BEFORE THE APPELLATE TRIBUNAL FOR ELECTRCITY
(APPELLATE JURISDICTION)

Appeal Nos. 57 of 2008, 155 of 2007, 125 of 2008, 45 of 2010, 40 of 2010, 196 of 2009, 199 of 2009, 163 of 2010, 6 of 2011 and 144 of 2010

Appeal NO. 57 OF 2008

Dated : 11th January,2012

Coram; HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER
HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

In the matter of:

Siel Limited
5th Floor Kirti Mahal, 19, Rajendra Place,
New Delhi-110 008 … Appellant

Versus

1. The Punjab State Electricity Regulatory Commission,
SCO. No. 220-221, Sector 34-a,
Chandigarh-160034 (New) 1600222 (Old).
Through its Chairman

2. Punjab State Electricity Board,
The Mall, Patiala-147001,
Through its Chairman

3. State of Punjab
Through The Secretary,
Department Of Power,
Chandigarh- 160009 …. Respondents

APPEAL NO. 155 OF 2007

In the matter of:

Steel Furnace Association Of India (Punjab Chapter),
C/o Upper India Steel Mfg. & Engg. Co. Ltd.,
Dhandari Industrial Focal Point,
Ludhiana- 141010 …. Appellant

Versus

1. The Punjab State electricity Regulatory Commission,
SCO. Nos. 220 221, Sector 34-A,
Chandigarh-160034 (New) 1600222(Old),
Through Its Chairman

2. Punjab State Electricity Board,
The Mall, Patiala-147 001,
Through its Chairman

3. State Of Punjab
Through The Secretary,
Department Of Power,
Chandigarh-160 009 .... Respondents

APPEAL NO. 125 OF 2007

In the matter of :

Siel Limited (Now Know as Mawana Sugars Ltd.)
5th Floor Kirti Mahal, 19, Rajendra Place,
New Delhi-110 008 … Appellant

Versus

1. The Punjab State Electricity Regulatory Commission,
SCO. Nos. 220-221, Sector 34-A,
Chandigarh-160034 (New) 1600222 (Old).
Through its Chairman

2. Punjab State Electricity Board,
The Mall, Patiala-147001,
Through its Chairman

4. State Of Punjab
Through The Secretary,
Department Of Power,
Chandigarh- 160009 …. Respondents

APPEAL NO. 45 OF 2010

In the matter of :

Government Of Punjab
Department Of Power,
Mini Secretariat, Sector- 9
Chandigarh- 160 009 …. Appellant

Versus

1. Punjab State Electricity Regulatory Commission
SCO: 220-221, Sector 34-A,
Chandigarh- 160 034

2. Punjab State Electricity Board
The Mall, Patiala – 147 001
Punjab ….Respondents

APPEAL NO 40 OF 2010

In the matter of:

Mawana Sugar Ltd.
(Siel Chemical Complex (Scc)
Rajpura, Distt Pdatiala ….. Appellant

VERSUS

1. Punjab State Electricity Regulatory
Hon'ble Commission,
SCO No. 220 221
Sector 34-A, Chandigarh

2. Punjab State Electricity Board
The Mall,
Patiala-147001 …Respondents

APPEAL NO. 196 OF 2009

In the matter of

Mandi Govindgarh Induction Furnace Association
Grain Market,
Mandi Govindgarh,
Punjab – 147 301 ….. Appellant

Versus

1. Punjab State Electricity Regulatory Commission
Through its Secretary,
SCO No. 222 221, Sector -34 –A,
Chandigarh- 160 022

2. Punjab State Electricity Board
Through its Secretary,
Head Office, The Mall, Patiala
Punjab – 147 001 … Respondents

APPEAL NO. 199 OF 2009

In the matter of:

Steel Furnace Association Of India (Punjab Chapter)
C/o Upper India Steel mfg. & Engg. Co. Ltd.,
Dhandari Industrial Focal Point,
Ludhiana – 141 010 ….. Appellant

Versus

1. **The Punjab State Electricity Regulatory Commission,**
   S.C.O. Nos. 220- 221, Sector 34 –A,
   Chandigarh Through Its Chairman,
   Chandigarh- 160 022

2. **Punjab State Electricity Board,**
   The Mall, Patiala
   Through Its Chairman,
   Patiala -147 001
   ….Respondents

APPEAL NO. 163 OF 2010

In the matter of :

Mawana Sugars Ltd.
(Siel Schemical Complex)
Rajpura, Distt Patila- 140 401 …. Appellant

Versus

1. **Punjab Electricity Regulatory**
   Commission
   SCO No. 220 221,
   Sector 34-A, Chandigarh- 160 022,

2. Punjab State Electricity Board
The Mall,
Patiala- 147 001 …. Respondents

APPEAL NO. 06 OF 2011

In the matter of:

Government Of Punjab
Department Of Power,
Mini Secretariat, Sector-9,
Chandigarh- 160 009 …. Appellant

Versus

1. Punjab State Electricity Regulatory Commission
SCO: 220-221, Sector 34-A,
Chandigarh- 160 022

2. Punjab State Power Corporation Limited
(formerly Punjab State Electricity Board)
The Mall,
Patiala- 147 001 …. Respondents

APPEAL NO. 144 OF 2010

In the matter of:

1. M/s Jogindra Castings Pvt. Ltd.
G.T. Road, Sihind Side,
Mandi Govindgarh, (Punjab) & 20 others

Versus

1. The Punjab State Electricity Board,
Now known as Punjab State Power Corporation Limited through its Chairman,
The Mall, Patiala-147001

2. Punjab State Electricity Regulatory Commission through its Registrar,
SCO No. 220-21, Sector 34-A Chandigarh- 160034

JUDGMENT

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

Introduction

1. The Appeal Nos. 57 of 2008, 155 of 2007, 125 of 2008, 45 of 2010, 40 of 2010, 196 of 2009, 199 of 2009, 163 of 2010, 144 of 2010 and 6 of 2011- in all ten in number are being disposed of by this common judgement and order and the following brief narration will suffice to show as to why a comprehensive and analogous treatment is meted out.

Background of the Parties

2. The Appeal No. 57 of 2008 has been preferred by SIEL Ltd. (now called Mawana Sugars Ltd.), which was engaged in manufacture of caustic soda and chlorine by electrolytic process, against the Punjab State Electricity Regulatory Commission (Commission, for short) , Punjab State Electricity Board and the State of Punjab respondent numbers 1, 2 and 3 herein respectively against an order dated 17.9.2007 passed by the Commission whereby the Commission determined the ARR for the FY 2007-08 along with true up exercise for the year 2005-06 and FY 2006-07 in respect of the respondent no 2, the PSEB(now called Punjab State Power Corporation Limited). The Appeal no 155 of 2007 has been preferred by the Steel Furnace Association of India, a registered association having its office in Ludhiana of Steel Furnace Units based on all over the country including Punjab against the self-same respondents as in Appeal no. 57 of 2008 and against the self same order and in identical languages. The contentions canvassed in both the appeals are as follows:-

(a) Determination of category-wise cost of supply

(b) Employees' cost

(c) Interest on subsidy and other amount receivable from the State Govt

(d) Excess agricultural consumption

(e) Applicability of Two Part Tariff

(f) Heavy cost of traded power

(g) Open Access charges

(h) PF surcharge

(i) H V Rebate

(j) Diversion of capital funds and interest cost

(k) Interest element on loans relatable to prior period expenses

(l) Non-compliance with the directions of this Tribunal passed in a batch of appeals, being appeal no 4,13,14, 23 etc. of 2005 on 26.5.2006

2.1. Appeal no 125 of 2008 has been preferred against the same set of respondents as in the Appeal nos. 57 of 2008 and 155 of 2007 by SIEL Ltd. , now known as Mawana Sugars Ltd. who is also the appellant in Appeal no 57 of 2008 and Appeal no 40 of 2010 against the order dated 3rd July 2008 passed by the State Commission urging the following issues in respect of ARR of the PSEB for the FY 2008-09;

(a) Determination of the cost of supply

(b) Non compliance with the directions of this Tribunal passed in a batch of appeals, being appeal no 4,13,14, 23 etc. of 2005 on 26.5.2006

(c) Cross subsidy

(d) Higher purchase cost

(e) Excess Open Access charges

(f) T&D loss

(g) PF surcharge

(h) H T Rebate

(i) Cost of Ranjit Sagar Dam Project.

2.2. The Appeal No 40 of 2010 has been preferred by Mawana Sugars Ltd. who is also the appellant in Appeal no 57 of 2008 and Appeal no 125 of 2008 against the Commission and the PSEB challenging the order dated 8th September 2009 concerning the ARR and the annual retail tariff for the FY 2009-10. Appeal no 196 of 2009 has been preferred by Mandi Govindgarh Induction Furnace Association against the Commission and the PSEB being aggrieved against the same order as 8.9.2009 whereby the annual retail tariff for the FY 2009-10 was determined by the Commission. The Appeal no 199 of 2009 has been preferred by the Steel Furnace Association of India who is also the appellant in Appeal no 155 of 2007 being aggrieved against the order dated 8.9.2009 passed by the Commission in respect of the annual retail tariff of the PSEB for the FY 2009-10. The Appeal no 45 of 2010 has been preferred by the Govt of Punjab against the Commission and the PSEB feeling aggrieved against the order dated 8.9. 2009 passed by the Commission in respect of the

tariff of the PSEB for the FY 2009-10. The grounds of appeal in Appeal no 40 of 2010, Appeal no 196 of 2009, Appeal no 199 of 2009 and Appeal no 45 of 2010 are almost common and they cover the following issues;

(a)Diversion of capital funds to meet revenue expenditure

(b)Non -compliance with the directions of this Tribunal passed in a batch of appeals, being Appeal no 4, 13, 14, 23 etc. of 2005 on 26.5.2006

(c)Retrospectivity of the order dated 8.9.2009

(d) T&D Loss

(e) Non elimination of cross subsidy

(f) LT Surcharge/ HT or EHT Rebate

(g) Energy balance

(h) Power purchase

(i)Agricultural consumption

(j)Installation of energy meters

(k) Category-wise cost of supply

(l) RSD Project cost

2.3. The Appeal no 163 of 2010 has been preferred against the same set of respondents by Mawana Sugars Ltd. who is also the appellant in Appeal nos. 57 of 2008 , 40 of 2010 , and 125 of 2008 being aggrieved with the order dated 23rd April 2010 whereby the Commission determined the tariff of PSEB vis-à-vis the appellant category of consumers for the FY 2010-11, while the Appeal no 6 of 11 has been preferred by the Govt of Punjab against the Commission and the PSEB(now known as Punjab State Power Corporation Ltd.) against the same order dated 23rd. April

2010 in respect of the tariff for the FY 2010-11 and the grounds of appeal cover the following issues;

(a) Determination of category-wise cost of supply

(b) Rebate

(c) PF surcharge

(d) Open Access charges

(e) Limit of consumption for the subsidized category of consumers

(f) Cross subsidy

(g) High power purchase cost

(h) RSD Project cost

(i)Non- compliance with the directions of this Tribunal passed in a batch of appeals, being appeal no 4,13,14, 23 etc. of 2005 on 26.5.2006

(j)Determination of tariff for agricultural pump set consumers.

2.4 The appeal no. 144 of 2010 has been preferred by M/s Jogindra Castings Private Limited and twenty others who are all industrial consumers under the Punjab Electricity Board, the respondent no. 1 herein against the order dated 23.04.2010 whereby the Commission, the respondent 2 herein determined the tariff of the Board for the FY 2010-11 alleging some facts common to other appeals.

WHY COMMON JUDGEMENT

3. The above narration shows that for the sake of brevity and precision and in order to avoid conflict of decisions a comprehensive treatment is necessary to deal with commonality of the issues.. Now, we would proceed to narrate in brief the contentions of the appellants in each of the appeals and the counters of the respondents thereto after which we will frame common issues for consideration.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 57OF 2008

4. In Appeal no 57 of 2008 the appellant gives a prelude by mentioning an order dated 26th May 2006 passed by this Tribunal in a batch of appeals being Appeal no. 4, 13, 14, 23 etc. of 2005 and complains that the directions contained in the said order were not complied with by the Commission. This is notably a common grievance of all the appellants in all the appeals and in course of the judgement we will reproduce the relevant extract of the order dated 26.5.2006 so as to examine whether and how far the directions contained in the said order were complied with by the Commission or by the PSEB, (now known as Punjab State Power Corporation Ltd.) as the case may be.

4.1 It is also contended as a prelude by all the appellants in all the appeals that while determining tariff for the successive years beginning from the FY 2007-08 down to the FY 2010-11 the principles enunciated in section 61 of the Electricity Act, 2003 were not honoured.

4.2 Now, it is contended that regarding true up exercise for the year 2005-06 as also for the year 2006-07 agricultural consumption in excess of the approved levels was not priced at average cost of supply. Again, we are to say here that this is also a ground ventilated in all the memorandum of appeals. Energy consumption was finalized by the

Commission at 7317MU as against 7000MU approved for the year 2005-06 in the tariff order 2006-07, while for the year 2006-07 the Commission finalized the energy consumption by the agriculture sector at 8233MU as against 7115MU approved for the year 2006-07. Any excess supply of energy to the agriculture sector over and above what was approved by the Commission in its tariff order should have been priced at average cost of supply.

4.3 The Commission did not give effect to the diversion of funds in the true up exercise for the year 2005-06 which is a violation of the order dated 26.5.2006. It is contended that once the amount of diversion of funds has been determined and the principle for disallowance of the same has been laid down by the Tribunal there was no reason as to why the relative amount of interest on the diverted funds be not disallowed in the FY 2005-06.

4.4 Thirdly, the amount of Rs.480.73crores being the interest on Government loans had been adopted on the basis of Tariff Order for the year 2004-05 and for arriving at the figure of Rs.480.73crores, interest element on loan raised for Ranjit Sagar Dam Project (RSD) as relatable to the Irrigation Department (i.e. Rs.580crores @ 12.22% =70.79crores) was reduced for the purpose of finalizing interest cost to be passed on to the consumers.

4.5 Further, it is contended that Respondent No. 1 in its order dated 13.09.07 passed in compliance with the directions of this Tribunal as given in the order dated 26.05.2006 has admitted the amount of loan raised for RSD as pertaining to Irrigation Department to the extent of Rs.1322.62crores instead of Rs.580crores .Accordingly, the respondent No. 1 was duty bound to replace the amount of Rs.580crores with

Rs.1322.62crores while doing the true up exercise for the year 2005-06. The impact of the same would come to Rs.91crores and it would go to reduce the amount of interest cost to that extent.

4.6 Prior period expenses, it is next contended, of Rs.52.66crores should not have been allowed to be the part of the ARR for the year 2005-06. The PSEB has been paying interest to the State Government on its loan @ 12.22% and an amount of Rs.719.55crores should have been reduced from the amount of loan for the purpose of calculating interest payable by the Board to the State Govt.

4.7 With regard to the ARR for the year 2007-08 it is contended that despite direction by this Tribunal in its order dated 26.5.2006 the Commission has not determined the category-wise cost of supply as a result of which cross subsidization exceeded its limitations.

4.8 Then, employees' cost should not have been increased unless there was improvement in productivity of employees. In the order dated 26.5.06 this Tribunal directed that the cost of the employees should remain capped at the level of FY 2005-06.

4.9 With regard to interest on subsidy and other amount receivable from the State Govt it is contended that as the Board was paying interest on the Govt loan alone @ 12.22% an interest on Rs.1009.87 which represents Rs.123.40crores needed to be reduced. It is contended that agricultural consumption continued to be increased from year to year resulting thereby in gradual increase of cross subsidy.

4.10. Further, despite direction by the Commission Two Part Tariff was not made applicable. Power continued to be purchased at high rate

putting burden on the consumers. Concept of Open Access was made a failure.

4.11. Charges on account of T&D loss @50% of total normative loss of 20%, wheeling charges @ 25% of the transmission and distribution charges and surcharge in lieu of cross subsidy was wrongly realized . Incentive by way of rebate to compensate in respect of transmission line loss, transformation loss and cost of capital was also not given.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 155 OF 2007

5. We need not reproduce the contentions in the memorandum of appeal of the appellant in Appeal no 155 of 2007 because they are in fact the same and in identical language as are contained in Appeal no 57 of 2008.

REPLY OF THE COMMISSION IN APPEAL NO 57 OF 2008 AND APPEAL NO 155 OF 2007

6. It is now necessary to see the counters of the Board as also of the Commission in Appeal no 57 of 2008 and Appeal no 155 of 2007. The Commission contends that prior period charges pertain to the FY 2005-06 and it was discussed in the impugned order in this way that the Commission decided to disallow a sum of Rs8.66crore and allowed a sum of Rs52.66crore on the ground that the Board could not make before the Commission available the details of such prior period charges. With respect to Two Part Tariff the Board failed to provide a comprehensive proposal for determination of Tariff for the FY 2007-08 and with respect to power purchase it is contended that outside purchase of power by the

Board was largely from central generating stations and other sources under long term power purchase agreements, while a smaller portion was obtained from traders and on unscheduled inter change (UI) basis. While power purchases in the former category are by and large reasonably priced and sourcing such power is advantageous to the Board, the same is not true in the case of power purchased from trading entities/UI. An analysis of outside power purchase effected by the Board over the last few years reveals that the Board purchased traded and UI power within the limits fixed by the Commission in Tariff Order for the relevant year. It is only in the year 2006-07 when a very large quantity of 2036 MU of has been purchased over and above the quantity determined. It is contended that the Commission refrained itself from imposing penalty but gave a direction to the Board to pursue a policy of purchase from the traders in a more judicious manner. In respect of high voltage rebate it is contended that for the financial year in question the existing policy of rebate continued but higher rebate was not granted.

6.1. In respect of Appeal no 155 of 2007 the Commission contends that the appellants' contentions to the points namely (i) agricultural consumption in excess of approved level needed to be priced at average cost of supply(ii) diversion of capital funds resulting into higher revenue requirement needed to be considered for the year 2005-06. (iii) prior period expenses should not have been allowed during the truing up exercise. (iv) employees' cost needed to be capped in absence of increase in productivity level were all dealt with by this Tribunal in Appeal no of 4 of 2005 and others and this Tribunal had given certain directions which have been duly taken note of. With regard to agricultural consumption in excess of the approved level the Board did not supply the relevant data and the Commission had to determine the average cost of supply applying the methodology as in the previous tariff orders. Diversion of capital fund

and interest cost were settled by this Tribunal in Appeal no 5 of 2008. The matters relating to interest element on loans relatable to the Irrigation Dept and determination of category-wise cost of supply were also decided by this Tribunal in Appeal no 5 of 2008. In Appeal no 153 of 2007 the matters relating to prior period charges and employees cost were also decided.

REPLY OF THE PSEB IN APPEAL NO 57 OF 2008 AND APPEAL NO 157 OF 2007

7. The PSEB, now known as Punjab State Power Corporation Ltd (PSPCL), has filed a common written note of submissions covering the Appeal no 57 of 2008 and Appeal no 155 of 2007 wherein it has been averred that with regard to agriculture consumption for the years 2005-06, 2006-07, & 2007-08 the Commission approved the agriculture consumption on the basis of the available data instead of conceding to whatever was claimed by the Board. The Tribunal in its order dated 26.5.2006 only directed the Commission to set benchmarks for the future in order that the parties concerned ought to be informed of the basis of the limits prescribed in advance, while for the year 2007-08 the Commission only allowed a normative increase of 5% as against the previous year. With regard to employees' cost it is contended that in Appeal no 153 of 2007 the point was decided by this Tribunal. In compliance with the direction of this Tribunal the category-wise cost of supply was being undertaken. With respect to prior period expenses the Commission allowed a sum of Rs 52.66crores on the basis of the audited accounts. With regard to interest on loans relatable to the Irrigation Dept it is contended that the matter has been re-examined and this Tribunal also did not disturb the finding of the Commission with regard to apportionment of RSD project cost. In respect of interest on amounts receivable from the

State Govt it has been contended that the Board cannot be made to suffer in any manner on its cost of servicing the loans on account of the factors not attributable to the Board. The determination of the amounts payable by the State Govt to the appellant relating to the year 2006-07 cannot and does not have any impact on the Annual Revenue Requirements of the Respondent No. 2 for the said year as because the amounts have not been received. Lastly, with respect to Two Part Tariff it is contended that the State Commission considered the report of the Board which, was, however, not found comprehensive and it postponed the determination of Two Part Tariff but non- implementation of Two Part Tariff cannot be faulted with the Board and the issues of Tariff design including Two Part tariff and rebate on high voltage supply cannot affect the revenue requirements of the Board.

CONTENTIONS OF THE APPELLANT IN APPEAL NO. 125 OF 2008

8. The facts in Appeal No. 125 of 2008 preferred by Siel Ltd. ,now known as Mawana Sugars Ltd. who is also the appellant in Appeal No. 57 of 2008 and Appeal No. 40 of 2010 are as follows:

8.1. As per regulation 13 of PSERC(Terms and Conditions for Determination of Tariff) Regulation 2005, the Commission is required to file tariff application on or before 30th November each year but for the year 2008-09 the Punjab State Electricity Board, now called PSPCL, who is here the respondent no 2 did not file any such application but filed the same only on 12.2.2008 and the Commission upon hearing the parties passed the annual tariff order for the FY 2008-09 on 3rd July 2008 making the same retrospective with effect from 1st April 2008 to the detriment of the interest of the appellant which is engaged in the business of

manufacture and sale of chemicals namely, caustic soda and chlorine by electrolytic processes , sugar and edible oils and is a large supply power intensive consumer under the respondent no 2 with a contract demand of 35 MVA and a connected load of about 38 MW.

8.2. In Appeal Nos. 4, 13, 14, 23 and others of 2005 this Tribunal by an order dated 26th May 2006 had given certain directions to the Commission which did not implement any such directions namely (a) complete metering to be done by 31.03.07 (b) voltage wise cost/ consumer category wise cost determination (c) financial restructuring of the Board by Government of Punjab (d) cleaning up Board's balance sheet pending since 2003-04 (e) steps for T&D losses reduction (f) Ranjit Sagar Dam cost (g) study to fix bulk supply tariff in a scientific manner (h) Correct compilation which is mostly unmetered (i) Fixing of some maximum numbers of units to be allowed free to subsidized categories of consumers (j) determination of cross- subsidy strictly in terms of the order dated 26th May 2006 and (k)gradual reduction of element of cross-subsidy in respect of the subsidized consumer.

8.3. By the impugned order the tariff was increased by 6% of the existing tariff ignoring the aforesaid directions of the Tribunal in the above order.

8.4. Total subsidy contributed by the subsidized sectors was increased to Rs1509 crore from Rs1241 crore of the last year.

8.5. There has been purchase of power at high cost and during the paddy season at the rate of Rs 6 per unit and sold to agricultural consumers at highly subsidized rate of about Rs2.40/kwh. Since such a power at extra rate was purchased to meet the requirements during the paddy season it is the State Government who was required to bear the extra burden instead of burdening the appellant with extra charges for drawing power in peak

load hours on account of peak load power. Further, number of giving new tube well connection free of cost was on increase at the cost of the consumers subsidizing.

8.6. Open access charges were very high so as to make such open access transactions economically unviable.

8.7. There was no reason for recovery of transmission/distribution loss at high cost and it is supposed to be included and accounted for in course of working out transmission or distribution charges. No distribution charges are leviable because wheeling is done at the voltage of 66KV.

8.8. The Commission was wrong in observing that benefit to the system due to improvement in power factor decreases as the power factor approaches unity and that the loss to the power system due to decrease in power factor below 0.9 is much more as compared to the benefit which accrued with increase in power factors above 0.95 .

8.9. It was required of the Commission to provide for rebate for compensating by way of incentive at the rate of 11% atleast on account of transmission line loss, transformation loss and the cost of capital that would be required for creating an operating infrastructure at 66KV. The appellant incurs Rs 24 crores on account of comsumtion units every year but because of allowing only 3% HT rebate against the justified figure of 11% the appellant was losing about 35units that represent a loss of about Rs. 8 crores per annum.

8.10. Despite direction by the Tribunal the Commission did not fix any upper limit of consumption for subsidized categories of consumers on the pretext of non metering to the extent of 100% which might take more

than 10 yrs meaning thereby that implementation of the directive of the Tribunal has to be postponed for an uncertain period of time .

8.11. Despite the direction of the Tribunal actual cost of supply for different categories of consumers was not determined and in the absence thereof the issue of working of actual amount of cross subsidy paid by the consumers like the appellant is getting swept under the carpet.

8.12. As regards the RSD project cost, the Commission fully relied upon the finding of one member Chatha committee constituted by the Govt of Punjab in May, 2003 without any independent analysis. The Commission completely ignored in this regard the views expressed by the Tribunal in its order dated 26th.May, 2006.

REPLY OF THE PSEB TO THE APPEAL NO. 125 of 2008

9. In its counter affidavit the PSEB contends that the Commission determined and approved the revenue gap of Rs. 249.64crore for FY 2008-09 required to be covered with an increase of 2.6% in the existing tariff rate of FY 2007-08 across all categories of consumers except common pool consumers, outside state sales, bulk supply consumers and public lighting consumers.

9.1. There has been a gradual movement towards reduction of cross subsidies, as such the Commission decided to increase the tariff of domestic supply consumers with consumption up to 100 units by 3.4% and AP consumers by 4.8%. The tariff for public lighting and bulk supply consumers was retained at the previous year's level and for others an increase of 2% was approved.

9.2. Subsidized power to the agriculture power consumers is being given as per policy of the Government and the subsidies do not affect the tariff

because the Govt is financing funds to the PSEB for the subsidized power to the agriculture consumers. National Tariff Policy states that the tariff should be +/- 20% of the average cost of supply. The principles enunciated in section 61 of the Act have been strictly followed. The Commission has determined the average cost of supply and correct cross subsidy component for each category of consumers as per the tariff policy and the Commission determined and approved average cost of supply at 364.45 paise per unit for the FY 2008-09. Cross subsidy component in respect of LS industry has been reduced in real terms from 22.08% (during 2007-08) to 17.80% (during 2008-09) with net reduction of 4.28% for the appellant category of consumers.

9.3. With respect to Ranjit Sagar Dam Project cost the Commission followed the Chatha Committee's report whereby cost was apportioned at 79.1% and 20.9%.

9.4. The directions contained in this Tribunal's order dated 26.5.2006 are being followed.

9.5. With regard to P.F surcharge it is contended that incentives and surcharges are in order. Surcharge is levied to the consumers if the power falls below 0.9 to encourage the consumers to install power factor improvement measures which helps the Board for providing better voltage profile to the consumer.

CONTENTIONS OF THE APPELLANT IN APPEAL NO.199 OF 2009

10. It bears recall that against the tariff order dated 8.9.2009 for the FY 2009-10 four appeals being Appeal no 199 of 2009, Appeal no 196 of 2009, Appeal no 40 of 2010 and Appeal no 45 of 2010 have been preferred by Steel Furnace Association of India, Mandi Govindgarh

Induction Furnace Association, Mawana Sugars Ltd. and the Govt of Punjab respectively agitating some common issues which are again common to the earlier set of appeals.

10.1. Steel Furnace Association of India (Punjab Chapter) who is the appellant in Appeal No. 199 of 2009 and who are steel furnace units and high energy users alleges that their interests have been ignored by the Commission while determining the tariff on the following points namely:

a) Higher T&D loss was approved by the Commission in the tariff order of FY2009-2010.
b) Rebate to HT consumers was disallowed contrary to the principles followed by the Commission in its previous tariff order.
c) Non determination of category wise cost of supply and high level of cross subsidization.
d) Non-implementation of the order dated 26.5.2006 passed by this Tribunal in Appeal No. 4 of 2005 related to the allocation of cost of Ranjit Sagar Dam Project (RSD) between the Punjab State Electricity Board and the Irrigation Department of the Government of Punjab.

10.2. With regard to high T&D losses, this appellant says that the Commission allowed higher T&D losses for the year 2009-10 than what

was approved by the Commission in the previous years and even higher than what was claimed by the Board causing higher power purchase requirement of the Board leading to increase in the average cost of supply and higher tariff for the consumers of the State.

10.3. Since the HT category of consumers invested large amount for creating infrastructure to receive power at high voltage they have been granted rebate at 3% of the energy charges for a number of years, apart from the fact that the Electricity Act provides for linking the tariff with the cost of supply. In the tariff order for the year 2009-10 the Commission took a contrary view and discontinued the rebate to HT consumers which have been in force for a period of ten years prior to the passing of the impugned order.

10.4. The Commission in the tariff order for the year 2009-10 has not worked out the category wise cost of supply for different categories of consumers although this Tribunal by its order dated 26.5.2006 passed in a batch of eight appeals directed the Commission to determine the cost of supply to different classes and categories of consumers and also determine the average cost of supply and then determine the extent of cross subsidy to be added to the tariff.

10.5. The RSD was capitalized over by a huge amount of money leading to causing unnecessary burden on the consumers of the State.

REPLY OF THE PSEB TO THE APPEAL NO 199 of 2009

11. The PSEB now called PSPCL has filed a counter affidavit challenging the contentions of the appellant in Appeal no 199 of 2009.

11.1 It is contended that the Commission allowed T&D Losses after considering all relevant aspects. The loss reduction level as fixed by the Commission and the level of achievement as reported by the Board has been depicted in the following table:

YEAR	T&D loss fixed by the Commission	T&D loss reported by the Board
1	2	3
2004-05	23.25%	24.27%
2005-06	22.00%	25.07%
2006-07	20.75%	23.92%
2007-08	19.50%	22.53%
2008-09	19.50%	21.00%

11.2. It is further contended that in spite of the Commission having fixed a higher T&D Loss the Board has taken the following steps for reduction of the loss ;

a. By conversion of L.T Distribution System to H.T Distribution System.

b. By replacement of Electro Mechanical Meters and shifting of meters to the outside of the consumers premises. It is also submitted that all EHT/HT consumers of LS, MS, and SP Electro Mechanical

Meters stand already replaced with electronic meters.

c. By installing capacitors on 11 KV feeders.

d. Shifting of meters outside residential/consumer premises under Non-APDRP area.

11.3. It is contended that the Commission has discontinued all voltage rebate with effect from 1.4.2010 in its tariff order for the FY 2009-10.

11.4. With regard to category-wise cost of supply it has been contended that the Board has invited tenders from consultancy firms for conducting the cost of service study for various categories of consumer. The input of the study can be considered as and when finalized for progressive reduction of cross subsidies in the spirit of National Tariff Policy and National Electricity Policy. Moreover,the matter regarding fixing the capping of free units to a special category of consumer falls within the purview of the Govt. of Punjab. However, the national Tariff Policy says that *"consumer below poverty line, who consume below as specified level, say 30 units per month, may receive a special support through cross subsidy"*. However, the said consumption of 30 units is just an indicative number, which in no way becomes a norm that the units allowed free to such consumers should be capped at that level.

11.5. With regard to over capitalisation of RSD project it has been contended that this point has been adjudicated by this Tribunal in Appeal no 5 of 2008.

REPLY OF THE COMISSION TO THE APPEAL N O. 199 of 2009

12. The Commission has contended that the issues relating to non-compliance with the orders dated 26.5.2006 the issue concerning the

concerning determination of the category-wise cost of supply have been dealt with by this Tribunal in Appeal no 5 of 2008.

12.1. With regard to T&D Loss the Commission found that the Board could not be able to achieve T&D Loss reduction to the level prescribed by the Commission and there was some merit in the plea of the Board that it would be counter productive to persist with fixation of T&D Losses if found unrealistic. The National Tariff Policy suggests that it is advisable to relax the norms and refix the target which a licensee would be required to achieve and given the consistent inability of the Board to achieve themselves of T&D loss as prescribed by the Commission, it became necessary to reconsider the entire issue. Taking note of the fact that actual losses on the basis of revised AP consumption at the end of 2008-09 was 24.07%, the Commission now prescribed that the loss level to be achieved during the year 2009-10 would be 22%. The Board has indicated that it would take some steps to reduce T&D Loss.

12.2. With regard to rebate it is contended that rebate as has been envisaged had some historical perceptions. However, after general conditions of tariff were pronounced the rebate and the surcharge became meaningless so far as the consumers who were adhering to the condition are concerned.

12.3. With regard to power purchase cost the Commission approved the cost of Rs 4186.33 crore for purchase of 15381 MU in the tariff order for the FY 2008-09. And, the revised estimate of the Board has been considered by the Commission at Rs 6507.04crore for purchase of 17,747 MU for the year 2009-10. Finally, the Commission approved the revised power purchase cost of Rs 4414.59 crore for purchase of 13307MU.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 196 of 2009

13. The appellant, Mandi Gobindgarh Induction Furnace Association challenges in this appeal the self-same order dated 8.9.2009 passed by the respondent No. 1 Punjab State Electricity Regulatory Commission in respect of the ARR and tariff for the year 2009-2010 of the respondent No. 2 then called Punjab State Electricity Board on the following grounds:

13.1. Order is violative of different provisions of the Electricity Act namely Section 61 (g), 62 (3) and Regulation 7 (1) and (2) of the PSERC (Terms and Condition for determination of tariff) Regulations 2005.

13.2. The Commission was without any jurisdiction to give effect to its order retrospectively from 1.4.2009.

13.3. The Commission overlooked its duty to ensure elimination of cross subsidy.

13.4. The consumers were forced to bear transmission and distribution loss due to delay in installation of energy meters by the Board.

13.5. T& D loss was not retained at the level of 19.5% as was proposed by the Board.

13.6. Voltage rebates were discontinued to the commercial advantage of the Board.

14. The details are as follows:-

14.1 The Board worked out a cumulative revenue gap of Rs.6980 crore for the year 2009-2010 including carried over revenue gap of the two preceding financial years of 2007-08 and 2008-09 without any proposal to cover up the gaps . The Commission which passed the impugned order on 8.9.2009 in violation of the provision of regulation 52 (5) of the PSERC (Conduct of Business) Regulations, 2005 made the order effective retrospectively from 1.4.2009 and further overlooked the important decision of the Supreme Court in *Binani Zinc Limited Vs Kerala Electricity Board reported* in 2009 5) JT 162. The Commission further overlooked that the appellant had already priced their end products and sold the same on that price, yet it is to pay increased electricity charges with retrospective effect. The tariff order was passed after a lapse of 252 days against the mandatory period of 120 days as a result of which cumulative effect from April, 2009 is increased by 0. 72 paise per unit per month. Such retrospecitvity of the order is therefore, impermissible.

14.2. The tariff order for the year 2003-04 contained a directive to the Board to take up studies in respect of the cost of the service to each category of consumers voltage -wise on priority basis for the subsequent financial years. The Board compiled the data voltage wise and submitted to the Commission. Regulation 7 of the Tariff Regulations, 2005 defined tariff in two phases – elimination of the commercial rates differential declared in the tariff between the subsidising categories and the subsidized categories and this has to be based on the combined average cost of supply. The elimination of the common element of cross subsidy is determinable on the basis of reduction of the percentage of the cross-subsidy and reduction in terms of the quantum of the commercial element of cross subsidy in absolute terms. The second phase takes place after the elimination of the commercial cross subsidy by the year 2015 in terms of regulations 7 (1) and 7(2) of the Tariff Regulations, 2005. Quantum of cross subsidy in absolute terms per unit in the year 2005-06 was 71 paise, whereas in the year 2009-2010 it was 65 paise, while the target for reduction, as per the Regulation, is 10% every year, meaning 7 paise reduction per year. In the year 2005-06 the cross subsidy was at the level of 21.6% as against 16.1% in the year 2009-10 instead of 13.60%. The Commission

failed to adhere to the regulation and its own orders. The appellant is entitled to proportionate reduction of tariff by 40% for the year 2009-10.

14.3. In the ARR the Board projected T&D loss at 19.5% for 2009-10 as against 22.53% in 2007-08 and 21% in 2008-09. In spite of the Board having projected T&D loss level at 19.5% in FY 2009-10 which was the target fixed by the Board for the years 2007-2008 and 2008-2009 the Board increased the loss level for the year 2009-2010 at 22% unreasonably. If T&D loss of 22% as fixed by the Commission is accepted, the projection of the Board for the year 2011-2012 at 17% would lose its significance.

14.4. Though there is no projection by the Board for withdrawal of rebate for the HT at 3% and EHT at 5% the Board withdrew the rebate unrealistically which was introduced to reduce the transmission losses.

14.5. The Commission erroneously approved the total energy requirement for the year 2009-10 at 41625 MU against the Board's projection at 44105 MU. The total growth is allowed to increase at the rate of 10.29% and the total growth in generation was projected at 7.33% which means that the Board has to depend upon power purchase although its availability at the reasonable rate at the peak requirement of the system was not

ensured in advance. Therefore, the growth by way of releasing of the connections can only be allowed equivalent to the addition of the generating capacity so that the consumers like the appellant may not suffer.

14.6. To meet the periodic requirement of the AP sets consumers during the kharif period the Board planned power purchase for the FY 2009-2010 and in that case cost has to be recovered from such consumers. Similarly, the Board will get higher margin of profit from the industrial consumers if power is arranged for this category. Therefore, open clearance should be allowed to the respondent No.2 to purchase as much power as required to eliminate the scenario of power cuts.

14.7. With regard to agriculture consumption, the Commission appointed one M/s. ABPS Infrastructure Advisory Private Limited, Mumbai for verification of AP consumption reported by the Board. The variation in the preliminary report and the final report of the agency indicates that the final report cannot be relied upon as being contradictory in itself. The Commission erroneously decided to reduce agricultural consumption reported by the respondent No.2 by 11.25% by applying the findings of the study to the State as a whole and approved AP consumption

of 8902 MU based on the validated data and report of the agency for the year 2007-08.

14.8 The Board failed to comply with the provision of Section 55(1) of the Electricity Act, 2003 mandating against supply of electricity except through installation of a correct meter.

REPLY OF THE PSPCL TO THE APPEAL NO 196 of 2009

15. The respondent No.2, now called Punjab State Power Corporation Ltd. in its counter affidavit has contended the following;-

15.1. The respondent No.2 after unbundling of the erstwhile Punjab State Electricity Board is now responsible for generation, distribution and trading of electricity, while the function of transmission has now been assigned to Punjab State Transmission Company Ltd. (PSTCL). The Commission passed the tariff order after considering the interest of all the categories of the consumers as well as that of the respondent No.2. The Government of Punjab has withdrawn the increase in tariff for the period between 1.4.2009 to 7.9.2009 and the revenue to be recovered from the consumers would be compensated for in the shape of subsidy.

15.2. As per the National Tariff Policy the tariff should be plus or minus 10% of the average supply and LS tariff cross subsidy level has been gradually reduced from 22% in 2007-08 to 17.8% in 2008-09 and it is wrong to suggest that the Act has mandated elimination of subsidy. A road map for reduction in cross subsidy has been notified by the Commission's Tariff Regulations and the Commission is progressively moving towards that objective.

15.3 The Commission allowed higher T&D losses after considering all the relevant aspects. In spite of the Commission having fixed a higher T&D losses the Board has taken the following steps:-

c) By conversion of LT distribution system to HT distribution system

ii) By installation of electronic meters

iii) By installation of Capacitors of 11 KV feeders

iv) Shifting of meters outside residential premises under non APDRP area.

15.4. The decision to withdraw rebate was more logical because voltages at which supply is to be given to different categories of

consumers have been specified in the conditions of supply for more than ten years and the Board was required to release all new connections/ additional loads/demands of voltage. When supply is given at a specified voltage to a specified category there is no point in allowing rebate to class or classes of categories of consumers.

15.5. Purchase of power is a necessity because of availability of power at a limited capacity. For the FY 2009-2010 the Board had no other recourse than to purchase power from external sources and in respect of the AP consumption it was estimated to be lower in FY 2008-09 because of good rainfall than the year 2007-08, but since in the FY 2009-10 monsoon was not found to be favourable the consumption was bound to be higher. However, the Board applied 8% growth rate twice on the FY 2007-08 figures to evaluate AP consumption for the FY 2009-10. Further, denial of power supply to any consumer is against the provision of Section 43 of the Act.

15.6. With regard to power purchase, it is contended that the Board has to rely on supplies from long term contracts apart from its own generation. Power trading was also essential to meet the short term demand at an optimum cost. The power traded is

sourced from coal/hydro power plants of which power production cost is not more than Rs.4/- per unit but the price in most of the time blocks have been higher. The gradual shortage of electricity, increase in maximum rate under UI, absence of regulatory frame work on price and increase in fuel cost are mainly the reasons for rising trend in the sale price of the short term traded electricity.

REPLY OF THE COMMISSION TO THE APPEAL NO 196 0F 2009

16. With respect to the retrospectivity of the order it is contended that the delay although it is reprehensible, in its own prudence the Commission thought that the same could be condoned since larger segment of masses are affected by the fixation of tariff. This Tribunal has condoned the delay in filing the Tariff Petition in number of judgements. However, it has been the endeavour of the Commission that the tariff petitions are filed in time and the tariff order be issued within the statutory period.

16.1. With respect to cost of supply it is contended that the matter has been decided in Appeal no 5 of 2008.

16.2. With respect to T&D Losses the contention of the Commission is, however, the same as in the Appeal no 199 of 2009.

16.3. The question of rebate has been answered in identical language as in Appeal no 199 of 2009.

16.4. The question of power purchase cost has been answered by the Commission in line with the Appeal no 199 of 2009.

16.5. As regards investment and planning it is contended that the Commission examined the points in details and found that the plans of the Board do not meet the actual capital expenditure. The Commission refers to paragraph 4.13.2 of its own order which is impugned in this appeal.

16.6. With regard to employees' cost it has been contended that the employees' cost has been increasing despite the fact that this Tribunal in its decision *Siel Ltd. Versus Punjab State Electricity Regulatory* Commission and others observed that the employees cost must be plugged, but later in Appeal no 99 of 2009 the Tribunal observed that the employees' cost has to be increased only to the level of WPI till the Board shows significant improvement in its working. The Commission reiterates its own order in this respect in the counter affidavit.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 40 OF 2010

17. Mawana Sugars Ltd., the appellant in Appeal No. 40 of 2010 who is also aggrieved by the order dated 8.9.2009 agitates almost the same points in their own ways. It is contended as follows:

17.1. In the tariff year 2003-04 the Board proposed an increase of 16% in the tariff, while the Commission allowed at 6%. In year 2004-05 though the Board did not propose any increase in tariff, the Commission did not allow the Board to maintain its tariff at a high level of Rs. 3.66 unit but reduced the tariff applicable to the appellant by 8%. In the year 2005-06 the Board proposed an increase of 10% and it was allowed by the Commission against which this appellant preferred Appeal before this Tribunal. Against the tariff order for the year 2006-07, the Board preferred an appeal before this Tribunal which according to the appellant was rejected. The Commission approved a tariff hike from Rs. 3.72 paise per unit to Rs.3.98 paise per unit in tariff for the FY 2007-08 which was very high as compared to the average cost of supply of Rs.3.44 per unit. For the year 2008-09 the tariff was further increased to Rs.3.95 per unit. The tariff order for the year 2007-08 and for that of 2008-09 have been challenged before this Tribunal. With this background this appellant alleges that the tariff order for the year 2009-10 was issued in a mechanical manner ignoring the directions and guidelines of this Tribunal and that of the Hon'ble Supreme Court made in the case of *West Bengal Electricity Regulatory Commission Vs CERC reported in*

(2002) 8 SCC 715 wherein the Hon'ble Court observed that the 1998 Act reflected that the consumer should be charged only for the electricity consumed by them on the basis of average cost of energy and the burden of subsidy has to be borne by the State Government if it intends to help a class of consumers. Similarly, in Appeal No. 4 of 2005 and connected batch of appeals this Tribunal by the order dated 26.5.2006 made certain observations relating to unrealistic allocation of cost of Ranjit Sagar Dam project, the Board's financial restructuring plan, reduction of the rate of interest on government loans, rationalising the burden on account of all valued assets, limiting the working capital loan upto one month's requirement, restructuring the auxiliary consumption upto 9.54%, fixing a cap on number of units allowed free or at subsidized rates, and installing meters on all the premises by the end of March, 2007.

17.2. Now, in the tariff order for the year 2009-10 none of the directions made therein was complied with. In the tariff order for 2009-10, the Board projected annual revenue requirement of Rs.17277 crores against which a requirement of Rs.12538 crore was allowed and a reduction of the differential amount was achieved by reducing the establishment cost by Rs. 16000 crores, power purchase cost by Rs.2578 crore, and interest charges by

Rs.538 crore although these reductions were mainly eye wash because the Board was never able to arrest its expenditures within the limits permitted by the Commission and in the next year again the Commission could feel compulsion to allow these expenses by way of truing up for the year 2009-10 and in fact, the Board took excess working capital loans, diverted loan taken for capital works to meet revenue needs and utilized funds for depreciation revenue, consumer's contribution and ROE for meeting revenue needs. Thus, the Commission failed to safeguard the interest of the consumers which is the mandate of the law.

17.3. The National Tariff Policy stipulates that the rates for the subsidized category should not have been less than 80% of the average cost of supply which have been depicted at Rs.4.03 per KWH. Accordingly, the tariff rate for AP category should not be less than Rs.3.23 per KWH whereas it has been fixed at Rs.2.85 per KWH. This Tribunal also is said to have directed to fix a sealing on number of units eligible for cross subsidy and Board has to fix meters at the premises of all the consumers by March, 2007. This has been ignored.

17.4. Resources raised through depreciation amounts, consumers' deposits and contributions are to be used not to meet revenue expenses but to create assets but the Board and the Commission accepted that consumers contributions /deposits are to be offset against total investment plan but in actual practice this has not been reflected; further from the statement of accounts it is not discernable that regarding return on equity the funds as earmarked under total revenue requirement are offset against the accumulated loss.

17.5. There has been a gradual increase in power purchase cost. More and more heavy purchase of power especially traded power at high rates is evident. No concrete proposal has been given for generation of more power.

17.6.Though with regard to employees' cost, the Commission begged down the cost to Rs.1856 crore from Rs.3455 crore, in the long run this has been deceptive because denial of payment of arrears of pay arising out of Pay Revision Committee's recommendations cannot last long.

17.7. The Board has been postponing furnishing data regarding cost of supply voltage- wise and consumer category- wise on one pretext or the other. During the year 2003-04 the Commission observed against slow move or no move at all regarding

acceptance of the report of the Consultants or initiation of a fresh tariff proceedings .

17.8. Regarding T&D loss, the picture depicted is the same as has been depicted in the reply of the PSEB to the Appeal No. 199 of 2009. Surprisingly, for the year 2009-10The Commission allowed a higher level of 22% which was even not projected by the Board and which achieved 21% in the preceding year. By so doing it reduced AP consumption thereby giving relief to the Government by way of reduced subsidy amount of Rs.500 crore and increased the cost of power purchase to the extent of about Rs.700 to 800 crore and this resulted in increase in tariff by 10%.

17.9. There has been over capitalization of RSD cost resulting in diversion of funds to meet the revenue expenditure from the capital works.

17.10. The Commission toed the line of the Government concerning capital subsidy for grant of tube well connections. For, cost of new connections for other categories is borne by the individual consumers and in case the Government wants that the tube well applicants are to pay partly for it then the balance should be borne by the Government and the Commission's contention that the supply code provides for such a burden on the consumers is not tenable.

17.11. Both the Board and the Commission tried to justify high rate of depreciation on the grounds of actual life span of various assets for FY 2008-09 and FY 2009-10 which will be reflected from the following:

Year	Thermal	Hydro	Transmission	Distributionb	Others
08-09	4.32%	2.31%	4.99%	5.99%	1.34%
09-10	5.47%	2.24%	4.83%	6.23%	1.34%

17.12 As is seen, the rates for the two years are not the same. Still as per rates the life spans for the said assets work as under:

Thermal	Hydro	Transmission	Distribution	Others
18 years	40 years	18 years	15 years	70 years

Prima facie, the life spans assumed are on a much lower side. In case, realistic life spans are taken, the amount required for depreciation reserve fund would be drastically reduced resulting into lesser revenue requirement to that extent.

17.13 The Commission was wrong in not allowing 5% annual growth rate in respect of non tariff income. Therefore, figures for FY 2008-09 and

FY 2009-10 should have been Rs.464 and Rs.485 crores respectively instead of Rs. 484 crore during the FY 2008-09

17.14 The Board has been charging extra charges over and above the normal energy charges if the consumer like the appellant runs its industry during peak hours. The appellant's contention is that if the Board incurs extra cost because of purchase of power to supply during peak hours the same is already accounted for when the total power purchase expenditure is considered amongst various cost components and, secondly, this becomes discriminatory against the appellant - category of consumers as because domestic and commercial consumers who are instrumental in adding to peak hour circumstances are not required to pay extra charges for peak load use of power. The second plea of the appellant is that during peak hour season when the Board has to purchase power at extra high rate to meet the requirement of tube well consumers they are not loaded with extra charge. The Commission accepted the plea of the appellant observing that all these extra costs are taken in account in the ARR and the Commission allows their recovery from the consumers, yet it still decided to continue with the existing extra charges. Proposal to introduce KVAH based tariff in the place of existing KWH tariff has been pending since long and the Commission has been avoiding its decision on one pretext or the other. KVAH based tariff is more scientific and a complete one as it accounts for both the active and reactive energy.

Secondly, if a consumer has installed expensive equipments to improve the P.F. the incentive given is much lower as compared to the penalty imposed on a consumer who has done no investment for improving the P.F.

17.15.The Commission rejected the excess interest charges claimed by the Board on heavy working capital loan and other diverted capital funds but has not issued any direction to recover the disallowed amounts from the Government. As a result, the Board had to divert funds or take heavy working capital loans. In the event of the Government not being asked to pay to the Board all such extra interest amounts there would be a corresponding increase of accumulated losses of the Board who would try to meet this out of the ROE amount allowed in the ARR which otherwise would have been available for spending on capital/development works.

17.16 As per the general conditions and the schedule of tariff large supply consumers are covered under a less tariff whose per unit tariff has been structured against the distribution voltage level of 11 KV upto a specified load/demand beyond which it is used to be given at the voltage of 33/66/132 KV but in the latter cases consumers are given a rebate of 3% in the energy bills worked on 11 KV tariff rates to compensate them for transmission losses and interest on depreciation charges on the huge investment which the consumers have to incur on erection of 33/66/132 KV line. In the tariff order for the year 2009-10 the Commission stopped

payment of rebate with effect from 1.4.2010 even though the Board did not put any proposal in ARR petition for such stoppage and secondly the order has been made applicable during theFY 2010-11 although the tariff pertains to the year 2009-10. For giving supply at higher voltage level a consumer has to be compensated for the excess expenditure and losses incurred by him. Further, abolition of rebate would further result in increase in cross- subsidy in the case of affected consumers because earlier the element of cross subsidy was L.S. tariff x 0.97- average cost of supply. The appellant gives the following table in support of his contention:

Year	Average rate of cost of supply (Paise/Kvh)	Tariff applicable for 66 KV consumer (Paise/Kvs)	Element of cross subsidy
08-09	364.45	97/100x395=383	18.55
09-10	403	433	30

The above obviously is against the provision of Electricity Act 2003 as well as the directives of this Tribunal which contains that the element of cross-subsidy be gradually reduced and brought equal to the cost of supply to a particular category of consumer.

REPLY OF THE PSPCL TO THE APPEAL NO 40 OF 2010

18. The contentions in the counter affidavit of the PSPCL in Appeal no 196 of 2009 and Appeal no 199 of 2009 have been repeated in the counter affidavit of this respondent in Appeal no 40 of 2010.

REPLY OF THE COMMISSION TO THE APPEAL NO 40 OF 2010

19. The contentions in the written submission of the Commission as we find in Appeal no 196 of 2009 and Appeal no 199 of 2009 have been repeated in the written submission of this respondent in Appeal no 40 of 2010.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 45 OF 2010

20. Here the Govt of Punjab is the appellant against the Commission's order dated 8.9.2009 whereby the Commission determined the tariff of the PSEB for the FY 2009-10.

20.1. The Commission failed to construe the order of the Tribunal dated 26.5.2006 passed in a batch of appeals aforesaid dealing with the issue of diversion of funds. There was a clear finding by this Tribunal which is, however, disputed by the State Government on the cost of diversion of funds. The State Commission has, however, applied the above decision to the diversion of capital funds to include for the years 2007-08, 2008-09 and 2009-10, despite the finding that the funds from which diversion took

place could not be clearly identified and when there are other reasons for diversion of such funds.

20.2. The Commission cannot penalize the Govt for alleged diversion of capital funds by the Board for revenue purposes beyond Rs 1121crores.

20.3. The Commission failed to appreciate that the Board duly paid all the subsidy amounts which the Govt was required to pay.

20.4. The Commission failed to appreciate that the decision of the Tribunal dated 26.5.2006 in regard to diversion of capital funds for revenue purposes is relatable to the period prior to 2006-07.

20.5. The Commission failed to take into consideration that the tariff for agriculture consumption should reach a level of 50% of the average cost of supply and it wrongly increased the tariff for AP set consumers from Rs 2.40 per unit to Rs. 2.85per unit.

20.6. The Commission ought to have provided for the adjustment of the excess amount of Rs 198.51crore when it found that the Govt had paid Rs 2601.73 crore as subsidy in the year 2008-09 as against the actual subsidy payable at Rs. 2403.22crore.

REPLY OF THE PSPCL TO THE APPEAL NO 45 OF 2010

21. With respect to the Govt of Punjab's contention that the Govt was responsible for diversion of capital funds to meet the revenue expenditure with respect to the period during which the Board was functioning as a

regulated entity under the State Commission it is contended that the Commission in its tariff order for FY 2004-05 made a detailed calculation of diversion of funds and disallowed interest of Rs 100 crore every year in its tariff order since 2003-04 onwards . Further, pursuant to the judgement of this Tribunal dated 26th May, 2006 the Commission in its order dated 13.9.2007 observed *"The Commission has given due consideration to the issues now submitted by the Board and find that these are not without force"* meaning thereby that the Commission accepted the view of the Board that the main reasons for diversion of funds were (a) inadequate revision of tariff during 1.4.97 to 31.3.02(tariff revised by 15% during July, 1998 and by 8% during July, 2000) (b) The AP Consumers were making payment @ Rs. 60 per BHP/month i.e. at the subsidized rates which was made free with effect from14.2.97 without any compensation to PSEB by Govt. of Punjab up to 31.3.2002. However, after determining the diversion of funds the Commission in its order dated 10th May 2006 for FY 2006-07 burdened the State Govt with interest cost of Rs. 289.92crores on account of diversion of funds. However, PSPCL also contends that the Commission should not have considered the diversion of funds prior to 1.4.2002 for the purpose of disallowing interest because the Commission started issuing tariff for the FY 2002-03 and diversion made after 1st April 2002 should have been considered . It is also the contention of the PSPCL that due to inadequate

increase in tariff and non payment of subsidy by the Govt of Punjab during the period from FY 1997-98 to FY 2001-02 the Board had to borrow funds to meet its revenue deficit and the consumers enjoyed benefit due to inadequate increase in tariff. The disallowance of interest of Rs. 100 crores to PSEB every year since 2003-04 on account of diversion of funds is also not justified and is required to be allowed as pass through for the purpose of determining the tariff. If at all, any disallowance is to be made, then it should be burdened on to the State Govt., at least on account of diversion of funds which took place during the period 1997-98 to 2001-02. This is so because the diversion of funds during this period was made due to inadequate increase in tariff and non-payment of subsidy by the Government.

REPLY OF THE COMMISSION TO THE APPEAL NO 45 OF 2010

22. The state Commission filed a written note of submissions to contend that the diversion of funds came to be discussed in judgement dated 26.5.2006 in Appeal no 4 of 2005 and others *SIEL Ltd. Vs. PSERC & Ors.* Reported in 2007 in APTEL 931 by this Tribunal. While appreciating the analysis by the Commission in its earlier tariff orders and not disputed by the Government of Punjab or the Board that there is a huge mismatch amounting to more than Rs. 4,000 crores between assets and liabilities of the Board, meaning thereby in FY 2005-06 itself the

Board was carrying accumulated loss of more than Rs 4000 crores. it stated that the Board was compelled to constantly carry a correspondence on unproductive debt. This Tribunal observed that going strictly by commercial principles, the cost of the debt cannot be treated as pass through expenditure. The Government of Punjab itself stated in its comments on the ARR for the year 2002-03 that interest on loans which do not result in benefits to the consumer cannot be passed onto them. The issue of the diversion of funds was further dealt with by this Tribunal in Appeal No. 5 of 2008 and Appeal No. 63 of 2008 in Steel Furnishing Association of India Vs Punjab State Regulatory Commission.

22.1 The present appeal concerns the tariff year 2009-10 and through the impugned order the Commission accepted the truing for the year 2007-08 and 2008-09. Thus, for the determination of the tariff for the year 2008-09 while truing up for the year 2007-08, the Commission observed in para 2.14.11 as follows;

"The diversion of capital funds for revenue purposes for the year works out to RS. 4066.56 crore out of which debt servicing of the SBI bonds of Rs. 637.35 crore will have no effect on interest charges of the Board as the same has been taken over by the Govt. Therefore, the net diverted amount carrying interest liability is Rs. 3429.21 crore on which interest works out to Rs. 419.05 crore at an average rate of 12.22%, which is

disallowed. The Commission retains its decision regarding disallowance of interest of Rs. 100 crore out of this amount on account of deficiencies in the functioning of the Board. The balance of Rs. 319.05 crore is disallowed from the interest on Govt. loans for diversion of capital funds. Accordingly, interest payable by the Board on Govt. loans stands reduced to RS. 42.83(361.88-319.05)crore." For the review of the order 2008-09, the Commission had to approve net cost and finance charges at Rs. 537.66 crores(2008/09).

22.2. It is further contended that with respect to tariff for agricultural pump set consumers the tariff has been raised from Rs 2.40 per unit to Rs. 2.85per unit for the year 2009-10 but the tariff has not been increased with Govt subsidy. If the argument of the Govt is accepted there would be an increase in the cross subsidy whereas as per the Regulations the cross subsidy has to be eliminated altogether by the year 2015. It is untenable that the Govt could ask for reduction of tariff without paying for it which would increase the cross subsidy.

22.3 With respect to adjustment of excess subsidy amount the Commission adjusted an extra amount of Rs. 260.37 crore by the Govt to the Board towards other payments.

CONTENTIONS OF THE APPELLNAT IN APPEAL NO. 6 OF OF 2011.

23. This appeal has been preferred by the Govt of Punjab against the Commission's order dated 23rd April 2010 whereby the Commission, the respondent no 1, herein determined the annual tariff in respect of the PSPCL, the respondent no 2 herein for the year 2010-11.

23.1. The State Commission has wrongly construed the order of this Tribunal dated 26.5.2006 dealing with the issue of diversion of funds and has failed to appreciate that the said order of this Tribunal dealt with the specific aspect of diversion, namely, those related to Ranjit Sagar Dam cost allocated to the Respondent No 2, subsidy including rural electrification subsidy, higher rate of interest on Govt loans etc which necessitated the Respondent No 2 to use the borrowed funds for revenue expenses and further such aspects relevant to the FY 2006-07 onwards. Thus, there was a clear finding by the Tribunal on the cost of diversion of funds, namely, it is related to the State Govt. The State Commission has, however, applied the above decision to the diversion of capital funds to revenue expenditure by the Respondent No 2 from the year 2006-07 onwards including for the years 2007-08, 2008-09, 2009-10 and now 2010-11, despite the finding that the funds from which diversion took place could not be clearly identified and when there are other reasons for diversion of such funds.

23.2. The State Commission has proceeded on the wrong premise that the decision of this Tribunal in the order dated 26.5.2006 is to the effect that the State Commission exercises pervasive control over the Respondent No 2 and, therefore, the State Govt should be held in law to be liable for the diversion of capital funds by the Respondent No. 2 irrespective of whether such diversion was on account of the failure on the part of the State Govt to provide subsidy, funds related to irrigation cost of RSD, higher interest rate etc.

23.3. The State Commission has failed to appreciate that in terms of the order of this Tribunal dated 26.5.2006 the issue of diversion of capital funds by the Respondent No. 2 for revenue purposes need to be decided not on the basis that the diversion of funds had occurred on account of the factors attributable to the State Govt such as wrong allocation of cost of Ranjit Sagar Dam subsidy including rural electricity subsidy and higher interest charged on the Govt loan.

23.4. The State Commission has failed to appreciate that the order dated 26.5.2006 passed by the Tribunal provides for the implication on the State Govt on account of diversion of funds by the Respondent No 2 to be considered for future i.e. from 2006-07 onwards and in the absence of any factor attributable to the State Govt such as wrong allocation of cost of Ranjit Sagar Dam, subsidy including RE subsidy, higher rate of interest

relatable to such years from 2006-07 onwards, the State Commission ought not to have held the State Govt liable for such diversion of funds.

23.5. The State Commission cannot penalize the State Govt for alleged diversion of capital funds by the Respondent No 2 for revenue purposes beyond Rs. 1121 crore and the amount of the unpaid subsidy for free supply to Agricultural Pumpset during the period 1997-2002 as worked out by the State Commission in the Order dated 13.9.2007, was not on account of any factor attributable to the State Govt.

23.6. The State Govt has duly paid all the subsidy amounts which the State Govt was required to pay as per various tariff orders. Accordingly, there was no issue of any non-payment of subsidy by the State Govt giving a cause to the State Commission to direct adjustment of the interest on loan payable by the Respondent No 2 to the State Govt.

23.7. The State Commission has proceeded on completely wrong premise in generalizing the implications of the order dated 26.5.2006 passed by this Tribunal as applicable to any and every diversion of capital funds by the Respondent No. 2. This is particularly contrary to the scheme and the provisions of the Electricity Act, 2003 where the licensees such as the Respondent No 2 have been placed under the regulatory control of the State Commission. It is for the State Commission to approve the capital

expenditure and utilization of capital funds and take appropriate action as may be necessary to ensure that the funds are used for capital works.

23.8. The State Commission has unnecessarily burdened the State Govt's exchequer and funds available with the State Govt for meeting the essential expenditure on account of Governmental activities such as law and order, health care, education etc by calling upon the Govt to take substantial burden on account of the alleged diversion of capital funds by the Respondent No 2, which are not due to any direction or action on the part of the State Govt.

23.9. The State Commission has failed to appreciate that the State Govt is not responsible at all for diversion of capital funds by the Respondent NO 2, as the Respondent No 2 is a statutory autonomous body and is itself responsible for all its affairs and functions under the Regulatory Control of the State Commission.

23.10. It is contended that the Commission wrongly increased the tariff for agricultural Pumpset Consumers from Rs 2.85per unit to Rs 3.20 per unit i.e., an increase of about 12.2% over FY 2009-10 and by about 30% over the FY 2008-09. This has implication that the cost will have to be met by the Govt as subsidy particularly in the context of the importance of agriculture production.

23.11. The Commission ignored that in the conference of the Chief Ministers held in 1998 it was decided that tariff for agricultural

consumption should reach a level of 50% of the average cost of supply and in the State of Punjab the average cost of supply works out to be Rs 24.27 per unit for the yr 2010-11 and as such a tariff for the agriculture consumers should have been determined at not more than Rs 2.13 per unit.

REPLY OF THE PSPCL TO THE APPEAL NO 6 of 2011

24. The contention of the PSPCL with respect to diversion of funds is the same as in the PSPCL's counter affidavit in the Appeal no 45 of 2010 Infact, contention on this point is exactly in identical languages as in the Appeal No 45 of 2010. Therefore, we desist from reproducing the same once again here.

24.1. With regard to determination of tariff for agricultural pumpset consumers it is contended by the PSPCL that the Commission while determining ARR of the successor entities for FY 2010-11 covered the revenue gap with an increase of 7.58% in the existing tariff. The Commission decided to increase the tariff of AP consumers by 35 paise per unit being the highest subsided category. As per regulations of the Commission, tariff is to be determined in such a way that it progressively reflects combined average unit cost of supply. The Commission observed that in consonance with PSERC tariff regulations there is a reduction in the cross subsidy level in both the subsidizing categories as compared to

FY 2009-10. Even with the increase of 35 paise per unit for AP Consumers, the cross subsidy level has been reduced from (-) 25.74% in FY 2009-10 to (-)21.39% in FY 2010-11. The net subsidy payable as per the tariff Order for FY 2009-10 was RS. 2804.99crore and for the tariff order for FY 2010-11 it is Rs.2702.87crores whereas the AP Energy sales for the year 2010-11 has been estimated to be 10305 MUs against the 9814 MUs estimated for the FY 2009-10.

REPLY OF THE COMMISSION TO THE APPEAL NO 6 OF 2011

25. The reply of the Commission to the Appeal No 6 of 2011 is exactly in identical language as in the reply of the Commission to the Appeal no 45 of 2010.

CONTENTIONS OF THE APPELLANT IN APPEAL NO 163 of 2010

26. Mawana Sugars Ltd. who is the Appellant in Appeal No 57 of 2008 and Appeal no 40 of 2010 is also the Appellant in Appeal no 163 of 2010 where the following contentions have been raised against the Commission's order dated 23rd April 2010 whereby the Commission determined the Tariff of the PSPCL for the FY 2010-11 in respect of which the Govt of Punjab also preferred Appeal no 6 of 2011 as we have noticed earlier.

26.1. The Commission in the tariff order for the FY 2009-10 increased the Tariff for the appellant category of consumers by about 9.6% but

again for the FY 2010-11 it raised tariff for the appellant category of consumers to Rs 4.58 per unit i.e., an increase about 5.7 % .

26.2. For the FY 2010-11 the Commission issued the tariff order in a mechanical manner without appreciating the directions of the Hon'ble Supreme Court's order dated 18th Aug 2008 passed in Civil Appeal Nos 5380-5389,5394 etc. of 2005.

26.3. This Tribunal's order dated 26th May 2006 passed in Appeal No 4 of 2005 has not been complied with with respect to unrealistic allocation of the cost of RSD project, the Board's financial restructuring plan, reduction of the rate of interest on Govt loans to the Board, rationalising the burden on account of valued assets, limiting the working capital loan to one month's requirement , restricting auxiliary consumption at GNDTP up-to 9.54% , fixing a cap on a number of units for the subsidized category of consumer and installing meters in all premises by the end of March, 2007 but in the Tariff order 2010-11 none of the above directions have been followed.

26.4. In this Appeal No 163 of 2010 the appellant also takes up the grounds of appeal as it took in Appeal no 40 of 2010.

26.5. The Commission has been avoiding a decision on one pretext or the other in respect of introduction of KVAH based tariff in the place of existing KWH based tariff. KVAH based tariff is more scientific as it accounts for both the active and reactive energy.

26.6. Regarding P.F incentive to be given at par with PF surcharge it has been mentioned that there was no justification for giving incentive to industries whose PF inherently was above threshold level. It is a strange argument. . Because of this discriminatory action of the Commission the consumers like the appellant are being deprived of rightful incentive fixed level and thus inducting extra reactive energy into the system".

26.7. The Commission rejected the excess interest charges claimed by the Board on heavy working capital loan and other diverted capital funds but has not issued any direction to recover the disallowed amounts from the Govt because of whose actions the Board had to divert funds or take heavy working capital loans.

26.8. The Commission withdrew the EHV rebate although there was no such recommendation in the ARR of the Board for the FY 2010-11.

26.9. The Commission failed to determine category-wise cost of supply particularly in respect of large supply power intensive consumers.

26.10. The Commission failed to determine the voltage- wise cost of supply.

26.11. The tariff cannot be subjected to vagaries of incorrect planning and improper phasing of investment as non- adherence to approved targets of the expenditure, besides giving tariff shocks to the consumers will inevitably introduce uncertainties and lack of credibility in the tariff determination process.

26.12. Agricultural segment is unmetered and subsidized. If they `consume higher than frozen consumption, it gets loaded on the cross subsidizing category unnecessarily. Therefore, it is important that Commission should freeze limit of consumption of the categories who are cross subsidized and utility should be directed to recover consumption exceeding that limit at the normal tariff not at the subsidized tariff from these consumers. Or the Govt should make good of this increased consumption by these cross-subsidized consumers or consumers should pay at extra tariff i.e. normal tariff.

26.13. The commission failed to comply with the directions passed by this Tribunal in the order dated 26th May 2006 in a batch of Appeals being Appeal No 4 of 2005 etc.

26.14. Transmission and distribution loss trajectory was not implemented.

REPLY OF THE PSPCL TO THE APPEAL NO.163 Of 2010

27. Withdrawal of HT rebate is a matter of tariff design to be decided by the Commission for determination of tariff across the various categories so as to recover the total annual revenue requirements of the Board. ARR of the Board is required to be fully protected and any variation in the tariff for any particular category of consumer is required to be compensated for by suitable adjustment so that ARR is not reduced. The rebate for the EHT consumers is not tenable. Surcharge is proposed to be levied only to those consumers taking supply at a lower voltage than

the required voltage level. Further rebate is to be given only to those consumers taking supply at voltage levels Which are Higher than the required voltage levels.

27.1. The contention of the appellant that the Commission has not held interest on diverted fund disallowed to the respondent no 2 (PSPCL) to be on account of the Govt of Punjab is incorrect. This matter was made clear in the tariff order in details. The appellant has not challenged the tariff determination on the basis of any omission of the Commission to give direction to the Govt of Punjab.

27.2. The PSPCL has already initiated the process of studies for determination of category-wise cost of supply which could not be completed because of the size of the State and the nature of its consumers.

27.3. The percentage level of cross-subsidy has been reduced by the Commission for the year 2010-11. Cross subsidy contributed by LS Industrial Consumers (high tension) has been reduced from the level of 16.21% in the tariff year 2009-10 to a level of 14.37% in the tariff year 2010-11. The Commission has computed the cross subsidy level on the basis of the average cost of supply of electricity which is consistent with the provisions of the National Tariff Policy.

27.4. Peak load charges are necessary to maintain the load centre effectively and to dis-incentivize the consumers from consuming at peak

hours. The contention of the appellant that the peak load charges are levied to compensate the PSPCL for higher purchase cost of power during peak hours is wrong. Consumers who consume electricity at the peak hours are subject to the peak load charges.

27.5. The contention of the appellant that the cumulative revenue gap for the year 2007-08 and the year 2008-09 cannot be considered by the Commission for tariff determination for the FY 2010-11 till disposal of the pending appeals is meritless because there is no stay granted against implementation of the tariff orders. The Respondent No 2 suffers from the revenue gap due to non-allowance of various legitimate expenses and is entitled to claim the same in the next tariff order.

27.6. The ground of incorrect planning is vague and baseless.

27.7. Introduction of KBHH based tariff is at the discreation of the Commission. The Commission has to go into the matters in detail and it needs separate examination .

27.7. The Commission has considered and followed the directions of this Tribunal dated 26.5.2006. The Commission has disallowed interest on diverted funds and the tariff relating to the subsequent years in accordance with the directions of the Tribunal.

REPLY OF THE COMMISSION TO THE APPEAL NO 163 OF 2010

28. Serious measures have been taken to calculate the cost of supply and it shall finalize the same within the time prescribed by the Tribunal in Appeal no 5 of 2008.

28.1. The Board brought the T&D loss at 19.5% for FY 2009-10 which represents a reduction of only 3.03%. The Board has not been able to achieve T&D loss to the level prescribed by the Commission .

28.2. The Commission has already considered the proposal of KVAH Tariff in the tariff order and decided to continue the existing practice of levy of low power factor surcharge and high power factor incentive for LS,RT and MS consumers besides bringing other categories under the ambit of the system.

28.3. The rebate as has been envisaged had some historical perceptions Insistence of the Commission has been on the fact that the connection be released to the consumers as per the voltage requirements and only the consumers who are getting supply at a higher voltage as have been specified in the condition would be entitled for rebate and not otherwise.

CONTENTIONS OF THE APPELLANTS IN APPEAL NO. 144 OF 2010

29. It is contended that (a) tariff was not being based on cost of supply, (b) higher voltage consumers have been cross subsidizing the lower voltage consumers (c) the order dated 26.05.2006 passed in appeal no. 4 of 2005 have not been complied with, the appellants got their connections

released on 66 KV voltage with express understanding that grant of 3% rebate would continue to compensate the appellants for interest on capital investment, depreciation charges on the investment of installation of 66 KV substation, cost of operation and maintenance and transformation losses, (d) the industrial consumers have been pur to loss on account of T&D losses for which they were not responsible and they have not been compensated for on account of they having been burdended with to bear T&D losses for which the Board is responsible, (e) because of not determining average cost of supply and then cost of supply for the appellant category of consumers cross subsidy has been reached at unsustainable level in the case of EHT industrial consumers (f) two different and distinct category of consumers have been unjustly classed under LS Consumers.

REPLY OF THE PSPCL TO THE APPEAL NO. 144 OF 2010

30. It is contended by the PSPCL in the reply that rebate for EHT consumers claimed by the appellant is not tenable . The Commission in the order dated 8.9.2009 had taken a conscious decision to ensure that the supply to all consumers are commensurate to corresponding voltate level specified in the conditions of supply. HT rebate has been discontinued where supply is catered by the Board at the designated voltage, it however, contunes where supply is received at voltages higher

than those specified. The justification therefore has been given in para 5.5 of the Tariff Order for 2009-10.

COMMISSION'S REPLY TO THE APPEAL NO. 144 OF 2010

31. The Commission filed a written note of argument justifying its order dated 8.9.2009 concerning withdrawal of rebate for the HT and EHT consumers and extensively quoted the said order observing that where is no logc in any rebate in rariffs to a consumer who is given suspply at the specified voltage for that category. The Commission also observes that there is a need for the existing consumers getting supply at a lower voltage to convert to the specified voltage for benefit of the system and to reduce T&D losses. However actual conversion of supply voltage of the exsting consumers will require some time. There could also be technical constraints in convnersion of supply voltage or release of a new connection and or additional load/ demand at the prescribed supply voltage which merits consideration. It is further observed that there could be the Commission further observes that there could be some consumers who are getting supply at a voltage higher than specified in the Conditions of Supply. Thus their investment is providing the required infrastructure/ sub-station and bearing maintenance cost thereof besides transformation losses & carrying cost of investment may need to be considered on a separate footing as their action is definitely helping the utility in reducing T&D losses.

32. So far we have completed the pleadings of the parties in ten appeals and now we propose to frame the following issues for composite consideration.

1. Whether the Commission did not follow the directions contained in this Tribunal's order dated 26.5.2006 in batch of appeals being appeal no. 4 of 2005 etc.
2. Whether the Commission ignored the direction of the Tribunal contained in its order dated 26.5.2006 in appeal no. 4 of 2005 regarding the capping of agricultural consumption at the subsidized rate ?
3. Whether the Commission neglected in its function to determine the catagory wise cost of supply ?
4. Whether the Commission can be faulted with in its successive tariff orders for not taking suitable measures for elimination of cross subsidy?
5. Whether the Commission gave a wrong treatment regarding Board's diversion of funds towards meeting out revenue requirements?
6. Whether the Commission rightly allocated the cost of Ranjit Sagar Dam between the Irrigation Department of the Government of Punjab and The Punjab State Electricity Board?

7. Whether the Commission correctly decided the burden of the Government of Punjab with the interest on diverted fund ?
8. Whether the Commission gave appropriate treatment in its diverse tariff orders for the year 2007-08, 2008-09,2009-10, and 2010-11 on T&D loss ?
9. Whether the Commission's approach towards the issue of employees cost was justified ?
10. Whether the Commission's approach towards the issue of prior period expenses was justified?
11. Whether the Commission was justified in disallowing rebate ?
12. Whether the Commission failed to insist on the Board to furnish a scientific and reasonable investment plan?
13. Whether the Board was justified in giving tariff order dated 8.9.2009 for the year 2009-10 effective retrospectively?
14. Whether the Commission treatment with respect to the issue on policy of the power purchase by the Board was justified?
15. Whether the Commission was not justified in implementing Two Part Tariff ?
16. Whether the Commission was justified in its treatment on PF surcharge and KVAH tariff ?

17. Whether the Commission was justified in its treatment on peak load exemption charges ?

18. Whether the Commission was not justified in ensuring installation of energy meters to each consumer ?

19. Whether the Commission was not justified in its treatment on non-tariff income?

20. Whether the Commission's approach with regard to open access charges was reasonable ?

21. Whether the Commission's approach to the issue of energy balance was justifiable.?

22. What relief or reliefs, if any, are the appellants in ten appeals entitled to?

33. **Issue No. 1 :**

Having considered the history of the litigation covering ten appeals it is clear that the appeals relating to tariff orders for FY 2007-08, FY 2008-09, FY 2009-10 and FY 2010-11 have lost their importance for the reasons than the issues raised in these batch of appeals which are common to all the appellants in all the appeals have been traversed one way or the other or at one time or the other by this Tribunal in certain earlier appeals, and so far as the present appeals are concerned this Tribunal cannot reach altogether a different conclusion from the ones

reached earlier in identical appeals in as much as the principles set out in earlier batch of appeals still hold the field. Secondly, all the tariff orders have, by the time we are disposing of all the appeals, have attained their natural death and what remained for the Commission was to undertake true up exercise year by year so as to bridge in reasonable and scientific manner between what was projected and what was achieved. As earlier noticed, the Appeal No. 57 of 2008 and the Appeal No. 155 of 007 relate to the tariff order dated 17th September 2007 for the FY 2007-08. For the tariff order 2008-09 it is the order dated 3rd July 2008 that has been under challenge in Appeal No. 125 of 2008. In respect of the tariff order FY 2009-10, there are altogether four appeals being Appeal No. 40 of 2010, Appeal No. 196 of 2009, Appeal No. 199 of 209 and Appeal No. 45 of 2010. These appeal challenge the order dated 8th September 2009. The Appeal No 163 of 2010, Appeal No. 144 of 2010 and the Appeal No. 6 of 2011 are the three appeals preferred against the order dated 23rd April 2010 in respect of the tariff order for the FY 2010-11.

33.1. While disposing of the appeals certain decisions of this Tribunal have necessarily to be referred to. They are Appeal No 4 etc. of 2005, Appeal No. 5 of 2008, Appeal No 63 of 2008, Appeal No 153 of 2007, Appeal No. 102, 103, 112 of 2010 because of the fact the issues we are traversing were also traversed in them. In each of the appeals there is one common grievance of the appellants that the directions contained in

Appeal 4 etc of 2005 have not been complied with. Now, the Appeal 4 etc of 2005 which is a batch of ten appeals was the earliest in point of time decided as far back as 26th May 2006 when the operation of the Electricity Act 2003 was at a very nascent stage. Now, this is a 201-page judgment covering some of the major issues which are of vital importance and irrespective of the findings as may be arrived at in respect of all the issues the observations contained there are still relevant and binding and cannot be over-looked. When the issue is whether the directions contained in these batch of appeals decided by a Full Batch of this Tribunal have been complied with or not by the Commission in its treatment of four tariff orders i.e., FY 2007-08, 08-09, 2009-10 and 2010-11 we are to observe here that this issue itself can not be decided in a few words because this issue contains within itself a number of issues separately framed and while considering those issues separately we will be able to see the extent to which compliances have been so far made.

34. <u>Issue Nos. 2, 3 & 4</u>

These three issues, being they correlated to one another are treated comprehensively. The question of subsidy has been a burning one in all the appeals and interestingly the stand of the Government of Punjab in Appeal No. 45 of 2010 and 06 of 2011 where it is the appellant has been diametrically opposite to the stand of the industrial consumers who allege in all the appeals that at the cost of the industrial consumers there has not

been any attempt to decrease subsidy and agricultural pump set consumers are being provided with the supply of electricity without installing electrical meter and there has been infact increase of subsidy to protect the A. P. Consumers. It is further alleged that in spite of the directions contained in the order dated 25.06.2006 in Appeal No. 04 of 2005, the Commission has not made any attempt to fix tariff for the agricultural consumers at the normal tariff rate beyond the permissible limit. The stand of the individual consumers does not see eye to eye to that of the State Government because of difference in outlook. While the Government's approach has always been socio-welfare oriented the industrial consumers speak from the standpoint of commercial principle banking upon the observation of this Tribunal dated 25.06.2006 where the following observations were made:-

"114. For all consumers who are being cross-subsidized by the commission, a limit on consumption must be specified for which special support through cross subsidy may be given, but once the consumer exceeds that limit he should be charged at the normal tariff. In this regard, for the year 2007-08, parameters shall be fixed by the Commission. To effectuate the order, we consider it necessary to press into service Section 55 of the Act of 2003. As per Section 55 of the Electricity Act, 2003, a licensee is required to supply electricity through installation of correct meters in accordance with the Regulations made by the concerned authorities. Therefore, metered supply of power shall be given to every consumer of electricity including those who are subsidized or cross subsidized. In order to give effect to this direction the work should commence within three months and completed by the end of March, 2007 by the Board/Discom.

115. Under Section 65, State Government can grant subsidy to any consumer or class of consumers in the tariff determined by the State electricity regulatory Commission under Section 62. The State

*government is required to pay subsidy in advance and in such manner as may be specified by the regulatory commission. If the payment is not made in advance and in such manner as may be directed by the State commission, the tariff fixed by the State Commission shall be applicable. As per para 8.3 of the National Tariff Policy, payment of direct subsidy is a better way to support the economically weaker sections of consumers than the mechanism of cross subsidizing the tariff across the Board. As a substitute of cross subsidy, the State government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. It is the option of the State government to** subsidise or not to subsidise. It is also the option of the State government, in case they decide to give subsidy, to determine the extent to which the subsidy shall be given. In case the State Government decides to give subsidy as a substitute for cross subsidy, it will be a better way to support the poorer sections of the society, but as already pointed out, the option lies entirely in the hands of the state government.*

116. Keeping in view of the provisions of the Act, the Commission was bound to require the Government to pay the outstanding subsidy including Rural Electrification subsidy. The manner of payment was also to be specified under section 65 of the Act by the Commission and the State government would be bound by such specification. Section 29(2) (d) and (e) and Sub-section (5) of Section 29 of the 1998 Act is also to the same effect. It can not be left to the discretion of the State how the subsidy is to be paid to the Board. The State appears to be adjusting subsidy against the interest allegedly due from the Board on account of Government loans which is not permissible, as the Act provides for actual payment as a statutory obligation. Factually, subsidy has not been paid in cash and has merely been adjusted not against the principal but against interest. In any case, if subsidy would have been adjusted against the principal amount, the loans would have been substantially reduced and consequently, the interest payable by the Board would have come down drastically.

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

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

iii) To what extent the subsidy could be applied or adjusted towards the principal (loans)?.

iv) What is the amount of interest payable by the Board to the State?

v) What is the quantum of amount which the state has failed to disburse towards RE subsidy?

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

119. We further direct that:

i) The Commission shall determine the cost of supply of electricity to different class and categories of consumers; ii) The Commission shall also determine the average cost of supply;

iii) Once the figures of cost of supply and average cost of supply are known, the Commission shall determine the extent of cross subsidies added to tariff in respect of each class/category of consumers; and

iv) The consumers who are being cross subsidized by the Commission, a limit of consumption shall be specified for which special support through cross subsidy may be provided. Once the consumer exceeds the limit, he shall be charged at normal tariff. These directions shall be applicable from the next tariff year onwards."

iv) The consumers who are being cross subsidized by the Commission, a limit of consumption shall be specified for which special support through cross subsidy may be provided. Once the consumer exceeds the limit, he shall be charged at normal tariff. These directions shall be applicable from the next tariff year onwards."

35. It is contended in the Appeal Nos. 155 of 2007 and 57 of 2008 that in the year 2005-06 and 2006-07 agricultural consumption in excess of the approved level was not priced at the average cost of supply. Energy consumption was finalized by the Commission at 7317 MU as against 7000 MU approved for the year 2005-06 in the tariff order 2006-07, while for the year 2006-07 the Commission finalized the energy consumption by the agricultural sector at 8233 MU as against 7115 MU approved for the year 2006-07. Any excess supply of energy to the agricultural sector over and above what has been approved by the Commission in its tariff order should have been priced at the average cost of supply. In Appeal No. 125 of 2008 that relates to FY 2008-09 it has been alleged that the tariff was increased by 6% of the existing tariff ignoring the direction of the Tribunal as aforesaid and the total subsidy contributed by the subsidizing sector was increased to Rs. 1509 crore from Rs. 1241 crore and during the paddy season power was purchased @ Rs. 6/- per unit and sold to the agricultural consumers at the subsidized rate of Rs. 2.40 KWH. In Appeal No. 199 of 2009 high level of cross-

subsidization was alleged, while in Appeal No. 196 of 2009 it has been alleged that regulation 7 of Tariff Regulations, 2005 defined tariff phases – elimination of the commercial rates, differential declared in the tariff between the subsidizing category and the subsidized category and this has to be based on the combined average cost of supply. The elimination of common element of cross-subsidy is determinable on the basis of reduction of the percentage of cross-subsidy and reduction in terms of the quantum of commercial element of cross-subsidy in absolute terms. The second phase takes place after the elimination of commercial cross-subsidy by the year 2015 in terms of the regulations 7 (1) and 7(2) of the Tariff Regulations, 2005 and quantum of cross-subsidy in absolute terms per unit in the FY 2005-06 was 71 paise whereas in FY 2009-10 it was 65 paise while the target for reduction as per the regulations is 10% in each year meaning 7 paise reduction per year. The level of cross subsidy was 21.6 % in FY 2005-06 as against 16.1% in the year 2009-10 instead of at 13.60%. Learned advocate for the appellant in Appeal No. 40 of 2010 referred to the decision in **West Bengal Electricity Regulatory Commission Vs. CERC reported in (2002) 8 SCC 715** to argue that the consumers should be charged only for the electricity consumed by them on the basis of average cost of energy and the burden of subsidy has to be borne by the Government. It is further argued that the National Tariff Policy stipulates that the rates for the subsidized

category of consumers should not have been less than 80% of the average cost of supply which have been depicted at Rs. 4.03 per KWH. Accordingly, the tariff for A.P. Category should not be less than Rs. 3.23 per KWH whereas it has been fixed at Rs. 2.85 per KWH. On the contrary, the learned counsel for the Government argued that the Commission wrongly increased the tariff for agricultural pump set consumers from Rs. 2.85 per unit to Rs. 3.20 per unit i.e. increase of 12.2 % over the year 2009-10 and about by 30% over and above FY 2008-09. In Appeal No. 163 of 2010, it has been argued that the agricultural segment is unmetered and subsidized and it is of utmost importance that the consumers should freeze limit of consumption of the categories who are cross-subsidized and utility should be directed to recover consumption exceeding that limit at the normal tariff.

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

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

(b) Where gradual reduction of cross-subsidy is what is contemplated in the law absolute elimination was at least

inconceivable for the periods in respect of which the appeals are being heard.

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

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

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

37. It is true that in respect of the FY 2007-08, the Commission in the absence of relevant data determined the average cost of supply. For the year 2009-09, the Commission went on determining the average cost of supply but it cannot be doubted that there has been reduction of cross-subsidy in real terms as against FY 2007-08. There has been gradual increase of tariff for the A.P. Consumers from 2.40 per unit to Rs. 2.85

per unit in the year 2009-10 and again the tariff for this category of consumers was further increased from 2.85 per unit to Rs. 3.20 per unit in FY 2010-11. The contention of the Government of Punjab that tariff for the FY 2010-11 in respect of the agricultural consumers should have been determined at not more than Rs. 2.13 per unit is not sustainable, for if this argument is to be accepted then the level of cross-subsidy cannot be arrested and kept at +/- 20% of the average cost of supply. It is apparent that increase of 35 paise per unit for the A.P. consumers resulted in reduction of cross-subsidy from (-) 25.74% in FY 2009-10 to (-) 21.39% in FY 2010-11. The learned advocate for the Commission has pointed out the Commission has adjusted an extra amount of Rs. 260.37 crore by the Government to the Board towards other payments. In the FY 2009-10 the cross-subsidy level came down to 14.37% as against 16.21 % in the FY 2009-10. There has been a reduction in the cross-subsidy level of both the subsidized and subsidizing categories as compared to FY 2009-10. The combined average cost of supply was at 427.29 paise per unit as against 402.76 paise per unit in FY 2009-10. In absolute terms the quantum of cross-subsidy in FY 2010-11 was Rs. 558.14 crore as against Rs. 605.61 crore in FY 2009-10. Thus, a comparative study of four financial years clearly shows remarkable declining trend in the levels of cross-subsidy, although in the absence of complete data and particulars

the Commission had to rely on the usual methodology of determination of average cost of supply.

38. Cross-subsidy is intrinsically related to the determination of cost of supply. It is the stand of the appellants that tariff is to be based on the cost of supply of electricity to each category of consumers receiving supply at a particular voltage level and there should be no cross-subsidy amongst the different consumer categories. In the order dated 26.5.2006, it was made clear that there cannot be any quarrel with the proposition that the ultimate aim is to go by the concept of cost plus basis of supply to various categories and classes of consumers but this is impossible to achieve overnight and at one go. The spirit of the order was that the Commission was required to fix a road-map for achieving the objective to be notified by the Commission. Initially, the approach adopted by the Commission in determining the average cost of supply could not be necessarily faulted although it was made clear that the cost of supply does not mean average cost of supply. It has been contended in Appeal Nos. 155 of 2007 and 57 of 2008 that because of non-determination of category-wise cost of supply, cross-subsidy exceeded its limitation. It has been canvassed in Appeal No. 125 of 2008 that despite the direction of the Tribunal, actual cost of supply for different categories of consumers was not determined and in the absence thereof, the issue of

working out of the actual amount of cross-subsidy paid by the Consumers was getting swept under the carpet. This was the issue two in Appeal No. 199 of 2009, 196 of 2009 and 40 of 2010. Some relevant observations of this Tribunal on this issue are:-

"104. The point for our consideration is whether cross subsidy has increased or reduced has to be determined with reference to the consumption of electricity by the subsidizing and the subsidized consumers or is it to be worked out on the basis of cost of supply of electricity per unit, to different categories of consumers. In case the cross subsidy is to be worked out on the basis of the consumption of electricity by the subsidized and subsidizing consumers, the amount of cross subsidy in that event would depend on the quantum of sale of energy to various categories of consumers. By employing this method, the quantum of cross subsidy will be directly proportionate to the increase or decrease in the consumption of electrical energy by various categories of consumers. For example when the consumption of energy by the industrial consumers goes down, the quantum of cross subsidies will decrease. But when the industrial consumers are consuming more, the cross subsidy will go up. Again, when the sale of energy to the agricultural consumers goes up, the Therefore, in case the quantum of cross subsidy is measured on the basis quantum of cross subsidy will of consumption, it will vary depending upon the quantum of consumption by the consumers of various categories. This is illustrated by figures given in the written submissions filed on behalf of the appellants in proportionately increase. Therefore, in case the quantum of cross subsidy is measured on the basis of consumption, it will vary depending upon the quantum of consumption by the consumers of various categories. This is illustrated by figures given in the written submissions filed on behalf of the appellants in Appeal No.

35 of 2005. If this method is adopted, the cross subsidies between consumers may show inflated results even where the tariff for the industrial & commercial consumers and railways is reduced and tariff for the subsidized category is kept static or is increased, since, the calculations will depend on the consumption of electricity by the various categories. In the instant case, there has been a uniform increase of tariff for all categories by 10% but the quantum of cross subsidies considered from the point of view of consumption may have gone up. Basically, the distortions would disappear once the cross subsidies are eliminated. But this still seems to be a far cry in view of the recent Electricity (Amendment) Bill, 2005, which has been tabled in the Parliament. Section 7 of the Amendment Bill seeks to substitute the following clause in place of Section 61(g) of the principal Act:

> *(g) that the tariff progressively reflects the cost of supply of electricity, and also reduces cross subsidies in the manner specified by the Appropriate Commission,"*
>
> *For the present, however, the law is that eventually the cross subsidies are to be reduced and eliminated so that tariff progressively reflects the cost of supply.*
>
> *105. It appears to us that the question whether cross subsidies have increased or decreased should be considered with reference to the rate of supply of electricity per unit to different categories of consumers and not on vagaries of consumption, which are indefinite and cannot be controlled by the Commission or the Board. In two years viz. 2004-05 and 2005-06; there has been a 6 paise/unit** increase in tariff for the industrial consumers whereas there has been a 15 paise/unit** increase in tariff for the domestic consumers. This being so it cannot be said that there has been an increase in the cross subsidies.*

*106. It is significant to note that in the year 2004-05, tariff for agricultural consumption was fixed at Rs. 2/- per unit. It is equally important to note that earlier electricity was being supplied to agriculturists free of cost. Therefore by applying the aforesaid ** method, it can be safely Stated that cross subsidy has been lowered during the year 2004-05 and was not increased during the year 2005-06. It may not be proper to consider the question whether cross subsidy has increased or decreased during the year 2005-06 by making a comparison with the tariff for the year 2004-05 as the tariff for the year, 2004-05 was reduced on the basis of an assumption that the Board will generate a surplus of Rs. 438.29 crores. Subsequently, after the truing up exercise, it was revealed that the Board has actually suffered a revenue gap of Rs. 305.24 crores on account of reduction in tariff. However, the Board had a surplus of Rs. 36.66 crores for the financial year 2003-04. Therefore, the revenue gap for the year 2004-05 was to the tune of Rs. 268.58 crores. This revenue gap had to be recovered during the year 2005-06 and for that and other factors, the Commission in its wisdom increased the tariff of all categories of consumers by 10%. Therefore, cross subsidy for the year 2005-06 was not reduced as compared to the year 2004-05.*

107. The cross subsidies have to be brought down by degrees without giving tariff shock to the consumers. Though it is desirable that cross subsidies are reduced through every tariff order but in a given situation, it may not be possible. As long as cross subsidy is not increased and there is a roadmap for its gradual reduction in consonance with Section 61(g) of the Act of 2003 and the National Tariff Policy, the determination of tariff by the Commission on account of existence of cross subsidy in the tariff can not be flawed.

108. The learned counsel for the Industrial Consumers canvassed that the Commission is required to safeguard the interests of the consumers by

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

109. According to Section 61(g) of the Act of 2003, the Commission is required to specify the period within which till the Commission progressively reaches that stage, in the interregnum, the roadmap for achieving the objective must be notified by the Commission cross subsidy would be reduced and eliminated so that the tariff progressively reflects the cost of supply of electricity. Under Section 28(2) of the Act of 1998, the Commission while prescribing the terms and conditions of tariff was required to safeguard the interests of the consumers and at the same time, it was to ensure that the consumers paid for the use of the electricity in a manner based on average cost of supply. The word "Average" preceding the words "cost of supply" is absent in Section 61(g) of the Act of 2003. The omission of the word "Average" is significant. It indicates that the

cost of supply means the actual cost of supply, but it is not the intent of the legislation that the Commission should determine the tariff based on cost of supply from the date of the enforcement of the Act of 2003. Section 61(g) of the Act of 2003 envisages a gradual transition from the tariff loaded with cross subsidies to a tariff reflective of cost of supply to various class and categories of consumers when the tariff Policy was notified by the Government of India, within six months from January 6, 2006, i.e. by July 6, 2006. In consonance with the tariff policy, by the end of the year 2010-11, tariffs are required to be fixed within + 20% of the average cost of supply (pooled cost of supply of energy received from different sources). But the policy has reached only up to average cost of supply. As per the Act, tariff must be gradually fine tuned to the cost of supply of electricity and the Commission should be able to reach the target within a reasonable period of time to be specified by it. Therefore, for the present, the approach adopted by the Commission in determining the average cost of supply cannot be faulted. We, however, hasten to add that we disapprove the view of the Commission that the words "Cost of Supply" means "Average Cost of Supply". The Commission shall gradually move from the principle of average cost of supply towards cost of supply."

39. In the last tariff order dated 23.04.2010 in relation FY 2010-11, the Commission observed as follows:-

"In compliance with the order of the ATE dated 25.6.2006, the Board was asked in the tariff order for FY 2007-08 to initiate a study for determination of cost of supply of electricity to different classes and categories of consumers. The Board, in its letter dated 17.2.2010 has

intimated that limited tenders have been floated to five firms for submitting the bids to engage consultants which will be opened on 02.03.2010. In the light of ATE's directions the successor entity needs to ensure that the process of engaging consultants for carrying out the proposed study is expedited and the findings of the study as well as its on views thereon are submitted to the Commission as early as possible".

The above words show that it is the PSPCL, the successor entity of the PSEB that has to submit all relevant data and analysis to the Commission so as to enable the Commission to determine the cost of supply category-wise that has its co-relation to the extent of cross-subsidy. This issue has in fact been dealt with by an appropriate direction contained in Appeal No. 05. of 2008 and 63 of 2008 decided on 25.02.2011 in these words:-

"17. The next issue is with reference to the determination of category-wise cost of supply and capping of consumption by subsidised category of consumers. In the remand order passed by the Tribunal, a specific direction had been issued by the State Commission to determine category-wise cost of supply and to ascertain the magnitude of cross subsidization from that level. It was also further directed that the State Commission shall put up a cap on the consumption of energy by subsidized category of consumers to be allowed at subsidized tariff. Without considering the same, the State Commission in the impugned order has simply mentioned that the directions of the Tribunal in the Remand order pertained to the year 2007-08 and accordingly, the State Commission would deal with it only in Tariff Order for the year 2007-08. The State Commission has, however, not indicated any action plan or

given any directions for carrying out studies and collection of data required for implementation of the directions of the Tribunal.

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

19. In respect of determination of normative level for consumption of energy in terms of directions given by this Tribunal in the Remand Order, the State Commission has again expressed its limitation in evolving normative levels of agricultural consumption in view of variations in agro climatic and differing crop pattern in the State. It is also observed by the State Commission that even if the normative level of consumption is evolved, they would not get monitored in the absence of complete metering of agricultural consumption. Thus, by virtue of these observations, the State Commission has continued to allow agricultural consumption on actual basis casting additional burden of cross subsidization to be borne by the subsidizing category of consumers.

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

i) the principles and methodology specified by the Central Commission for determination of tariff

applicable for Generating Companies and Transmission Licensees;

ii) *The generation, transmission, distribution of and supply of electricity are conducted on commercial principles;*

iii) *The factors which should encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*

iv) *The safeguarding of consumers' interests and the recovery of the cost of electricity in a reasonable manner;*

v) *The tariff should progressively reflect the cost of supply of electricity and also should reduce the cross subsidy within the period to be specified by the State Commission;*

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

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

consideration all these principles while considering tariff related issues which should aim at passing on only reasonable and efficient cost to the consumers while making optimum use of the investment.

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

24. SUMMARY OF OUR FINDINGS.

I. The State Commission has complied with the directions of the Tribunal given in the remand order on issues (1) & (2).
II. On the third issue the State Commission is again directed to carry out the Tribunal's directions of determining category wise cost of supply and setting limit of consumption for subsidised consumers for which support through cross subsidy may be provided."

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

"17. Section 61(g) of the 2003 Act stipulates that the tariff should progressively reflect the cost of supply and cross subsidies should be reduced within the time period specified by the State Commission. The Tariff Policy stipulates the target for achieving this objective latest by the end of year 2010-11, such that the tariffs are within ± 20% of the average cost of supply. In this connection, it would be worthwhile to examine the

original provision of the Section 61(g). The original provision of Section 61(g) "the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross subsidies within the period to be specified by the Appropriate Commission" was replaced by "the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies in the manner specified by the Appropriate Commission" by an amendment under Electricity (Amendment) Act, 2007 w.e.f. 15.6.2007. Thus the intention of the Parliament in amending the above provisions of the Act by removing provision for elimination of cross subsidies appears to be that the cross subsidies may be reduced but may not have to be eliminated. The tariff should progressively reflect the cost of supply but at the same time the cross subsidy, though may be reduced, may not be eliminated. If strict commercial principles are followed, then the tariffs have to be based on the cost to supply a consumer category. However, it is not the intent of the Act after the amendment in the year 2007 (Act 26 of 2007) that the tariff should be the mirror image of the cost of supply of electricity to a category of consumer.

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

19. The National Electricity Policy provides for reducing the cross subsidies progressively and gradually. The gradual reduction is envisaged to avoid tariff shock to the subsidized categories of consumers. It also provides for subsidized tariff for consumers below poverty line for

minimum level of support. Cross subsidy for such categories of consumers has to be necessarily provided by the subsidizing consumers.

20. The Tariff Policy clearly stipulates that for achieving the objective, the State Commission has not been able to establish that the tariff progressively reflects the cost of supply of electricity, latest by the end of the year 2010-11, the tariffs should be within ±20% of the average cost of supply, for which the State Commission would notify a road-map. The road map would also have intermediate milestones for reduction of cross subsidy.

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

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

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

ii) The tariff for different categories of consumer may progressively reflect the cost of electricity to the consumer category but may not be a mirror image of cost to supply to the respective consumer categories.

iii) Tariff for consumers below the poverty line will be at least 50% of the average cost of supply.

iv) The tariffs should be within ±20% of the average cost of supply by the end of 2010-11 to achieve the objective that

the tariff progressively reflects the cost of supply of electricity.

v) The cross subsidies may gradually be reduced but should not be increased for a category of subsidizing consumer.

vi) The tariffs can be differentiated according to the consumer's load factor, power factor, voltage, total consumption of electricity during specified period or the time or the geographical location, the nature of supply and the purpose for which electricity is required.

Thus, if the cross subsidy calculated on the basis of cost of supply to the consumer category is not increased but reduced gradually, the tariff of consumer categories is within ±20% of the average cost of supply except the consumers below the poverty line, tariffs of different categories of consumers are differentiated only according to the factors given in Section 62(3) and there is no tariff shock to any category of consumer, no prejudice would have been caused to any category of consumers with regard to the issues of cross subsidy and cost of supply raised in this appeal."

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

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

distribution system of respondent no. 2 is pathetic. Only about 1/4th of 11 KV feeders have been metered and very small numbers of transformers have been provided with meters. Only 68% of the consumer meters are functional in the distribution system as indicated in Table-37 of the impugned order. It is also noticed that a large number of meters are old electro mechanical meter which are not functioning. This is in contravention to Section 55 of the Act. Section 55(1) specifies that no licensee shall supply electricity after the expiry of two years from the appointed data, 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."

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

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

"*17. The next issue is with reference to the determination of category-wise cost of supply and capping of consumption by subsidised category of consumers. In the remand order passed by the Tribunal, a specific direction had been issued by the State Commission to determine category-wise cost of supply and to ascertain the magnitude of cross subsidization from that level. It was also further directed that the State Commission shall put up a cap on the consumption of energy by*

subsidized category of consumers to be allowed at subsidized tariff. Without considering the same, the State Commission in the impugned order has simply mentioned that the directions of the Tribunal in the Remand order pertained to the year 2007-08 and accordingly, the State Commission would deal with it only in Tariff Order for the year 2007-08. The State Commission has, however, not indicated any action plan or given any directions for carrying out studies and collection of data required for implementation of the directions of the Tribunal.

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

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

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

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

i) The principles and methodology specified by the Central Commission for determination of tariff applicable for Generating Companies and Transmission Licensees;

ii) The generation, transmission, distribution of and supply of electricity are conducted on commercial principles;

iii) The factors which should encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

iv) The safeguarding of consumers' interests and the recovery of the cost of electricity in a reasonable manner;

v) The tariff should progressively reflect the cost of supply of electricity and also should reduce the cross subsidy within the period to be specified by the State Commission;

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

22. The Electricity Board is bound to remain efficient and competitive while making economical use of resources and optimising through investment. Accordingly, the reasonable costs which are efficiently incurred in competitive environment by making optimum use of the investment by State Electricity Board can only be passed on to the consumers. Thus, the State Commission is supposed to take into consideration all these principles while considering tariff related issues which should aim at passing on only reasonable and efficient cost to the consumers while making optimum use of the investment.

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

43. Accordingly, on this issue the Commission was directed to carry out the Tribunal's directions to determine category-wise cost of supply and setting a limit of consumption for subsidized consumer for which support through cross subsidy may be provided for.

44. This issue has been raised in Appeal No. 57 of 2008, 155 of 2007, 125 of 2008, 163 of 2010 40 of 2010, 196 of 2009, 199 of 2009, 144 of 2010 and other appeals in these words that despite the direction contained in Appeal No. 4 of 2008 the Commission committed default in determining the category-wise cost of supply as a result of which the industrial consumers have been burdened with unjustifiable tariff and to the advantage of subsidized consumers at the cost of the former. The matter of the fact is that when this issue was raised through the ten appeals as aforesaid the decision of the Tribunal in Appeal No. 5 of 2008 and 63 of 2008 did not come into being because the decision was reached in these two appeals on 25th February 2011 before which the 10 appeals were filed we are at the threshold of the year 2012 and it has come out

from the submission of the learned counsel for the Commission that the Commission has undertaken study and exercises for category-wise determination of tariff which will be having its co-relation with amount of subsidy for the subsidized category of consumers. In these circumstances, we hope and trust that the Commission will implement the direction of the Tribunal in Appeal No. 5 of 2008 and 63 of 2008 in true spirit upon hearing all concerned and we direct accordingly once again.

Issue No. 5

45. The issue concerning diversion of funds was first considered in Appeal No. 4 of 2005 and it is profitable to reproduce the views of the Tribunal in that appeal:

"At the time of issuing Tariff Order for the year 2003-04, the Commission had asked PSEB to explain its position about diversion of capital funds towards revenue expenditure. PSEB had not given any satisfactory reply to this query at that time.

During the processing of ARR for the year 2004-05, the Board has further made certain submissions on diversion of funds vide letter of Member (Finance) dated October 20, 2004. It is stated therein that diversion of funds is mainly due to non-revision of tariff in earlier years as well as free AP supply. These ultimately have affected revenue receipts and the cost of operations are going up. It is further stated that the historical mis-match cannot be balanced without total financial re-

structuring of the Board's Balance Sheet. However, the accumulated losses and gap between capital funds and its utilization is being looked into in the Financial Restructuring Plan being finalized by the Government of Punjab. Further, during the year 2003-04, there was no diversion of capital funds. It is also Stated that the Board has made earnest efforts to reduce the cost of loans and other finance charges which have resulted in the net interest and finance charges during the year 2003-04 coming down to Rs. 631.94 crores only from Rs.709.14 crores during the previous years. Disallowance of Rs.100 crores on ad-hoc basis by the Commission on account of RSDP cost, accumulated losses etc. is also mentioned.

Finally it is to allow total interest and finance charges

as claimed in the ARR while finalizing the tariff for the year 2004 -05.

The Commission notes that the reply of the Board is rather general on earnest efforts to reduce the cost of loans and other finance charges which have resulted in the net interest and finance charges during the year 2003-04 coming down to Rs. 631.94 crores only from Rs.709.14 crores during the previous years. Disallowance of Rs.100 crores on ad-hoc basis by the Commission on account of RSDP cost, accumulated losses etc. is also mentioned.

Finally it is requested to allow total interest and finance charges as claimed in the ARR while finalizing the tariff for the year 2004 -05.

The Commission notes that the reply of the Board is rather general on the main issue of diversion of funds. Even in this, the Board accepts the fact of "historical mismatch" which can be remedied only through re-structuring of Board's Balance Sheet. The Commission also notes that the Board never commented about disallowance of Rs.100 crores in interest charges after issue of Tariff Order for the year 2003-04 in May 2003 and has first commented on it only now in October 2004.

In order to reach its own conclusions on the matter, the Commission has undertaken detailed exercise for assessment of extent of diversion of funds. In this connection it is noted that, the PSEB is an autonomous body created by the Government of Punjab under the statutory provisions of the Electricity (Supply) Act, 1948 for the specific purpose of generation, transmission and distribution of electricity in the State. For creation of the infrastructure, PSEB received funds from the State Government in the form of equity, loans, subsidy and grants for capital assets. Besides raising loans from the banks and various financial institutions, the Board utilized from time to time the funds available in the form of consumer contributions. The accumulations in GPF of the employees have also been utilized by the Board for this purpose with the prior approval of the

State Government. The extent and effect of diversion of funds meant for capital expenditure ending the years 2002-03 and 2003-04 as assessed by the Commission is exhibited in Table below:

		Grant & subsidy	*434.35*		*414.53*	
zTable - Diversion of Capital Funds S.No	*Item*	*Amount (Rs. In crores) toward cost of capital assets*	*2002-03*	*2003-04*		
1.		*Net Fixed Block*	*8745.87*		*8492.78*	
2. *7.*		*Add works in progress*	*2315.30*		*2382.49*	
		Less WIP of RSDP	*1469.27*		*1444.21*	
3. *8.*		*Total (6+7) allocable to Irrigation Branch*	*1664.08*	*1784.48*		*1784.48*
		Balance	*846.03*	*846.03*	*938.28*	*938.28*
4. *9.*		*WIP (2-3)*	*Balance capital base (5-8)*	*7927.82*		*7646.58*
			Total (1+4)	*9591.90*		*9431.06*
10. *5.*			*Requirement of loans+ Equity*	*7927.82*		*7646.58*
11.			*Amount of GoP*	*4537.53*		*4537.53*
6.			*Consumer loans Contribution*	*1229.73*		*1369.95*
12.			*Less RSDP loans*	*580.28*		*580.28*

		to be apportioned to irrigation Branch@20.9%				
13.	*Balance GoP Loans (11-12)*	*3957.25*	*3957.25*		*3957.25*	*3957.25*
14.		*Add other loans*	*4220.11*		*3836.60*	
15.		*Equity*	*2806.11*		*2806.11*	
16.		*Accumulations in GPF*	*1269.19*		*1379.99*	
17.		*Less amount invested*	*112.78*		*151.47*	
18.	*GPF utilized by Board (16-17)*	*1156.41*	*1156.41*	*1228.52*		*1228.52*
19.	*Actual loans +Equity (13+14+15 +18)*	*12139.88*	*12139.88*	*11828.48*		*11828.48*
20.		*Amount Diverted*	*4212.06*		*4181.90*	

As per provisional balance sheet for the year 2003-04, the value of gross fixed assets of PSEB as on 31.3.2004 is Rs. 13402.08 crores. After

deduction of accumulated depreciation of Rs. 4909.30 crores, the value of net fixed assets comes to Rs. 8492.72 crores. Besides net assets worth Rs. 8492.78 crores, the value of works-in-progress at the close of the year is Rs. 2382.49 crores inclusive of works-in-progress amounting to Rs. 1444.21 crores pertaining to RSDP allocable to irrigation Branch. Thus, after adding net works-in-progress amount to Rs. 938.28 crores allocable to Board, the total assets work out to Rs. 9431.06 crores. Of these, the assets created with the funds available from consumers' contribution, grants and subsidy towards capital assets work out to Rs. 1784.48 crores. This leaves the balance assets of Rs. 7646.58 crores. Thus, the requirement of loans and equity to finance these assets should have been limited to Rs. 7646.58 crores only.

Against the above requirement, PSEB actually availed of loans and equity amounting to Rs. 11828.48 crores upto the period ending March 31, 2004. Clearly, the Board has availed loans of Rs. 4181.90 crores (11828.48-7646.58) in excess of its requirement for capital assets. This is obviously meant for diversion towards revenue expenditure. The PSEB has thus utilized these excess loans for purposes other than creation of assets. From the above table, it is also noted that the diversion of capital funds upto the end of financial year 2003 was Rs. 4212.06 crores. The diversion of fund to the large scale continued during the year 2003-04 as

well as the corresponding figure at the end of 2003-04 was Rs. 4181.90 crores.

The fact of substantial diversion of funds is also proved by the perusal of Balance Sheets of the Board. As will be seen therefrom, at the end of the year 2002-03, the accumulated losses of the Board as reflected in the Balance Sheet were Rs.708.37 crores only. However, to this is required to be added unpaid R.E. subsidy to the Board to the extent of Rs.3241.94 crores, making total of RS.3950.31 crores. This is on account of the fact that though the Board has been claiming R.E. subsidy from the Government even beyond the interest chargeable on the Government loans to the Board, the Government has clearly refused to bear any burden on account of R.E. subsidy beyond the amount of interest due on Government loans. In view of the clear and consistent policy of the Government in this regard and the clear refusal of the Government, the claim of the Board towards RE. Subsidy needs to be restricted only to the amount of interest on Government loans. The amount of unpaid subsidy of Rs.3241.94 crores represents subsidy claimed by the Board beyond the amount of interest on Government loans and as such is not payable by the Government. This, therefore, needs to be added to the accumulated losses taking the total accumulated losses to Rs.3950.31 crores. These accumulated losses would clearly have been funded by the Board by taking loans from outside sources. Obviously the loans taken for other

purposes, therefore, would have been diverted to fund the accumulated losses. Thus, even perusal of the Board's Balance Sheet substantiates diversion of funds to the order of Rs.4000 crores at the end of year 2002-03.

The position continued during the next year 2003-04 as well. The accumulated losses are represented as Rs.542.58 crores in the provisional Balance Sheet for this year. There was no change in the figure of unpaid subsidy during the year 2003-04 as there was no question of R.E. subsidy after coming into existence of the Commission and its passing of Tariff Order. Therefore, only unpaid subsidy of Rs.3241.94 crores as above is to be added to work out the total accumulated losses. Adding accumulated losses to unpaid subsidy, the total accumulated losses at the end of 2003-04 work out to Rs.3784.52 crores which is roughly at the same level as the year before. This proves that the substantial diversion of funds continued during the year 2003-04 as well.

The diversion of Capital fund is not an accepted practice. More importantly, it has carrying cost by way of interest on the borrowed funds so diverted. Appropriately, these carrying costs need to be borne either by the Board or the Government. The Commission feels that the consumers should justifiably not be burdened with these costs. The Commission has given time to the Government and the Board in its past

two Tariff Orders to undertake the restructuring and to clear these costs from the Balance Sheet. However, adequate progress in this regard has not taken place as no concrete results are reflected by way of clearing of these costs in the Balance Sheet. The Commission is alert to the fact that the costs are real as far as Board is concerned and are direct results of events prior to setting up of the Commission. As such, taking a considerate view, the Commission decides to continue its past practice of disallowing Rs.100 crores towards this liability and allows only balance to be charged from the consumers through the tariff.

The Commission, therefore, disallows interest of Rs. 100 crores from the amount of interest allowable for the year 2004-05.

Interest on fresh borrowings of Rs. 1090.00 crores has been calculated at Rs. Rs.45.44 crores. Consumers contribution of Rs.139.68 crores, say Rs.140.00 crores (estimated at previous year's level as per provisional accounts for the year 2003-04) is likely to be received during the current year. As such, the actual borrowings for investment will be to the tune of Rs.869.00 crores after adjustment of this amount. Therefore, interest on fresh borrowing has also been proportionately reduced by RS.6.30 crores being interest on Rs.140.00 crores. Thus, the interest amount for the year 2004-05 will work out to RS.875.62 crores as above.

The Commission, therefore, approves interest and finance charges of Rs. 944.31 cores (gross) and Rs. 875.62 crores (net) after capitalization of Rs. 68.69 crores for the year 2004-05.

Tariff Order 2005-06

As analysed by the Commission in its earlier Tariff Order (and not disputed by the Government of Punjab or the Board), there is a huge mismatch amounting to more than Rs.4000 crores between the assets and liabilities of the Board. Alternately, the Board is carrying accumulated losses of more than Rs.4000 crores. Either way, the Board is compelled to constantly carry a corresponding burden of unproductive debt. Going strictly by commercial principles, the cost of this debt cannot be treated as a pass through, legitimate revenue expenditure. The Government of Punjab itself had Stated in its comments on the ARR for the year 2002-03 that interest costs of loans which do not result in benefits to the consumers cannot be passed on to them.

There is only partial justification in the arguments that the consumers must cheerfully bear this burden which is historical and is entirely due to the reason that these losses occurred because tariffs were not raised sufficiently in the past and thus the consumers alone benefited from this cause. There are at least two other equally important reasons for these recurring losses viz. the inability of the Board to achieve reasonable levels of operating efficiencies in the past and the failure of the

Government (in the period prior to the commencement of the regulatory regime) to either provide subventions to the Board to liquidate annual losses or to resolve the issue of large unpaid RE subsidies, as was Stated, year after year, in the Balance Sheet of the Board.

If the Commission is to go by the letter and spirit of the Electricity Act, 2003, it must decide that it is the obligation of all the three major stakeholders - the Government of Punjab, the Board and the consumers - to discharge such obligations. Even though it is a generally accepted principle of corporate business that accumulated losses have to be taken care of by the owners, the Commission feels that all the three must make broadly similar sacrifices in such situations. Furthermore, the Government of Punjab had accepted its responsibility to clean up the Balance Sheet of the Board and the State Government has been constantly assuring the Commission for the last three years but unfortunately, the required process has not been completed till date.

It may be stated here that the consumers are currently being made to discharge another large obligation from which they deserve relief. In the last few years, the interest rates have fallen all around. Like all other commercial organizations, and also in response to directions of the Commission, the Board has been successfully exchanging its old debts for cheaper and easier loans as a result of which the average interest rate being paid by the Board on the institutional loans has already come down

to 7.05 - 11.5 percent from the earlier rate of 11.5 - 18 percent. However, the Government of Punjab has shown no such accommodation to the Board in respect of its large portfolio of loans aggregating to Rs.4537.53 crores. Legitimately, the consumers could expect a relief of around Rs.100 crores on this account.

In the above stated circumstances, the Commission feels that the decision to disallow interest cost of RS.100 crores is just, reasonable and fair and is in no way harsh. The Commission further feels that within the provisions of the law the Government of Punjab cannot be directly burdened with any such charges.

On the basis of above decisions, the Commission approves interest and finance charges as given in Table below:

Interest Charges approved for the year 2005-06

(Rs. In crores) S.No.	*Particulars*	*Loans o/s as on 31.3.05*	*Receipt of loans*	*Repayment of loans*	*Loans o/s as on 31.3.06*	*Amount of interest*
1	*2*	*3*	*4*	*5*	*6*	*7*
1.	*As per ARR (other than WCL*	*4124.66*	*1876.00*	*840.19*	*5160.47*	*56537*

	& Governme nt loans)					
2.	*Approved by Commissio n (other than WCL & Governme nt loans)*	*3825.66*	**1060.00*	*840.19*	*4045.47*	*479.27*
3.	*Working capital loan*	*600.00*	*518.74*	*600.00*	*518.74*	*37.71*
4.	*Governme nt loans*	*4537.53*	*-*	*-*	*4537.53*	*480.73*
5.	*Total (2+3+4)*	*8963.19*	*1578.74*	*1440.19*	*9101.74*	*997.71*
6.	*Add finance charges*	*-*	*-*	*-*	*-*	*15.90*
7.		*Grand Total*			*1013.61*	
8.	*Less capitalizat ion*	*-*	*-*	*-*	*-*	*102.20*

9.	*Net interest & finance charges*	-	-	-	*911.41*

Receipt of loans of Rs.1060.00 crores = Approved investment of Rs. 1200 crores - *consumer contribution of RS.140 crores*

Thus, net interest and finance charges work out to Rs.911.41 crores for the year 2005-06. Out of this amount, Rs.100 crores is to be disallowed on account of diversion of capital fund for revenue purposes for the year 2005-06 as was decided by the Commission in para 7.15.8 of the Tariff Order for the year 2004-05. The net interest and finance charges, thus, work out to Rs.811.41 crores for the year 2005-06.

The Commission, therefore, approves net interest and finance charges of Rs. 811.41 crores net of capitalization of Rs.102.20 crores for the year 2005-06."

"123. It seems to us that the Commission has correctly analyzed the situation that the consumers are being burdened with interest on account of diversion of funds. The Commission was also entirely right in its view that borrowings made for the purpose of capital expenditure have been wrongly diverted for the purpose of meeting the revenue deficit. But in practical terms, except for relieving the consumers of Rs. 100 crores interest for each of the aforesaid years, the rest of the interest was saddled on them by the Commission. While disallowing the aforesaid

amount, the Commission had also expressed the view that Section 59 of Electricity (Supply) Act, 1948, Section 29(2) of the Electricity Regulatory Commissions Act, 1998 imply that the Commission is bound to allow only such expenses/ costs in the ARR, which are properly chargeable to revenue and would generally be incurred in an organization being run on commercial lines and operating at adequate and improving levels of efficiency, that the Commission is required to take care of the interests of the consumers, that in view of the statutory provisions, the objections raised by the consumers cannot be brushed aside lightly, and that any expenses incurred to service the debt raised in the past to meet the revenue deficit cannot be admitted in the current ARR. Even though, it was the consistent opinion of the Commission that diversion of funds is impermissible, yet it has allowed pass through of the bulk of the interest, ostensibly on the ground that in case the Board is asked to bear the entire interest load, it will have a crippling effect on its financial resources.

124. Basically, the main reasons for the diversion of funds are related to RSD cost allocated to the Board, subsidy including RE subsidy, high rate of interest of Government loans etc. In view of such heavy burden, the Board requires funds for its revenue expenses. The Board appears to have adopted the strategy of diversion of funds because of the necessity created by the aforesaid burden imposed on it.

125. In the tariff order for the year 2003-04, it is pointed out by the Commission that the balance sheet of the Board for the year 2001-02 showed an outstanding subsidy of Rs. 5470 crores as recoverable from the State Government According to the Board this amount related to rural electrification subsidy and cash subsidy. As already noted, rural electrification subsidy due to the Board from the government was unilaterally limited to the amount of interest accrued due from the Board to the government on the loans extended by the government. That means the outstanding subsidy amount was not adjusted against the principal amount due from the Board to the government, and only the interest payable by the Board to the State government was adjusted against the RE subsidy. Even with regard to cash subsidies, which were due from the government to the Board, the State did not like the intervention of the Commission when the Commission took up the matter with the State Government through its communication dated April 4, 2003. The State Government replied that the Commission is not legally bound to resolve pending issues between PSEB and the State Government This stand of the State Government is inconsistent with the provisions of the Act of 1998 since these are not issues concerning the Board and the State alone but they are issues having an impact on tariff payable by the consumers. These are actually tariff issues which fell within the domain of the Board. The Commission ought not to have felt bound by the view expressed by

the State of Punjab in the aforesaid letter and ought not to have allowed heavy financial burden on the Board to continue.

126. It also needs to be pointed out that the Board had exchanged its institutional debts for cheaper ones. As a consequence thereof the average interest rate came down to 7.05% – 11.5%P.A. from the earlier rate of 11.5% - 18% P.A. . In so far as the Government of Punjab is concerned, it did not scale down the rate of interest in respect of the loan of Rs 4537.53 crores standing to the account of the Board. The aforesaid factors and RSD cost seem to have substantially contributed to the financial crunch which the Board has been facing.

127. It has been pointed out by the Commission that the total assets of the Board are to the tune of Rs. 9431.06 crores. Out of these, the assets created with the funds available from the consumers' contributions, grants and subsidies work out to Rs. 1784.48 crores. Therefore, the value of the balance assets is Rs. 7646.58 crores. It has been rightly observed by the Commission in the tariff order for the year 2004-05 that the requirement of loans and equity to finance these assets should have been limited to Rs. 7646.58 crores only, but the Board took loans amounting to Rs. 11828.48 crores during the period ending with March 31, 2004. Thus, the Board availed loan of Rs. 4181.90 crores in excess of its requirement for capital assets. This, according to the commission, were meant for diversion towards revenue expenditure.

128. It seems that the Commission felt that these mistakes cannot be corrected as the State government is insulated from its directions relating to tariff issues. This perception cannot be countenanced in law as otherwise tariff cannot be determined according to the parameters and factors laid down in Section 61 of the Act of 2003. The Commission is required to determine the tariff by seeking guidance from factors which would encourage economical use of the resources and optimum investments and at the same time safeguard the interests of the consumers and recover the cost of electricity in a reasonable manner etc. (see Section 61 particularly 61(c), (d) and (g).”

46. In the Appeal No. 57 of 2008 it has been alleged that the Respondent No.-1 was duty bound to repay an amount of Rs. 580 Crore with Rs. 1322.62 crore while doing up the true up exercises for the year 2005-06 and the impact of the same would come to Rs.91 crore and it would go to reduce the amount of interest cost to that extent. In the order dated 13.9.2007 passed after remand in Appeal No. 4 of 2005 the Commission admitted the amount of loan raised for RSD Project as pertaining to Irrigation Department to the extent of Rs 1322.62 crores instead of Rs. 580 crores. In Appeal No. 155 of 2007 it has been contended also that diversion of capital funds resulting into higher revenue requirements into which to be considered for the FY 2005-06 of this issue was again considered in Appeal No. 5 of 2008 and 63 of 2008

and the finding of the Tribunal in these two appeals of this issue requires to be mentioned as here under:

"16. Let us now deal with the issue of Diversion of Funds:

i) The Tribunal in its Judgment dated 26.5.2006 had directed the following:

"129. It appears to us that the breach of financial discipline by the Board violates the provisions of Section 61 of the Act of 2003 and corresponding provisions of Section 29(2) of the Act of 1998. Since the issue of diversion of funds is interlinked with other issues namely RSD cost allocation subsidy, high rate of interest on Government loans etc., the controversy relating to the extent of interest which can be allowed as a pass through can not be resolved unless the other issues are also decided by the Commission as directed by us. The resolution of these issues are bound to take time and cannot be decided without relevant data. Therefore, relief can only be given to the consumers for the future years.

130. In view of the foregoing, we direct that for the year 2006-07 the issue relating to the extent of interest which can be allowed as a pass through shall be determined and resolved by the Commission along with the determination of the issue relating to RSD cost allocation, subsidy and high rate of interests on Govt. loans. This shall be accomplished during the truing up exercise for the year 2006-07".

ii) The State Commission has carried out detailed exercise regarding diversion of funds and has determined year-wise quantum of funds diverted for revenue purpose for the years 2002-03 to 2005-06. However, the State Commission could not work out the funds diverted in the year 2006-07 due to non-availability of the accounts for FY 2006-07. The State Commission has tentatively adopted the figures of Rs. 3824.23 crores of diverted fund worked out for FY 2005-06 for FY 2006-07 also subject to review on availability of audited accounts for the FY 2006-07. After accounting for RBI bonds amounting to Rs. 637.35 crores having no interest liability the net amount of diversion has been worked out as Rs. 3190.88 crores. On the basis of weighted average interest rate of 12.22% in respect of State Government loans the State Commission has worked out interest on diverted funds as Rs. 389.92 crores. Out of this Rs. 100 crores has already been disallowed by the State Commission in the Tariff Order for FY 2006-07. The balance Rs. 289.92 crores has been directed to be disallowed from the interest payable on Govt. loans in the APR for 2006-07 when the same is reviewed in Tariff Order for 2007-08.

iii) We find that the State Commission has allowed the relief according to the directions of this Tribunal."

Therefore, this issue is no longer res integra and is disposed of accordingly.

Issue No. 6

47. The allocation of cost of RSD Project between the erstwhile PSEB (now called PSPCL) and the Irrigation Department of the Government of Punjab has been a pertinent issue since the time when the appeal in respect of the annual tariff order for the FY 2002-03 was decided in Appeal No. 4 etc of 2005 which definitely is a comprehensive and an erudite decision. This issue was thrashed out in details with reference to the tariff orders for the FY 2002-03, 2003-04, 2004-05 & 2005-06 and with reference to the certain decisions namely *Jana Singh Vs Brij Lal Ors, AIR 1966 SC 1631, M/s Indian Export House Pvt. Ltd, New Delhi & Anr. Vs J.R. Vohra, AIR 1983 Delhi 67, Johri Singh Vs S. Pal Singh and Ors.AIR 1989 SC 2073, A.R., Antulay Vs R.S. Nayak, (1988) 2 SCC 602, Angalo Waterproof Ltd. Vs Bombay Waterproof Manufacturing Co. 1997(1) SCC 99, Soloman Vs Soloman & Co. Ltd., 1897 AC 22, Secretary H.S.E.B. Vs Suresh & Ors., (1999) 3 SCC 601, West Bengal Electricity Vs. CESC Ltd. (Supra)* which at the moment are not necessary to be discussed in view of the fact that the issue relating to the RSD Project cost has now gone historical evolution and in fact has been set at rest with the decisions of this Tribunal in Appeal No 5 of 2008 and 63 of 2008 decided on 25th February 2011 and in fact these two appeals are the outcome of the orders passed by the Commission consequent upon the disposal of the Appeal No. 4 of 2005 whereby this issue was again

remanded back to the Commission for re determination of the allocation of cost instead of fixing it at 79.1% : 20.9%. For, at that time when the Appeal No. 5 of 2005 was decided it was felt that the allocation of cost between the two entities as was done by the Govt. of Punjab was wrong and that the Commission did not apply its own mind in the matter of determination of the allocation of the cost between the said two entities. Now, after the remand the Commission made a detailed discussion on this issue and re-examined it on available data and broadly relied on the following:

a) Detailed project Report Containing Statistical Data of the past 50 years considered by the State Government and Planning Commission.

(b) State Government's approval of cost apportionment was based on 'Facilities Used Method', recommended by the Government of India

(c) The cost of sharing of 79.1 % : 20.9% was approved by Central Water Commission.

(d) Chatha Committee also recommended to retain the same cost sharing ratio. It was further found as follows:

(i) In the Project report of Ranjeet Sagar Dam Project the cost share between the power and the Irrigation Department was allocated in the

ratio of 88.6% and 11.4% based on Separate Costs Remaining Benefit Method (SCRB method)

(ii) The Government of India vide its letters dated 11.4.1967 addressed to all State Government recommended the "Use of Facilities" Method for allocation of cost. Accordingly, the Government of Punjab revised the cost of allocation based on 'Use of Facilities' Method to 79.1 % : 20.9%.

(iii) The Central Water Commission vide its letter dated 24.3.1999 has accepted the revised cost allocation of 79.1% and 20.9% between the two wings namely Power and Irrigation (in place of 88.6% and 11.4%).

(iv) The Planning Commission has also accepted the above cost allocation vids its letter dated 5.11.2001.

(v) There is only marginal increase in water used for Irrigation as a result of RSD Project while the entire water has been used for power generation. The detailed calculation of the relative increase in use of water in Irrigation and Power generation after commissioning of RSD Project as has been provided in this documents were examine by this Tribunal in Appeal No. 5 of 2008 and 63 of 2008 and accordingly upon such serious examination the finding of the Commission was upheld. Therefore, with this decision in Appeal No. 5 of 2008 and Appeal Nos. 63 of 2008 this issue is set at rest so far as this Tribunal is concerned. Accordingly,

this issue as has been raised in the Appeal No. 125 of 2008, 57 of 2008, 40 of 2010 & 163 of 2010 is answered accordingly.

Issue No. 7

48. The issue relating to burdening the Government of Punjab with the interest on diverted fund is a decided issue and cannot be re-agitated or resettled because in Appeal No. 63 of 2008 wherein the Government of Punjab was the Appellant the question raised was whether the Commission was justified in restraining the PSEB from paying interest to the State of Punjab on various Government loans on the ground that since the Electricity Board which has since been under control by the Government of Punjab had diverted the capital for revenue purposes the burden of interest for diverted amount has to be borne by the State of Punjab. The Commission decided to burden the Government of Punjab with interest cost on diverted funds to the tune of Rs. 289.92 crores on the ground that the Government of Punjab has been exercising the pervasive powers over the State Electricity Board, and therefore the Commission directed that interest of Rs. 298.92 corres would not be payable to the Government of Punjab on the loans given by the Government of Punjab to the State Electricity Board. This Tribunal upheld the finding of the Commission in the Appeal no 63 of 2008 decided along with appeal No. 5 of 2008 on 25th February 2011 and held that the interest cost of Rs. 289.92 crore is directed to be disallowed from

the interest payable on Government loans and this amount cannot be paid by the Board to the State Government which will refund the amount to the Board if already paid. In Appeal No. 4 of2005 this Tribunal also viewed that the Board appeared to have adopted the strategy of diversion of funds because of the necessity created by the burden imposed on it. This issue is answered accordingly.

Issue Nos. 8 and 21

49. The issue no. 8 has to be considered along with the issue no. 21. On the question whether the Commission gave appropriate treatment in its diverse tariff orders for the years 2007-08, 2008-09, 2009-10 and 2010-11 of T&D Loss this is to be noted here that with regard to the tariff orders for the year 2007-08. PSEB (Punjab State Electricity Board) who is one of the respondents in this batch of` ten appeals was itself the appellant in Appeal No. 153 of 2007 which was decided by a Full Bench of this Tribunal on 4.3.2011. Therefore, on this issue for the tariff order on 2007-08 nothing different can be observed and it is necessary to reproduce what this Tribunal held on this point in so far as the tariff order for the year 2007-08 is concerned.

"*27. The next issue is Transmission and Distribution Losses. According to the Appellant, the State Commission determined the transmission and distribution losses at 19.5% as against 22% as claimed by the Appellant for the year 2007-08.*

28. This issue has been considered by the State Commission in its previous orders. Having determined the losses to be 27.52% in the year 2001-02 the State Commission had laid down programme of phased reduction for the next six years down to 19.5% in the year 2007-08. However, the Appellant has been unable to meet this target and losses for the year 2006-07 stood at 23.91% which is now proposed to be reduced to 22% by the Appellant. It is noticed that the Commission has accepted that there can only be a gradual reduction of such losses after substantial investments to improve the transmission and distribution system in addition to comprehensively drawing up base line data, introduction of energy audit at all levels and enforcing accountability where loss exceeds the prescribed limits. However, the Appellant on each occasion in the past assured to initiate series of measures that would bring down the technical and commercial losses but no such steps have been taken and the position remains the same level even as now. However, in view of the same, State Commission had no choice but to retain the loss level at 19.50% as earlier prescribed. Therefore, this finding also had been validly given by the State Commission."

49.1. With regard to T&D loss for the year 2008-09, 2009-10 & 2010- 11 in the Appeal No. 125 of 2008, 40 of 2010, 144 of 2010 and other appeals it has been contended that there was no reason for recovery of T&D Loss at high cost and it is supposed to be included in and accounted for in

course of working out transmission or distribution charges and moreover no distribution charges are leviable once wheeling is done at the voltage of 66 KV. PSEB in this respect has contended that this issue falls in the purview of Govt. of Punjab. PSEB has been able to reduce T&D losses to 22.53% upto 2007-08. For further reduction of T&D Losses, PSEB has fixed a target to bring down T & D losses to 17% by FY 2011-12. PSEB has prepared a road map for implementing the measures related to T&D loss reduction to bring down losses to around 17% by FY 2011-12. The detail of the road map has already been submitted to the Commission in the previous year ARR. Installation of LT capacitors on all the AP connections and 100% replacement of electro-mechanical meters by more accurate electronics meters are on the process of being completed. The electronic meters capable of online monitoring & control of various parameters including energy accounting will be installed upto 11 KV feeders. Effective earthing has been provided to all the substations and distribution transformers to bring down due to high earth resistance. PSEB has initiated IT implementation by introducing measures like spot billing, GIS mapping, and Centralized Call Centers for complaint registration, remote metering etc. refurbishing/ strengthening of distribution system under APDRP programme. Installation of HT Capacitors-11 KV feeders in urban and rural areas are provided with capacitors. Additional Capacitors of adequate capacity had been provided

at transmission substation to improve the power factor and voltage profile. All the overloaded feeders are deloaded by way of bifurcation or augmentation of higher capacity conductors. Monitoring of T&D losses is being done by PSEB management at Division/Circle/Zonal level and concerted efforts are being made to achieve the targets by cutting down both technical and commercial losses.

49.2. In respect of the FY 2009-10 on this point the appellants in Appeal Nos. 40 of 2010, 196 of 2009, 199 of 2009 and 45 of 2010 have contended that higher T&D loss was provided by the Commission in the tariff order of FY 2009-10, that T&D loss was not retained at the level of 19.5% as was proposed by the Board, that the Commission allowed a higher level on 22% which was even not projected by the Board and which achieved 21% in the proceeding year. By so doing it reduced AP consumption thereby giving the relief to the Government by way of reduced subsidy amount of Rs. 500 Crore and increased the cost of power purchase to the extent to about Rs. 700 to Rs. 800 crore and this resulted in increase in the tariff by 10%. Though the Government of Punjab is also an appellant against the tariff order for the FY 2009-10 it did not raise this issue in its Appeal No. 45 of 2010. The Board in Appeal No. 199 of 2009 replied by saying that up to the FY 2008-09 it reduced the T&D loss to 21% and the table presented in the counter affidavit will show that there has been consistent reduction in T&D loss right from the FY 2004-

05. It has further been contended that the Board has taken steps namely by conversion of L.T. distribution system to H.T. distribution system. By replacement of Electro-mechanical meters and shifting of meters to the outside of the consumers premises it is also submitted that all EHT/HT consumers of LS, MS and SP Electro Mechanical Meters stand already replaced with electronic meters by installing of capacitors of 11 KV feeders. Shifting of meters outside residential/consumer premises under Non-APDRP area is also under process. It is true that Commission retained the target as it was in the FY 2007-08. The Commission has been found to be realistic in the sense that it took cognizance of the performance of the Board, no matter whatever was projected by the Board in its ARR. Having considered the fact that there has been gradual reduction of T&D loss in successive financial years we do not think that the Commission can be faulted with Board's failure to achieve wonderful achievements to the expectations of the appellants. It however is noticeable that the Board has taken some measures for reduction of T&D loss to the level approved by the Commission in successive financial years. With respect to the FY 2010-11 the same observation can be made and we direct that the Board will be serious in implementing the measures it has taken for gradual reduction of T&D loss in order that the impact of gradual reduction is felt in reduction of subsidy and unrealistic increase in tariff. The issue of energy balance is intrinsically related to loss

percentage and T&D losses. FY 2006-07 the Commission approved 34739 M U as against Board's revised estimate of 36238 MU. Projection by the Board for 2007-08 was 37344 MU but the Commission reduced the availability figure to 35671 MU which was higher than the FY 2006-07. In the true up for year 2006-07 the availability figure came to 36142 and the Commission considered the T&D loss at 20.75 %. In respect of the ARR FY 2008-09 the Board revised its estimate at 40239 and the Commission approved 37883 and it was duly noted that the loss percentage was less than the previous year in the true up for the year 2007-08 the Commission approved the total energy requirement for the year 2007-08 at 38048 MU after retaining the T&D losses at 19.50 %. In the projection for the FY 2008-09 the loss percentage was shown at 19.5 % and the total energy availability was taken as 37739 MU by the Board. In the true up for the yea 2008-09 T&D loss was retained at 19.5% as was approved in the tariff order in the 2008-09. In the review for the year 2009-10 energy availability as was projected by the Board was 40030 MU and the Commission approved 41308 MU and the loss percentage was projected by the Board at 19.5% but having regard to pragmatism the Commission fixed it at 22.00%. This is subject to review. But having regard to the totality of the situation it can be said that the quantum of energy availability has been on the higher side gradually. We direct the PSPCL to implement the earlier orders of this Tribunal and the

Commission will continue to review the same regularly. The issues are answered accordingly.

Issue No.9

50**.** The issue concerning alleged gradual increase in employees cost has been raised right since the year 2007 when the first appeal in the batch of ten appeals, being Appeal Nos. 155 of 2007 was filed in respect of the tariff order for the year 2007-08. It was contended at that time that the employees cost should not have been raised unless there was improvement in productivity of employees. In the order dated 26.05.2006 this Tribunal directed that the cost of the employees should remain capped at the level of 2005-06. The Commission in its reply to the Appeal No. 196 of 2009 contended that employees cost has been increasing despite the fact that the Tribunal in its decision Siel Ltd. Versus Punjab State Electricity Regulatory Commission and others observed that the employees cost must be plugged, but later in Appeal No. 99 of 2009 the Tribunal observed that the employee's cost has to be increased only to the level of WPI till the Board shows significant improvement in its working. The Commission reiterates its own order this respect in the counter affidavit. In the Appeal No. 40 of 2010 that relates to the tariff year 2009-10, it has been contended that though with regard to employees cost, the Commission pegged down the cost to Rs. 1856 crore from Rs. 3455 crore, in the long run this has been deceptive

because denial of payment of arrears of pay arising out of Pay Revision Committee's recommendations cannot last long. The Appeal No. 153 of 2007 was filed by the Punjab State Electricity Board challenging the Commission's order dated 17.09.2007 whereby the Commission determined the annual revenue requirement and the tariff for the FY 2007-08 and true up for FY 2005-06 and review for the FY 2006-07 In that appeal the question of employees cost was raised. According to the Punjab State Electricity Board, it claimed Rs. 1793 crore as employees cost and the State Commission has merely allowed the employees cost for a sum of Rs. 1661.41 crores on the ground that the Appellant is not entitled to any increase in the employees cost unless the productivity is increased. This was done without considering the fact that the increase in the employees cost was due to the factors not within the control of the Appellant. Therefore, the employees cost which is in the nature of a standard cost can be disallowed. This point was answered by this Tribunal in Appeal No. 153 of 2007 in these words:-

"It is noticed that the State Commission has allowed reasonable cost in the tariff order as fixed in the previous order after following the relevant regulation in this regard. As a matter of fact, the State Commission has referred to the Tribunal orders and applied the principles contained in the Tribunal's order for fixing the employees cost. As a matter of fact,

the Commission went by the materials placed by the appellant before the State Commission and found that no worthwhile measures were adopted by the Board to reduce the employees cost during the year in question. Even the voluntary retirement scheme which has been suggested by the Tribunal was not adopted. In the above background that too on the basis of the principles laid down by this Tribunal in 2007 APTEL, 931 (Siel Vs. Punjab State Electricity Commission), State Commission has approved Rs. 1661.41 crores as employees cost for the year 2007-08. There is nothing wrong in this finding."

51. This order in Appeal No. 153 of 2007 was decided by the Full Bench of this Tribunal on 4th March, 2011 and a month thereafter that is, on 13th April, 2011 this issue was again considered in Appeal No. 99 of 2009 preferred by the same PSEB challenging the order dated 03.07.2008 wherein the Commission determined the ARR and tariff for the FY 2008-09. In the said order the Commission disallowed the employees cost claimed by the appellant and kept the employees cost at the capped levels and allowed only the wholesale price index escalation. In fact, this Appeal No. 99 of 2009 that relates to the tariff year 2008-09 almost exclusively related to the issue of alleged gradual increase of the employees cost. While deciding the Appeal No. 99 of 2009 this Tribunal had the occasion to refer to a reported decision of this Tribunal namely

SIEL Vs. Punjab State Electricity Regulatory Commission & Ors. reported in 2007 APTEL, 931. In this reported decision the Tribunal declined to interfere with the decision of the Commission disallowing increase in the employees cost. In this decision it was observed by the Tribunal in concurrence with the Commission that unless there has been substantial improvement in the performance of the employees of the Board, there cannot be any automatic allowance with reference to the actual expenditure as the automatic availability of benefits generates inefficiency and indolence. The Tribunal approved the stand of the Commission and held that :

"State Commission has taken into account the Regulation 28(6) of the Tariff Regulations and has given reasons as to why the entire claim made by the appellant on employees cost could not be allowed. As a matter of fact, the State Commission has specifically held that the State Commission does not find justification to deviate from the Regulations in determining the employees cost of the appellant as the WPI increase as on March, 2008 against the corresponding period in the previous year stands at 6.68% and applying the same on employees cost determined for the year 2007-08, the State Commission has arrived at the allowable employees cost of Rs. 1773.55 crores in FY 2008-09. Even though the Appellant claimed Rs 2225.01 crores towards employees cost, the State

Commission allowed reasonable cost of Rs. 1773.55 crores, based on the WPI increase and on the strength of sound reasonings"

52. This issue was again raised in Appeal No 40 of 2010. It appears that in the ARR for 2009-10 the Commission by its order dated 8.9.2009 approed Rs. 1856.60 crore as employees cost from Rs. 3454.68 crore as was projected by the Board. As such, it cannot be said that the Commission's approach to the issue is unjustified; on the contrary the Commission adopted a consistent reasonable approach throughout the year preceding the FY 2010-11.This issue is answered accordingly.

Issue No. 10

53. The question of disallowance of prior period expenses relating to the FY 2005 -06 was raised in Appeal No. 153 of 2007 wherein the Punjab State Electricity Board was the appellant challenging the order dated 17.9.2007 passed by the State Commission determining the Annual Revenue Requirement and the tariff for the Financial Year 2007-08 and their truing up for the FY 2005-06 and review for the FY 2006-07. This Tribunal observed as follows:-

"It is contended by the Appellant that the State Commission has disallowed the prior period expenses relating to employees cost of Rs. 8.66 crores in the truing up of 2005-06. On going through the impugned order it appears that the State Commission has explained for the disallowance of the prior period expenses of Rs. 8.66 crores on the

ground that period expenses relating to the period for which it remained capped cannot be allowed. This finding also, in our view, is perfectly justified."

There is no longer any lis on this point. The issue is answered accordingly.

Issue No. 11

54. The question of withdrawal or discontinuance of rebate has been agitating the industrial consumers right from the tariff of FY 2007-08. With regard to this issue there has been, however, no positive affirmative indication by this Tribunal in Appeal No. 4 of 2005 for its continuance. In Appeal No. 155 of 2007 and Appeal No. 57 of 2008 it has been alleged that incentive by way of rebate to compensate in respect of the transmission line loss, transformation loss and cost of capital was not given. In Appeal No. 125 of 2008, the same was agitated that the appellant incurred loss of 24 crore and it was required of the Commission to provide for rebate to compensate by way of incentive at 11% at least on account of transmission loss, transformation loss and cost of capital that would be required for creating an operating infrastructure at 66 KV. In Appeal No. 199 of 2009 and 196 of 2009 it has been contended that rebate to HT consumers was disallowed contrary to the principles followed by the Commission in its previous tariff order. The same question has been raised in the subsequent appeal too.

54.1 It was in the tariff order for FY 2009-10 that this issue has been very objectively dealt with by the Commission in detail. It is the main contention that in the draft conditions of supply that was issued to public notice by the Commission in November, 2008 and discussed in a meeting of the State Advisory Committee held on 22.01.2009 it was stipulated that all consumers would be supplied with electricity at the voltage commensurate with the load or contract demand as specified in the conditions of supply. The Board was required to release all new connections and additional demand at the voltage specified in the conditions of supply for last 10 years and there was hardly any reasoning in affording relief in the form of grant of rebate when supply is provided against specified voltage for a particular category of consumer. Says the Commission:

"The Commission also observes that there is a need for the existing consumers getting supply at a lower voltage to convert to the specified voltage for benefit of the system and to reduce T & D losses. However, actual conversion of supply voltage of the existing consumers will require some time. There could also be technical constraints in conversion of supply voltage or release of new connection and /or additional load/demand at the prescribed supply voltage which merits consideration".

The Commission further observes:-

"There could some consumers who were getting supply at a voltage higher than the specified in the conditions of supply. Thus, their investment in providing the required infrastructure / sub-station and bearing maintenance cost thereof besides transformation losses and carrying cost of investment may need to be considered on separate footing as their action is definitely helping the utility in reducing T & D losses".

54.2 Accordingly, the Commission concludes:-

"In the light of the above observations, the Commission decides to discontinue all voltage rebate w.e.f. 1st April, 2010….. .* The Commission further decides that as existing consumer getting supply at a higher voltage than specified in the conditions of supply will for the present be entitled to a rebate in the tariff at the prevailing rates specified in the General Conditions of Tariff".*

54.3. We do not think that the finding of the Commission can in the circumstances be faulted with and are not sufficient to answer the plea of the industrial consumers that the rebate should continue for the existing as well as new consumers. When supply is proposed to be linked to the voltage commensurate with the load/contract demand, there cannot be any upward revision of rate from 3% to 10% to compensate for depreciation or incremental transmission and transformation loss. Moreover, the movement for determining the cost of supply, which it is

nobody's case to get a back foot, will necessarily have relevance with the rational and objective determination of tariff having regard to the eye on the cost of supply. The grant of rebate has rightly it has been suggested historical perception and once the Commission is legally obligated upon to determine the tariff in accordance with the National Electricity Policy, the National Tariff Policy and the provision of Section 61 of the Act, the past practice of the Board to grant rebate on the ground that industrial consumers received supply at high voltage direct from the transmission system lost its relevance. This issue is decided accordingly.

Issue No. 12

55. It has been alleged by the appellant that the Board has not come out with appropriate investment and planning that results into sufferance of the consumer. In Appeal No. 40 of 2010 it has been contended by the appellant that an amount of Rs. 618 crore has been allowed as capital subsidy for grant of tube-well connection. It is the case of the PSPCL that providing subsidy to any activity is the prerogative of the Government of Punjab because the cost owing to subsidy has to be borne by the Government. The Commission, however, found that the plans of the Board do not meet the actual expenditure. The Commission upon examination of the issue made the following order on 08.09.2009 as follows:

"4.13.2. Investment Plan

The Board has proposed an investment plan of Rs. 5016.40 crore in the ARR for 2009-10. In order to improve generation, the Board has proposed an investment of Rs. 53.74 (10+43.74) crore in Hydro Electric Plant at Shahpur Kandi and Bhakra Power House. With a view to reduce T &D losses (including APDRP Schemes) and improve its power system performance, the Board has proposed to spend Rs. 3453.41crore, inclusive of Rs. 2,000/- crore for HVDS Project, for conversion of LT lines of AP feeders to 11 KV feeders. The Board has also proposed an investment of Rs. 189.91 crore under RGGVY scheme and Rs. 618 crore for release of 40,000/- A.P. connections during the year.

It is noted that for 2008-09, an investment plan of Rs. 2,000 crore was approved against which actual expenditure reported by the Board is Rs. 1924.51 crore. After excluding 365 crore for Rajpura Thermal Plant which is being privately developed on BOO basis, the Commission approved an investment plan of Rs. 1559.51 crore on actual basis. The Commission observes that the Board invariably proposes an ambitious investment plan every year but actual capital expenditure is no where near the proposed plan. However, considering the Board's need to make substantial investments in transmission and distribution network for providing uninterrupted and reliable power supply to the consumers and considering the level of actual capital expenditure in previous years, the

Commission now allows an investment plan of Rs. 2000 crore for 2009-10. After adjustment of consumers' contribution of Rs. 215.58 crore, assumed at the level of 2007-08, the actual investment requirement comes to Rs. 1784.42 (2000-215.58) crore. Interest on loans other than WCL & Govt. loans works out to Rs. 660.96 crore on proportionate basis."

56. We find the finding of the Commission quite reasonable and the issue rests there.

Issue No. 13

57. The question of retrospectivity of the tariff order for the FY 2009-10 as also of the previous tariff order for the FY 2008-09 has been answered by the Commission with the reasoning that (a) the Board sought exemption of time for furnishing information/data/application, (b) that the Commission granted extension of time, (c) that the Commission in its prudence decided to implement the tariff in the larger interest of Consumers w.e.f. the date of commencement of the financial year. The major circumstance is that when the appeals were filed, the arguments against retrospectivity has some substance but with the cessation of the periods of tariff the arguments against retrospectivity becomes more academic which we will definitely answer but not real. This question was academically dealt with by the Tribunal in its order dated 26.05.2006 in Appeal No. 04 of 2005 in these words:-

"77. Some of the Industrial Consumers have questioned determination of tariff by the Commission on the ground that the effect of the Tariff Order for the year 2005-06 was given from April 1, 2005 while the order was passed on June 14, 2005. According to them the Commission was not having any jurisdiction to require the consumers to pay enhanced tariff from a retrospective date.

78. In order to determine the reasons which led to the passing of the tariff order on June 14, 2005 instead of it being passed on March 31, 2005, it is necessary to refer to a few dates. The Board filed ARR and tariff application on December 30, 2004. The application, however, was found to be incomplete. The Commission by its communication dated January 21, 2005 asked the Board to remove the deficiencies and complete the application. It was, however, only on Feb., 9, 2005 that the deficiencies were removed and the application was taken on record. This led to delay in the determination of tariff for the year 2005-06. The Commission was able to pass the tariff order only on June 14, 2005, though the financial year commenced on April 1, 2005.

79. It is not in dispute that the Commission determined the tariff for the year 2005-06. The Industrial Consumers would not have been able to grudge the application of the tariff order with effect from April 1, 2005, in case the tariff order was passed on that date or on a date close to that date. It is only because the tariff order was delayed by about two months

that the Industrial Consumers are finding fault with its application from April 1, 2005.

80. It needs to be noticed that the retrospective operation covers only a period of two months and having regard to the short time involved, the Commission was of the view that the interest of the consumers will not be adversely affected by the retrospective operation of the tariff order.

81. We do not find that the Commission was wrong in its approach by giving effect to the tariff order from the aforesaid retrospective date as the tariff was fixed for the tariff year 2005-06, which commenced on 1st April, 2005. If the submission of the Industrial Consumers is accepted, a consumer could initiate some proceedings in a Court against the Commission with a prayer for seeking an interim order restraining the Commission from revising the tariff on some ground or the other. This could delay the passing of the tariff order in case an interim order interdicting the determination of tariff is passed pending the proceedings. In such a contingency, it is only after the interim order is lifted by the Court that the Commission would be in a position to pass the tariff order. Obviously, it would only be just and fair that the tariff order relates back to and commences on the first day of the year for which the tariff determination is made. In Kanoria Chemicals & Industries Ltd. & Anr. Vs. State of U.P. & Ors. (1992) 2 SCC 124, a question was raised with regard to the competence of the Electricity Board to determine tariff with

retrospective effect. The Supreme Court was of the view that retrospective effect to the revision of tariff was clearly envisaged in law. In this regard, the Supreme Court held as follows:

"A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this State of affairs, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective".

82. Section 62, which provides for determination of tariff by the Commission, does not suggest that the tariff cannot be determined with

retrospective effect. In the instant case, the whole exercise was undertaken by the PSERC to determine tariff and the annual revenue requirement of the PSERB for the period April, 1, 2005 to March 31, 2006, therefore, logically tariff should be applicable from April 1, 2005.

83. According to sub-section (6) of Section 64 of the Act of 2003, a tariff order unless amended or revoked continues to be in force for such period as may be specified in the tariff order. Thus the Commission is vested with the power to specify the period for which the tariff order will remain in force. The Commission deriving its power from Section 64(6) has specified that the order shall come into force from April 1, 2005. No fault can be found with such a retrospective specification of the Commission.

84. The learned counsel for the industrial consumers relied on the decision of the Supreme Court in Sri Vijay Lakshmi Rice Mills vs. State of Andhra Pradesh, AIR 1976 SC 1471, wherein it was held that a notification takes effect from the date it is issued and not from a prior date unless otherwise provided by the statute, expressly or by appropriate language from which its retrospective operation could be inferred. This decision is of no avail to the industrial consumers, in view of the provisions of Section 64 (6) of the Act of 2003, which empowers the Commission to specify the period for which the tariff order will remain in force. In other words, the Commission is empowered to specify the date

on which the tariff order will commence and the date on which it will expire.

85. The Board in consonance with the cost plus regime is entitled to recover all costs prudently incurred for providing service to the consumers. Besides, the Board is entitled to reasonable return. Since the cost prudently incurred has to be recovered, therefore, in the event of the tariff order being delayed, it can be made effective from the date tariff year commences or by annualisation of the tariff so that deficit, if any, is made good in the remaining part of the year or it could be recovered after truing up exercise by loading it in the tariff of the next year. All these options are available with the Commission.

86. There is one more aspect which needs to be considered. In case the Commission had lowered the tariff rates, relief to the consumers could not be denied on the ground that the tariff order is being operated retrospectively.

87. For all these reasons we hold that the Commission had the jurisdiction to pass the tariff order with retrospective effect. Therefore, we reject the submission of the learned counsel for the industrial consumers that the tariff cannot be fixed from a retrospective date".

58. It is true that an order particularly when it becomes a fiscal order becomes prospective but that too only when retrospectivity is expressly or impliedly negatived. The Act, Sections 61, 62 and 63 do not speak of the

time from which a tariff has to be enforced. Sub-section (3) of Section 64 of the Act provides that the appropriate Commission shall within 120 days from the receipt of an application under sub-Section (1) and after considering all suggestions and objections received from the public issue a tariff order. Though Section 2 does not have any definition of "year " "the regulations framed by the different Commissions do connote a financial year meaning, a retail annual tariff order has to last for a financial year. According to the learned advocate for the appellant in Appeal No. 196 of 2009, 199 of 2009 and 125 of 2008, under regulation 41 of the Punjab State Electricity Regulatory Commission (Terms & Conditions for Determination of Tariff, 2005) it is mandatory that the Commission shall within 120 days from the date of receipt of tariff petition and after considering all suggestions and objections issue a tariff order. This is so in the Regulations 2005 but the words are but reproductions of those contained in Section 64 of the Act. This regulation, as said above, does not speak of prospectivity or retrospectivity. Emphasis is laid on Regulation 52 (3) of the PSERC (Conduct of Business Regulations, 2005) which provides that " the tariffs determined by the Commission published under clause 1 above, shall be notified tariff applicable in the concerned area. In case of any increase in tariff, the same shall take effect preferably with prospective effect and

after such number of days as the Commission may direct which shall not be less than seven days from the date of first publication of the tariff. ”

59. Now publication or notification of the tariff order and enforcement of such tariff order after expiry of 7 days from the date of first publication of the tariff does not necessarily mean that enforcement cannot take effect retrospectively. Enforcement of the order 7 days after publication of the tariff order does not militate against retrospectivity. The decisions in **Binani Zinc Ltd. Vs. Kerala State Electricity Board (2009) JT 162**, **Maharashtra State Electricity Board Vs. Maharashtra State Electricity Regulatory Commission, AIR 2004 Bombay 294** are factually distinguishable. In **Binani** case the question was whether the Commission can determine tariff for the period prior to its own existence under the law. The decision of the Tribunal in Meghalaya State Electricity Board Vs. Meghalaya State Electricity Regulatory Commission does not lay down any legal proposition. The matter of the fact is that the Act does not have any provision that a tariff order which is definitely meant to be operational in a financial year cannot take effect from the commencement of the financial year in case it becomes impossible for the Commission to pronounce such order before 1st April of a financial year. If for some reason or the other the Commission passes a tariff order, some time after the commencement of the financial year, it cannot be argued that the

order would become effective without any alternative from the date of making of the order because of the fact that neither the Act nor any provision of the Punjab Tariff Regulation does mandately provide that a tariff order shall always be effective only on from the date when it is pronounced. Moreover, even if there be any such provision still then the question against mandatory nature of the provision may be argued on the proposition as to whether any consequence has been provided for in the provision itself in case of breach of any such provision. Therefore, the argument fails.

Issue No. 14

60. This issue has been raised in Appeal No. 57 of 2008, 125 of 2008, 196 of 2009, 199 of 2009 and 40 of 2010. It has been contended by the appellants that every year the Board has been making arrangements for power purchase to satisfy the A.P. Consumers during the paddy season but at the same time additional power purchase should also be made for industrial consumers who give extra margin of profit to the Board and more profit means more reduction in power cuts. The appellants alleged further that the Board has shown ever increasing dependence on power purchase at the rates double than power generation and the growth rate is almost four times for A.P. Consumers. This sort of increase in power purchase will gradually put the non-subsidized category to pay higher tariff. Thus, growth may be

allowed as per availability of power to have a balanced energy balance. The Board replies that no doubt it is true that power purchase has been on increase but that was a necessity. Some power projects were in the pipe line and for FY 2009-10 it has to resort to power purchase from external source. When the monsoon is not favourable, the Board has to reply on power purchase as AP consumption was bound to be higher. Furthermore, the Board mainly relies on supplies from long term contracts and power trading is necessary to meet the short term demand and the source is mainly from coal/hydro power plants in which case power production cost does not normally exceed Rs. 4 per unit. It is submitted by the Board that increasing shortage of electricity, increase in maximum UI rate, absence of regulatory framework on price and ever increasing fuel cost are the reasons that contribute to high power purchase cost in which the Board has hardly any control.

61. In respect of the tariff order for the FY 2009-10 the Board makes an observation that in the tariff order for the FY 2008-09 the Commission approved a cost of Rs. 4186.33 crore for purchase of 15381 MU and the revised estimate of the Board has been considered by the Commission. The Commission noted the contention of the Board that actual losses for the first six months of the year, transmission losses for power received from Western Region and Eastern Region at 8.79 % and 7.15% respectively and projected transmission losses for the second half of the

year received from the Northern Region taken as the average of the loss of the same region during the previous year have been taken into account to work out the external losses. The Commission decided to allow external losses @ 4.71 % which was actually incurred by the Board in 2007-08 and after adding 4.71 % loss, the gross energy required to be purchased worked out to be 13307 MU. Accordingly, the Commission approved the revised power purchase cost of Rs. 4414.59 crore for purchase of the said 13307 MU. We note that the Commission has given specific direction to the Board to pursue a policy of purchase from the traders in more judicious manner. We concur with that accordingly.

Issue No. 15.

62. This issue has been raised by the appellants in Appeal No. 57 of 2008 and 155 of 2007 alleging that the Commission despite direction has not implemented the two part tariff. We do not find any specific direction of this Tribunal in Appeal No. 04 of 2005 on this issue. However, it was the Commission who directed the respondent licensee in its tariff order 2005-06 to make two part tariff applicable from the year 2006-07. However, in absence of any concrete proposal from the respondent licensee the same was not made applicable in the year 2006-07. In the year 2007-08 to which the order dated 17.09.2007 relates, the Commission made certain observations that the proposal given by the

Board was not comprehensive. It is also the case of the Board that it is also in the interest of the respondent no.2, namely, PSPCL to have two part tariff for more effective recovery of fixed and variable charges but non-implementation of two part tariff does not affect the consumers. We direct the Board to submit comprehensive report in this matter to the Commission so that the Commission upon examination makes appropriate order.

Issue No. 16

63. This issue has been raised in number of appeals and the main contention of the industrial consumers is that KVAH based tariff is more scientific and composite as it accounts for both the active and reactive energy and at the moment only active energy is metered and billed. Secondly, if a consumer has installed expensive equipments to improve the PF, the incentive given is much lower as compared to the penalty imposed on a consumer who has done no investment for improving the PF. It is LS consumer who are the most affected and they have been asking for replacement of KWH based tariff with KVAH based tariff.

63.1. As per the existing instructions all consumers are required to maintain a PF of 0.9, in case it below 0.9 a surcharge of 1 per cent is levied for every 1% fall. On the contrary if PF increases above 0.9 incentive is given at the rate of 0.25 % for every 1% increase to all consumers other than power intensive units. This is according to the

appellants both discriminatory and irrational. It is alleged that the Commission was wrong in observing that benefit to the system due to improvement in power factor decreases as the power factor approaches unity and that the loss to the power system due to decrease in power factor below 0.9 is as much as compared to the benefit which accrued with benefit in power factor above 0.95 . Accordingly to the PSEB incentives and surcharges are in order. Surcharge is levied to the consumers if the power falls below 0.9 so as to encourage the consumers to install power factor improvement measures that helps the Board to provide better voltage profile to the consumers.

63.2. Now this issue has been dealt with by the Commission in each of the tariff orders for FY 2007-08, FY 2008-09, FY 2009-10 and FY 2010 - 11 and in each of the tariff orders the Commission decided to continue with the existing practice of power factor surcharge/ incentive for large supply, medium supply and railway traction.

63.3 The Board represented before the Commission that it feels that prima facie the request for introduction of KVAH based tariff has been reset from small number of high end LS consumers and induction furnace consumers, whereas large number of other consumers have not expressed any inclination for opting the KVAh tariff and the Board was working on finer modalities of the issue. The board has been asked by the Commission to examine the issue and submit a reporting a limited

timeframe after which the Commission will a view in the matter. For power factor incentive/ surcharge the Commission had earlier taken the view that it is desirable to fix suitable thresholds for different categories of industries keeping in view their inherent characteristics.

63.4 The Commission observes as follows:

" The Commission observes that the proposal to introduce KVAH tariff has been endorsed by a relatively small number of high end LS consumers. On the other hand, the concept of surcharge for low power factor and rebate for achieving of high power factor is continuing for LS, RT and MS consumers for the last four years or so while this is now being introduced for the first time for SP,BS and DS/NRS consumers with loads exceeding 100 KW. Before taking view as to the introduction of KVAH tariff, the Commission deems it proper to examine this matter separately taking into account not only the implications on the revenue stream of the Board but also the views of all categories of consumers who are proposed to be covered there under. The Commission therefore decides to continue the existing practice of levy of low power factor surcharge and high power factor incentive for LS, RT and MS consumers besides bringing other categories under the ambit of this system"

63.5. We see no reason to differ with the Commission's view but direct at the same time that the Commission may re-examine the issue after the PSPCL equips the Commission with more data and materials.

Issue No. 17

64. This issue has been raised in a number of appeals notably 40 of 2010, 196 of 2009, 199 of 2009- all relating to the financial year 2009-10 and the appeal no. 163 of 2010 that relates to the FY 2010-11. It is the case of the appellant in Appeal No. 40 of 2010 as also in the other two appeals that it was unjust for the Commission to levy extra charge for consumption of electricity by a consumer of industry over and above the normal energy charges on the ground that extra cost incurred by the Board is already accounted for while the total expenditure incurred on power purchase is considered along with other cost components during working out per unit cost and it would be a double recovery if again amount is charged extra on the ground of peak load charges. Secondly, during peak summer season when the Board purchases extra power at extra high rates to meet the requirements of tube-well consumers they are not loaded with extra charges. If the extra costs are comprised in the ARR then there is no point in continuing with existing extra charges. It is the case of the PSPCL that peak load charges are necessary to maintain the load centre effectively and to dis-incentivise the consumers from consuming at peak hours. It has been contended by the Board, now the PSPCL that extra charges are loaded when an industrial consumer runs his industry during peak load hours because the cost of purchase of power during peak load hours is more than the normal times of the day and

further supply is given to different categories of consumers as per the voltages specified in the conditions of supply. During the peak load period, the Board purchases power resources to meet the extra demand of the consumer and at the time of the peak the frequency of the system generally falls and power is drawn at higher UI charges. In the tariff order FY 2009-10 the Commission justifies imposition of peak load charges and does not find any reason for its withdrawal. At paragraph no. 5 of the order dated 08.09.2009 the Commission observes as follows:-

"5.7.3. The Commission notes that even though peak load hour restrictions can be imposed on MS & LS consumers, these restrictions are being actually imposed on LS consumers only. Even so, MS consumers with a load of 50 KW & above are liable to be charged @ Rs. 100 per KW or part thereof per month of sanctioned load in addition to the normal energy bill. In the case of LS consumers, charges are @ Rs. 120 per KW of permitted load less reduced load allowed to be used without additional charges, where permitted load during peak hours is upto 100 KW. When the permitted load exceeds 100 KW, charges are leviable @ Rs. 1.80 per KW per hour upto 65% of Contract Demand and Rs. 2.70 per KW per hour for exemption allowed beyond 65% of Contract Demand. The charges are calculated for a minimum period of 3 hours per day and are recoverable over and above the energy bill.

5.7.4. The Commission observes that the reasons given by the Commission in Tariff Order 2004-05 for levying PLEC on commitment basis still hold good. The Commission also observes that it is not feasible to measure energy payable at PLEC rates separately because the same meter would record energy consumption payable at normal tariff as well as PLEC. Therefore, the Commission decides to continue to charge PLEC on commitment basis. The Commission further notes that even though there has been a substantial increase in purchase price of power from traders or through UI all these costs are taken into account in the ARR and the Commission presently allows their recovery from the consumers. The Board is, thus, not put to any loss in supplying power during peak hours and the Commission does not find adequate justification in the present circumstances for enhancement of PLEC.

The Commission therefore decides to continue the existing rates for levy of PLEC on commitment basis."

65. Having heard the learned advocates for the parties and having seen the order of the Commission, we are in agreement with the Commission that there is scientific and objective basis behind imposition of peak load charges inasmuch as an industrial consumer who needs electrical energy round the clock for manufacture of products in the industry is supplied with such energy at peak hours by the licensee upon purchase of power at

a high cost and secondly the idea behind imposition of such charges is to dis-incentivise the consumer from using electricity at peak hours for the purpose of maintenance of equilibrium in supply of electrical energy. We decide the point against the appellant.

Issue No. 18

66. It is the common grievance of the appellants that a large number of agricultural pump set consumers are still being supplied with electricity unmetered. It has been submitted by the Board that a road-map has been chalked out to increase the size sample metering to 10% and carrying out 100% metering of AP consumers not only involve heavy initial investment, but also recurring expenditure for monthly recording of readings. Due to geographically scattered area, the recording of readings of more than 10 lac consumers every month is a gigantic exercise.

Keeping in view the above, Central Electricity Authority (CEA) on the recommendations for Forum of Regulators has proposed to initiate R& D Project for developing cost effective method for remote metering of AP consumers. PSEB has expressed its willingness to participate in the project. On its successful completion, the project may be extended to cover the whole State. However, the process is in progress and on its completion such practice will start to be adopted.

67.We direct the Commission to direct the Board to complete total metering of the A.P. set of consumers.

Issue No. 19

67. On this issue it is contended that there has not been any consistent growth and the Board was unable to control the factors attributable to it. According to the Board it has not been possible to estimate growth. In the FY 2008-09 Board based on half yearly actual and half early projection. Non tariff income takes into account certain factors such as meter/service line rental and miscellaneous charges. Non tariff income has been reckoned on actual estimate by the Board. The Commission approved non tariff income of Rs. 340.00 crore in the tariff order of 2005-06 which was increased to Rs. 352.80 crore based on Board's revised estimates in the order for FY 2006-07.This figure was changed to Rs. 355.97 Crore and it was finally approved by the Board. For the year 2007-08 the Commission approved Rs. 369.44 crore as non tariff income. In the true up for the year 2006-07 the Commission approved non tariff income at Rs. 417.49 crore .The total non tariff income for the year 2007-08 came to Rs. 444.69 crore which was approved by the Commission . In the true up the Commission raised this figure to Rs. 580.79 crore. For the year 2008-09 Commission approved non tariff income of Rs. 412 crore against the Board's estimate of Rs. 342 crore. The Board itself revised the figure to Rs. 424.01 crore but the Commission approved a sum of Rs. 442.57 crore. In the true up for year 2008-09 the Commission approved a non tariff income of Rs.

523.96 crore . The projection of the Board for the year 2009-10 was Rs. 444.03 which was modified by the Commission to Rs. 448.60 crore. In respect of the year 2010-11 the projection of the Board was Rs. 519.01 crore and the Commission reduced it to Rs. 448.66 crore after taking into account of Rs. 70.35 crore on account of theft of energy which is considered towards revenue of successor entities. As compared to the FY 2005-06 there has been though slow but gradual improvement in the non tariff income of erstwhile PSEB. We do not find any substantial wrong committed by the Commission and we only direct that the Board will endeavour to have projection of steady growth of non tariff income and the Commission will monitor the same.

Issue No. 20

68. In appeal no. 125 of 08 and other appeals it has been alleged that the Commission's approach with regard to open access surcharge was not reasonable. It appears that the Commission has hardly any alternative than to go by the Open Access Regulations notified by the Commission and it has followed its own Regulation which cannot be challenged . Open access charges, both transmission and wheeling charges are payable by long term customers and short term customers according to MW per day and so far the FY 2009-10 is concerned no surcharge was levied ; similarly in relation to FY 2008-09 the Commission followed its own Regulations which cannot be taken exception to. T&D losses

which are also included in open access charges and percentage of T& D losses voltage wise do not appear to be unreasonable. This issue is answered accordingly.

Issue No. 22.

70. We have seen that this Tribunal in judgments in Appeal No. 4, 13, 14, 23 etc. of 2005, Appeal No. 5 of 2008, Appeal No. 63 of 2008, Appeal No. 153 of 2007, Appeal No. 102,103 and 112 of 2010 have dealt with almost all the major issues and certain directions have been given on those issues which cover the present batch of 10 appeals and in this batch of 10 appeals we reiterate those directions. Accordingly, we direct the Commission to ensure that the utilities concerned do fully comply with the Tribunal's directions with special reference to the issue no. 1,2,3,4,8,9,12,14,15, 18 and 21.

72. In ultimate analysis, we dismiss the appeals without cost but subject to the directions and observations contained in the preceding paragraphs of this judgment.

(P.S Datta)
Judicial Member

(Rakesh Nath)
Technical Member

Reportable/Non-reportable

KS