

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO. 255 OF 2014**

**Dated: 23<sup>rd</sup> March, 2016**

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of:-**

**Damodar Valley Corporation,  
DVC Towers, VIP Road,  
Kolkata-700054.**

**...Appellant**

**Versus**

**Jharkhand State Electricity Regulatory Commission,  
2<sup>nd</sup> Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar,  
Main Road, Ranchi-834001.**

**...Respondent**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Anushree Bardhan  
Ms. Ranjitha Ramachandran  
Mr. Subham Arya  
Ms. Poorva Saigal

Counsel for the Respondent(s) : Mr. Farrukh Rasheed for R-1  
  
Mr. Amit Kapur,  
Mr. Vishal Anand and  
Mr. Janmali Manikale for Objector

## JUDGMENT

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

1. The present Appeal is being filed under Section 111 of the Electricity Act, 2003 by M/s. Damodar Valley Corporation (hereinafter referred to as the “**Appellant**”), against the Impugned Order dated 04.09.2014 in Petition dated 25.04.2013 of the Appellant passed by Jharkhand State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”), whereby the State Commission has determined the Annual Revenue Requirement (ARR) and retail supply tariff of the Appellant for the multi-year tariff period from FY 2013-14 to FY 2015-2016 for the area of license (command area) of the Appellant falling in the State of Jharkhand.
2. The Appellant herein is a statutory body constituted under the provisions of the Damodar Valley Corporation Act, 1948 (hereinafter referred to as the “**DVC Act**”) a Central Act and a special Legislation dealing with Damodar Valley, a carved area in the provinces of West Bengal and Jharkhand.

The Appellant has been engaged in the generation, transmission bulk/wholesale and also retail sale of electricity to consumers in the Damodar Valley. Since the Appellant is being controlled by the

Central Commission, the generation of electricity by the Appellant is regulated by the Central Commission under Section 79(1)(a) of the Electricity Act, 2003 and as such, the tariff is determined by the Central Commission. Similarly, the power system owned, operated and maintained by the Appellant being essentially an inter-state transmission system, the activities of inter-state transmission of electricity undertaken by Appellant is regulated by the Central Commission in terms of Section 79(1), (c) and (d) of the Electricity Act, 2003. The tariff for the distribution and retail supply of electricity by the Appellant to the consumers in the State is however within the jurisdiction and functions of the State Commissions of West Bengal and Jharkhand in the respective part of Damodar Valley areas falling in the respective States.

3. The Jharkhand State Electricity Regulatory Commission (hereinafter referred to as the “**JSERC**” or “**State Commission**”) was established by the Government of Jharkhand under section 17 of the Electricity Regulatory Commission Act, 1998 on 22.08.2002. As the Electricity Act, 2003 being brought out into force, the earlier Electricity Regulatory Commission Act, 1998 stands repealed and the State

Commission is now deemed to have been constituted and functioning under the provisions of the Electricity Act, 2003.

4. The Appellant also purchases electricity from other generating stations of NTPC, NHPC, Maithon Power Ltd. (a joint venture company of DVC and Tata Power Company Ltd.) for the purposes of ensuring supply to consumer in its command area. The tariff for the Central Public Sector such as NTPC Ltd., NHPC for generation and supply of electricity is also determined by the Central Commission. The tariff for Maithon Power Ltd. is also determined by the Central Commission.
5. For transmission of power from the generating stations of NTPC, NHPC and other suppliers, the Appellant avails the services of Power Grid Corporation of India Ltd. and other inter-state transmission licensees. The tariff for such inter-state transmission is also determined by the Central Commission. For better understanding of the case, it is observed that the tariff determined is for (i) the generating stations of the Appellant, (ii) the transmission system of the Appellant, (iii) the generating stations of other Central Sector Units such as NTPC and NHPC and the other generating stations such as Maithon etc. (iv) the inter-state transmission by the Power

Grid Corporation of India Ltd. and other inter-state transmission licensee and (v) all other applicable charges in relation to the above and all these serve an input cost for the State Commission of West Bengal and Jharkhand respectively while determining the revenue requirement of the Appellant as well as the retail and distribution tariff.

6. The State Commission while passing Impugned Order dated 04.09.2014 determined the ARRs and retail supply tariff of the Appellant for the tariff period FY 2013-14 to FY 2015-2016 indicating therein the revenue gap as a part of the revenue requirements of the Appellant relating to the past period, namely, from FY 2006-2007 to FY 2012-2013 consequent upon final determination of tariff by the Central Commission subject to the orders of the Hon'ble Supreme Court.
7. Aggrieved by the Impugned Order dated 04.09.2014 passed by the State Commission, as the ARRs of the Appellant have not properly been considered by the State Commission, the Appellant has preferred the present Appeal.

8. **Facts of the present Appeal:**

- (a) Treatment of revenue gap/surplus of the period 2006 to 2013 and allowing such revenue gap during 2013-14 to 2015-2016 as considered by the State Commission in its Impugned Order dated 04.09.2014 has not been properly determined as per the Appellant.
- (b) Revenue realization gap on account of applicability of the Impugned Order from September, 2014 which, in terms of the Appellant, would reduce the applicability of the tariff determined by the State Commission for the 5 months period in the FY 2014-15.
- (c) The Appellant is contesting that the adjustment of secondary fuel cost as per the Central Commission's Tariff Regulation, 2009 has not been considered by the State Commission.
- (d) The Appellant further contested the computation of interest on working capital as considered by the State Commission in its Impugned Order dated 04.09.2014.
- (e) Consideration of the cost of power purchase from central sector generating station and other sources as well as procurement of

solar power in discharge of renewable purchase obligation has not been properly considered by the State Commission in its Impugned Order dated 04.09.2014 as per the Appellant.

- (f) Even for consideration of expenditure towards pension and gratuity and sinking fund for the period 2006-2011, the Appellant is disputing the Impugned Order of the State Commission.
- (g) Calculation of actual transmission and distribution losses as considered in the Impugned Order dated 04.09.2014 has also been disputed by the Appellant.

Mr. Amit Kapur, the Learned Counsel on behalf of M/s. Maithon Power Ltd., appeared in response to a public notice and submitted that the Appellant has been restrained by to the State Commission for purchasing power from M/s. Maithon Power Ltd. The said order of the State Commission restraining the Appellant to purchase power from M/s. Maithon Power Ltd. is a subject matter of challenge in a different Appeal before this Tribunal. Hence, the parties are at liberty to raise this matter in the Appeal relating to the issue of restraining the Appellant to purchase power from M/s. Maithon Power Ltd. Thus, in

the present Appeal we are confined to the issues raised by the Appellant as above.

9. For deciding this Appeal, the following issues need to be examined carefully:-

***Whether the State Commission in its Impugned Order dated 04.09.2014 while deciding all the seven issues as indicated above i.e. (1) treatment of revenue gap/surplus of the period 2006-2013, (2) revenue realization gap for the first five months in FY 2014-15, (3) adjustment of secondary fuel cost, (4) computation of interest on working capital, (5) consideration of the cost of power purchase from central sector generating stations and other sources, (6) consideration of expenditure towards pension and gratuity and sinking fund for the period 2006-2011 and (7) calculation of actual transmission and distribution losses, have considered all the relevant facts and circumstances of the case and calculated appropriately?***

10. We have heard at length Mr. M.G. Ramachandran, Learned Counsel for Appellant & Mr. Farrukh Rasheed, Learned Counsel for the State Commission and considered their written submissions and the



arguments during the pleadings before us and our observations on the various issues as challenged in the present Appeal are discussed hereunder.

11. On the specific issues raised in the present Appeal, the Appellant has made the following submissions for our consideration:-

(a) The Central Commission in the final Tariff Order dated 08.05.2013 for the period 2006-2009 and for the period 2009-14 vide its various Orders issued from 29.07.2013 to 27.09.2013 had determined the input cost of the Appellant's generation and transmission activities. Similarly, the Central commission had determined the final tariff of NTPC's generating stations and other generating stations from whom the Appellant procures power as well as the tariff of Power Grid Corporation of India Ltd. from whom the Appellant avails the transmission facilities. The increase in the tariff as provided in the Central Commission's Order in respect of generating and transmission cost was to be allowed as revenue Gap for the FY 2006-07 to 2008-09 and again for the FY 2009-10 to 2012-13 which was not granted by the State Commission in its Impugned Order on the purported ground of pendency of the

proceedings before the Hon'ble Supreme Court and Consumer Grievances Redressal Forum.

- (b) The Hon'ble Supreme Court vide its Order dated 09.07.2010 in Civil Appeal No. 4881 of 2010 relating to tariff period 2006-07 to 2008-09 has directed stay only on the refund of amount collected by the Appellant from the consumers based on the earlier tariff and had declined any stay of the Orders of this Tribunal in other respects.
- (c) As per the Appellant, mere pendency of the proceedings before the Hon'ble Supreme Court in the absence of any stay on the implementation of the Orders cannot be a ground for refusal to consider the implications of the Orders of the Central Commission and this Tribunal for determination of distribution and retail supply tariff by the State Commission. Further the Appellant has stated that the final outcome of Civil Appeal No. 4881 of 2010 filed by the Appellant before the Hon'ble Supreme Court will not in any case reduce the Revenue Gap arising from the Orders passed by the Central Commission relating to the FYs 2006-07 to 2012-13. Similarly, the issue of compensation under the Consumer Grievance Redressal

Forum, if any, will add to the Revenue Gap as determined by the State Commission.

- (d) The deferred elements of tariff for the period 2006-2009 has already been decided by the Central Commission vide its Order dated 08.05.2013 without prejudice to the rights and contentions of the parties before the Hon'ble Supreme Court of India and the tariff has been revised for the aforesaid period accordingly.
- (e) Subsequent to above, the Central commission determined the final tariff for the FYs 2009 to 2014 for the existing power stations and for the composite transmission and distribution system of the Appellant through its various Orders passed between July to September, 2013 and directed the Appellant to file the application for determination of retail tariff before the respective State Commissions for the period 2009-14 and pursue the matter for expeditious determination of distribution tariff.
- (f) The Appellant submitted that final outcome of the Civil Appeal, if decided in its favour, would be over and above the amount

determined by the Central Commission and accordingly the State Commission ought to have considered adjustment of Revenue Gap by way of amortization equally during the control period FY 2013-14 to FY 2015-16 in order to avoid any tariff shock in the future.

- (g) The Appellant further submitted that the recovery of regulatory assets should be time bound and within the period not exceeding three years at the most and preferably within control period as decided by this Tribunal vide its Judgment dated 11.11.2011 in O.P. No. 1 of 2001.
- (h) In support of this argument, the Appellant has referred to National Tariff Policy which provides for recovery of the Revenue gap in a short span and the relevant extract is reproduced below:-

***“8.2.2. The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:***

***a. The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap***

***must be covered through transition financing arrangement or capital restructuring;***

***b. Carrying cost of Regulatory asset should be allowed to the utilities;***

***c. Recovery of regulatory asset should be time-bound and within a period not exceeding three years at the most and preferably within control period;***

***d. The use of the facility of Regulatory asset should not be repetitive.***

***e. In case where regulatory asset is proposed to be adopted, it should be ensured that the return on equity should not become unreasonably low in any year so that the capability of the licensee to borrow is not adversely affected.”***

(i) Thus the claim made by the Appellant for such adjustment of the Revenue Gap within the control period of 2013-14 to 2015-16 is justified and if it is not done in time, it would affect the financial viability of the Appellant.

(j) The Station Commission vide its Impugned Order dated 04.09.2014 has determined tariff for the period 2014-15 and for such determination had considered the revenue requirements and other financials of the period from 01.04.2014 to 31.03.2015. Since this Order was issued on 04.09.2014, the Appellant would be recovering the increased tariff prospectively

from September, 2014. Accordingly, the State Commission should have considered the implication of increased tariff not being given effect during the previous five months of the FY 2014-15. Non-recovery of this increased tariff for the initial five months of the FY 2014-15 is bound to cause financial hardship to the Appellant. As per the Appellant, the State Commission ought to have annualized the increase in the tariff during the remaining seven months of the FY 2014-15 so that the Appellant would effectively recover the increase in the tariff pertaining to all the twelve months to meet the revenue requirements determined by the State Commission for the FY 2014-15 and in the absence of the above, it is likely to result in accumulation of further Revenue Gap and regulatory assets which is detrimental to the spirit of the National Tariff Policy and also likely to cause tariff shock to the consumers in future.

- (k) As regards the second issue of adjustment of secondary fuel oil cost, the Appellant submitted that the Central Commission determines the capacity charge taking the normative generation coupled with the price of the secondary fuel price prevailing at the time of submission and as such the State Commission

ought to have considered that the capacity charges determined by the Central Commission for the period commencing 01.04.2009 in regard to the generating stations of the Appellant by making requisite adjustment for the secondary fuel oil cost in accordance with the prevailing Regulations and such secondary fuel oil cost is further subject to fuel price adjustment at the end of each year.

- (l) In respect of the issue regarding interest on working capital, the Appellant submitted that the State Commission ought to have considered the interest on working capital in terms of Regulation 6.26 of the Tariff Regulations, 2010 notified by the State Commission in regard to the period 2013-14 and 2014-15 not in terms of Regulation 12 of the Tariff Regulation 2004. Regulation 6.26 of the Tariff Regulation 2010 is as under:-

***“Interest on working Capital***

***6.26 Working capital for the Distribution Business of electricity for the Transition Period shall consist of:***

- a) One-twelfth of the amount of Operation and Maintenance expenses for such financial year; plus***
- b) Maintenance spares @ 1% of Opening GFA; plus***
- c) Two months equivalent of the expected revenue from sale of electricity at the prevailing tariffs; minus***

- d) Amount held as security deposits under clause (a) and clause (b) of subsection (1) of Section 47 of the Act from consumers and Distribution System Users; minus**
- e) one month equivalent of cost of power purchased, based on the annual power procurement plan.”**

In view of the above, State Commission ought to have determined the admissible interest on working capital.

- (m) The Appellant further stated that the State Commission in its Impugned Order dated 04.09.2014 has erroneously calculated the projected revenue for the period 2013-14 with reference to the pre-existing tariff and as a result of the same, the admissible interest on working capital has substantially been reduced. Due to non-consideration of interest on working capital in proper terms, the Appellant is suffering a huge deficit in cash flow and have to rely on short term borrowing for arranging working capital and maintaining a sustainable generation.
- (n) On the issue of power purchase cost, the Appellant stated that it has filed the ARR considering cost of power purchase for the FY 2013-14 on actual basis and for FYs 2014-15 and 2015-16 on projection basis. In its Impugned order dated 04.09.2014,



the State Commission erred in disallowing a part of actual power cost for FY 2013-14 which has actually been incurred and also not allowed the projected power purchase cost for the FYs 2014-15 and 2015-16. The State Commission ought to have considered that the power purchased from Central Sector Generating Stations like NTPC, NHPC and others, including M/s. Maithon Power Ltd. are as per bilateral long term Power Purchase Agreements based on the terms and conditions and tariffs determined by the Central Commission. Therefore, there was no reason for the State Commission for non-consideration of the power purchase cost as incurred for the FY 2013-14 and as projected for the FYs 2014-15 and 2015-16 since the power requirement of the Appellant has been arranged on long term basis both from the generating stations of the Appellant as well as through purchase from the other generating stations.

- (o) Even the solar power purchase cost as incurred by the Appellant for meeting the Renewal Purchase Obligation ought to have been considered by the State Commission while determining the ARR.

- (p) As regards pension & gratuity and sinking fund contribution, the Appellant stated that the payment of pension & gratuity is statutory obligation of the Appellant and should be allowed to in its entirety and such obligations cannot be linked with performance parameters. In terms of the Judgment of this Tribunal dated 23.11.2007, the Central Commission allowed the station-wise pension & gratuity and sinking fund along with other elements for generating stations and transmission distribution network of the Appellant as per the terms & conditions of the Tariff Regulations, 2009 of Central Commission. As per the Appellant, it not open to the State Commission to re-determine the quantum of pension & gratuity and sinking fund contribution to be included in the revenue requirements as a Distribution Licensee and the State Commission ought to have considered their entire amount as determined by the Central Commission, while determining the revenue requirements of the Appellant and not linking the same with performance parameters.
- (q) As regards the last issue raised by the Appellant in the present Appeal regarding transmission and distribution losses, the State

Commission had while passing the retail Tariff Order dated 22.11.2012 allowed the actual T&D loss from FYs 2006-07 to 2011-12 and determined the loss level of 3% for the FY 2012-13 subject to truing up. However, the State Commission has not yet trued up the ARR, T&D loss, etc. for the FY 2012-13. The Appellant stated that for computation of transmission and distribution losses, it had followed the procedure adopted by the State Commission and the same ought to have been considered by the State Commission. As per Appellant, T&D losses as computed by the Appellant should be allowed by the State Commission.

12. The Learned Counsel for the State Commission made the following submissions/arguments for our consideration:-
  - (a) As regards the first issue regarding treatment of revenue gap/surplus of the period 2006-2013 as determined by the Central Commission and allowance of such Revenue Gap to be recovered during FY 2013-14 to FY 2015-16, the State Commission has rejected the same on the ground of pendency of the cases before the Apex Court and further stated that final true up for the period FY 2009-10 to FY 2012-13 shall be

undertaken on disposal of these cases which are before the Hon'ble Supreme Court.

- (b) It was further stated by the Learned Counsel for the State Commission that the matter of true up of ARR for FY 2006-07 to FY 2008-09 has not yet been undertaken by the State Commission since the final true up would be carried out based on the decision of the Hon'ble Supreme Court in Civil Appeal No. 4881 of 2010. It was further stated that the matter involves the refund of excess amount billed and collected by the Appellant during the aforesaid period and it is in this context it would be appropriate to undertake final exercise once the Hon'ble Supreme Court decides the Civil Appeal No. 4881 of 2010 which would ensure that the final true up would be done once for all. It is an admitted position that the State Commission shall allow carrying /holding cost on the surplus/deficit amount of ARR during the period if so required during the final true up of ARR for FY 2006-07 to FY 2008-09.
- (c) The State Commission in its Impugned Order dated 04.09.2014 while considering the Revenue Gap/surplus of the period for the FY 2006-07 on account of determination of tariff by the Central

Commission and allowing such Revenue Gap to be recovered during FY 2013-14 to 2015-16 has stated as under:-

**“6.93 The Petitioner has estimated cumulative revenue gap for FY 2006-07 to FY 2012-13 of Rs.3850.77 Cr on the basis of issue of final tariff orders by CERC for period 2009-14. The following table summarises the revised revenue gap submitted by DVC.**

**Table 57:  
Projected Revenue Gap/ (Surplus) for FY 2006-07 to FY 2012-13 (Rs Cr)**

<b>Particulars</b>	<b>Submitted by the Petitioner based on CERC final Order on 28th February 2014</b>
<b>FY 2006-07</b>	<b>290.58</b>
<b>FY 2007-08</b>	<b>295.96</b>
<b>FY 2008-09</b>	<b>(9.23)</b>
<b>FY 2009-10</b>	<b>378.21</b>
<b>FY 2010-11</b>	<b>883.75</b>
<b>FY 2011-12</b>	<b>1118.06</b>
<b>FY 2012-13</b>	<b>893.44</b>
<b>Total</b>	<b>3850.77</b>

**6.94 The Petitioner has submitted that the entire gap along with carrying cost for previous years should be amortised within the MYT control period. The following table summarises the cumulative revenue gap/(surplus) for previous years submitted by the Petitioner.**

**Table 58:  
Summary of Revenue Gap/(surplus) for previous years submitted by DVC**

<b>Particulars</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Revenue gap opening *</b>	<b>3850.77</b>	<b>2736.02</b>	<b>1460.19</b>
<b>Carrying cost @ 14.45%</b>	<b>556.44</b>	<b>395.4</b>	<b>211.00</b>
<b>Yearly recovery proposed through</b>	<b>1671.19</b>	<b>1671.19</b>	<b>1671.19</b>

<i>installment</i>			
<b>Revenue gap closing</b>	<b>2736.02</b>	<b>1460.19</b>	<b>0.000</b>

**6.95 Accordingly, the Petitioner has projected recovery of Rs. 1671.19 Cr in lieu of previous year's revenue gap during FY 2013-14.**

**6.96 As summarised in Section 5 of this Order, the Commission has not considered the pass through of previous year's gaps as they are subject to final judgments to be passed by Supreme Court as well as compensation finalisation in lieu of final orders notified by CERC for period 2009-14.**

**Summary of ARR for Jharkhand Area for the Control Period**

**6.97 The following table summarizes the ARR for Jharkhand area as per the submission by the Petitioner and that approved by Commission for the Control Period from FY 2013-14 to FY 2015-16:-**

**Table 59:**

**Summary of ARR (Rs Cr) for Jharkhand Area for the Control Period as submitted by Petitioner and as approved by Commission**

Particulars	FY 2013-14			FY 2014-15		FY 2015-16	
	Petitioner		Commission analysis	Petitioner submission	Commission analysis	Petitioner submission	Commission analysis
	As per original Petition	As per revised Petition					
<b>Allocated input cost to Jharkhand Area</b>	5,555.64	4,944.25	4,944.99	7,025.85	4,825.37	8,655.46	5,080.30
<b>Add: IWC for Jharkhand Area</b>	130.08	154.77	5.64	163.86	6.26	201.80	6.58
<b>Add: Interest on Security Deposit</b>	2.35	0.69	0.69	2.53	2.53	2.70	2.70
<b>Add: Tariff filing and publication expenses for Jharkhand Area</b>	0.38	0.38	0.38	0.42	0.42	0.46	0.46
<b>Total ARR for Jharkhand area</b>	<b>5,688.45</b>	<b>5100.10</b>	<b>4,951.70</b>	<b>7,192.66</b>	<b>4,834.58</b>	<b>8,860.43</b>	<b>5,090.04</b>

<i>Adjustment of revenue gap in equal monthly installments</i>	210.35	1,671.19	-	1,671.19	-	1671.19	-
<i>Revenue at existing tariff</i>	4,196.23	3,189.07	3904.86	4,463.22	4,241.93	4813.97	4,460.30
<i>Revenue Gap/(Surplus) at existing tariff</i>	1,702.57	3,582.22	1046.84	4,400.64	592.65	5,717.66	629.74
<i>Sales (MU)</i>	10,734.00	9,610.55	9,610.55	11,549.00	10,439.49	12,336.00	10,976.81
<i>Average Cost of Supply (Rs./kWh)</i>	5.50	7.05	5.15	6.23	4.63	7.18	4.64

**7.1 The Petitioner has projected cumulative revenue gap for FY 2006-07 to FY 2012-13 as Rs. 3850.77 Cr. Further, considering carrying cost on this gap @ 14.45%, the Petitioner has projected to amortise the entire gap within the MYT control period in annual installments. During FY 2013-14, the Petitioner has projected amortisation of Rs. 1671.19 Cr in lieu of previous years revenue gap.**

**7.2 In addition, considering the ARR projections for FY 2013-14 of Rs. 5100.10 Cr and revenue from existing tariff during FY 2013-14 of Rs. 3189.07 Cr, the Petitioner has estimated revenue gap for FY 2013-14 as Rs. 1911.02 Cr. Accordingly, the cumulative revenue gap for FY 2013-14 projected by Petitioner works out to Rs. 3582.22 Cr.**

**7.3 To meet the cumulative revenue gap till FY 2013-14, the Petitioner has proposed an overall hike of 81%. This would result in additional revenue of Rs. 2588.73 Cr leaving an unmet gap of Rs. 993.48 Cr.**

**7.4 In addition to above, the Petitioner has projected two part tariff for HT consumers inclusive of demand and energy charges. The following table summarises the proposed retail tariff by DVC for the MYT Control Period from FY 2013-14 to FY 2015-16:**

**Table 60:  
Proposed Retail Tariff for the Control Period  
from FY 2013-14 to FY 2015-16**

Consumer Category	Name of Tariff Scheme	Consumption Slab	FY 2013-14		FY 2014-15		FY 2015-16	
			Energy Charges	Demand Charges	Energy Charges	Demand Charges	Energy Charges	Demand Charges
			(Paise /kWh)	(Rs./kVA/ Month)	(Paise /kWh)	(Rs./kVA/ Month)	(Paise /kWh)	(Rs./kV A/ Month)
Industries (33 kV)	TOD	Normal (06:00 to 17:00)	380	884	471	934	568	953
		Peak (17:00 to 23:00)	458		566		683	
		Off Peak (23:00 to 06:00)	323		400		483	
	Non TOD	All Units	389	884	481	934	581	953
Industries (132 kV)	TOD	Normal (06:00 to 17:00)	377	884	466	934	562	953
		Peak (17:00 to 23:00)	452		559		675	
		Off Peak (23:00 to 06:00)	320		396		478	
	Non TOD	All Units	384	884	475	934	574	953
Traction (132 kV)	Non TOD	All Units	241	884	298	934	359	953
Industries (220 kV)	TOD	Normal (06:00 to 17:00)	369	884	457	934	551	953
		Peak (17:00 to 23:00)	444		549		662	
		Off Peak (23:00 to 06:00)	314		388		468	
	LT	Non TOD	All Units	550	Nil	641	Nil	735

**7.5 During FY 2013-14, the Commission has approved the total ARR as Rs.4951.70 Cr for the Jharkhand area. The revenue from existing tariff during FY 2013-14 is projected at Rs. 3904.86 Cr. Accordingly, the revenue gap estimated for FY 2013-14 by Commission is Rs. 1046.84 Cr. Further, the Commission has not considered pass through of previous year's gaps which are subject to final judgment by Supreme Court and compensation awarded to consumers in lieu of final orders issued by CERC for period 2009-14.**



**7.6 Thus, to meet the revenue gap for FY 2013-14, the Commission has considered an overall hike of 16%. This would result in additional revenue of Rs. 624 Cr. The unmet revenue gap for FY 2013-14 i.e. Rs. 422.84 Cr shall be carried forward to next Financial year subject to true up based on audited accounts.**

**7.7 In addition to above, the Commission has decided to adopt two part tariff for HT consumers in the command area of DVC in line with similar tariff existing for other consumers in the State (falling in erstwhile JSEB area). The approved two part tariff consists of demand charges and energy charges. The Commission also directs to submit report on application of two-part tariff for HT consumers giving details of impact on revenue and consumers.**

**7.8 In case of LT consumers, the Petitioner has proposed a single part energy rate for all types of LT consumers. The Petitioner has not submitted details related to LT connections i.e. type of LT connection, energy sale, load applicable for such consumers, etc. In absence of such data, the Commission is of the view that approving a single energy rate for all types of LT connections is not feasible.**

**7.9 Thus, in case of LT consumers, the Commission directs that the applicable consumer category and slab wise tariff shall be as per the tariff schedule approved in the Tariff Order for erstwhile JSEB (now JBVNL) as amended from time to time. Further, the Petitioner is directed to submit data regarding the category wise number of consumers, connected load, sales, revenue assessed and realized for LT consumers along with its next tariff filing.”**

In light of the above, the Learned Counsel for the State Commission stated that main reason for not allowing pass through of the previous years Revenue Gaps, the State Commission has been repeatedly taking the same stand that it

shall be suitably addressed after the decision of the Hon'ble Supreme Court in the Civil Appeal as indicated above.

- (d) The Learned Counsel for the State Commission further submitted that the Appellant itself in its previous tariff petition for FY 2012-13 had submitted that only current year gap be adjusted through appropriate tariff hike as the true up for the period between FY 2006-07 to FY 2008-09 is provisional and is subject to the final outcome of Civil Appeal No. 4881 of 2010 pending before the Hon'ble Supreme Court and the relevant extracts of the Tariff Order for FY 2012-13 is as under:-

***“9.1 The Petitioner has submitted a revenue gap of Rs.3725 Cr. from FY 2006-07 upto FY 2012-13. However, the Petitioner has proposed that the current year gap for FY 2012-13 of Rs.423 Cr. alone be adjusted through a tariff hike of 2.5% as the true up for previous years i.e. FY 2006-07 to 2008-09 is provisional subject to the final decision of the Hon'ble Supreme Court in its appeal C.A. No. 4881/2010 and should be adjusted once the final decision is made in this regards.***

***9.5 The Commission agrees with the submission of the Petitioner that as the true up for past years is provisional i.e. subject to the final order of the Hon'ble Supreme Court in C.A. No. 4881/2010 in the appeal of DVC against the Order of ATE dated May 10, 2010, the cumulative revenue gap for past years from FY 2006-07 to FY 2011-12 will be adjusted once the final decision is made in this regard. Accordingly, the Commission has adjusted the revenue***

**gap for FY 2012-13 i.e. Rs.64.10 Cr. through a tariff hike of 1.7% over the existing tariffs during the year.”**

It is evident from the above that the State Commission has maintained a consistent approach on the matter whereas the Appellant has now deviated from the approach it had itself proposed in the tariff petition for FY 2012-13. Even the final true up for the FY 2009-10 to FY 2012-13, has been kept pending till final outcome of the Civil Petition as mentioned above.

- (e) With regards to amortization of gap determined for FY 2013-14, the State Commission vide its Impugned Order dated 04.09.2014 vide Clause 7.6 has assured that the unmet revenue gap shall be carried forward to the next FY and the relevant extract is as follows:-

**“Thus, to meet the revenue gap for FY 2013-14, the Commission has considered an overall hike of 16%. This would result in additional revenue of Rs.624 Cr. The unmet revenue gap for FY 2013-14 i.e. Rs.422.84 Cr. shall be carried forward to next Financial Year subject to true up based on audited accounts.”**

- (f) On the issue of the Appellant regarding non-recovery of increased tariff during the first five months of FY 2014-15 and

ought to have annualized the increase in the tariff during the remaining seven months of its FY 2014-15 so as to enable the Appellant to effectively recover the increase in the tariff pertaining to all the 12 months of FY 2014-15 to meet the revenue requirements determined by the State Commission, Learned Counsel for the State Commission stated that any shortfall in the revenue during the FY 2014-15 during the first five months of the FY 2014-15 shall be allowed to be recovered from the consumers as per the relevant mechanism permitted in the State Commission's Regulations, 2010.

- (g) So far as the submission of the Appellant with regard to adjustment of secondary fuel oil cost is concerned, the State Commission stated that the same shall be considered as per the Order passed by the Central Commission on true up of previous years. The State Commission vide its Impugned Order dated 04.09.2014 Clause 6.3 stated that the secondary fuel cost is considered as part of the capacity charges and as such the State Commission has approved capacity charges from final Tariff Order issued by the Central Commission.

- (h) With regard to the submission that the State Commission has erroneously calculated the component of Interest on Working Capital for the FY 2013-14 with reference to the pre existing tariff in its Impugned Order and should have relied on the Regulations 6.2 of the Tariff Regulations, 2010 as opposed to the Tariff Regulations 2004. In support of its arguments for adopting the same methodology as considered in its previous Tariff Order dated 22.11.2012, the State Commission vide Clauses 6.83 to 6.87 of its Impugned Order 04.09.2014 opined as follows:-

**“6.83 As per the ‘Distribution Tariff Regulations, 2010’, Interest on Working capital during the transition period shall be calculated on the basis of the following:**

- (a) One-twelfth of the amount of Operation and Maintenance expenses for such financial year; plus**
- (b) Maintenance spares at 1% of Opening GFA; plus**
- (c) Two months equivalent of the expected revenue from sale of electricity at the prevailing tariff; minus**
- (d) Amount held as security deposits under clause (a) and clause (b) of subsection (1) of Section 47 of the Act from consumers and Distribution System Users; minus**
- (e) One month equivalent of cost of power purchased, based on the annual power procurement plan.**

**6.84 However, since the O&M cost and other expenses of the Petitioner are included in the cost of generation of power from its own stations, applying the aforementioned methodology as per the 'Distribution Tariff Regulations, 2010' is not possible.**

**6.85 Hence, the Commission has adopted the same methodology as described in the previous Tariff Order for FY 2012-13 dated 22nd November 2012. The relevant extracts of the same are discussed below:**

**“7.40 However, the Commission noticed that the GFA and O&M cost of the Petitioner cannot be segregated into that of pertaining to generation and transmission business and that for distribution and retail business at present. Hence, applying the aforementioned methodology for computation of IWC is not possible. Therefore, the Commission decided to continue with the methodology as applied by the Commission for truing up the ARR for FY 2006-07 to FY 2011-12 in this Order.**

**7.41 Accordingly, the Commission has estimated the working capital requirement for Jharkhand area to be 1% of the projected revenue from sale of power in the Jharkhand area. The interest on working capital has been estimated at the prevailing State Bank of India (SBI) Prime Lending Rate (PLR) as on April 1<sup>st</sup> of the respective year.....”**

**6.86 The Commission has considered Interest Rate equal to SBI PLR as on 01st April of the corresponding year. For FY 2015-16, SBI PLR is considered same as that considered for FY 2014-15.**

**6.87 Thus, adopting the aforementioned methodology, the Commission arrived at the Interest on Working Capital as**

**shown in the following table:**

**Table 55:  
Interest on Working Capital (Rs Cr) for Jharkhand area  
as approved by the Commission for the Control Period**

<b>Particulars</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Revenue from sale of power in Jharkhand Area at existing tariff</b>	<b>3,904.86</b>	<b>4,241.93</b>	<b>4,460.30</b>
<b>Working Capital Requirement in Jharkhand Area (@ 1% of Revenue from sale of power)</b>	<b>39.05</b>	<b>42.42</b>	<b>44.60</b>
<b>Interest Rate (%)</b>	<b>14.45%</b>	<b>14.75%</b>	<b>14.75%</b>
<b>Interest on Working Capital for Jharkhand Area</b>	<b>5.64</b>	<b>6.26</b>	<b>6.58</b>

”

- (i) Learned Counsel for the State Commission submitted that as per the methodology adopted by the State Commission in previous Tariff Orders, the working capital requirement is based on the existing revenue to estimate revenue gap at existing tariff and any change in the working capital requirements taking into consideration based on revised tariffs is adjusted at the time of true up in subsequent years. Accordingly the State Commission has not deviated from the previous approach and has maintained consistency.
- (j) As regards the power purchase cost is concerned, the State Commission has approved power purchase cost for the Appellant in accordance with its Regulations on the actual sales in FY 2013-14 and the approved forecast of sales for the FY

2014-15 to 2015-16 along with the prudent level of transmission and distribution loss as detailed in Tariff Order and any power procurement beyond approved requirement has been disallowed as in the opinion of the State Commission such additional requirement of the Appellant has arisen purely on higher level of T&D loss level which reflects the poor performance parameters of the Appellant. While determining the power purchase cost, the State Commission has allowed the cost of approved power as per actual and disallowed the excess power procured by the Appellant.

- (k) Even for the consideration of solar power procurement cost as part of its RPO, the State Commission has allowed the same as per unit rate of power procured as approved by the Central Commission from time to time. In support of the same and its reasoning for disallowing the power procurement cost as sought by the Appellant, the relevant extracts from the Impugned Order are reproduced hereunder:-

***“6.20 The Petitioner has submitted that it has projected to purchase power from CSGS (NTPC, NHPC), PTC, MPL and other hydro generating stations as per the power purchase agreements with the generating stations. The power***



*available on ex bus of respective plants is subjected to transmission POC loss before entering the DVC system.*

*6.21 In order to fulfill the RPO obligation, the Petitioner has submitted that it has procured bundled solar power from NTPC and has also purchased non-solar Renewable Energy Certificates (REC) from IEX and PXIL.*

*6.22 After meeting the energy requirement from own generation, the Commission has projected the balance energy requirement to be met through purchase of power from CSGS and other sources during the MYT period from FY 2013-14 to FY 2015-16.*

#### ***Commission's Analysis***

*6.23 The Commission has adopted the merit order principle in approving the power purchase quantum and consequently the power purchase cost. Based on the total energy requirement and quantum of energy to be purchased from CSGS and other sources (other than own sources), the Commission has disallowed the purchase of energy from generating stations having the highest cost per unit among all the CSGS and other sources from where DVC procures power.*

#### ***RPO Obligation***

*6.24 In addition to above, all distribution licensees supplying power in State of Jharkhand have to meet Renewable Purchase Obligation (RPO) i.e. they are obligated to purchase minimum specified percentage of energy requirement from renewable energy sources or purchase Renewable Energy Certificates (RECs) in lieu thereof to promote sustainability. The RPO target for the MYT period has been considered at 4% of the total energy requirement. Out of this, 1% has to be met through solar power and remainder 3% from other renewable energy sources.*

*6.25 The approved energy requirement for FY 2013-14 based on review of energy sales and loss for the period*

**has been approved by the Commission at 17579 MU. Accordingly, the RPO target for FY 2013-14 based on obligation of 4% of energy requirement works out to 703 MU which includes solar RPO target of 176 MU and non-solar RPO target of 527 MU. Out of the above estimated target, the DVC submitted it has procured bundled power (coal based power and solar power) from NVVN. As per Jawaharlal Nehru National Solar Mission (JNNSM) launched by the Ministry of New and Renewable Energy (MNRE), when NVVN supplies bundled power to distribution utilities, those utilities will be entitled to use part (solar component) of the bundled power to meet their RPO, as determined by the regulatory authorities. Thus, the Commission has considered the solar part of the bundled power for the DVC's RPO obligation for FY 2013-14. Accordingly, DVC has met 17.68 MU of solar RPO target through purchase of bundled power from NVVN and 102 MU of non-solar RPO target through purchase of hydro power from Maithon and Tilaiya micro/mini hydel stations(<25MW) and non-solar RECs equivalent to 3 MU. Thus, during FY 2013-14, solar RPO target of 158 MU and non-solar RPO target of 422 MU has remained unmet. Further, as the FY 2013-14 is already over, the Commission notes with concern that the Petitioner will be unable to achieve the above mentioned RPO targets for the year.**

**6.26 As RPO regulations have been issued to provide for long term energy security and sustainability of the power sector, such nonperformance on part of the Petitioner in not meeting the targets is unacceptable. Other licensees in the State have managed to meet the targets for non-solar RPO through purchase of RECs from exchange. Thus, the Commission is of the view that the Petitioner should make all out efforts to meet RPO targets. To compensate the procurement of RE power, the Commission has decided to carry forward the shortfall in RPO during FY 2013-14 to next year FY 2014-15. The Commission further clarifies that in future years the Petitioner should make all out efforts to meet RPO targets through purchase of solar/ non-solar**

power or RECs and any noncompliance may invite penal action.

6.27 For FY 2014-15, the Commission has carried forward the unmet RPO targets for FY 2013-14. The solar RPO target for FY 2014-15 is considered as 358 MU (200 MU for current year + 158 MU carried forward for FY 2013-14). The non-solar RPO target for FY 2014-15 is revised to 921 MU i.e. current year non-solar RPO target of 601 MU add carry forward of unmet target of previous year of 422 MU less non-solar RPO met through generation from own small hydel stations i.e. 102 MU. The RPO target for FY 2015-16 has been considered after deducting the power available from own small hydel stations. Accordingly, solar RPO is 211 MU and non-solar RPO is 531 MU (633 MU less 102 MU considered as own generation from small hydel stations).

6.28 Based on the above, the source-wise power purchase quantum as submitted by the Petitioner and that approved by the Commission for the MYT period has been summarised in following tables.

**Table 25:  
Station-wise Power Purchase (MU) for FY 2013-14**

Name of Station	DVC's Submission				Commission's Analysis	
	Gross Purchase (as per original Petition)	Gross Purchase (as per revised Petition)	Net Purchase (as per original Petition)	Net Purchase (as per revised Petition)	Gross Purchase	Net Purchase
<b>NHPC</b>						
Rangit	33.60	34.62	32.69	33.89	34.62	33.89
Teesra	198.45	196.39	193.09	192.21	196.39	192.91
<b>NTPC</b>						
Talcher	18.35	21.85	17.85	21.40	-	-
Farakka	228.62	216.55	222.45	212.11	-	-
Kanti	17.18	-	16.72	-	-	-
NVVNL-Bundled power(coal part)	-	72.78	-	72.15	-	-
<b>PTC</b>						
Chukha	160.00	188.02	155.68	183.90	188.02	183.90
Kurichu	160.00	74.07	155.68	72.45	74.07	72.45
Tala	80.00	200.51	77.84	196.11	200.51	196.11

<b>MPL</b>	<b>1,671.20</b>	<b>1204.83</b>	<b>1,626.08</b>	<b>1,1788.88</b>	<b>1172.94</b>	<b>1141.27</b>
<b>Total Non - Renewable sources #</b>	<b>2,567.40</b>	<b>2,209.62</b>	<b>2,498.08</b>	<b>2,163.09</b>	<b>1,866.55</b>	<b>1,819.82</b>
<b>Solar (including NVVN-solar part)</b>	<b>163.48</b>	<b>17.68</b>	<b>159.07</b>	<b>17.68</b>	<b>17.68</b>	<b>17.68</b>
<b>Non-Solar</b>	<b>490.43</b>	<b>-</b>	<b>477.19</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Renewable Sources</b>	<b>653.91</b>	<b>17.68</b>	<b>636.25</b>	<b>17.68</b>	<b>17.68</b>	<b>17.68</b>
<b>UI</b>	<b>-</b>	<b>112.60</b>	<b>-</b>	<b>112.60</b>	<b>112.60</b>	<b>112.60</b>
<b>Grand Total</b>	<b>3,221.31</b>	<b>2,339.90</b>	<b>3,134.33</b>	<b>2,293.37</b>	<b>1,996.84</b>	<b>1,950.10</b>

**Table 26:  
Station-wise Power Purchase (MU) for the FY 2014-15**

<b>Name of Station</b>	<b>DVC's Submission</b>		<b>Commission's Analysis</b>	
	<b>Gross Purchase</b>	<b>Net Purchase</b>	<b>Gross Purchase</b>	<b>Net Purchase</b>
<b>NHPC</b>				
<b>Rangit</b>	<b>33.28</b>	<b>32.38</b>	<b>33.28</b>	<b>32.38</b>
<b>Teesta</b>	<b>196.56</b>	<b>191.25</b>	<b>196.56</b>	<b>191.25</b>
<b>NTPC</b>				
<b>Talcher</b>	<b>18.99</b>	<b>18.48</b>	<b>-</b>	<b>-</b>
<b>Farakka</b>	<b>236.68</b>	<b>230.29</b>	<b>-</b>	<b>-</b>
<b>Kanti</b>	<b>48.10</b>	<b>46.80</b>	<b>-</b>	<b>-</b>
<b>PTC</b>				
<b>Chukha</b>	<b>160.00</b>	<b>155.68</b>	<b>160.00</b>	<b>155.68</b>
<b>Kurichu</b>	<b>160.00</b>	<b>155.68</b>	<b>160.00</b>	<b>155.68</b>
<b>Tala</b>	<b>80.00</b>	<b>77.84</b>	<b>80.00</b>	<b>77.84</b>
<b>MPL</b>	<b>1,880.10</b>	<b>1,829.34</b>	<b>234.28</b>	<b>227.95</b>
<b>Total Non - Renewable sources</b>	<b>2,813.71</b>	<b>2,737.74</b>	<b>864.12</b>	<b>840.78</b>
<b>Solar</b>	<b>223.71</b>	<b>217.67</b>	<b>358.35</b>	<b>358.35</b>
<b>Non-Solar</b>	<b>671.14</b>	<b>653.02</b>	<b>920.50</b>	<b>920.50</b>
<b>Total Renewable Sources</b>	<b>894.85</b>	<b>870.69</b>	<b>1,278.86</b>	<b>1,278.86</b>
<b>Grand Total</b>	<b>3,708.56</b>	<b>3,608.43</b>	<b>2,142.97</b>	<b>2,119.64</b>

**Table 27:  
Station-wise Power Purchase (MU) for the FY 2015-16**

Name of Station	DVC's Submission		Commission's Analysis	
	Gross Purchase	Net Purchase	Gross Purchase	Net Purchase
<b>NHPC</b>				
Rangit	33.60	32.69	33.60	32.69
Teesta	198.45	193.09	198.45	193.09
<b>NTPC</b>				
Talcher	19.42	18.90	-	-
Farakka	242.06	235.52	-	-
Kanti	54.97	53.49	-	-
<b>PTC</b>				
Chukha	160.00	155.68	160.00	155.68
Kurichu	160.00	155.68	160.00	155.68
Tala	80.00	77.84	80.00	77.84
MPL	1,984.55	1,930.97	838.37	815.73
Total Non - Renewable sources	2,933.05	2,853.86	1,470.42	1,430.72
Solar	279.57	272.02	211.17	211.17
Non-Solar	838.72	816.07	531.39	531.39
Total Renewable Sources	1,118.29	1,088.10	742.56	742.56
Grand Total	4,051.34	3,941.95	2,212.98	2,173.28

.....  
.....

**6.54 The Petitioner submitted that the tariff for NTPC, NHPC and MPL has been determined in accordance with the CERC tariff regulations 2009-14. For computation of fixed charges for FY 2014-15 and FY 2015-16, the Petitioner has considered the escalation factor of 5% and 2% respectively. For energy charges, the Petitioner has considered the escalation factor of 20% on year-on-year basis.**

**6.55 In order to fulfil the RPO obligation, the Petitioner has also submitted in the revised Petition that it has procured bundled power from NTPC and has also purchased Renewable Energy Certificates (REC) from IEX and PXIL.**

**6.56 Following table summarises the overall power purchase cost as submitted by the Petitioner for the Control Period:**

**Table 44:  
Projected power purchase cost for FY 2013-14**

Name of Station	FY 2013-14					
	Gross Power Purchase (MU)		Rate (Rs/Kwh)		Total Cost (Rs Cr)	
	As per original Petition	As per revised Petition	As per original Petition	As per revised Petition	As per original Petition	As per revised Petition
<b>NHPC</b>						
Rangit	33.6	34.62	2.76	3.98	9.28	89.94
Teesta	198.45	196.39	2.08		41.36	
<b>NTPC</b>						
Talcher	18.35	21.85	2.65	5.20	4.86	121.34
Farakka	228.62	216.55	3.78		86.43	
Kanti	17.18	-	3.14	-	5.39	-
NVVN-Bundled Power(Coal)	-	72.78		5.13		37.11
<b>PTC</b>						
Chukha	160	188.02	1.59	1.99	25.44	
Kurichu	160	74.07	2.13		34.08	90.21
Tala	80	200.51	2.02		16.16	
MPL	1,671.20	1,204.83	3.85	4.67	643.3	550.14
Total Non - Renewable sources	2,567.40	2,209.62	3.37	4.12	866.3	888.74
Solar(including NVVNsolar)	163.48	17.68	16.13	5.10	263.69	9.01
Non-Solar*	490.43	-	5	-	245.22	0.50
Total Renewable Sources	653.91	17.68	7.78	5.38	508.91	9.51
UI	-	112.60	-	0.18	-	1.99
POSCO	-	-	-	-	-	0.35
WBSEB	-	-	-	-	-	0.12
<b>Grand Total</b>	<b>3,221.31</b>	<b>2,339.90</b>			<b>1,375.20</b>	<b>900.71</b>

\*Non-solar purchase through mini-hydel stations considered in the generation from own stations.

**Table 45:  
Projected power purchase cost for FY 2014-15**

Name of Station	FY 2014-15		
	Gross Power Purchase (MU)	Rate (Rs/Kwh)	Total Cost (Rs Cr)
<b>NHPC</b>			
<i>Rangit</i>	33.28	2.9	9.65
<i>Teesta</i>	196.56	2.19	43.01
<b>NTPC</b>			
<i>Talcher</i>	18.99	3.05	5.79
<i>Farakka</i>	236.68	4.29	101.62
<i>Kanti</i>	48.1	3.44	16.54
<b>PTC</b>			
<i>Chukha</i>	160	1.59	25.44
<i>Kurichu</i>	160	2.13	34.08
<i>Tala</i>	80	2.02	16.16
<b>MPL</b>	1,880.10	4.41	830.05
<b>Total Non - Renewable sources</b>	2,813.71	3.85	1,082.35
<b>Solar</b>	223.71	16.13	360.84
<b>Non-Solar</b>	671.14	5	335.57
<b>Total Renewable Sources</b>	894.85	7.78	696.41
<b>Grand Total</b>	3,708.56	4.8	1,778.76

**Table 46:  
Projected power purchase cost for FY 2015-16**

Name of Station	FY 2015-16		
	Gross Power Purchase (MU)	Rate (Rs/Kwh)	Total Cost (Rs Cr)
<b>NHPC</b>			
<i>Rangit</i>	33.6	2.96	9.94
<i>Teesta</i>	198.45	2.23	44.29
<b>NTPC</b>			
<i>Talcher</i>	19.42	3.5	6.8
<i>Farakka</i>	242.06	4.85	117.3
<i>Kanti</i>	54.97	3.71	20.41
<b>PTC</b>			
<i>Chukha</i>	160	1.59	25.44
<i>Kurichu</i>	160	2.13	34.08
<i>Tala</i>	80	2.02	16.16
<b>MPL</b>	1,984.55	5.04	1,000.32
<b>Total Non - Renewable sources</b>	2,933.05	4.35	1,274.74
<b>Solar</b>	279.57	16.13	450.95

<b>Non-Solar</b>	<b>838.72</b>	<b>5</b>	<b>419.36</b>
<b>Total Renewable Sources</b>	<b>1,118.29</b>	<b>7.78</b>	<b>870.31</b>
<b>Grand Total</b>	<b>4,051.34</b>	<b>5.29</b>	<b>2,145.05</b>

### **Commission's Analysis**

**6.57 For FY 2013-14, the Commission has considered the power purchase rates as submitted by the Petitioner. Further as stated earlier in this Order, the Commission has adopted the merit order principle in approving the power purchase quantum and consequently the power purchase cost. Based on the total energy requirement and quantum of energy to be purchased from CSGS and other sources (other than own sources), the Commission has disallowed the purchase of energy from generating stations having the highest cost per unit among all the CSGS and other sources from where DVC procures power. DVC Order for MYT Period from FY14 to FY16.**

**6.58 Since CERC has not finalised the Tariff Orders for the period FY 2014-15 to FY 2018- 19, the Commission has considered the power purchase rates for FY 2014-15 and FY 2015-16 as approved for FY 2013-14 in this Order. The same shall be subject to True-up based on the actual power purchase cost.**

**6.59 For RPO, the Commission has considered the solar power purchase cost as submitted by the Petitioner for FY 2013-14. For FY 2014-15 and FY 2015-16, the rate of purchase of solar power is considered as Rs. 6.95/kWh as per CERC Tariff Order for determination of generic tariff for RES for FY 2014-15 dated 15th May 2014. The rate of non-solar power is considered at Rs. 3.30 per unit for FY 2014-15 and FY 2015-16.**

**6.60 Based on the above, the Commission computed the total projected power purchase cost (other than own generation cost) as shown in the table below subject to true up based on actual.**



**Table 47:**  
**Approved power purchase cost for the Control Period**

Name of Station	FY 2013-14			FY 2014-15			FY 2015-16		
	MU (Gross)	Rate (Rs/kWh)	Cost (Rs. Cr.)	MU (Gross)	Rate (Rs/kWh)	Cost (Rs. Cr.)	MU (Gross)	Rate (Rs/kWh)	Cost (Rs. Cr.)
<b>NHPC</b>									
Rangit	34.62	3.89	89.94	33.28	3.89	12.96	33.60	3.89	13.08
Teesta	196.39			196.56	3.89	76.53	198.45	3.89	77.26
<b>NTPC</b>									
Talcher	-	-	-	-	-	-	-	-	-
Farakka	-	-	-	-	-	-	-	-	-
Kanti	-	-	-	-	-	-	-	-	-
NVVN Bundled Power(Coal)	-	-	-	-	-	-	-	-	-
<b>PTC</b>									
Chukha	188.02	1.95	90.21	160	1.95	31.20	160	1.95	31.20
Kurichu	74.07			160	1.95	31.20	160	1.95	31.20
Tala	200.51			80	1.95	15.60	80	1.95	15.60
MPL	1,172.94	4.57	535.58	234.28	4.57	106.97	838.37	4.57	382.81
Total Non - Renewable sources	1,866.55	3.83	715.74	864.12	3.17	274.47	1,470.42	3.75	551.16
Solar(NVVNSolar)	17.68	5.10	9.01	358.35	6.95	249.06	211.17	6.95	146.77
Non-Solar*	-	-	0.50	920.50	3.30	303.77	531.39	3.30	175.36
Total Renewable Sources	17.68	5.38	9.51	1278.86	4.32	552.82	742.56	4.34	322.12
UI	112.60	0.18	1.99	-	-	-	-	-	-
POSCO	-	-	0.35	-	-	-	-	-	-
WBSEB	-	-	0.12	-	-	-	-	-	-
Grand Total	1,996.84	3.64	725.25	2,142.97	3.86	826.77	2,212.98	3.95	873.29

\*Non-solar purchase through mini-hydel stations for FY 2013-14 considered in the generation from own stations.”

- (i) As regards the issue for consideration of expenditure towards pension and gratuity and sinking fund, the State Commission has maintained that as the pension and gratuity and sinking fund has already been appropriately considered by the Central Commission while determining the tariff for the generating stations of the Appellant and as such the State Commission has not undertaken any determination/re-determination of the same and the cost thereof has been allowed as an input cost as part of the power procurement cost from the Appellant's

stations and as such the claim of the Appellant on this account not tenable.

- (m) With regard to the last issue i.e. higher T&D losses, the State Commission directed the Appellant to make all out efforts to restrict the T&D loss within the targeted level and kept the target for the FY 2012-13 as 3%. Accordingly, the State Commission has maintained the same level of T&D loss for the control period.
- (n) The State Commission also advised through its Tariff Order Dated 22.11.2012 that the Appellant should implement energy accounting measures at all voltage level in its command area and submit quarterly report on its progress. Implementation of this directive would have shed light on the actual T&D losses of the Appellant's network but the Appellant had failed to adequately comply with this directive and in view of the same it would not be appropriate for the State Commission to increase T&D loss level and burden the retail consumers without having any basis and justification for the same.

13. After having a careful examination of all the submissions/arguments made before us for our consideration, our observations are as follows:-

(a) On the first issue as contested by the Appellant is regarding allowance of the Revenue Gap of the preceding years i.e. 2006-2013 needs to be recovered during this control period i.e. FY 2013-14 to FY 2015-2016. We have noticed that the main issue which is holding up the State Commission for determination of final true ups of all the years under dispute is on account of the on-going proceedings in respect of Civil Appeal No. 4881 of 2010 before the Hon'ble Supreme Court and as such, we need to first analyse the relevant background leading to filing of this Civil Appeal as discussed hereunder.

(i) In terms of the Electricity Act, 2003 the Central Commission initiated suo-motu proceedings with regard to determination of the tariff of the Appellant and vide order dated 29.03.2005 directed the Appellant to file a petition before the Central Commission for determination of tariff.

- (ii) In pursuance to the direction of the Central Commission, on 08.06.2005 the Appellant filed a Petition being Petition No. 66 of 2005 for determination of Tariff of the Appellant for the MYT period 01.04.2004 to 31.03.2009.
- (iii) By Order dated 03.10.2006, the Central Commission determined the tariff for the Appellant in respect of the period from 01.04.2004 to 31.03.2009 pertaining to the generation and transmission tariff of the Appellant, and the distribution tariff was to be determined by the concerned State Commission.
- (iv) Aggrieved by the Order dated 03.10.2006, the Appellant as well as some of the consumers filed Appeal being Nos. 271, 272 and 273 of 2006 before this Tribunal on the ground that the Central Commission had not considered the various aspects of additional capitalization during the period from 01.04.2004 onwards for the purpose of tariff i.e. capital cost and other tariff elements. By Judgment and Order dated 23.11.2007, this Tribunal was pleased to allow the Appeal filed by the Appellant and remanded the

matter to the Central Commission for de-nova consideration of the tariff Order.

- (v) Thereafter, Order dated 23.11.2007 of this Tribunal was challenged by M/s. Bhasker Shrachi Alloys Limited in Civil Appeal No.971-973 of 2008 before the Hon'ble Supreme Court which are pending for disposal.
- (vi) In the meantime, the tariff for the electricity activities of the Appellant was determined by the Central Commission vide Order dated 06.08.2009 in a de novo proceedings as per Order dated 23.11.2007. The Appellant being aggrieved had filed an Appeal being Appeal No. 146 of 2009 before this Tribunal.
- (vii) This Tribunal vide its Judgment dated 10.05.2010 in Appeal No. 146 of 2009, upheld the Order dated 06.08.2009 of the Central Commission. Aggrieved by the Order dated 10.05.2010, the Appellant has filed a Second Appeal being No. 4881 of 2010 before the Hon'ble Supreme Court of India, which is pending at present. The Hon'ble Supreme Court vide its interim Order dated

09.07.2010 refused to grant stay on Impugned Order but stayed the refund of the excess amount collected by the Appellant till the disposal of the Civil Appeal and the relevant extract of this Interim Order is reproduced below:-

***“Upon hearing counsel the court made the following***

***ORDER***

***Application for impleadment filed by the Appellant is allowed.***

***Issue show cause notice as to why this appeal should not be admitted. Place this appeal on 12<sup>th</sup> August, 2010, for direction.***

***In the meantime, parties will submit before us the various disputed items to be taken into account in Tariff Fixation as well as the relevant documents on which Damodar Valley Corporations would be relying upon at the final hearing.***

***Until further orders, there shall be stay on refund.***

***No orders on other applications for impleadment.”***

As per this above Interim Order, it is clear that all the disputed items referred to by the Appellant in the present Appeal would have to be revisited/re-determined by the appropriate Commissions after the subject Civil Appeal is decided by the Hon'ble Supreme Court and until the final disposal of this Civil

Appeal by the Hon'ble Supreme Court, there has been stay only on refund. Accordingly, the Central Commission passed Tariff Order pertaining to the period 01.04.2009 to 31.03.2014 on provisional basis only. Even with regard to the Appellant's distribution business in its command area in Jharkhand, the State Commission passed the Tariff Order on ARR for the period upto 31.03.2013 on provisional basis only. In the meantime, the Central Commission passed an Order on 08.05.2013 wherein it determined the earlier deferred elements of tariff generation and inter-state transmission for the electricity for the period 2006-09. During the pendency of the tariff petition before the State Commission, the Central Commission finally determined final tariff for the period FY 2009 to 2014. Based on the Order of the Central Commission, the Appellant filed revised petition for true up of FY 2006-07 to FY 2012-13 and thereafter filed ARR for the FY 2013-14. The main issue as contested by the Appellant is regarding the adjustment for Revenue Gap for the FY 2006-07 to 2008-09 and again for the FY 2009-10 to 2012-13. The State Commission has not considered to pass through the Revenue Gap of the past years

under dispute on the ground of pendency of the proceedings of the Hon'ble Supreme Court and the Consumer Grievance Redressal Forum in respect of the related issues as contested by the Appellant. On examination of the issues relating to Civil Appeal No. 4881 of 2010, we observed that they are relating to tariff period FYs 2006-07 to 2008-09. We are of the considered opinion that the Hon'ble Supreme Court has yet to take the final view on disputed tariff of the Appellant for these years which would definitely have repercussions on all issues brought out by the Appellant in the present Appeal. As such, we are inclined to accept the argument put forth by the Learned Counsel for the State Commission that the matter of true up of ARR for FY 2006-07 to 2008-09 would be undertaken by the State Commission only after the final outcome of the Civil Appeal No. 4881 of 2010 of the Hon'ble Supreme Court. We also noticed that based on the outcome of this Civil Appeal by the Hon'ble Supreme Court, the State Commission has unconditionally agreed to allow carrying cost on the surplus/deficit amount of ARR during the said period if so required under the appropriate Regulations arising from the final true up of ARR for FYs



2006-07 to 2008-09. We have also noticed that the Appellant itself in its tariff petition for the FY 2012-13 has submitted that only current year gap be adjusted through appropriate tariff hike as the true up for the period between FYs 2006-07 to 2008-09 is provisional and is subject to the final outcome of the Civil Appeal No. 4881 of 2010. So the State Commission while maintaining a consistent approach for the final true up for the subsequent period i.e. FY 2009-10 to 2012-13 as sought by the Appellant has deferred the same until the disposal of the said Civil Appeal by the Hon'ble Supreme Court.

- (b) As per the Appellant's contention that the State Commission ought to have considered capacity charges determined by the Central Commission for the period 01.04.2009 onwards in regard to the generating stations of the Appellant by including the adjustment for the secondary fuel cost for the relevant period in accordance with the Regulation 20(2) of the Tariff Regulation 2009. Such secondary fuel oil cost should also be subjected to fuel price adjustment at the end of each year. We noticed from the State Commission's analysis as considered in the Impugned Order dated 04.09.2014 that the State

Commission has considered secondary fuel oil cost as part of the capacity charge as done by the Central Commission while passing final Tariff Order of the Appellant and the State Commission while allowing the secondary fuel cost has made it abundantly clear that is not averse to it and shall be considered as per the Order passed by the Central Commission on true up of previous orders.

- (c) As regards the other issue brought out by the Appellant with respect to the non-recovery for the first five months i.e. April to August of the FY 2014-15 on account of the enhanced tariff as per the Impugned Order dated 04.09.2014, the State Commission has very rightly opined that the unmet Revenue Gap is allowed to be carried to the next FY subject to true up based on the audited accounts since the State Commission's Regulation, 2010 clearly define that any surplus/shortfall in the revenue during the year shall be determined during the ARR and allowed to be recovered from the consumers as per the stipulation in the aforesaid Tariff Regulation. We do not consider it appropriate to interfere at this stage and are in

agreement with the findings of the State Commission in its Impugned Order in this regard.

- (d) On the second issue regarding secondary fuel oil cost, after examining the relevant stipulation of the Impugned Order, we observed that the same shall be considered as per the Order passed by the Central commission on true up of previous years and as such the State Commission has approved capacity charges as per the final Tariff Order issued by the Central Commission. In this regard also, the State Commission has also provided for approval of variation on the input cost during the true up of the ARR of the concerned stated period. We are keeping it open to the Appellant to approach the State Commission if in its opinion, it is found that the secondary fuel oil cost alongwith the applicable adjustments as considered in the Impugned Order has not been considered as part of the capacity charges in light of the final Tariff Order issued by the Central Commission, the same can be dealt with by the State Commission on its merits.
- (e) As regards the Appellant's contention regarding interest on working capital in terms of Regulation 6.26 of the State

Commission's Tariff Regulations, 2010 for the period 2013-14 and 2014-15 and not in terms of Regulation 12 of Tariff Regulations 2004, we noticed that the Learned Counsel for the State Commission stated that the State Commission has approved working capital to be calculated on the basis of revenue at existing tariff as per the approach adopted in the previous Tariff Orders also and further mentioned that had it been worked out as sought by the Appellant, it would have led to increase in short term borrowings thereby incurring additional interest.

- (f) The State Commission vide its Impugned Order dated 04.09.2015 has elaborated the methodology adopted for calculation of the interest on working capital for the Appellant. As it is observed from the stipulation at para 6.83 to 6.87 of the State Commission's Impugned Order dated 04.09.2014 that in the case of the Appellant, the Central Commission determines working capital requirement for its generation and consolidated T&D business and that such inclusive tariff is considered as an input cost for the purpose of determining the retail tariff by the State Commission for the consumers in the command area of

the Appellant in the State of Jharkhand and as such it has already been appropriately considered.

- (g) The State Commission has been adopting the common methodology as done in the previous tariff Orders for working out capital requirements based on the existing revenue to estimate Revenue Gap at existing tariffs and any change in working capital requirement taking into consideration based on revised tariff is adjusted at the time of true up in the subsequent years. We have also observed the reasoning given by the State Commission for adopting the methodology as considered in the previous Tariff Orders due to the peculiar situation of the Appellants catering to diverse functions. We are accepting the State Commission's arguments that it has followed the same methodology as considered in the previous years for computing the working capital requirements for the Appellant vide Impugned Order dated 04.0-9.2014 and State Commission has maintained consistency.
- (h) With regard to the late payment surcharge being considered as part of non-tariff income, we are of the view that delay in recovery of due amount reflect on the operational inefficiency of

the licensee and the inefficiency of the licensee in this regard should not be passed on as a cost element to the end consumers. The Appellant has raised the issue regarding principle adopted while formulating the tariff regulations. In this regard, the Appellant may submit an application to the State Commission for consideration of the same and the State Commission may consider for suitable amendment to the Regulations in light of the purportedly difficulty that the Appellant is facing related to its cash flow.

- (i) As regards the power purchase cost, the Learned Counsel for the State Commission submitted that the State Commission has considered the power purchase cost as per the rates approved by the Central Commission in the relevant Tariff Orders under consideration and further clarified that the State Commission has not in any case revisited and undertaken re-determination of the rates of power procurement from those approved in the relevant Central Commission's Orders.
- (j) As regards the Appellant's allegation that the State Commission erred in disallowing the actual power purchase cost for FY

2013-14 which is incurred by the Appellant and not allowed in the projected power purchase cost for FYs 2014-15 and 2015-16, after careful examination of this issue, we find that the Appellant has arranged on long term basis the power required under its command area from the generating units of the Central Sector as well as other generating stations and it has to determine fixed cost as per the long term PPAs for power procurement irrespective of whether the Appellant schedules the power made by these generating stations or not. Looking into this merit, we are inclined to accept the same particularly, in light of the Central Commission's Regulations which state that if the utility has been able to declare the capacity to the level as prescribed in the Regulations, the consumers have to bear the fixed charges even if they are not scheduling the power and this is in light of the fact that Appellant has tied up long term PPAs for sourcing its power requirement. Hence, we direct the State Commission to consider entire fixed cost of power purchase as determined by the Central Commission vide its different Orders from the generating stations of CPSUs and other IPPs for meeting the power obligations of the Appellant

to serve end consumers under its command in the State of Jharkhand. Even the rate of solar power purchase by the Appellant from CPSUs to meet its renewable purchase obligations should be allowed in its entirety as incurred by the Appellant. However, the State Commission should carry out its prudence check and it is confined to only in respect of Long Term PPAs of the Appellant. Hence this issue is decided in favour of the Appellant to the extent as discussed above.

- (k) As regards the another issue of pension & gratuity and sinking fund contribution, the State Commission in its Impugned Order dated 04.09.2014 vide para 6.72 states as follows:-

***“6.72 The Commission is of the view that the contribution to Pension and Gratuity and Sinking fund has already been considered by CERC in the Annual Fixed Charges of the DVC’s generating stations and as per Section 21 of the CERC Regulations, the fixed costs of the generating stations shall be computed on annual basis based on actual plant availability factor as well as the normative plant availability factor. Hence, the claim of the Petitioner finds no merit and accordingly the Commission has disallowed the cost claimed by the Petitioner under this head.”***

The State Commission has stated that the pension & gratuity and sinking fund has been appropriately considered by the



Central Commission while determining tariff of generating stations of the Appellant and hence the State Commission has not undertaken any determination/re-determination on the same and this cost has in fact been allowed as input cost as part of the power procurement cost from the Appellant's generating stations and as such no part of it is required to be re-determined by the State Commission.

We are in agreement with the State Commission's findings as above.

- (l) Now the last issue raised by the Appellant in the present Appeal is regarding the claim of entitlement of T&D losses on its assurance that it is taking prudent measures to reduce the T&D losses but still it has not been able to achieve the normative loss level of 3% for the FY 2012-13 as given by the State Commission which was subject to truing up. As per the Appellant, T&D losses as submitted by the Appellant before the State Commission for the FYs 2013-14, 2014-15 and 2015-16 respectively should have been considered in the absence of the truing up of ARR, T&D losses, etc. for the FY 2012-13 by the

State Commission which are higher than that the normative loss level of 3%.

- (m) The State Commission is not bound to accept actual or the projected T&D losses for the FYs 2013-14, 2014-15 and 2015-16 as indicated by the Appellant as the State Commission would be in its wisdom interested in bringing down the level of T& D Losses so as to benefit the end consumers by not subjecting them to the inefficiency of the Appellant on account of restricting and bringing down the T&D losses in its command area.
- (n) The Appellant should immediately take prudent measures in its command area within an aim to bring down the T&D losses by complying with the various requisite proven measures.
- (o) Since the truing up exercise by the State Commission is not yet accomplished for the recent past Financial Years, the State Commission would be analyzing the same during its truing up. We are in agreement with the findings of the State Commission in its Impugned Order dated 04.09.2014 regarding consideration of transmission & distribution losses.

**ORDER**

We are of the considered opinion that all the issues raised by the Appellant except the power purchase cost, have been rightly addressed and decided by the State Commission in its Impugned Order dated 04.09.2014 and hence, the State Commission's Impugned Order dated 04.09.2014 is hereby upheld to the extent as stated above.

As regards the power purchase cost is concerned, the State Commission is hereby directed to re-determine the same keeping in view the fixed charges of the power purchase cost as approved by the Central Commission and incurred by the Appellant duly audited, should be reconsidered subject to the prudent check as advised above. Hence the present Appeal filed by the Appellant has been allowed partly on the only issue regarding the consideration of power purchase cost. No order as to cost.

Pronounced in the open court on this **23<sup>rd</sup> day of March, 2016.**

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

**(Justice Surendra Kumar)**  
**Judicial Member**

√  
**REPORTABLE/NON-REPORTABLE**  
dk