2008, whereas the Board had proposed a rise of 70 paise per kWh.

18.4 According to Ld. Counsel for the State Commission, the tariff has been determined on combined average cost of supply as specified under Regulation 15(2) of the Tariff Regulations, 2007.

18.5 Let us now examine the findings of the State Commission in regard to cost of supply. The relevant paragraph from the impugned order is reproduced below:

“5.1.1 The Commission in determining the revenue requirement of BSEB for the year 2010- 11 and the retail tariff has been guided by the provisions of the Electricity Act, 2003, the National Tariff Policy (NTP), Regulations on Terms and Conditions of Tariff issued by the Central Electricity Regulatory Commission (CERC) and Regulations on Terms and Conditions of Tariff notified by the BERG in April 2007. Section 61 of the Act lay down the broad principles, which shall guide determination of retail tariff. As per these principles the tariff should “Progressively reflect cost of supply” and also reduce cross subsidies “within the period to be specified by the Commission”. The Act lays special emphasis on safeguarding

consumer interests and also requires that the costs should be recovered in a reasonable manner. The Act mandates that tariff determination should be guided by the factors, which encourage competition, efficiency, economical use of resources, good performance and optimum investment.

The NTP notified by Government of India in January 2006 provides comprehensive guidelines for determination of tariff as also working out the revenue requirement of power utilities. The Commission has endeavored to follow these guidelines as far as possible.”

5.1.2 *NTP mandates that the Multi Year Tariff (MYT) framework be adopted for determination of tariff from 1st April 2006. However the Commission is not in a position to introduce MYT regime in the State mainly because of lack of requisite and reliable data. The present MIS and regulatory reporting system of the Board is very inadequate for any such exercise at this stage. The accounts of the Board for FY 2008-09 have been compiled and adopted by the Board, which are yet to be audited. **There has been no study to assess voltage wise losses in the absence of metering of all feeders, distribution transformers and consumers. Technical and commercial losses are yet to be segregated and quantified voltage wise. The Commission issued a directive to the BSEB in the Tariff Order 2006-07 to chalk out a long-term action plan for reduction of T & D losses for both technical and non-technical with relevant load flow studies and submit to the Commission by March 2007. But so far there is no concrete action from the Board.** Under these conditions it would not be practicable to implement the MYT framework this year. The Commission taking into account all factors, has decided to introduce MYT from the year 2012-13. The mandate of the NTP that tariff should be within plus / minus 20% of the average cost of supply by 2010-11 has not been possible for the Commission to lay down the road map for reduction of cross subsidy, mainly because of lack of data regarding cost of supply at various voltage levels. The BSEB furnished the voltage-wise cost of supply, based on annual accounts, assuming certain percentage of voltage-wise losses without proper load flow*

studies, which cannot be taken into consideration. Hence, in working out the cost of supply, the Commission has gone on the basis of average cost of supply in the absence of relevant data for working out consumer category wise cost of supply. However in this tariff order an element of performance target has been indicated by setting target for T&D loss reduction for the years 2010-11 to 2012-13. This better performance by reduction of loss level will result in substantial reduction in average cost of supply.”

18.6 Thus, the State Commission has gone on the basis of average cost of supply due to absence of the relevant data for working out consumer category-wise cost of supply.

18.7 Let us first examine the Tariff Regulations, 2007. The relevant Regulation 14 is reproduced below:

“14 Cross subsidy

- (1) The cross subsidy for a consumer category means the difference between the average per unit rate based on tariff schedule of the Commission for that category and the combined average cost of supply per unit expressed in percentage terms as a portion of average cost of supply.*
- (2) In the first phase, the Commission shall determine the tariff so that it progressively reflects the combined average cost of supply of electricity and also reduce and eliminate cross subsidies within a reasonable time. In the second phase, the Commission shall consider moving towards category-wise cost of supply as a basis of determination of tariff.”*

Thus, the Regulations provide for determinations of tariff/cross subsidy on the basis of average cost of supply in the first phase. In the second phase the Commission shall consider moving towards category-wise cost of supply as a basis of determination of tariff.

18.8 However, in the impugned order, the State Commission in the absence of data has gone as per the average cost of supply. In view of the provisions of the Regulation and the fact that the increase in tariff in the impugned order has been only marginal with reference to the last tariff order of the year 2008, we do not want to interfere with the impugned order but direct the State Commission to move to the determination of cost of supply as decided by this Tribunal in the various judgments. The Tribunal has also held in the various judgments that the cross-subsidy has to be calculated with respect to cost of supply to the particular category of consumer and not on the basis of overall average cost of supply for the distribution system.

18.9 This Tribunal in its judgment reported in 2011 ELR (APTEL) 1022 between Tata Steel Ltd. Vs. Orissa Electricity Regulatory Commission & Another has decided as under:-

“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.”

“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 $\pm 20\%$ 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.”

“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.”

“28. Of the above Judgments of this Tribunal, 2007 APTEL 931 Siel Limited vs. PSERC & Ors. has a clear finding on the cost of supply. The relevant extracts of the Judgment are reproduced below:

“109. According to Section 61(g) of the Act of 2003, the Commission is required to specify the period within which cross subsidy would be reduced and eliminated so that the tariff progressively reflects the cost of supply of electricity. Under Section 28(2) of the Act of 1998, the Commission while prescribing the terms and conditions of tariff was required to safeguard the interests of the consumers and at the same time, it was to ensure that the consumers paid for the use of the electricity in a manner based on average cost of supply. The word “Average” preceding the words “cost of supply” is absent in Section 61(g) of the Act of 2003. The omission of the word “Average” is significant. It indicates that the cost of supply means the actual cost of supply, but it is not the intent of the legislation that the Commission should determine the Tariff based on cost of supply from the date of the enforcement of the Act of 2003. Section 61(g) of the Act of 2003 envisages a gradual transition from the Tariff loaded with cross subsidies to a Tariff reflective of cost of supply to various class and categories of consumers. Till the Commission progressively reaches that stage, in the interregnum, the roadmap for achieving the objective must be notified by the Commission within six months from January 6, 2006, when the Tariff Policy was notified by the Government of India, i.e. by July 6, 2006. In consonance with the Tariff Policy, by the end of the year 2010-11, tariffs are required to be fixed within ± 20 per cent 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."

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

This Tribunal in the above Judgment has held that the cost of supply as indicated in Section 61(g) is not the average cost of supply but the actual cost of supply and the cross subsidy is the difference between the tariff fixed by the State Commission and the actual cost of supply."

- "30. *It is regretted that even after six years of formation of the Regulations, the State Commission has not been able to establish 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.

36. *The learned counsel for the Appellants has argued that it would not be difficult to determine cost to supply for them as they draw electricity directly from the transmission system of the State Transmission Licensee. We feel that even if it is not difficult for the State Commission to determine the cost of supply for the appellants, unless the cost of supply is determined for all the consumer categories connected to different voltage levels, it will not serve any purpose. We also do not accept the argument of the learned counsel for the appellant that the distribution losses and network costs in respect of the appellant consumer category will be nil. As stated above, the commercial losses of the distribution system have to be borne by all the consumers of the distribution licensee. However, as the distribution losses reduce gradually, the cost of supply for the appellants' category will also reduce. We also can not grant any relief to the appellants on account of fixed charges for the distribution system assets and O&M expenses, etc. due to complexities involved in determining the segregated cost of service and in light of amendment of 2007 of the Act removing the provision for elimination of subsidies.*
37. *We, however, direct the State Commission to determine the cross subsidy for each consumer category after working out the voltage-wise cost of supply based on the directions given in the preceding paragraphs. The cross subsidy will be calculated as the difference between the average tariff realization for that*

category as per the Annual Revenue Requirement and the cost of supply for the consumer category based on voltage-based cost of supply.”

18.10 The State Commission has expressed difficulty in moving to cost of supply due to non-availability of data. In our opinion it will not be prudent to wait indefinitely for availability of the entire data before switching to cost of supply. It would be advisable to initiate a simple formulation which could take into account the major cost elements of cost of supply. It would be adequate to determine the voltage-wise cost of supply taking into account the power purchase and loss level at different voltages. This Tribunal has given a practical formulation to determine voltage-wise cost of supply to all categories of consumers connected at the same voltage level in paragraphs 31 to 35 of the above judgment. Accordingly, the State Commission is directed to determine the cross subsidy based on cost of supply at different voltage levels within next 6 months and ensure that in future orders beginning from FY 2013-14, the cross subsidies and tariffs are determined based on the principles laid down by this Tribunal in the Tata Steel judgment referred to above. We

also direct the State Commission to indicate the computation of cross-subsidy for each category of consumer in the tariff order, increase/reduction in cross subsidy with respect to previous year, increase/ reduction in tariff with respect to tariff of previous year for transparency, in future.

18.11 Ld. Counsel for Kalyanpur Cements Ltd. has argued that since they are drawing power directly from the transmission system at 132 kV, their tariff shall not include the distribution losses and cost of the distribution network. This Tribunal has already decided similar issue in the above mentioned judgment rejecting the contentions of the Appellant. This issue is answered in paragraph 36 of the judgment indicated above. The same finding will apply in the present case.

19. The seventh issue is regarding differentiation in tariff for HTSS category in the matter of demand charges and levy of monthly minimum charges.

19.1 According to Bihar Industries Association, the tariff determined for HTSS category is discriminatory and has no rationale.

19.2 According to Ld. Sr. Counsel for the Electricity Board, the HTSS consumers are now consuming power at load factor of 70% and above, the effective rate is even less than those agreed by HTSS consumers in the year 1999. The Board and the Bihar Steel Manufacturers Association had entered into an agreement according to which a separate tariff for induction furnaces consumers under HTSS category was introduced w.e.f. 1.9.1999, having high demand charges and low energy charges. Thereafter, the same structure of high demand charge and low energy charge as compared to other HT consumers has been continued. Section 62(3) of the Act permits such differentiation.

19.3 According to the counter affidavit filed by the State Commission, the nature of load and consumption pattern of induction furnaces under HTSS category as compared to other HT consumers are different. Considering the

consumers' load factor, nature of load, consumption, etc., of HTSS consumers, the State Commission has allowed billing demand charges on the basis of the contracted load which is in line with Section 62(3) of the Act.

19.4 Lets us first examine Section 62(3) of the Act. 62(3) of the Act is reproduced below;

“(3) 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.”

Thus, the State Commission can differentiate the tariff according to the factors indicated above.

19.5 We notice that HTSS (33 KV/11KV) category tariff is applicable for supply of electricity to all consumers who have contract demand of 300 kVA and more for induction furnace including Ferro Alloy loads. The demand charges for this category is higher as compared to other HT industries but the

energy charge is much less than other categories. The tariff for HTSS category has been decided as under:

“Tariff rates

Demand charge Rs. / kVA / Month of billing demand	Energy charges (Paise / unit)
700	All units 205

- (i) *Minimum monthly charges at Rs. 1233 per kVA of contract demand per month shall be payable on monthly basis. Minimum hours of supply will be 630 hours per month. If for any particular month the hours of supply are less than the minimum assured hours of supply as shown above then the minimum monthly charges for the month will be –*

$$\left\{ \text{Rs. } 700 + \frac{\text{Rs. } 533 \times \text{Actual hours of supply}}{630 \text{ (Assured hours of supply)}} \right\}$$

- (ii) *The billing demand shall be the maximum demand recorded during the month or the contract demand whichever is higher.”*

The demand charge of HTSS category is Rs.700/- per KVA per month while for HTS-I (11kV/6.6kV) HTS-II (33KV) is Rs.220/- per kVA per month. On the other hand the energy charge for HTSS category is Rs.205 paise per kWh compared to 423/415 paise per kWh for HTS-I and HTS-II categories.

For HTS-1 and HTS-II category, there is a provision of minimum base energy charge. However, for the HTSS category, there is minimum monthly charge in the form of demand charge per KVA of contract demand. There is also a provision for reduction of monthly minimum demand charge in case the actual hours of supply to the consumer is less than the assured supply of 630 hours in a month. Such a clause is not available for HTS-I and HTS-II categories with regard to calculation of minimum energy charges.

19.6 We notice that the State Commission has created HTSS category as a separate category for induction furnaces with different tariff. The State Commission is authorized to differentiate tariffs according to Section 62(4) of the Act. The energy charges and demand charges and mode of minimum charges is different for HTSS category and other HT industries. We notice that the monthly minimum charges are also being levied in the form of energy charges for non-domestic categories, low tension industries and other HT industries. We find that the appellant Industries Association has not been able to establish its case of discrimination. On

the other hand, the Electricity Board has indicated that the overall tariff for HTSS category is lower as compared to other categories.

19.7 Thus, we do not find any infirmity in the tariff regarding demand charges and monthly minimum charges for HTSS category of consumers.

20. Summary of our findings:

- i) Employees Cost: We do not find any reason to interfere with the order. However, the State Commission shall true-up the employees cost including the terminal benefits for the FY 2010-11 on the basis of the audited accounts, after prudence check.**
- ii) A&G expenses: We do not find any fault with the findings of the State Commission. However, the A&G expenses for the FY 2010-11 shall be trued up by the State Commission on the basis of the audited accounts, after prudence check.**

- iii) Interest and finance charge: We do not find any illegality in the order of the State Commission. However, we have given some directions to improve the accounting practices adopted by the Electricity Board and to examine the Regulations regarding interest on consumers security in paragraph 15.9 above for necessary action.**
- iv) Revenue from sale of power: We do not want to interfere with the order of the State Commission. We have also given directions to the Electricity Board to comply with the directions of the State Commission regarding provision of meters.**
- v) Procedural impropriety: We do not find that any procedural impropriety has been committed by the State Commission in passing the impugned order. However, we have given directions to the State Commission in paragraph 17.7 above.**
- vi) Cost of Supply: We do not want to interfere in the present tariff order based on average cost of supply. However, we have given directions to the State Commission to**

determine category-wise cost of supply in paragraph 18.10 for future.

vii) Discrimination in tariff to HTSS category: We reject the contention of the Appellant Industries Association.

21. All the Appeals viz. 14 of 2011, 26 of 2011 and 27 of 2011 are dismissed with some directions to the State Commission and the Electricity Board for future. No orders as to costs.

Pronounced in open court on 10th day of May, 2012.

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

**(Mr. Rakesh Nath)
Technical Member**

REPORTABLE/NON-REPORTABLE

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