

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

**Appeal nos. 26, 27 & 28 of 2009, Appeal nos.160, 161 & 162 of
2010, Appeal nos.147, 148 & 149 of 2011 and Appeal nos.193,
194, 195 & 196 of 2012**

Dated: 3rd July, 2013

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

In the matter of:

Appeal no. 26 of 2009

**Southern Electricity Supply Company of
Orissa Ltd. (SOUTHCO)
123-A, Mancheswar Industrial Estate
Bhubaneswar**

....Appellant(s)

Vs

**1. Orissa Electricity Regulatory
Commission
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa**

...Respondent(s)

**2. Orissa Consumers' Association
& FOCO
Biswanath Lane
Cuttack, Orissa – 753 002**

3. **M/s. Jayashree Chemicals Ltd.**
PO: Jayshree, Dist: Ganjam
Orissa – 761 025
4. **Grahak Panchayat, Friends Colony**
Parlakhemundi
5. **Mr. Ramesh Ch. Satpathy**
Secretary
National Institute of Indian Labour
302(B), Beherasahi, Nayapalli
Bhubaneswar 751 012
6. **East Coast Railway**
B-2, Rail Vihar, Chandrasekharpur
Bhubaneswar – 751 023
7. **Mr. T.C. Padhi**
M/s. Berhampur Cold Storage
Konisi, BED-1,
Berhampur - 761 025
8. **Mr. Pravakar Dora**
Advocate, 3rd Lane Vidya Nagar
Cooperative Colony
Rayagada – 765 001
9. **Shri R.P. Mahapatra**
Plot no. 775 (Pt), Lane – 3
Jayadev Vihar
Bhubaneswar, Orissa – 751 013
10. **The Utkal Chamber of Commerce & Industry**
N/6, IRC Village, Nayapalli
Bhubaneswar – 751 015
11. **Mr. Jogendra Behera**
Fellow Scholar, XIMB
Utility Regulation Research Centre

**Xavier Institute of Management
Bhubaneswar – 751 013**

**12. Mr. K.C. Mohapatra
Chairman
PDC, F/6, BJB Nagar
Bhubaneswar**

Counsel for the Appellant (s): **Mr. Buddy A. Ranganadhan
Ms. Anjali Chandurkar
Mr. Hasan Murtza
Ms. Richa Bharadwaja
Ms. Samitha Inna
Ms. Junaira Rahman
Ms. Shilpy Chaturvedi
Mr. Shiv K. Suri**

Counsel for the Respondents (s): **Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. C.S. Chauhan
Ms. Rajdipa Behura
Mr. Suresh Tripathy
Mr. N.K. Sahoo
Mr. Ghanshyam Yadav
Mr. M.C. Chandan
Ms. Deepti Sharma
Mr. A.P.R. Rao, AEEE,
East Coast Railway**

Appeal no. 27 of 2009

**Western Electricity Supply Company of
Orissa Ltd. (WESCO)
123-A, Mancheswar Industrial Estate
Bhubaneswar**

....Appellant(s)

Vs

1. **Orissa Electricity Regulatory Commission** ...Respondent(s)
Niyamak Bhawan, Unit-VIII,
Bhubaneswar-751 10 2,
Distt. – Khurda, Orissa.
2. **M/s Orissa Consumers' Association & FOCO,**
Biswanath Lane,
Cuttak – 753 002,
Orissa.
3. **Mr. Suryakanta Pati, Manager (Elec.),**
OCL India Ltd., At : 1/12, OCL New Coloy,
PO/PS: Rajgangpur, Distt. Sundergarh,
Orissa-770 017.
4. **Mr. A.P. Mishra, VP,**
M/s. Larsen & Toubro Limited,
Kansbahal Works : PO.Kansbahal,
Distt. Sundergarh, Orissa – 770034.
5. **Mr. Arjun Kumar, CEDE,**
South Eastern Railway,
Garden Reach, Kolkata – 700 043.
6. **Mr.Ramesh Mehta, President,**
M/s Rourkela Chamber of Commerce & Industry,
Chamber Bhawan, Rourkela-769 004.
7. **Mr. Ramesh Ch. Satpathy, Secretary,**
National Institute of Indian Labour, 302 (B),
Beherasahi, Nayapali, Bhunaneswar-751 012.
8. **Mr. Shyama Bihari Prasad,**
M/s Top Tech Steel Pvt. Limited,
F-4/31, Civil Township, Rourkela,
Sundergarh-769 004.

9. **Mr.Sudarsan Goal,
M/s. Subh Ispat Limited,
Jaibahal, Kalunga Road,
Rourkela, Distt. Sundergarh-769 012.**
10. **Mr. Sunil Agarwal,
M/s Shree Jaganath Alloys Pvt. Ltd.,
Besanti Colony Road, Udit Nagar,
Rourkela, Sundergarh-769 004.**
11. **Mr. Amit Agarwal,
M/s Bajrangbali ReRollers Pvt. Ltd.,
Lal Building Kacheri Road,
Rourkela, Distt. Sundergarh-769 012.**
12. **Mr. Suvendu Ku. Das,
M/s Scan Steel Ltd., Main Road,
Rajgangpur, Distt. Sundergarh,
Orissa-770 017.**
13. **Mr.Sitaram Agarwal,
M/s Attitude Alloys Pvt. Ltd.,
Ghurudu Khamar,
Vill: Bijayanagar, PO-Barkot,
Distt. Deogarh-13.**
14. **Mr.Sunil Choudhury, MD
M/s. Omkar Steels Pvts. Ltd., F-9,
Civil Township, Rourkela-769004.**
15. **Mr.Satya Sunder Kara,
M/s Shree Metalicks Ltd., Gurudwara Road,
Barbil, Distt. Keonjhar-758035.**
16. **Mr.Gobardhana Pujari, General Secy.,
Sundergarh District Employer's Association,
AL-1, Besanti Nagar, Rourkela-769 012,
M/s Shree Metalics Ltd., Gurudwara Road,
Barbil, Distt.Keonjhar-758035.**

17. **Mr.Surendra Das**
General Manager, Nagarika Samiti,
Rourkela-769 004.
18. **Mr.Susanta Kumara Pradhan,**
General Secretary, Resident Association,
Civil Town Ship, Rourkela – 769 004.
19. **Mr. Chitaranjan Mohanty,**
Basanti Forum, Basanti Nagar,
Rourkela-769 012.
20. **Mr. Nrusingh Charana Panda,**
M/s. Grihasti Udyog, Chhend Basti,
Rourkela-769 015.
21. **Mr. Samir Kumar Mishra,**
Advocate, Belpahar,
Jharsuguda.
22. **Mr.Sanjay Gagodia,**
M/s. Scan Steel Ltd., Q-1,
Civil Township, Rourkela-769 004.
23. **Mr.Balamukund Kadamwala,**
M/s Lingaraj Feeds Limited,
Kachery Road, Rourkela,
Sundergarh-769012.
24. **Mr.Pravakar Dora,**
Advocate,
3rd Lane Vidya Nagar,
Co-operative Colony,
Rayagada-765 001.
25. **Utkal Chamber of Commerce and Industry,**
N/6, I.R.C. Village, Nayapalli.
Bhubanesar-751015.

26. **Shri R.P. Mahapatra,**
Plot No.775 (Pt), Lane-3,
Jayadev Vihar, Bhubaneswar,
Orissa – 751 013.
27. **Mr.G.N. Agarwal,**
Gen.Secy. Sambalpur District,
Consumer Federation Balaji Mandir Bhawan,
Khetrajpur, Sambalpur-768 003.
28. **Mr. Jogendra Behera,**
Fellow Scholar, XIMB, Utility Regulation
Research Centre, XIMB, BBSR-751 013.
29. **Mr.T.C. Padhi,**
M/s. Berhampur Cold Storage,
Konisi, BED-1,
Berhampur-761 025.

Counsel for the Appellant (s):

Mr. Buddy A. Ranganadhan
Ms. Anjali Chandurkar
Mr. Hasan Murtza
Ms. Richa Bharadwaja
Ms. Samitha Inna
Ms. Junaira Rahman
Ms. Shilpy Chaturvedi
Mr. Shiv K. Suri

Counsel for the Respondents (s):

Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. Suresh Tripathy
Mr. N.K. Sahoo
Mr. N.A. Khan
Mr. G.S. Pujari
Mr. G. Rajan

Appeal no. 28 of 2009

**Northeastern Electricity Supply Company of
Orissa Ltd. (NESCO)
123-A, Mancheswar Industrial Estate
Bhubaneswar**

....Appellant(s)

Vs

- 5. Mr.Ramesh Ch. Satpathy, Secretary,
National Institute of Indian Labour, 302 (B),
Beherasahi, Nayapalli,
Bhubaneswar-751 012.**
- 6. East Coast Railway,
B-2, Rail Vihar, Chandrasekharpur,
Bhubaneswar-751 023.**
- 7. Chief Electrical Engineer. S.E. Railway,
Garden Reach, Kolkata-700 043.**
- 8. Ferro Alloys Corpn., Ltd.,
GD-2/10, Chandrasekharpur,
Bhubaneswar-751 023.**
- 9. Balasore Alloys Limited,
Balgopalpur,
Balasore, Orissa-756 020.**
- 10. Shri R.P. Mahapatra,
Plot No.775 (Pt.), Lane -3,
Jayadev Vihar,
Bhubaneswar-751 013, Orissa.**
- 11. Mr.Pravakar Dora,
Advocate,
3rd Lane Vidya Nagar,
Co-operative Coloy, Rayagada-765**

12. **Mr.P.K. Dey,
CO, M/s. MSP Steels Ltd.,
Haladiaguna, Keonjhar.**
13. **Mr.Sanjay Pattnaik,
Chief Resident Executive,
Tata Steel Limited,
273, Bhoumanagar,
Unit-IV, Bhubaneswr-751 001.**
14. **Jindal Stainless Steel,
50-HIG, BDA, Jaydev Vihar,
Bhubaneswar-751 013.**
15. **Utkal Chamber of Commerce and Industry,
N/6, I.R.C. Village, Nayapalli.
Bhubanesar-751015.**
16. **Mr.Ashok Kumar Mishra, MD,
M/s. IDCOL Ferro Chrome and Alloys Ltd.,
PO: Ferro Chrome Project,
Jaipur Road, Distt. Jaipur-755 020**
17. **Mr. Jogendra Behera,
Fellow Scholar, XIMB, Utility Regulation
Research Centre, XIMB, BBSR-751 013.**
18. **Mr.T.C. Padhi,
M/s. Berhampur Cold Storage,
Konisi, BED-1,
Berhampur-761 025.**
19. **Mr. Satya Sunder Kar,
M/s Shree Metaliks Ltd., Gurudwara Road,
Barbil, Distt.Keonjhar-758035.**

Counsel for the Appellant (s): Mr. Buddy A. Ranganadhan
Ms. Anjali Chandurkar
Mr. Hasan Murtza
Ms. Richa Bharadwaja
Ms. Samitha Inna
Ms. Junaira Rahman
Ms. Shilpy Chaturvedi
Mr. Shiv K. Suri

Counsel for the Respondents (s): Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. C.S. Chauhan
Ms. Rajdipa Behura
Mr. Suresh Tripathy
Mr. N.K. Sahoo
Mr. A.P.R. Rao, AEEE,
East Coast Railway

Appeal no. 147 of 2011

Western Electricity Supply Company of Orissa Ltd. (WESCO)Appellant(s)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

Vs

1. **Orissa Electricity Regulatory Commission** ...Respondent(s)
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa
2. **Sambalpur District Consumers Federation**
Balaji Mandir Bhawan, Khetrajpur
Sambalpur – 768003

3. **Sundargarh District Employee Association**
AL-1, Basanti Nagar
Rourkela – 769 012

4. **The Secretary, PRAYAS Energy Group**
Amrita Clinic, Ahtawale Corner
Carve Road, Pune – 400 004
Maharashtra

Counsel for the Appellant (s): **Mr. Buddy A. Ranganadhan**
Mr. Hasan Murtza

Counsel for the Respondents (s): **Mr. B.K . Nayak**
Mr. Rutwik Panda
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Satish Kumar
Mr. R.K. Mehta
Mr. David A.
Mr. Antaryami Upadhyay
Mr. Shibashish Mishra

Appeal no. 148 of 2011

Southern Electricity Supply Company of **....Appellant(s)**
Orissa Ltd. (SOUTHCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

Vs

1. Orissa Electricity Regulatory **...Respondent(s)**
Commission
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa

2. **Grahak Panchayat**
Friends Colony, Paralakhemundi
Dist: Gajapati – 761 200
Orissa
3. **Sri Prabhakar Dora**
3rd Lane, Cooperative Colony
Vidya Nagar, Rayagada 765 001
Orissa
4. **The Secretary, PRAYAS Energy Group**
Amrita Clinic, Ahtawale Corner
Carve Road, Pune – 400 004
Maharashtra

Counsel for the Appellant (s): **Mr. Buddy A. Ranganadhan**
Mr. Hasan Murtza

Counsel for the Respondents (s): **Mr. B.K . Nayak**
Mr. Rutwik Panda
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Satish Kumar
Mr. R.K. Mehta
Mr. David A.
Mr. Antaryami Upadhyay
Mr. Shibashish Mishra

Appeal no. 149 of 2011

North Eastern Electricity Supply Company of
Orissa Ltd. (NESCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

....Appellant(s)

Vs

1. **Orissa Electricity Regulatory Commission** **...Respondent(s)**
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa

2. **Orissa Consumer’s Association**
Balasore Chapter, (OCA)
C/o. Shri Nilamber Mishra
At/PO – Rudhungaon, Simulia
Balasore – 756 126

3. **The Secretary, PRAYAS Energy Group**
Amrita Clinic, Ahtawale Corner
Carve Road, Pune – 400 004
Maharashtra

Counsel for the Appellant (s): **Mr. Buddy A. Ranganadhan**
Mr. Hasan Murtza

Counsel for the Respondents (s): **Mr. B.K . Nayak**
Mr. Rutwik Panda
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Satish Kumar
Mr. R.K. Mehta
Mr. David A.
Mr. Antaryami Upadhyay
Mr. Shibashish Mishra

Appeal no. 160 of 2010

Western Electricity Supply Company of Orissa Ltd. (WESCO) **....Appellant(s)**
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

Vs

- 1. Orissa Electricity Regulatory Commission
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa** **...Respondent(s)**

- 2. Orissa Electrical Consumers' Association
Sibasakti Medicine Complex
B.K. Road, Cuttack – 753 001**

- 3. GRIDCO, Janpath
Bhubaneswar – 751022**

- 4. Department of Energy
Govt. of Orissa
Bhubaneswar – 751 001**

Counsel for the Appellant (s):

**Mr. Buddy A. Ranganadhan
Mr. Hasan Murtza
Mr. Shiv K. Suri**

Counsel for the Respondents (s):

**Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. R.K. Mehta
Mr. Antaryami Upadhyay
Mr. S. Lakhi Singh
Ms. Marie Riba
Mr. David A.
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Shibashish Mishra**

Appeal no. 161 of 2010

**North Eastern Electricity Supply Company of
Orissa Ltd. (NESCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015**

....Appellant(s)

Vs

**1. Orissa Electricity Regulatory
Commission
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa**

...Respondent(s)

**2. Orissa Electrical Consumers' Association
Sibasakti Medicine Complex
B.K. Road, Cuttack – 753 001**

**3. GRIDCO, Janpath
Bhubaneswar – 751022**

**4. Govt. of Orissa
Bhubaneswar – 751 001**

Counsel for the Appellant (s):

**Mr. Buddy A. Ranganadhan
Mr. Hasan Murtza
Mr. Shiv K. Suri**

Counsel for the Respondents (s):

**Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. R.K. Mehta
Mr. Antaryami Upadhyay
Mr. S. Lakhi Singh
Ms. Marie Riba
Mr. David A.
Ms. Rajdipa Behura**

Mr. C.S. Chauhan
Mr. Shibashish Mishra

Appeal no. 162 of 2010

**Southern Electricity Supply Company of
Orissa Ltd. (SOUTHCO)Appellant(s)**
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

Vs

- 1. Orissa Electricity Regulatory CommissionRespondent(s)**
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa
- 2. Orissa Electrical Consumers' Association**
Sibasakti Medicine Complex
B.K. Road, Cuttack – 753 001
- 3. GRIDCO, Janpath**
Bhubaneswar – 751022
- 4. Department of Energy**
Govt. of Orissa
Bhubaneswar – 751 001

Counsel for the Appellant (s):

Mr. Buddy A. Ranganadhan
Mr. Hasan Murtza
Mr. Shiv K. Suri

Counsel for the Respondents (s):

Mr. B.K. Nayak
Mr. Rutwik Panda
Mr. R.K. Mehta

Mr. Antaryami Upadhyay
Mr. S. Lakhi Singh
Ms. Marie Riba
Mr. David A.
Ms. Rajdipa Behura
Mr. C.S. Chauhan
Mr. Shibashish Mishra

Appeal no. 193 of 2012

**Western Electricity Supply Company of
Orissa Ltd. (WESCO)**
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

....Appellant(s)

Vs

**1. Orissa Electricity Regulatory
Commission**
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa

...Respondent(s)

2. Commissioner & Secretary
Department of Energy
Govt. of Orissa, Odisha Secretariat
Bhubaneswar – 751 001

3. World Institute of Sustainable Energy (WISE)
Plot no.44, Hindustan Estates, Road No.2,
Kalyani Nagar, Pune – 411 006

4. Prayas
Amrita Clinic, Ahtawale Corner
Carve Road, Deccan Gymkhana
Pune – 400 004

5. **Mr.G.N. Agarwal,**
Sambalpur District Consumer Federation
Balaji Mandir Bhawan,
Khetrampur, Sambalpur-768 003.

6. **Mr.Gobardhana Pujari, General Secy.,**
Sundergarh District Employer's Association,
AL-1, Besanti Nagar, Rourkela-769 012

Counsel for the Appellant (s): **Mr. Buddy A. Ranganadhan**
Mr. Hasan Murtza
Mr. Saswat Patnaik

Counsel for the Respondents (s): **Mr. B.K. Nayak**
Mr. Rutwik Panda

Appeal no. 194 of 2012

North-eastern Electricity Supply Company of Orissa Ltd. (NESCO) **....Appellant(s)**
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015

Vs

1. **Orissa Electricity Regulatory Commission** **...Respondent(s)**
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa

2. **Commissioner & Secretary**
Department of Energy
Govt. of Orissa, Odisha Secretariat
Bhubaneswar – 751 001

3. **World Institute of Sustainable Energy (WISE)**
Plot no.44, Hindustan Estates, Road No.2,
Kalyani Nagar, Pune – 411 006
4. **Prayas**
Amrita Clinic, Ahtawale Corner
Carve Road, Deccan Gymkhana
Pune – 400 004
5. **Orissa Consumer Association**
Balasore Chapter
Balasore – 756 126

Counsel for the Appellant (s):

**Mr. Buddy A. Ranganadhan
Mr. Hasan Murtza
Mr. Saswat Patnaik**

Counsel for the Respondents (s):

**Mr. B.K. Nayak
Mr. Rutwik Panda**

Appeal no. 195 of 2012

**Southern Electricity Supply Company of
Orissa Ltd. (SOUTHCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015**

....Appellant(s)

Vs

1. **Orissa Electricity Regulatory
Commission**
Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751 102
Distt: Khurda, Orissa

...Respondent(s)

2. **Commissioner & Secretary**
Department of Energy
Govt. of Orissa, Odisha Secretariat

Bhubaneswar – 751 001

- 3. World Institute of Sustainable Energy (WISE)
Plot no.44, Hindustan Estates, Road No.2,
Kalyani Nagar, Pune – 411 006**
- 4. Prayas
Amrita Clinic, Ahtawale Corner
Carve Road, Deccan Gymkhana
Pune – 400 004**
- 5. Grahak Panchayat, Friends Colony
Parlakhemundi
Distt. Gajapati 761 200**

Counsel for the Appellant (s):

**Mr. Buddy A. Ranganadhan
Mr. Hasan Murtza
Mr. Saswat Patnaik**

Counsel for the Respondents (s):

**Mr. B.K. Nayak
Mr. Rutwik Panda**

Appeal no. 196 of 2012

- 1. Western Electricity Supply Company of Orissa Ltd. (WESCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015** **....Appellant(s)**
- 2. North-eastern Electricity Supply Company of Orissa Ltd. (NESCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015**
- 3. Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO)
Plot no. – N1/22, IRC Village, Nayapalli
Bhubaneswar – 751 015**

2. State Commission and GRIDCO are the Respondents.

3. In Appeal nos. 26, 27 and 28 of 2009, the Appellants have challenged the ARR and Retail Supply Tariff Order dated 20.3.2008 for the three distribution licensees for FY 2008-09. In these Appeals the following issues have been raised.
 - I) Fixation of unrealistic distribution loss;
 - ii) Terminal benefits not allowed in full, ignoring the payments from the fund;
 - iii) Disallowance of AT&C Losses;
 - iv) Disallowance of Contingency Reserve;
 - v) NTPC Bonds;
 - vi) Miscellaneous Income;
 - vii) Truing up not done;

- viii) Other tariff issues: In the load factor computation, the State Commission has only considered the maximum demand of the peak hours and not considered the maximum demand during off-peak hours and has not provided for any penalty for overdrawal by captive power plants from the Grid.
4. Issue (iii) above relating to disallowance of AT&C loss has not been pressed; issue (v) relating to NTPC bonds has been withdrawn; Issue (vii) regarding Truing up not done does not survive since the State Commission has since carried out truing up exercise. Regarding issue (vi) on Miscellaneous Income the Appellants requested this issue to be dealt with Appeal no. 196 of 2012.
5. In Appeal nos. 160, 161 and 162 of 2010, the order dated 20.3.2010 passed by the State Commission

determining the ARR/Retail Supply Tariff for FY 2010-11 has been challenged on the following issues:

- I) Fixation of unrealistic distribution loss;
- ii) Computation of Revenue;
- iii) Disallowance of Employees Cost;
- iv) Disallowance of Repair & Maintenance charges;
- v) Disallowance of Administrative and General expenses.

6. In Appeal nos. 147, 148 & 149 of 2011, the order impugned dated 18.3.2011 passed by the State Commission determining the ARR/Retails Supply Tariff for FY 2011-12 has been challenged on the following grounds:

- I) Fixation of unrealistic distribution loss and notional sales;

- ii) Disallowance of Employees cost;
- iii) Disallowance of Administrative & General expenses;
- iv) Inadequate recovery of costs;
- v) Rebate on own transformer scheme.

The issue (v) regarding Rebate on own transformer scheme has not been pressed.

7. In Appeal no. 196 of 2012 the true up order dated 19.3.2012 for the three distribution licensees for the period FY 2000-01 to FY 2010-11 has been challenged.

The issues raised in this Appeal are:

- I) Unrealistic distribution loss;
- ii) Disallowance of Employees cost;
- iii) Administrative & General expenses;

- iv) Contingency Reserve;
 - v) Provision for bad and doubtful debt;
8. In Appeal nos. 193, 194 and 195 of 2012, the ARR/Retail Supply Tariff order for the three distribution licensees passed by the State Commission on 23.3.2012 for FY 2012-13 has been challenged. The following issues have been raised in these Appeals.
- I) Fixation of unrealistic distribution loss;
 - ii) Notional sale;
 - iii) Computation of revenue without factoring special rebate/concession for take-or-pay;
 - iv) Disallowance of Employees cost;
 - v) Disallowance of Administrative & General Expenses.

9. Since most of the issues raised in these Appeals are common, a common judgment is being rendered.

10. In Appeal nos. 26, 27 & 28 of 2009 regarding ARR for FY 2008-09 the Appellants have made the following submissions.

10.1 Fixation of unrealistic distribution loss:-

This issue is covered by the judgments of the Tribunal dated 13.12.2006 in Appeal nos. 77, 78 & 79 of 2006 and dated 8.11.2010 in Appeal nos. 52, 53 & 54 of 2007. The State Commission has filed Appeal against these judgments. Hon'ble Supreme Court has admitted the Appeals but has not passed any stay order. Further, the Business Plan Order for FY 2008-09 was issued on 20.3.2010 after the FY 2008-09 and FY 2009-10 were over. In the impugned order the State Commission against the direction given by the Tribunal, has adopted

the earlier distribution loss targets which were specifically set aside by the Tribunal.

10.2 Terminal benefits:-

The State Commission has worked out the funding deficit based on the actuarial valuation as on 31.3.2008, reduced by the amount allowed in ARR from FY 1999-2000 to 2007-08 and the Opening Balance Amount transferred from GRIDCO to the distribution licensees. However, the State Commission ignored the payment made by the distribution licensees to the pensioners/retired employees from 1999-00 to 2007-08. There is hardly any amount left as corpus with the distribution licensees after payment of the amounts approved in the ARR and, therefore, the Employees Trusts have been left under funded.

10.3 Disallowance of Contingency Reserve:-

The State Commission has not allowed any contingency reserve to the Appellants. When the matter was argued before the Tribunal regarding tariff for 2007-08, the issue had not been pressed by the Appellants since in the case of the transmission licensee, the distribution licensee had objected to the grant of contingency reserve on the ground that the same was not supported by the Regulations. However, in full bench judgment reported as 2010 APTEL 1238, this Tribunal in case of the transmission licensee had upheld allowing contingency reserve. The distribution licensees have filed an Appeal before Hon'ble Supreme Court against this judgment which is pending. Therefore, subject to the order of the Hon'ble Supreme Court, the Tribunal could allow contingency reserve to the distribution licensees.

10.4 Other tariff issues:-

In the impugned order, the industries have been allowed to draw upto 120% of their respective contract demand during off-peak hours without levy of any penalty. Therefore, for the purpose of determination of load factor for tariff, the State Commission has decided that the demands recorded in hours other than off-peak hours would be the basis. This is not in consonance with the definition of load factor in the Supply Code of 2004. Further, the State Commission has not provided for any penalty for overdrawal by the captive power plants. The Tribunal in judgment dated 21.12.2012 in Appeal no 188 of 2010 has remanded the matter to the State Commission to decide the claim of overdrawal charges payable by the distribution licensees to GRIDCO. Therefore, this issue may also be remanded

to the State Commission for consideration along with the matter remanded in Appeal no. 188 of 2010.

11. In Appeal nos. 160, 161 and 162 of 2010 for FY 2010-11, the following submissions have been made by the Appellants:-

11.1 Unrealistic distribution loss:

Similar arguments have been advanced as in Appeal no. 26 of 2009 & batch, as described in paragraph 10.1 above.

11.2 Revenue computation:

- (a) The State Commission has treated the entire difference between the actual distribution loss and targeted distribution loss as “Notional Sale” and the revenue attributable to such difference has been

included in the ARR. This is contrary to the Tariff Regulations as also the judgment of the Tribunal dated 4.12.2007 in Appeal no. 100 of 2007 in the matter of Karnataka Power Transmission Company Ltd. Vs. KERC.

- (b) The tariff petition was filed by the licensees before the Commission on 30.11.2009. At that time the sales projections were on the basis of full contracted capacity of the consumers. Subsequently, on 14.1.2010, the Commission promulgated an order of Load Regulation in the State imposing cuts on HT and EHT industries. Accordingly, the licensees made subsequent submissions about the impact of load regulation on the revenues which has not been considered by the State Commission. The State Commission has

since carried out truing up by order dated 19.3.2012 on the basis of actual figures. However, the Appellants are raising this issue as against the principle of tariff fixation as the Tribunal has repeatedly held that the truing up is not a panacea to cure the evils of an erroneous tariff fixation.

11.3 Disallowance of Employees cost:

- (a) The arrears of 6th Central Pay Commission payable by the Appellants to their employees has not been permitted as the State Commission has wrongly linked the payment of pay arrears to recoveries of arrears by the distribution licensees from their consumers. These are legitimate expenses of the Appellants. This issue has already been covered by the judgment of the Tribunal dated 19.4.2012 in Appeal no. 110 of 2010.

(b) The State Commission has not accepted the report of the Actuary M/s. Bhudhev Chatterjee for the FY 2010-11 in question. Instead the Commission took it upon itself to appoint an independent Actuary and to await his report without assigning any reason. It is pertinent that the same Mr. Bhudev Chatterjee was earlier appointed by the State Commission for FY 2008-09. The State Commission has tried to run the internal management of the distribution licensees which is wrong and against the principle laid down by the Tribunal in judgment dated 29.8.2006 in Appeal no. 84 of 2006.

11.4 Disallowance of Repair & Maintenance expenses:

The State Commission has disallowed the amount towards repair and maintenance expenses being the

difference between the amount spent during the relevant years from FY 1999-2000 onwards as per the audited accounts and the amount approved under the said head without realizing that the Appellants did not have sufficient funds to extend the approved costs towards repair and maintenance expenditure as all their receivables were escrowed with GRIDCO.

11.5 Disallowance of Administrative & General Expenses:

The State Commission has not allowed the additional expenses claimed by the Appellants stating that it would take a view on submission of documentary evidence including demand note raised by the State Government. The Commission has also wrongly held that declining employee base, computerization and IT

automation would lead to a decline in A&G expenses whereas in reality such costs would increase with the massive addition of consumes following Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) and other programmes. Consumer indexing and network documentation are the first steps to IT automation which ought to have been allowed as a prudent cost. Further, cess paid as per Building and Other Construction Workers Act, 1996 should have been considered as a part of A&G expenses. Despite the categorical statement in the impugned order that the Commission would consider such additional expenses in truing up exercise, the same have not been allowed in the truing up order dated 19.3.2012 challenged in Appeal no. 196 of 2012.

12. In Appeal nos. 147, 148, 149 of 2011 for FY 2011-12,
the following submissions have been made:-

12.1 Fixation of unrealistic distribution loss and Notional

Sales:

Same issues as in Appeal no.160 of 2010 and batch
described above.

12.2 Disallowance of Employees Cost:

(a) Basic pay, Grade pay and Dearness allowance
have not been granted on the basis of actual
figures. However in terms of the truing up order
dated 19.3.2012, the employees cost ought to be
trued up on the basis of actuals.

(b) As regards House Rent Allowance, the State
Commission has allowed @ 15% of basic pay as

against the claim of 18% which is actually paid to the employees. No reason or justification has been given by the State Commission in the impugned order for reducing the House Rent Allowance of the employees.

- (c) In respect of terminal benefits, the issue is same as raised in Appeal nos. 26, 27 and 28 of 2009 as the State Commission has overlooked to consider payment of dues made from the funds and considering the only accretion to the funds.

12.3 Disallowance of Administrative and General expenses:

The State Commission has disallowed Administrative and General expenses on activities such as spot billing, energy audit, etc; which were actually incurred by the

distribution licensees. According to the Appellants, this issue is covered in the full bench judgment of the Tribunal dated 08.11.2010 in the Appeal nos. 52, 53 and 54 of 2007.

12.4 Inadequate Recovery of Cost:

Despite the increase of bulk price payable by the distribution licensees by 36%, the retail supply has increased by only 26%. The retail supply tariff has been fixed in such a manner that the distribution licensee is able to recover the cost as approved by the Commission. The Commission did not take into account the realistic and achievable distribution loss levels. The Commission also approved the revenue of the distribution licensees considering the Notional Sales on account of difference between the distribution loss target and the actual loss. After payment of the bulk

tariff transmission and SLDC charges, the distribution licensees are left insufficient money to meet the approved expenses.

13. In Appeal no. 196 of 2012 against truing up order dated 19.3.2012, the following submissions have been made:-

13.1 Unrealistic distribution loss:

The State Commission has failed to have a relook at distribution loss in the truing up despite clear findings of the Tribunal in the judgment dated 13.12.2006 in Appeal nos. 77 to 79 of 2006 and full bench judgment dated 8.11.2010 in Appeal nos. 52, 53 and 54 of 2007. The issue is completely covered by the principles laid down by the Full Bench and Divisional Bench judgments by this Tribunal. Further by order dated 20.3.2010, the Commission passed an order on the

Business Plan for the second control period from FY 2008-09 to FY 2012-13. Apart from the fact that Business Plan order came into being after two years of the control period were already over, the said business plan order suffers from the same vice that was considered and held in the Full Bench judgment regarding the first Business Plan Order of 2005. The current Business Plan order dated 20.3.2010 also contained clear provisions of massive funding being made available to the distribution licensees as also various steps for raising of loan, etc. However, the budgetary allocation has not come; APDRP fund have not come; loans cannot be raised because GRIDCO has till date not released the mortgage on the assets and revenue of the distribution licensees still continued to be escrowed to GRIDCO. The Commission is, therefore, seeking to enforce and implement one part of

the Business Plan Order without looking at the every part of the order. The trueing up on the basis of benchmark loss is completely in violation of the judgment of the Tribunal. Despite the benchmark loss having being specifically set aside by this Tribunal, the Commission continues to insist on determination of tariff and true up on the same basis as if the judgment of the Tribunal did not exist. The State Commission has treated the entire difference between the actual distribution loss and targeted distribution loss as “Notional Sales” and the revenue attributable to such difference has been included in the ARR of the distribution licensees. It is contrary to the regulations as well as the judgment of this Tribunal.

13.2 Disallowance of Employees Cost:

Employees cost for the FY 2008-09 as per the audited accounts have not been permitted to the Appellants without giving any reason.

13.3 Disallowance of Administrative and General Expenses:

The Commission has trued up Administrative and General Expenses only on the approved figures whereas in the MYT order the Commission had stated that the A&G expenses would be considered after prudence check. Even in the Tariff Order for 2010-11, the Commission had specifically held *inter alia* that the actual expenses would be considered at the time of truing up. The principle for truing up is to compare the

actuals with projections and not projections with projections.

13.4 Contingency Reserves:

The Commission has not allowed any contingency reserve to the distribution licensees. When the matter was argued before the full Bench in the Tribunal in Appeals against the tariff order for FY 2007-08, the issue had not been pressed by the distribution licensees since in case of OPTCL, the transmission licensee, the distribution licensees had objected to the grant of contingency reserve to OPTCL on the ground that the same was not supported by the Regulations of the Commission. However, in the Full Bench judgment reported as 2010 APTEL 1238 this Tribunal, in the case of OPTCL, the transmission licensee, held that the provision of contingency reserve in area which is

highly prone to natural calamities is desirable. The above finding has been challenged by the distribution licensees (Appellants) before the Hon'ble Supreme Court in the Appeals being Civil Appeal no. 2939-41 of 2011. However, subject to the outcome of the aforesaid Supreme Court proceedings, the Tribunal may direct the Commission to provide contingency reserve for distribution licensees.

13.5 Provision for bad and doubtful debts:

The Commission has tried up the provision for bad and doubtful debts on the same percentage of sales revenue which were approved by the Commission in the different Annual Revenue Requirements. The Commission has considered the difference in the figures between the tariff order figures and the audited account whereas the Commission ought to have

considered the difference between the receivable audited figure and truing up figure. These differences would equal the difference between the tariff order figure and truing up figure which has not been considered by the Commission.

13.6 Non-consideration of delayed payment surcharge:

The Commission has erred in truing up the other expenses for the FY 1999-00 to FY 2010-11. The details of disallowed portion are not dealt in the impugned order. However on analysis of figures, it is understood that the Commission has erred in not considering the component of the Delayed Payment Surcharge payable to GRIDCO towards power purchase dues in truing up of other expenses.

14. Following submissions have been made in Appeal nos. 193, 194 and 195 of 2012 for FY 2012-13

14.1 Unrealistic distribution loss: This is the same issue as raised in the other Appeals.

14.2 **Notional Sales:** This is the same issue raised in the other Appeals.

14.3 **Computation of Revenue without factoring special rebate/concession for take or pay:**

The State Commission has erred in introducing a special rebate for HT/EHT consumers having contract demand more than or equal to 100 KW and extending them a special concession of 50 paise per unit without accounting for the same in the licensee's expected revenue. The Commission has introduced the concept

of “take or pay” tariff for the HT/EHT consumers having contract demand of more than or equal to 100 KW subject to their willingness to pay energy charges as per actual drawal or 70% load factor at the contract demand whichever is higher.

14.4 Disallowance of Employees costs:

Basic pay, Grade pay and Dearness Allowance has not been granted on the basis of actual figures. However, in terms of truing up order dated 19.3.2012 the employee cost ought to have been trued up on the basis of actuals. As regards House Rent Allowance, the Commission has allowed at the rate of 15% of basic pay as against 18% which is actually paid to the employees. In respect of terminal benefit the issue is the same as raised in Appeal nos. 26 to 28 of 2009.

14.5 Disallowance of Administrative and General Expenses:

The State Commission has disallowed the expenses relating to certain activities like RTI compliance of AMR installations, building and construction worker's welfare cess, meter replacement cost etc. in the Tariff Order thereby disallowing the actual expenses claimed by the distribution licensees. The Commission in the true up order has only allowed the approved figures of Administrative and General expenses, despite categorical statement in the MYT order that the Commission would consider such additional expenses in the truing up exercise.

15. On the above issues, the State Commission has filed reply and written submissions. Written submissions

have also been filed by GRIDCO, the Respondent no. 3 in Appeal nos. 160 of 2010.

16. We have heard the Learned Counsel for the Appellants, the State Commission and GRIDCO. On consideration of the submissions of the parties, the following questions would arise for our consideration:
- i) Whether the State Commission has erred in setting up unrealistic distribution loss target in contravention to the Tribunal's judgments in the Appeals filed by the Appellants against the tariff orders passed by the State Commission for the previous years?
 - ii) Whether the State Commission has erred in treating the entire difference between the actual distribution loss and the targeted distribution loss as notional sales and

- including the same in the revenue of the distribution licensees?
- iii) Whether the State Commission has erred in not considering the impact of load regulations promulgated by the State Commission in determining the sales revenue of the distribution licensees for the FY 2010-11?
 - iv) Whether the State Commission has erred in computing the requirement of funding the terminal benefits of the employees without considering the payments from the fund in the previous years?
 - v) Whether the contingency reserve should be provided in ARR of the Appellants in accordance with the findings of the Tribunal in another case where the Tribunal

- upheld the provision of contingency reserve for the transmission licensee?
- vi) Whether the State Commission has erred in computing the load factor of industries who have been allowed to draw upto 120% of their contract demand during off peak hours without levy penalty for FY 2008-09?
- vii) Whether the State Commission has erred in not imposing any penalty for overdrawal by captive power plants for FY 2008-09?
- viii) Whether the State Commission has erred in determining the employees cost?
- ix) Whether the State Commission has erred in determining the Repair & Maintenance expenses?

- x) Whether the State Commission has erred in determining the Administrative and General Expenses?

- xi) Whether the State Commission has correctly trued up the bad and doubtful debts in the true up order dated 19.3.2012?

- xii) Whether the State Commission has erred in truing up of accounts by not considering the delayed payment surcharge payable by the Appellants to GRIDCO?

- xiii) Whether the State Commission has erred in computing the revenue for the FY 2012-13 without factoring special rates/concession for take or pay in respect of some EHT/HT consumers?

17. let us now take up the first issue regarding unrealistic distribution loss.

17.1 According to the Learned Counsel for the Appellants this issue is covered by the judgments of this Tribunal dated 13.12.2006 and 8.11.2010.

17.2 Learned Counsel for the State Commission has made the following submissions:

- i) While fixing distribution loss target, the Commission has relied on the business plan orders. The State Commission by order dated 28.2.2005 had approved the first business plan for control period from 2003-04 to 2007-08. Thereafter the second business plan order was issued on 20.3.2010 to cover the period from FY 2008-09 to 2012-13. In the business plan orders,

- the loss reduction target for five years has been set up by the Commission to give predictability to the future tariff.
- ii) The Government of Orissa had constituted a high level power committee called “Souvan Kanungo Committee” to suggest mid-course correction of reforms. The distribution licensees themselves furnished the level of distribution loss in the year 2001-02 as NESCO – 41.38%, WESCO – 38.29%, SOUTHCO – 39.14% and CESCO – 43.02%, which were approved in toto by the Committee in its report.
 - iii) The State Commission had during the first business plan hearing, had considered the loss level accepted by the Kanungo Committee and the submissions of the distribution licensees before setting up a trajectory of

loss level reduction for the control period 2003-04 to 2007-08 and the same distribution loss level has been utilized as base in fixing the distribution loss trajectory and tariff for the subsequent years.

- iv) The State Commission passed the second business plan order dated 20.3.2010 for control period from 2008-09 to 2012-13 wherein the distribution loss and AT&C loss for each financial year have been fixed in advance in continuation of the first business plan period.

- v) None of the Appellants have been able to achieve the distribution loss target set up by the State Commission for which they were alone responsible. Allowing adjustment of actual loss against the normative loss would mean condoning the inefficiencies in operation of

the distribution licensees which is against the National Electricity Policy and Tariff Policy and Section 61 (c) of the Electricity Act, 2003.

- vi) As regards the contention of the Appellants that the issue is covered by the full bench judgment of the Tribunal, it is submitted that an Appeal has been filed before the Hon'ble Supreme Court by the Commission against the judgment of the Tribunal and the same is pending for final adjudication.

17.3 Let us first take the findings of this Tribunal in judgment dated 13.12.2006 of this Tribunal in Appeal nos. 77 of 2006 and batch reported in 2007 APTEL 278 in the matter between the Northern Eastern Electricity Supply Co. of Orissa Ltd. and Ors Vs. Orissa Electricity Regulatory Commission & Ors., etc; in which the tariff

order dated 23.3.2006 for FY 2006-07 was challenged.

The relevant finding of the Tribunal is as under:-

“27. Much reliance is placed on the status report submitted during the pendency of the appeal by the Special Officers appointed by this Appellate Tribunal. Here again in our view, it is for the Regulatory Commission to take a re-look of the entire matter, while undertaking truing up exercise. We hasten to add that the Commission need not stick to its earlier view, but it shall have a re-look in this respect by taking a practical view of the ground realities instead of proceeding on assumption and surmises. We are sure that Commission will take a re-look of the matter and grant the benefits to the DISCOMS.”

Thus the Tribunal directed the State Commission to have a re-look in respect of the distribution loss for FY 2006-07 by taking an practical view of the ground realities instead of proceeding on assumption and surmises.

17.4 The Orissa Commission has filed an Appeal against the above judgment of the Tribunal before the Hon'ble Supreme Court which has been admitted. However, no stay has been granted by the Apex Court.

17.5 The second judgment is the full bench judgment dated 8.11.2010 in Appeal nos. 52, 53 and 54 of 2007 reported as 2010 ELR (APTEL) 1254 in the matter between the Western Electricity Supply Company of Orissa Ltd. & Ors. Vs. Orissa State Electricity Commission & Ors., etc. pertaining to tariff order for FY 2007-08. The relevant extracts of the full bench judgment are as under:

“20. In this connection, it would be relevant to reproduce the excerpts from the report of the Kanungo Committee constituted by Govt. of Orissa in May, 2001 to review the power sector reforms in Orissa:

“5.15. To bring reform back on rails, the World Bank and the DFID who helped Orissa initially and hopefully have retained their interest in the reform, should come forward with a suitable revenue gap in the intervening years. Without this interim financing estimated at Rs. 3240 crores, there seems hardly any prospect of the reform coming to fruition. The Govt. of India should not only persuade them to do so but also extend a helping hand in sharing the responsibility of interim financing of the revenue gap.

5.16. Once a decision is taken on interim financing and its apportionment, the Discos and GRIDCO may be pinned down to specific performance parameters by desegregating the proposed T&D loss reduction Disco-wise”.

21. It has been submitted by the Appellants that the said infusion of funds never happened. On the other hand, the Appellants Distribution Companies were starved of finances as the tariffs approved by the State Commission did not cover the approved costs. Even though Bulk Supply Tariff have been increased, there has not been any increase in tariff since 2001-2002. The learned counsel for the Appellants has explained that monies collected by the distribution licensees are escrowed to GRIDCO to service Bulk Supply Tariff Bills and loan repayment. Consequently, the distribution licensees have no control over cash flows and have to approach the State Commission and GRIDCO for relaxation of escrow to meet essential expenses.

The cash proceeds of current operation on Trading of Power and Unscheduled Inter-charge instead of reducing the input costs and consequently inject liquidity has been used to effect losses of period prior to privatization. The Distribution Companies are facing difficulties in recovery of electricity dues from Government Departments, Local Bodies and State Public Sector Undertaking and also find it difficult to disconnect them. All their distribution assets are also hypothecated to GRIDCO making it difficult for them to raise loans from Financial Institutions. Under these circumstances, unless the recovered revenue gap in ARR are taken care of by the State Commission infusion of finances for capital investment in distribution may not be possible. In our opinion, there is force in arguments of the Appellants that the loss reduction targets have been approved by the State Commission in the impugned Order without keeping in view the ground realities and infusion of funds required to achieve the targets.

22. *As a matter of fact, the table produced by the Appellants would reveal that the financial impact on account of setting up unrealistic targets for the FY 2007-2008 would be Rs.73.35 crores in the case of WESCO, s.40.37 crores in the case of NESCO and Rs.43.47 crores in the case of SOUTHCO. It is, therefore, clear prima-facie from the table produced by the Appellants that in the year in question, the approved reduction with respect to estimated losses for previous year in the case of WESCO was 11.5 % in respect of SOUTHCO 13% and 6.8 % in*

respect of NESCO. These targets are very high and are considered unrealistic. Moreover, the Distribution Licensees have given valid reasons for non-availability of funds for strengthening of the distribution system which is necessary to reduce the losses. As such, the finding on this issue rendered by the State Commission which relates to the un-realistic distribution loss targets is unacceptable. So, this point is decided in favour of the Appellants.”

17.6 Thus, in the above judgment of the Tribunal the distribution loss for the FY 2007-08 considered for tariff determination was set aside as the Tribunal felt that the loss reduction target had been approved without keeping in view the ground realities and infusion of funds required to achieve the targets.

17.7 Let us now examine the distribution loss as approved by the State Commission in the various tariff orders and

the actual loss for the distribution licensees of Orissa
 from 2003-04 to 2012-13.

	2003-04		2004-05		2005-06		2006-07		2007-08	
	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual
CESU	30.9	39.8	39.0	41.5	36.0	42.9	33.0	43.5	29.3	41.5
NESCO	34.8	43.7	38.0	39.4	35.0	37.1	31.5	33.2	26.0	31.2
WESCO	31.1	39.0	34.0	36.4	31.0	37.8	33.7	36.4	25.0	36.1
SOUTHCO	30.9	42.5	39.0	40.5	36.0	41.1	33.0	43.4	30.4	45.5
All Orissa	31.9	40.8	37.1	39.2	34.2	39.6	32.8	38.6	27.1	37.5

	2008-09		2009-10		2010-11		2011-12		2012-13	
	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual
CESU	29.3		26.3		25.37		24.0		23.0	
NESCO	25.5	34.57	23.0	32.52	18.46	32.2	18.4	34.28	18.35	
WESCO	25.00	33.55	22.50	34.68	19.63	38.1	19.70	38.84	19.60	
SOUTHCO	30.42	47.78	27.92	48.02	27.82	48.12	26.50	46.42	25.5	
All Orissa	27.05		24.47		22.22		21.70		21.20	

17.8 We find that the State Commission has adopted the distribution loss target as per the first business plan for the period from FY 2003-04 to 2007-08 and as per the second business plan for the period from FY 2008-09 to FY 2012-13. The distribution loss trajectory in the second business plan is based on the loss levels decided by the State Commission for FY 2006-07 and 2007-08 which have been set aside by the Tribunal with

directions to redetermine the distribution loss levels taking into account the ground realities.

17.9 We find that the actual distribution loss in respect of NESCO has reduced for 43.7% in 2003-04 to 31.2.% in 2007-08 but again increased to 34.57% in 2008-09 and then gradually gone down to 32.2% in 2010-11 but again increased to 34.28% in 2011-12. NESCO's losses reduced from 43.7% in 2003-04 to 34.28% in 2011-12 i.e. a reduction of 9.42% in a period of 8 years.

17.10 In case of WESCO, the actual loss reduced from 39.0% in 2003-04 to 33.55% in 2008-09. However, thereafter it gradually increased to 38.84% in 2011-12 i.e. almost the same level as recorded during 2003-04.

17.11 In the case of SOUTHCO, the actual loss has reduced from 42.5% in 2003-04 to 40.5% in 2004-05 but again increased to 45.5.% in FY 2007-08. However, it again increased to 46.42% in FY 2011-12, i.e. higher than the loss recorded in 2003-04.

17.12 The reasons given by the Appellants for non-reduction and in some cases increase in distribution loss are:

- i) The single biggest factor which has resulted in distribution loss not having been reduced is lack of funds. The first business plan order of 2005 envisaged infusion of funds to the extent of Rs. 3240 crores from various sources including World Bank loan, State Government support besides availability of APDRP funds from Government of India. The second business

plan order dated 20.3.2010 also envisaged infusion of funds to the extent of Rs. 2450 crores from the State Government, raising of loan capital of RS. 2550 crores by the distribution licencees, GRIDCO and Government of Orissa releasing the mortgage of the assets of the distribution licensees to enable them to avail loan and availability of R-APDRP funds. The funds from RAPDRP have not flown. Out of estimated budgetary support of Rs.2450 crores only about 100 crores has been made available to all the 4 distribution licensees by the State Government and that too only in FY 2012-13. On the other hand, the mortgage of the assets of the distribution licensees has also not been released by GRIDCO to enable the licensees to raise loans. There is no money left even for routine repairs and maintenance expenses after payment to GRIDCO against power purchase cost.

- ii) There is lack of administrative support in curbing theft of electricity. The State Government took its own time in setting up of energy police stations and courts. Even when the police stations were established, they were ineffective on account of manpower shortage and lack of clear cut reporting guidelines.

- iii) Massive rural electrification programme like RGGVY and BGJY, etc., caused addition of subsidized consumers mostly under BPL category leading to unsustainability of the distribution business. Further massive addition at lower voltage would added to losses on account of increase in LT/HT ratio.

- iv) Multiple trade unionism and inadequate administrative support has held to a restive industrial climate. As many

as 42 trade unions exist in distribution companies who in a bid for one-upmanship resort to strike or dharna at the slightest pretext leading to disruption of works.

- v) Business uncertainty and dampened morale of the employees due to financial losses incurred by the licensees, disallowance of employees cost pertaining to 6th Pay Commission and late payment of salaries.

- vi) Hence the distribution licensees are caught in a vicious cycle of high loss levels, negative returns and poor employee morale.

17.13 We find force in the arguments of the Appellants that the infusion of funds is necessary to achieve the desired reduction in the distribution loss and if the infusion of funds has not been possible for

reasons beyond the control of the distribution licensees, then the loss reduction trajectory has to be reset keeping in view of the ground realities. However, we are not convinced by the argument of the Appellants regarding increase in the distribution loss. We also do not accept the contention of the Appellants that the loss level should be adjusted as per actuals. When the distribution loss was being reduced gradually in NESCO and WESCO in the period 2003-08, there is no justification in increase in loss levels in the period 2008-12. Similarly, there is no justification in increase in loss level in SOUTHCO to 46.42% in FY 2011-12 i.e. higher than what was existing 8 years back in 2003-04. The actual loss levels in the distribution system clearly indicate large quantum of commercial losses due to theft, slow or defective meters, etc., which is

required to be curbed at any cost. The distribution licensees cannot wash their hands off completely from curbing losses by stating administrative reasons. Even though there are valid reasons in the Appellants not being able to achieve the loss trajectory as decided in the tariff orders based on the Business Plans, there is no justification in the Appellants not able to achieve reduction in loss levels gradually from 2003-04 to 2012-13. We also do not accept the arguments of the Appellants regarding increase in loss levels.

17.14 However, the loss levels for 2006-07 and 2007-08 have to be reset by the State Commission as per the findings of the Tribunal in Appeal no. 77 of 2006 and batch and Appeal no. 52 of 2007 and batch. The loss levels earlier set for 2006-07 and 2007-08 form the

base for the loss level trajectory approved by the State Commission for the period 2008-09 to 2012-13. Accordingly the loss levels for the period 2008-09 to 2012-13 have also to be reset by the State Commission due to change in loss levels for 2006-07 and 2007-08 and keeping in view that the finances as envisaged in the business plan could not be made available to the Appellants. However, as pointed out earlier there is no case for retaining the loss levels per actuals or accepting increase in loss level.

17.15 To sum up, the loss level trajectory has to be reset by the State Commission from 2008-09 to 2012-13 in light of the judgment of the Tribunal in Appeal nos. 77 of 2006 and batch and 52 of 2007 and batch and also the findings in these Appeals referred to in the preceding paragraphs. The distribution loss trajectory

has to be redetermined keeping in view ground realities that the requisite funds for augmentation of the distribution system have not be made available to the Appellants. However, the loss level trajectory has to be reduced gradually from 2006-07 to 2012-13 and in no case, it should increase. The State Commission shall then true up the accounts of the Appellants for the above period with the revised loss levels. Accordingly directed.

18. The second issue is regarding the Notional Sales.

18.1 According to the Appellants, the treatment given by the State Commission to the difference between the actual distribution loss and targeted distribution loss as Notional Sales is contrary to the Tariff Regulations as

also judgment of the Tribunal in Appeal no. 100 of 2007.

18.2 According to the Learned Counsel for the State Commission, as per clause 5(3)(c) of the Tariff Regulations, 2004, the losses on account of under achievement of loss target should be entirely borne by the licensee. The sale forecast of the distribution licensees has been calculated based on targeted distribution loss over estimated power purchase. The said sale forecast has to be applied in estimating the revenue accruals.

18.3 This issue is covered by the judgment of the Tribunal dated 4.12.2007 in Appeal no. 100 of 2007 in the matter of Karnataka Power Transmission Company Ltd Vs. Karnataka State Electricity Regulatory Commission.

- “31. We now advert to the T&D losses. The Commission is expected to fix the T&D loss targets in consultation with the licensee. Once the target for loss level is fixed, the licensee is expected to make all efforts to achieve the loss level. The consumers should not be made to bear the brunt of losses over and above the fixed target. In the case in hand, during one year, a loss level of 31% is fixed by the Commission. The cost of 100 units purchased and 69 units (100-31) sold should be considered in the ARR. However, KPTCL could achieve only 35.5% loss level which means that units required to be purchased will be about 107 so that 69 units are available for sale to the consumers. Whereas the Commission has allowed the cost of procurement of power of about 107 units, simultaneously by applying a loss level of 31% to 107 units, it has also assumed that there will be sale of about 5 units over and above the 69 units. This results in recovering from the licensee for the electricity which has not actually been sold because of losses being 35.5% (actuals) against the set target of 31%. The additional imaginary sale of power assumed by the Commission is irrational, unreasonable as this electricity has not even reached the consumer end.*
- 32. We need to balance the interest of the consumer and the licensee by ensuring that the licensee tries his best to achieve the said targets and is deterred to under achieve loss reduction. In the present case to sell 69 units KPTCL will be allowed purchase cost of 100 unit only as per the target of 31% set by the Commission and the licensee will have to pay for the power required*

over and above 100 units so that 69 units are sold to consumers. We decide that this deterrent of disallowing cost of electricity required over and above 100 units is sufficient and it will not be correct to assume an imaginary sale of electricity when the actual loss level is 35.5% and when the licensee has already been penalized by not allowing it the cost of power procurement over and above 100 units. This will ensure that the licensee functions efficiently. Interest of consumers is not prejudiced because licensee is being allowed only purchase cost of power as per the loss level target set by the Commission.

The question before us is how much of power can be deemed to have been sold and what amount should be taken as the revenue from the sale of power. The Commission cannot be allowed to assess the revenue of the licensee on the imaginary sale of power as indicated above. The licensee has borne the burden of extra purchase of power for meeting the T&D loss over and above the target. The revenue of the licensee can be assessed only on the basis of actual sale. We, accordingly, uphold the objection of the appellant on this aspect and allow the appeal in respect of issues A&B.

Concedingly, the Commission has taken into account the additional power purchase cost payable to Tanir Bhavi as allowed by this Tribunal in appeal No. 107 of 2006. We direct that this element of additional cost may be succinctly reflected by the Commission while implementing this order.”

18.4 In the above judgment, the Tribunal decided that the revenue of the licensee can be assessed on the basis of the actual sale. The Power Purchase Cost admissible to the distribution licensee has to be determined on the basis of the estimated sales revenue and the targeted distribution loss. Thus the power purchase cost on account of non-achievement of the distribution loss level has to be borne by the distribution licensee and in this way, the inefficiency of the distribution licensee is not passed on to the consumers. It is not correct to assume notional sales on account of the difference between the actual distribution loss and targeted distribution loss and account the same in the revenue of the distribution licensee. The findings of the Tribunal in Appeal no. 100 of 2007 will squarely apply in this case. Accordingly, the State Commission has to redetermine the sales revenue of the Appellants and

the power purchase cost to be permitted to the Appellants. The cost of power purchase due to the Appellants not achieving the distribution loss target determined at average power purchase cost shall not be passed on in the ARR and Retail Supply Tariff and shall be borne by the Appellants.

18.5 The Learned Counsel for Appellants as well as Learned Counsel for the State Commission have referred to the Tariff Regulations in support of their respective contentions. Let us now examine the Tariff Regulations of 2004.

18.6 Regulation 5(2) and 5(3)(c) referred to by the Appellants and the State Commission respectively are reproduced as under:

5. General principles

“(2) Sales forecast

(a) The licensee shall forecast energy sales, the number of consumers and load profile for each consumer category and for each slab for the period under consideration. The Commission shall examine the sales forecasts of the licensee for reasonableness, consistency of principles across all licensees, past trend etc., before accepting and adopting it. The licensee shall develop a robust database of all consumers with desired particulars regarding their demand to facilitate the forecasting process in accordance with the direction given by the Commission.

(b) The sales forecast shall be applied in estimating the revenue accruals.

(3) Distribution Loss

(c) The licensee will have to share with the consumers part of the financial gains arising from achieving higher loss reduction vis-à-vis the target. Losses on account of under achievement of loss reduction target will be entirely borne by the licensee.”

18.7 Regulation 5(2) clearly indicates that the sale forecast shall be used in estimating the revenue accruals. Regulation 5(3)(c) only stipulates that the losses on account of under achievement of the loss target has to be entirely borne by the licensee. In the above findings of the Tribunal the Power Purchase Cost on account of non-achievement of the loss target is entirely borne by the distribution licensee. Thus, there is no conflict between the findings of the Tribunal and the Regulations of the State Commission. Further, the Regulation 5(3) (c) referred to by the Learned Counsel for the State Commission is not related to estimation of revenue accruals.

18.8 Accordingly, this issue is decided in accordance with the findings of the Tribunal in Appeal no. 100 of 2007.

19. The third issue is non-consideration of load regulation in revenue computation for the FY 2010-11.

19.1 According to the Appellants, when the tariff petition was filed by them before the State Commission on 30.11.2009, the sales projections were made on the basis of full contracted capacity of the consumers. Subsequent to the filing of the Tariff Petition on 14.1.2010, the Commission promulgated an order/protocol of load regulation in the State. In terms of the Regulation framed by the Commission, HT industries were to restrict their demand by 25% whereas EHT consumers were to restrict their demand by 15%. The Appellants made detailed submissions before the State Commission about the impact of load regulation on their revenues but none of these

submissions were considered at all in the impugned order.

19.2 We find that the truing up of revenue has been undertaken in the truing up order dated 19.3.2012 but the issue has been raised by the Appellants as a matter to principle of tariff fixation.

19.3 We feel that the State Commission, having promulgated the load regulations, should have taken into consideration the impact of the load regulations on the industries and other subsidizing categories on the revenue of the Appellants. It has been held by this Tribunal in various judgments that the truing up is not a panacea to cure the erroneous tariff fixation and if the original tariff fixation was faulty merely because the

same would be trued up is no defence to an erroneous tariff fixation. Accordingly, decided.

20. The fourth issue is regarding terminal benefits.

20.1 According to the Appellants, the State Commission has ignored the payments made by them to the pensioners/retired employees from 1999-00 to 2007-08 in working out the funding deficit based on the actuarial valuation.

20.2 According to the Learned Counsel for the State Commission, independent actuarial valuation is done by the Commission at regular intervals to assess the fund requirements of the corpus. If the fund availability in the corpus is less than the actuarial valuation, the

Commission allows deficit funding as a pass through in the revenue requirement with the carrying cost.

It is further stated that the interest earned on the fund invested in securities and fixed deposits has to be utilized for payout of the terminal benefits of the employees. Therefore, the Commission did not feel it to consider the payment from the trust fund, while determining the terminal liability. Moreover, the State Commission had done the truing up exercise upto FY 2010-11 and while carrying out the truing up exercise, the State Commission has considered the actual audited employees expenses as per the audited accounts which has taken care of any discrepancy in figure between approval and actual.

20.3 We find that the State Commission in its order dated 20.3.2008 has determined the terminal liabilities of the Appellant as under:

- i) The State Commission has computed the expected corpus availability as summation of opening balance as on 1.4.1999 of the fund transferred from GRIDCO to the distribution licensees and the terminal liabilities allowed by the Commission in the various years from 1999-00 to 2007-08.

- ii) The State Commission has deducted the expected corpus availability as computed in step i) above from the expected availability as on 31.3.2008 from corpus valuation as per the actuary of each distribution licensee to compute the deficit funding of each

licensee. The same is considered as the terminal liability for the year 2008-09.

20.4 We find that while computing the expected corpus availability the Commission did not account for the payments made from the fund to meet the employees terminal liability for the period 1999-00 to 2007-08 as also the interest earned on the investments from the fund. Now, it is admitted that the State Commission has since trued up the figures till 2010-11 on the basis of the actual numbers as per the audited accounts, this issue does not survive anymore. However, as a matter of principle, the accretion to the fund as also the payments from the fund have to be considered to arrive at the actual availability of the funds in the ensuing year.

20.5 We also do not accept the contention of the Learned Counsel for the State Commission that interest earned on the fund invested in securities and fixed deposits has to be utilized for the payment of the terminal benefit and, therefore, payment from the fund need not be considered for determining the terminal liability. The interest earned on the fund may not be sufficient to cover the payments from the fund. Therefore, both payouts from the fund as well as the interest earned on the securities have to be considered while determining the terminal liability. Accordingly decided and directed.

21. The fifth issue is regarding contingency reserve which has been raised in Appeals 26 of 2009 and batch as well as in Appeal no. 196 of 2012.

21.1 According to Learned Counsel for the Appellants, contingency reserve should be allowed in accordance with the judgment of the Tribunal in 2010 APTEL 1238 in which the Tribunal decided in favour of granting contingency reserve to OPTCL, the State transmission licensee of Orissa, subject to the outcome of the Appeals filed by the Appellants pending in the Hon'ble Supreme Court against the above judgments of the Tribunal.

21.2 According to Learned Counsel for the State Commission, the contingency reserve is meant for meeting unforeseen expenditure which is beyond the control of the licensee and the same cannot be estimated in advance. The LTTS (MYT) order of the Commission dated 18.6.2003 applicable for the first control period in respect of the distribution licensees

upto 2007-08 also does not provide for contingency reserve as on item of expenditure.

21.3 We find that the Appellants in their petition for ARR and tariff for FY 2008-09 had not proposed any contingency reserve. Accordingly, this issue was not considered by the State Commission in the impugned tariff order dated 20.3.2008. The Appellants are raising this issue now at the Appeal stage only because in another case relating to the OPTCL, the transmission licensee, the Tribunal upheld the provision of contingency reserve even though grant of contingency reserve to OPTCL was opposed by the Appellants. The Appellants have also filed an Appeal against the judgment of the Tribunal upholding the provision of contingency reserve for OPTCL. We do not think it is a proper ground for claiming contingency

reserve for distribution business at Appeal stage when the same was not claimed by the Appellants in their petition before the State Commission and on which there is no finding by the State commission in the impugned orders. There is no justification for the Appellants claiming the contingency reserve at Appeal stage just because the Tribunal in another case upheld the provision of contingency reserve for the transmission licensee. We, therefore, reject the contention of the Appellants on the issue of contingency reserve.

22. The sixth issue is regarding computation of load factor raised in Appeal nos. 26 of 2009 and batch.

22.1 According to the Appellants, the State Commission has only considered the maximum demand of the peak

hours but not considered the maximum demand during off peak hours for computing the load factor which is wrong.

22.2 According to the Learned Counsel for the State Commission this issue does not survive in view of truing up of the sales revenues of the Appellants in the true up order for the period till FY 2010-11.

22.3 We are in the agreement with the Learned Counsel for the State Commission. The tariff year 2008-09 has since been over long and the revenue has been collected from the consumers as per the tariff order. The consumers are also not before us to represent their case. We do not want to interfere with the tariff of the consumers for 2008-09 at this stage as it may result in additional payment liability of the consumers

for a period which is long over. In any case the revenue sales of the Appellants have since been trued up and no prejudice will be caused to the Appellants if we do not interfere with the tariff order.

22.4 In view of above we decide not to interfere with the impugned order in regard to load factor.

23. The seventh issue is regarding emergency power supply to captive power plants/generating station raised in Appeal no. 26 of 2009 and batch.

23.1 According to Learned Counsel for the Appellants, the State Commission should have kept a provision for penalty for overdrawal by captive power Plants/Generating Station keeping in view the

proposal submitted by the Appellants before the Commission.

23.2 According to the Learned Counsel for the State Commission, this issue would not survive as the tariff year 2008-09 is long over and the Appellants have collected the dues from the Captive Power Plants/Generating Stations in terms of the tariff order. The revenue accounts of the Appellants have also since been trued up upto FY 2010-11.

23.3 We are in agreement with the Learned Counsel for the State Commission. The tariff year 2008-09 has been long over and the bills have been raised and revenue collected by the Appellants from Captive Power Plants/ Generating companies as per impugned order. The concerned generating stations are also not before

us in this Appeal. Moreover, the accounts of the Appellants have already been tried up by the State Commission upto 2010-11. No prejudice will be caused to the Appellants if we do not interfere in the matter.

24.4. According to the Learned Counsel for the Appellants, this Tribunal in the judgment dated 21.12.2012 in Appeal no. 188 of 2010 has remanded the matter to the Commission to decide the claim of the overdrawal charges payable by the distribution licensees to GRIDCO and, therefore, when the issue of overdrawal charges to be paid by the Appellants to GRIDCO is considered by the Commission, the issue of overdrawal charges to be paid by the CPPs/generating stations to the Appellants could also be considered at that time. We are not inclined to

issue any directions which would result in revision of charges of the CPPs for FY 2008-09 after a lapse of 5 years. However, if any additional charges are payable by the Appellants to GRIDCO for overdrawal on account of overdrawal by the CPPs, the same has to be allowed in the ARR of the Appellants. Accordingly decided.

25. The eighth issue is regarding employees expenses which has been raised in Appeal no. 160 of 2010 and batch, 147 of 2011 and batch, 193 of 2012 and batch and 196 of 2012 and batch.

25.1 The various issues raised by the Appellants under the employees expenses are as under:

- a) The arrears of the 6th Central Pay Commission payable by the Appellants to their employees has not been permitted in FY 2010-11. The State Commission has linked the allowance of the arrears of the 6th Pay Commission payable to the employees of the Appellants with the recovery of arrears of dues by the distribution licensees from their consumers.

- b) The State Commission has micro managed the affairs of the Appellants by appointing Actuary to determine fund requirement for terminal benefit for FY 2010-11 without considering the report of the Actuary submitted by the Appellants for their claim of terminal benefit.

- c) The State Commission has allowed the House Rent Allowance ('HRA') @ 15% of basic pay as against the

claim of 18% which is actually paid to the employees for the FY 2011-12 and FY 2012-13.

- d) For FY 2011-12 and FY 2012-13, the State Commission has not taken into account the payments for the fund to arrive at the actual availability of the funds for terminal benefit.

- e) While carrying out true up of employees cost, the actual expenditure for FY 2008-09 has not been considered in the impugned true up order dated 19.3.2012.

25.2 Let us now examine the finding of the State Commission regarding payment of arrears of 6th Pay Commission in the impugned order dated 20.3.2010.

“386 The table above reveals that for the ensuing year the licensees have proposed a substantial rise in

employees cost compared to the approval for the FY 2009-10. The enhancement is mainly attributable two major factors. The DISCOMs have implemented 6th Pay Revision wef 01.01.2006 and Wage Board wef 01.04.2005 and have already started paying the enhanced salaries during the current year 2009-10. The DISCOMs have projected their employee cost taking into account the arrears from the date of implementation of 6th pay revision and Wage Board award. The terminal liability of the employees have also been consequently enhanced which has also been major contributor to the increased projection in the employee cost. The percentage rise in the CESU's estimation towards employee cost for the ensuing year i.e. 2010-11 over the approved figure of 2009-10 is highest at 122.54% mainly due to implementation of 6th pay revision, Wage Board award and proposed additional recruitment of about 6000 regular employees during ensuing year 2010-11.

387 The Commission during the last tariff order for FY 2009-10 had taken into account the implementation of the 6th pay Commission recommendations and allowed 30% hike on the pre-revised basic pay, DA & HRA to accommodate such revision. Accordingly commission allowed an additional amount of Rs 22.61 crore, Rs.18.48 crore, Rs.16.11 crore and Rs.28.40 crore to WESCO, NESCO, SOUTHCO and CESU to accommodate hike on account of 6th pay revision. The Commission did not provide for arrear payment in the ARR of 2009-10 since it would have led to a sizeable increase in ARR which has a cascading effect on the tariff. Regarding payment of arrears Commission observed the following in the ARR of 2009-10:

328. *The Commission would like to make it clear that payment of revised pay and allowances is entirely contingent upon efficient collection of revenue and affordability of the licensees. While Commission is of the opinion that the employee should not be deprived of their genuine and legitimate claims, at the same time directs that DISCOMs should make all out effort to collect extra revenue, out of the receivables lying uncollected with the consumers to meet the arrear payment of employees.*

329. *In the present scenario the performance of the DISCOMs in terms of billing and collection is really very disappointing. As such there is no scope to accommodate the payment of arrears. The payment of current revised pay and allowance would be guided by sufficiently extra efforts to increase the billing and collection efficiency and substantial reduction of the present loss level.*

330. *In order to address the issue of impact of Sixth Pay revision and Wage Board award, Commission Provisionally allows revision at an average rate of 30% on the pre-revised basic pay, DA & HRA for the financial year 2009-10 only without considering the payment towards arrear. The differential amount, if any will be taken care of in the truing up exercise after the audited accounts are available to the Commission and after being satisfied the extra efforts having been made to enhance the billing and collection efficiency.”*

“389. Further in Letter No. DIR(T)-342/08/3263 dated 29.01.2010 to all the DISCOMs, Commission directed the following regarding release of arrear salary:

In order to release the arrear salary by GRIDCO the DISCOMs need to furnish information on arrear collected during the financial year 2009-10. The arrear dues towards employee cost are supposed to be paid out of the arrear collected. But GRIDCO in a letter to the Commission mentioned that the DISCOMs have not furnished the details of appropriation of arrear payment out of the collection made against the arrear outstanding as on 31.03.2009. Hence, the DISCOMs are directed to furnish month-wise information (Apr-Dec'09) on collection of revenue (i) out of current and (ii) out of arrear on or before 07.02.2010 at the latest.

DISCOMs have not complied with the orders of the Commission as above. Hence no amount towards payment of arrears is allowed by the Commission in this order.”

25.3 Even though the State Commission has felt that employees should not be deprived of their genuine and legitimate claims, it has linked the allowance of 6th Pay Commission arrears to efficient collection of revenue recovery by the distribution licensees from their consumers. The State Commission is also of the opinion that the arrears of 6th Pay Commission should

be paid to the employees out of the collection of arrears of dues by the Appellants from the consumers. Accordingly, the State Commission sought the information regarding collection of revenue out of current bills and arrears from the Appellants by letter dated 29.1.2010. Since the Appellants did not furnish the desired information, the State Commission did not allow payment of arrears of 6th Pay Commission in the ARR of the Appellants.

25.4 In our opinion , the arrears of 6th Pay Commission to be paid to the employees is an expense of the Appellants which is required to be allowed in the ARR. The State Commission has also accepted that the arrears of 6th Pay Commission have to be paid to the employees. Thus, the arrears of 6th Pay Commission have to be allowed as expense in truing up of

accounts. The recovery of arrears by the Appellants from its consumers will only ease the cash flow of the Appellants. However, the arrears of the Pay Commission is an expense which has to be allowed in the ARR. Accordingly, decided. We also direct the Appellants to act on the directions given by the State Commission recovery of dues from the consumers and furnish the details sought by the State Commission.

25.5 Regarding appointment of independent Actuary by the State Commission, we find that the State Commission had decided to appoint an independent Actuary to assess the terminal liability while dealing with terminal liability for the previous year i.e. FY 2009-10. Pending valuation report of the actuary, the State Commission adopted the same method as done in the last tariff

order for FY 2009-10 to evaluate the terminal liabilities of the Appellants subject to the condition that the Commission would revisit the requirement based on the actuarial valuation report given by the appointed actuary. As the State Commission had taken the decision to appoint an actuary in the previous tariff order which is not before us in these batch of Appeals, it is not proper for us to intervene in the matter at this stage. However, we find that while determining tariff for FY 2011-12 and FY 2012-13 also the State Commission could not get the report of its actuary and has therefore decided the terminal benefit provisionally to be tried up later when the report of the actuary is received.

25.6 We find that there is inordinate delay in getting the report of the Actuary appointed by the State

Commission and in the absence of the Actuary Report, the State Commission has been deciding the terminal liability provisionally since 2009-10 which is not proper. We direct the State Commission to expedite the report of its actuary or else rely on the report of actuary appointed by the Appellants subject to prudence check, and true up the terminal liabilities of the Appellants for the period 2010-11 to 2012-13 within 180 days of the date of this judgment.

25.7 As regards House Rent Allowance, the State Commission has made the following observations in the impugned order dated 18.3.2011 ARR & tariff for FY 2011-12.

“406.....House Rent Allowance is approved at an average rate of 15% of Basic pay and

Grade Pay instead of 20% considering the fact that many employees are availing quarters. On scrutiny of Audited Accounts, it is also seen that the HRA as a proportion to Basic Pay and GP is about 15% and hence such rate is allowed towards HRA.”

25.8 Similar finding has been given with respect of HRA in the impugned order dated 23.3.2012 regarding ARR & tariff for FY 2012-13.

25.9 Thus the State Commission has allowed HRA @ 15% as many employees are availing quarters and the audited accounts of the Appellants show that the HRA is about 15% of the Basic Pay and Grade Pay. Thus, we do not find any infirmity in the order of the State Commission regarding HRA.

25.8 As regards computation of terminal benefit, we have given a detailed finding on this issue in paragraph 20.3 to 20.5 above in respect of FY 2009-10. The same would apply for FY 2011-12 and FY 2012-13.

26. The ninth issue is regarding repair & maintenance.

26.1 According to the Learned Counsel for the Appellants, the State Commission has wrongly disallowed the amount towards Repair and Maintenance ('R&M') expenses being the difference between the amount spent during the years FY 1999-00 onwards as per the audited accounts and the amount approved without realizing that the Appellant did not have sufficient funds to avail the approved R&M expenses as all their receivables were escrowed with GRIDCO.

26.2 We find from the impugned order dated 20.3.2010 that the Appellants have claimed the normal R&M expenses for the FY 2010-11 as well as the difference between the approved and actual R&M expenses for the previous year. The State Commission observed that similar claim was raised by the Appellants in the previous year and the State Commission had rejected the claim regarding the amount of R&M unutilized in the previous years. The findings of the State Commission in the impugned order dated 20.3.2010 in this regard are as under:

“427.As revealed from the above table that WESCO, NESCO, SOUTHCO and CESU have projected extraordinary high requirement in the R&M expenses with percentage of about 305%, 355%, 398% and 230% respectively over and above approved expenses for the previous FY 2009-10. WESCO, NESCO and SOUTHCO in their previous filing for FY 2009-10 had also projected such high and abnormal R&M expenditure. Commission in this regard observed the following in the tariff order for FY 2009-10.

361. *WESCO, NESCO and SOUTHCO in their filing submitted that they could not incur the R&M expenses equal to the approved amount because of the stringent Escrow mechanism and non-relaxation of Escrow by GRIDCO. Since the actual expenses are considered in the truing of exercise, the licensees claimed short-fall amount i.e. difference between approved and actual to be passed on to the revenue requirement in the FY 2009-10. This amount is over and above the normal requirement of R&M for that year. The licensees have determined the normal requirement of R&M @ 5.4% on gross fixed asset. A table showing the amount of normal R&M expenses and the short spent amount pertaining to previous period is depicted below:*

362. *The Commission observes that the short spent amount towards R&M is mainly attributable to inadequate cash inflow into the system and lack of infrastructure to undertake the work. In order to assess such short spending due to inadequate cash inflow, Commission analyzed the billing and collection of DISCOMs from FY 1999-2000 to 2007-08 based on the audited accounts submitted by the WESCO, NESCO and SOUTHCO. Company wise details on billing and collection from the audited accounts are depicted in the Table below:*

363. *The tables above reveals that the WESCO, NESCO and SOUTHCO have failed to collect the*

billed amount during their period of operation. Therefore, the proposal submitted by the licensees for allowing unspent amount of R&M expenses is unreasonable as the DISCOMs failed to collect the money lying with the consumers in order to generate enough cash for R&M activities. They should have put more money in the Escrow account through improved collection in order to generate surplus for R&M activity. In view of the aforesaid reasons, Commission is not inclined to allow the unspent amount of R&M expenses for the past years as proposed by the WESCO, NESCO and SOUTHCO as a pass through in the ARR for the FY 2009-10.

364. The objectors during hearing expressed their dissatisfaction on the quality of power, frequent interruptions, non-adherence to the standard of performance, poor maintenance of lines and substations, frequent snapping of lines, accidents causing loss of human and animal lives and no upgradation of lines, towers, poles and transformers. The poor quality of supply and standard of performance has also resulted in extreme consumer dissatisfaction leading to tardy collection efficiency.

3.65 The Commission observed that all the four distribution companies have not been able to spend what was being approved in the successive tariff orders since inception of their business from FY 1999-2000. The table below shows the comparison between approved and audited amounts from FY 1999-2000 to 2007-08.”

“The Commission in para 363 of the Last tariff order for FY 2009-10, as quoted above, discussed the reasons for not allowing unspent amount of R&M expenses for the past years as proposed by WESCO, NESCO and SOUTHCO. These utilities have again raised such demand in the current tariff petition for FY 2010-11. In this connection it may be noted that based on approved R&M expenditure for these years tariff was fixed and tariff has not been reduced for the respective years subsequently on ground of non utilisation of the amount approved under R&M. In view of the aforesaid reason Commission is not inclined to allow the unspent amount of R&M expenses for the past years as proposed by the WESCO, NESCO and SOUTHCO as a pass through in the ARR for the FY 2010-11 because this would amount to counting the unspent amount twice for the fixation of tariff – once for the earlier years and the other for the year under consideration.”

“429 The Commission observes that in recent years DISCOMs have improved their spending on R&M activities and expects that such trend should continue in the coming years. However, there remains yet much to be done about spending in R&M activities in order to maintain the existing fragile network.. The DISCOMs are heavily dependent upon the escrow relaxation in order to spend on the R&M activities. Commission is aware that timely and efficient R&M activities are essential to the optimum utilisation of the distribution network. The Commission is not averse towards allocation of higher amounts on R&M activities but the DISCOMs have to exhibit sincerity of purpose by

undertaking adequate R&M activities and increased revenue collection out of current as well as arrears in order to enable Commission to allow more money by way of ESCROW relaxation. Non relaxation of ESCROW is not the problem; the real problem is inadequate revenue collection efforts. If sufficient revenue is collected there will be no difficulty in allowing withdrawal from ESCROW account after meeting the BST, salary and other important item of expenditure.”

Thus, the State Commission has observed that the Appellants have not been able to utilize the approved R&M expenses due to inadequate cash flows and lack of infrastructure to undertake the work and the Appellants are themselves responsible for lack of cash flow due to failure to collect the billed amounts from consumers.

26.3 The State Commission has given detailed findings for not allowing the amount being the difference between the approved and actual R&M expenses of the previous years. We find that the State Commission has been

allowing actual R&M expenses in the true up as the Appellants have not been able to utilize the R&M expenses approved in the tariff orders. The Appellants' contention is that the R&M expenses allowed in the Tariff orders are the normative expense and should not be restricted to actual expenses if they are not able to spend the entire allocated expenses and, therefore, are claiming the unspent amount in the previous years along with the normal R&M expenses for the ensuing years. We are in agreement with the State Commission that the unutilized R&M expenses for the previous years could not be added to the R&M requirements for the ensuing year. The State Commission has rightly allowed R&M expenses as 5.4 % of the Gross Fixed Asset for the FY 2010-11 along with provisional amount towards R&M expenses on account of asset addition under RGGVY and BGJY during 2010-11 pending

detailed scrutiny and disallowed the claim of the Appellants for unutilized R&M expenses for the previous years.

26.4 There is no force in the arguments of the Appellants that R&M expenses allowed in the previous tariff orders are normative R&M expenses and, therefore, should not be trued up as per actuals if the Appellants have not been able to utilize the approved amount. The R&M expenses which remained unutilized in the past are not the savings in the R&M expenses due to efficiency of the Appellants. R&M expenses have remained unutilized due to lack of liquidity and the repair and maintenance of the distribution system has suffered on account of the same. That being the case, the consumers cannot be burdened with additional expenditure on account of unutilized amount of Repair

and Maintenance expenses. Accordingly, this issue is decided against the Appellants.

27. The tenth issue is regarding Administrative and General ('A&G') expenses.

27.1 The contention of the Appellants regarding A&G expenses is as under

- "a) The consumer indexing and network documentation are the first step to IT automation and ought to have been allowed as a prudent cost.

- b) Appellants are required to pay cess as per Building and other Construction Workers Act, 1996 and it being a sovereign levy ought to have been considered as a part of A&G expenses.

- c) The State Commission has disallowed the legitimate A&G expenses without going into the facts that some expenses such as energy audit and spot billing, etc., are already covered by the full bench judgment of the Tribunal dated 8.11.2010 in Appeal no. 52 of 2007 and batch reported in 2010 ELR APTEL 1254.
- d) Even though in the impugned order dated 20.3.2010, the State Commission observed that in case higher expenditure was incurred on energy police station due to operationalisation of the newly notified police station, the same would be considered in the truing up exercise after due scrutiny but in the truing up order dated 19.3.2012, the actual expenditure was not allowed.

e) The State Commission has erred in holding that declining employee base, computation and IT automation, the A&G expenses would decline.

27.2 Learned Counsel for the State Commission has referred to findings of the State Commission in the impugned orders dated 20.3.2010, 18.3.2011, 23.3.2012 and 19.3.2012 regarding A&G expenses.

27.3 Let us now examine the findings of the State Commission in the impugned orders.

27.4 The Appellants' claim for A&G comprised the normal A&G expenses which were forecasted on the basis of 7% escalation over the approved A&G expenses for the previous year to account for inflation and additional A&G expenses under different heads to

comply with the various directions of the State Commission. The additional expenditure under the various heads covered opening of customer cares in each division, mobile customer care vans, introduction of spot billing in various divisions, energy audit, consumer indexing and pole scheduling of all the consumers, automation of the operation and customer activity through IT intervention, appointment of franchisees, cess as per Building and other Construction Workers (RE&CS) Act 1996 and Building and other Construction Workers Welfare Cess Act, 1996.

27.5 The finding of the State Commission in the impugned order dated 20.3.2010 is reproduced below:

“419 The Commission in its order on Long-term Tariff Strategy (LTTS) has set out the principle of calculation

of A&G expenses at the rate of 7% escalation over the base year progressively for the first control period from FY 2002-02 to FY 2007-08. Commission has also been following the same principle for the next control period FY 2008-09 to 2012-13. The Commission observes that A&G expenses is a controllable cost as defined in the LTTS order and the DISCOMs would not be allowed more than the approvals in the truing up exercise. The DISCOMs should make efforts to expend A&G expenses prudently and put efforts to curb wasteful and avoidable expenses. The Commission further observes that with the declining employee base, computerized and IT automation the A&G expenses should be declining over the years. Commission for FY 2009-10 allowed additional expense towards Customer Care expenses as proposed by the WESCO, NESCO and SOUTHCO. An additional expense was also approved towards Fringe Benefit Tax as proposed by the DISCOMs. Expenditure towards Special police stations was allowed to the last year's level. Commission further observed that in case of higher expenditure is incurred on Energy Police Station due to operationalisation of the newly notified police station the same shall be considered in the truing up exercise after due scrutiny.

420. *WESCO, NESCO and SOUTHCO have also claimed Annual Inspection Fees of lines and substations to be recovered through ARR as a payment to State Government on installation of lines and substations. Commission in this regard observes that such fees shall be component on the Normal A&G expenses allowed in the ARR. However Commission may take a view to allow it separately as additional A&G expense*

on submission of documentary evidence including demand note raised by the State Government.

421. *Commission scrutinised the proposal towards A&G expense for the ensuing year FY 2010-11. The Commission has considered an escalation of 7% over the normal A&G expenditure for the last year tariff FY 2009-10 towards normal A&G expenditure for the ensuing year i.e. FY 2010-11 in terms of the LTTS order and adoption of the same for the next control period.*
422. *As regards additional expenditure, Commission approves expenses towards Customer Care as proposed by the DISCOMs for FY 2010-11. As regards additional expenses on the Special Police Station, Govt of Orissa in their notification no. 47514 dated 23.10.08 have notified to set up 29 nos. of Energy Police station all over Orissa. Accordingly DISCOMs have projected that all the allotted Energy Police stations would start functioning from 1.04.2010 in their area of operation. The entire expenses of the Energy Police stations including salary, fuel expenses, furniture & fixtures, establishment expenses are to be borne by the DISCOMs. The salaries to the staff of the Energy Police stations are to be paid in accordance with the 6th pay recommendations and therefore a higher expense is envisaged on such account. Commission have been emphasising on the reduction of AT& C losses and without effective participation of the Energy Police station such a task would remain tardy. Commission in order to fully implement the setting up of Energy Police stations therefore allows*

the expenses towards on this account as proposed by the DISCOMs. Commission expects that all the 29 Energy Police Stations as approved by the Government of Orissa would be functional by the end of the ensuing year. DISCOMs therefore are required to be in close contact with Government of Orissa in order to operationalise these Energy Police stations. As regards expenditure on Automation and IT expenses, Commission allows expense as proposed by the Licensees. The total A&G expenses thus allowed for FY 2010-11 to the DISCOMs are summarized below:

Table - 59

(Rs. in Crore)

A & G expenses for FY 2010-11	WESCO	NESCO	SOUTHCO	CESU
Normal A&G expenses	20.75	13.87	11.94	29.9
Additional expenses:				
Expenses for Customer Care Centers/ Call Centres	0.02	0.30	2.28	1.16
Special Police Station.	3.81	2.27	3.74	4.8
Automation/IT expenses	0.21	0.67		
Total Additional Expenses	3.04	3.24	6.02	5.96
Total A&G expenses	24.79	17.11	17.96	35.86

”

27.6 Thus, in the tariff order dated 20.3.2010 for FY 2010-11, the State Commission allowed normal expenses on the basis of the approved A&G expenses for the previous year (2009-10) with 7% escalation. The State Commission also approved the additional expenses

for customer care centres/call centres, police and automation/IT expenses as proposed by the Appellants. The State Commission also allowed the expenditure towards special police station to the last year's level but observed that in case of higher expenditure is incurred on energy police station due to operationalisation of the newly notified police stations, the same would be considered in the truing up exercise. The State Commission, however, did not approve the expenses on other additional expenditure such as spot billing, energy audit, etc.

27.7 In the impugned order dated 18.3.2011 for FY 2011-12, the State Commission followed the same principle. The State Commission approved additional expenditure on account of customer care centres/call centres, special police station, automation/IT

expenses as proposed by the Appellants and inspection fee for inspection of electrical installations. However the Commission did not allow the expenses on account of spot billing and energy audit.

27.8 The State Commission has noted the findings of this Tribunal in judgment dated 8.11.2010 in Appeal nos. 52 of 2007 and batch but decided not to implement the same as it had preferred a Civil Appeal against the above judgment. The relevant findings of the State Commission are as under:

430. The Hon'ble ATE in appeal No. 52, 53 and 54 of 2007 filed by WESCO, NESCO and SOUTHCO aggrieved ver the approval of their ARR and for determination of Retail Supply Tariff in respect of FY 2007-08 have ronounced following judgement dated 8th November, 2010 with regard to issue of Administrative and General Expenses. The extract of the same judgement is reproduced below:

“37. (v) XXXX In regard to Administrative and General Expenses, the State Commission has also disallowed the additional costs n account of distribution of spot billing on consumers conducting of energy audit. These activities were initiated by the Appellants as non introduction of the spot billing and not conducting energy Audit were some f the grounds for seeking revocation of the license of the Appellants by the State Commission. However, the expenditure on carrying out their activities was not allowed in the ARR for FY 2007-2008 even though the Appellants had submitted details of the expenditure to the State Commission. Therefore, finding of the State Commission on this issue can not be held valid. Accordingly, this point is also answered in favour of the Appellants.”

431.The Commission has taken note of the observation made by the Hon’ble ATE in the said order while approving the ARR of Licensee for FY 2011-12. The Commission in this regard has however preferred Civil Appeal against the above judgement of the Hon’ble ATE before the Hon’ble Supreme Court in the appeal, CA No. D 4688 of 2011.

27.9 Even though the Hon’ble Supreme Court has not granted a stay in the matter, the State Commission has not implemented the findings of the Tribunal in judgment dated 8.11.2010 in Appeal no. 52 of 2007 and batch.

27.10 The findings of the Tribunal in Appeal no. 52 of 2007 and batch will squarely apply to the present Appeals and, therefore, the State Commission is directed to give effect to the findings of the Tribunal in these Appeals by allowing expenses incurred on account of spot billing and energy audit.

27.11 In the impugned order dated 23.3.2012 for FY 2012-13, the State Commission allowed additional expenditure on account of special police station, automation/IT expenses and compensation for electric accidents. The State Commission had collected the actual expenditure on special police station and found that the approved amount was not being incurred and, therefore, allowed an amount of Rs. 1 crore for each of the distribution licensee for special police station

with the hope that all the approved special police stations would be functional by the end of the FY 2012-13. The State Commission again did not approve the expenditure for spot billing and energy audit.

27.12 In the true up order dated 19.3.2012 the State Commission decided to consider the approved A&G expenditure for the purpose of truing up.

27.13 After examining the rival contentions of the parties, we come to the conclusion that the expenditure on account of spot billing and energy audit should be allowed in accordance with the findings of the Tribunal in judgment dated 8.11.2011 in Appeal nos. 52 of 2007 and batch, on the basis of actual amount

incurred by the Appellants on these activities.

Accordingly, directed.

28. The eleventh issue is regarding bad and doubtful debts in the true up order dated 19.3.2012.

28.1 According to the Appellants, the State Commission has trued up the provision for bad and doubtful debts on the same percentage of sales revenue which were approved by the Commission in the different Annual Revenue Requirements.

28.2 According to Learned Counsel for the Appellants, the provision of bad and doubtful debts as approved in the tariff orders trued up for the period 1999-00 and 2004-05 for the Appellants is as under:

	As approved in tariff order	As per true up order
WESCO	88.86	85.41
NESCO	59.57	54.80
SOUTHCO	40.65	36.7

Accordingly, the true up figures towards provision for bad and doubtful debts ought to have been considered in table 4 of the impugned order to arrive at the amount of true up.

28.3 According to Learned Counsel for the State Commission, the Commission only follows the LTTTS/MYT principle in determining the provision towards bad and doubtful debt.

28.4 In our opinion if the sales revenue have been trued up by the State Commission, the bad and doubtful debts

should also be true up accordingly. This issue is, therefore, decided in favour of the Appellants.

29. The twelfth issue is regarding non-consideration of delayed payment surcharge.

29.1 According to the Appellants though the details of disallowed portion are not dealt with in the true up impugned order, it appears that the State Commission has not considered the component of delayed payment surcharge payable to GRIDCO towards power purchase dues in truing up of other expenses.

29.2 According to Learned Counsel for the State Commission the power purchase cost considered for truing up is based on audited actuals as per the MYT principle.

29.3 We are not able to deliberate on this issue as the impugned order dated 19.3.2012 does not indicate the details of the power purchase cost which has been trued up. In fact the true up order only indicates the principles and summary of true up indicating the revenue gaps. In our opinion the true up order should have clearly indicated the true up expenses under the various needs to transparently show the manner in which the true up has been carried out by the Commission. We, therefore, remand the matter to the State Commission with liberty to the Appellants to furnish the details of their claim and the State Commission shall decide the issue in accordance with law.

30. The thirteenth issue is regarding computation of revenue for the FY 2012-13 without factoring special rates/concession for take or pay in respect of some EHT/HT consumers.

30.1 According to the Learned Counsel for the Appellants, the State Commission erred in introducing a special rebate for that HT and EHT consumers having contract demand of more than or equal to 100 kW and extending them a special concession of 50 paise/unit without accounting for the same in the licensees' expected revenue. The State Commission, on representation of the Appellants, has revisited the scheme but the original scheme which was introduced in the impugned order continued to be applicable for April, May, June of 2012.

30.2 According to Learned Counsel for the State Commission, the Commission initiated a suo-motu proceeding in case no. 78 of 2012. and has revisited the “Take or Pay” scheme vide order dated 30.7.2012. Therefore, the grievance of the Appellants does not survive.

30.3 We find that the State Commission has revisited the “Take or Pay” scheme and revised the same by its order dated 30.7.2012. However, the original scheme as approved in the impugned order dated 23.3.2012 in which concessions were given to some HT & EHT consumers remained applicable during the period April-June 2012. Therefore, the revenue of the Appellants need to be trued up taking into account the impact of the scheme on the sales revenue of the Appellants during the period the scheme was in

vogue. Accordingly, the State Commission shall true up the sales revenue of the Appellants.

31. Summary of our findings:

- i) Fixation of Distribution Loss: We find force in the arguments of the Appellants that infusion of funds is necessary to achieve the desired reduction in the distribution loss and if the desired funds could not be made available to the Appellants for reasons beyond their control, the loss trajectory has to be reset keeping in view the ground realities. However, there is no justification for increase in distribution loss. We also reject the contention of the Appellants that loss levels have to be adjusted as per actuals. The actual loss levels clearly indicate a large quantum of commercial losses which are required to be**

curbed and the Appellants cannot wash their hands off completely stating administrative reasons. However, the loss level for 2006-07 and 2007-08 have to be reset by the State Commission as per the findings of this Tribunal in Appeal no. 77 of 2006 and batch and Appeal no. 52 of 2007 and batch. The loss levels earlier set for 2006-07 and 2007-08 from the base for the loss level trajectory for the period 2008-09 to 2012-13. Therefore, if the loss levels for 2006-07 and 2007-08 have to be changed it will have an impact on the loss level trajectory for the period 2008-13. Accordingly, the loss levels for the FYs 2008-09 to 2012-13 have also to be reset keeping in view the revision in loss level trajectory for 2006-07 and 2007-08 and the ground realities that the required funds could not be made available. The loss level

trajectory for the period from 2008-09 to 2012-13 should reduce gradually and in no case should increase. Accordingly, the State Commission shall reset the loss level trajectory and true up the accounts.

- ii) The issue relating to Notional Sales is covered by the judgment of the Tribunal dated 4.12.2007 in Appeal no. 100 of 2007 in the matter of Karnataka Power Transmission Company Ltd. Vs. Karnataka State Electricity Regulatory Commission. The findings of the Tribunal in Karnataka Power case will squarely apply to these Appeals. Accordingly, the Power Purchase Cost admissible to the distribution licensee has to be determined on the basis of the estimated sales revenue and the targeted distribution loss. The Power Purchase**

Cost on account of non-achievement of distribution loss level at the average power purchase cost has to be borne by the distribution licensees and in this way the inefficiency of the distribution licensees is not passed on to the consumers. The method of notional sales as adopted by the State Commission is set aside.

- iii) The third issue regarding non-consideration of load regulation does not survive in view of truing up order dated 19.3.2012 passed subsequently. However, as matter of principle, the State Commission having promulgated the load regulation, should have taken into consideration the impact of load regulation on the revenue of the Appellants.**

- iv) In computing the terminal benefits of the employees, the State Commission should have taken into account the payouts from the fund to the employees as also the interest earned on the fund invested in securities and fixed deposits. The State Commission has since trued up the accounts till 2010-11 on the basis of audited accounts and therefore the issue does not survive. However, as a matter of principle, the accretion to the fund as also the payments from the fund has to be considered to arrive at actual availability of the fund in the ensuing year.
- v) There is no justification for the Appellants claiming contingency reserve at the Appeal stage having not made any claim in the petition filed before the State Commission, just because the

Tribunal in another case upheld the provision of contingency reserve for the Transmission Licensee.

- vi) We do not want to interfere with the tariff of the consumers for 2008-09 at this stage. In any case the revenue sales of the Appellants have since been trued up and no prejudice will be caused to the Appellants if we do not interfere with the tariff order.**

- vii) We do not want to interfere with the tariff for the emergency power supply to captive power plants raised in Appeal no. 26 of 2009 and batch at this stage. The accounts of the Appellants have already been trued up by the State Commission**

upto 2010-11 and no prejudice will be caused to the Appellants if we do not interfere in the matter.

viii) Regarding the issues relating to employees expenses raised in Appeal no. 160 of 2010 and batch, Appeal no. 147 of 2011 and batch, Appeal nos. 193 of 2012 and batch and Appeal nos. 196 of 2009 and batch our findings are as under:-

- The arrears of 6th Pay Commission have to be allowed as in the truing up of the Accounts. However, the Appellants are directed to act on the directions given by the State Commission to improve the recovery of dues from the consumers and furnish the details sought by the State Commission.**

- **We find that the State Commission had decided to appoint an independent Actuary to assess the terminal liability while deciding with issue in the previous tariff order i.e. 2009-10. Therefore, we do not want to interfere with the decision of the State Commission regarding appointment of independent Actuary. However, there is an inordinate delay in getting the report of the Actuary and the Commission in the absence of the report of its Actuary has been deciding the terminal liability since 2009-10 provisionally. This is not proper. We, therefore, direct the State Commission to expedite the report of the independent Actuary or else rely on the report of the Actuary appointed by the Appellants subject to prudence check and true up the terminal**

liabilities of the Appellants for the period 2010-11 to 2012-13 within 180 days of the date of this judgment.

- **Regarding House Rent Allowance, we do not find any infirmity in the order of the State Commission.**
 - **As regards computation of terminal benefits, our findings at iv) above for FY 2008-09 will also apply to subsequent years.**
- ix) We do not find any infirmity in the orders of the State Commission in not allowing the unutilized Repairs and Maintenance expenses for the previous years as claimed by the Appellants.**
- x) Regarding Administrative and General expenses, the findings of the Tribunal in judgment dated 8.11.2010 in Appeal no. 52 of 2007 and batch will**

squarely apply to the present Appeals. The State Commission shall give effect to the findings of the Tribunal in these Appeals by allowing expenses incurred on account of spot billing and energy audit.

- xi) The State Commission shall true up the provision for bad and doubtful debts on the trued up figures of sales revenue.**

- xii) We are not able to deliberate on the issue of non-consideration of delayed payment surcharge as the impugned order dated 19.3.2012 does not indicate the details of the power purchase cost which has been trued up. We, therefore, remand the matter to the State Commission with liberty to the Appellants to furnish the details of their claim**

and the State Commission, therefore, shall decide the issue in accordance with law after considering the points raised by the Appellants.

- xiii) Regarding computation of revenue for the FY 2012-13, we find that the State Commission has revisited the “Take or Pay” scheme and revised the same by its order dated 30.7.2012. However, the original scheme as approved in the impugned order dated 23.3.2012 in which concessions were given to some HT & EHT consumers remained applicable during the period April-June 2012. Therefore, the revenue of the Appellants need to be trued up taking into account the impact of the scheme on the sales revenue of the Appellants during the period the scheme was in vogue.**

Accordingly, the State Commission shall true up the sales revenue of the Appellants.

32. In view of our above findings, the Appeals are partly allowed as indicated above. The State Commission shall give effect to the findings of the Tribunal within 180 days of the passing of this Judgment. No order as to costs.

33. Pronounced in the open court on this 3rd day of July, 2013.

**(Rakesh Nath)
Technical Member**

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

√
REPORTABLE/NON-REPORTABLE
mk