

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

**Appeal No. 173 of 2012**

**Dated: 18<sup>th</sup> December, 2013**

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

**In the matter of:**

**Chhattisgarh State Power Distribution Co. Ltd.,**  
4<sup>th</sup> Floor, Vidyut Sewa Bhawan, Dangania,  
Raipur-492 013.

Represented by its Additional Chief Engineer (RAC). ... **Appellant (s)**

Versus

**Chhattisgarh State Electricity Regulatory Commission,**  
Irrigation Colony, New Shanti Nagar,  
Raipur-492 001,  
Chhattisgarh.

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary  
Mr. Bhatnagar (Rep.)

Counsel for the Respondent(s) : Mr. Anand K. Ganesan,  
Ms. Swapna Seshdri for R-1

**JUDGMENT**

**RAKESH NATH, TECHNICAL MEMBER**

The present Appeal has been filed by Chhattisgarh State Power Distribution Co. Ltd. against the order dated 28.4.2012 by Chhattisgarh Electricity Regulatory Commission ("State Commission")

regarding provisional true up for FY 2010-11, revision of ARR for FYs 2011-12 and FY 2012-13 and determination of retail supply tariff for FY 2012-13.

2. The Appellant is a distribution licensee. The State Commission is the respondent.

3. The brief facts of the case are as under:

(A) The State Commission notified the Multi Year Tariff Regulations of 2010 on 9.1.2010 to be made applicable from FY 2010-11 onwards.

(B) The Appellant in October, 2010 submitted its tariff petition for determining ARRs for the control period FY 2010-11 to 2012-13 according to MYT principles and for determination of tariff for FY 2011-12. During FY 2010-11, the tariff as determined by the State Commission in the tariff order for FY 2009-10 was continued and as the MYT petition

was still pending before the State Commission till the end of FY 2010-11, no specific determination of tariff for FY 2010-11 was carried out.

(C) The State Commission determined the Multi Year ARR of the Appellant for the first three year control period of FY 2010-11 to 2012-13 by its order dated 30.3.2011.

(D) On 30.11.2011 the Appellant filed a petition being no. 61 of 2011 (T) for Annual Performance Review and provisional true up for FY 2010-11, review of ARR for FY 2011-12 and FY 2012-13 together with its proposal for retail supply tariff for FY 2012-13.

(E) On 28.4.2012, the State Commission passed a common order disposing of petition no. 61/2011 (T) of the Appellant along with other petitions filed by the State Generating Company and Transmission Company.

(F) Aggrieved by the impugned order dated 28.4.2012, the Appellant has filed this Appeal.

4. The issues raised by the Appellant are as under:

i) **Non-consideration of actual UI charges incurred during first six months of FY 2011-12:** The Appellant had estimated the power purchases and cost thereof for 2011-12 taking into account actual power purchases and costs during first six months and estimated power purchases costs during the second six months of FY 2011-12. The Appellant had included 572 MU drawn under Unscheduled Interchange (UI) at the cost of Rs. 195 crores (@ Rs. 3.40 per unit) as actuals during the first half of the FY 2011-12 and short-term power purchase of 1269 Million Units at a cost of Rs. 373 crores (@ Rs. 2.94 per kWh). However, the State Commission allowed only short term purchase of

1493 MU @ Rs. 3 per kWh with total amount of Rs. 448.04 crores. The said 1493 MUs do not include the actual UI drawals during the first half of FY 2011-12. The State Commission has thus underestimated the power purchase costs for FY 2011-12. The State Commission should have considered the actual energy drawal through UI and the actual UI charges for the FY 2011-12 (since revised to 569.79 MU at the cost of Rs. 195.77 crores by the Regional Load Dispatch Centre).

ii) **O&M Escalation rate for FY 2011-12 and 2012-13:** The State Commission had decided escalation factor in the MYT order at 5.72% based on the weighted average increase in Wholesale Price Index (WPI) and Consumer Price Index (CPI) in the ratio of 80:20 between FY 2003-04 and FY 2008-09 (Upto October, 2008). In the true up of 2010-11, the State

Commission had determined the actual escalation factor for the FY 2010-11 at 9.74% based on the increase in WPI and CPI during the FY 2010-11. Accordingly, the O&M expenses for FY 2010-11 were trued up at escalation rate of 9.74% over the approved O&M expenses for FY 2009-10. However, while revising the O&M expenses for FY 2011-12 and FY 2012-13, the State Commission has applied escalation factor of 5.72% as determined at the time of MYT order over the approved O&M expenses of FY 2010-11. In FY 2011-12, the actual escalation factor based on the actual increase in WPI and CPI is 8.9%. The State Commission should have adopted escalation factor of 8.9% while revising the O&M expenses for the FYs 2011-12 and 2012-13.

iii) **Rate of interest on working capital for FY 2011-12 and 2012-13:** The State Commission

has erroneously allowed rate of interest on working capital at 11.75% for FY 2011-12 and 2012-13. The State Commission should have allowed the interest rate of 13% for FY 2011-12 and 14.75% for FY 2012-13, based on SBI Prime Lending Rate as on 1<sup>st</sup> April of the respective year in accordance with its MYT Tariff Regulations.

iv) **Rate of interest for consumers' deposits:**

The State Commission erred in considering rate of interest payable on consumer deposit at 6% when the Appellant is bound to pay interest at 9.5% which is the rate determined by the Reserve Bank. As per the notification of the Reserve Bank dated 13.2.2012, the bank rate has been increased from 6% to 9.5% w.e.f. 14.2.2012. Since the Appellant is bound to pay interest to consumers on consumer security deposits at 9.5% p.a. following the revision of interest rate by

the RBI, the State Commission ought to have allowed the interest on consumer security deposit at 9.5% for FY 2012-13.

v) **Under recovery of revenue due to delayed implementation of tariff for FY 2012-13:** The State Commission has erred in not taking into account the impact of revenue loss to the Appellant due to delayed implementation of the tariff determined in the impugned order for FY 2012-13. The tariff schedule for FY 2012-13 was issued by the State Commission on 28.4.2012 and consequently the tariff determined by the State Commission was implemented after 7 days of the publication in the newspaper i.e. from 6.5.2012. During the period from 1.4.2012 to 5.5.2012, the applicable tariff would be that determined by the State Commission for FY 2011-12 which is lower. However, the State Commission has

considered full 12 months period while computing the revenue realization at the revised tariff for FY 2012-13. The State Commission ought to have considered and provided for the revenue loss to the Appellant which is over 92 crores while determining the revenue gap for FY 2012-13 in arriving at the uncovered revenue gap and total regulatory assets.

vi) **Non-inclusion of carrying cost of Regulatory Assets in the ARR for FYs 2011-12 and 2012-13:** The State Commission has erred in not providing the carrying cost of the regulatory asset created by the State Commission in determining the ARR for FY 2011-12 and FY 2012-13.

5. On the above subject we have heard Shri Gopal Choudary, learned counsel for the Appellant and Ms. Swapna Seshdari and Mr. Anand K. Ganeshan,

learned counsel for the State Commission have argued in support of the findings of the State Commission which we shall be discussing in the appropriate paragraphs of this judgment.

6. Based on the contentions made by the parties, the following questions would arise for our consideration:

- i) Whether the State Commission has erred in revising the power purchase cost for FY 2011-12 by not considering the actual power purchased through UI mechanism during the first half of FY 2011-12?
- ii) Whether the State Commission has erred in not considering the actual WPI and CPI escalation during the FY 2011-12 while determining the revised O&M costs for FY 2011-12 and 2012-13 and wrongly

applying escalation rate decided in the MYT order based on the actual WPI and CPI increase during the period 2003-04 to 2008-09?

- iii) Whether the State Commission has erred in not considering the actual SBI Prime Lending rate as on the first April of the respective years for FY 2011-12 and 2012-13 for determining the interest on working capital in contravention of its own Tariff Regulations?
- iv) Whether the State Commission has erred in not allowing the actual interest rate allowed by the Appellant on the consumers' deposit based on the RBI notification in the ARR of the Appellant for FY 2012-13?

- v) Whether the State Commission should have accounted for under recovery of revenue for FY 2012-13 due to delay in implementation of the revised tariff?
  
- vi) Whether the State Commission has erred in not allowing the carrying cost on the Regulatory Assets created by the State Commission for the FYs 2011-12 and 2012-13?

**7. Let us take up the first issue regarding under estimation of power purchase cost for FY 2011-12.**

8. According to the Appellant, the State Commission should have allowed the cost of actual Unscheduled Interchange (UI) drawal during the first six months of the FY 2011-12 while deciding the revised power purchase cost for the FY 2011-12.

9. According to learned counsel for the State Commission, the Appellant is proceeding on the basis that UI is a mechanism of power purchase and hence all the purchases through UI have to be allowed by the State Commission but this is not the intent of UI mechanism. While deciding the tariff, there is no reason to consider UI as mechanism of power purchase and rather power purchase has to be considered on the basis of long term and short term arrangements. The Central Commission's amendment dated 26.4.2010 of UI Regulations indicates that UI charges are a commercial mechanism to maintain grid discipline and UI mechanism should not be used as a real time market any more in view of the grid security. The Statement of Reasons on UI amendment dated 26.4.2010 also clarifies that UI mechanism is meant for unintended deviations and not for intentional deviations involving under draws and over injection. However, the State

Commission in the impugned order has taken into consideration and allowed the total energy purchases proposed by the Appellant which includes 572 MUs drawn through UI mechanism. The actual power purchase cost is to be considered by State Commission during the true up. The Appellant should, therefore, submit its claim for energy drawn under UI mechanism with full justification with the true up petition for FY 2011-12.

10. We find from the impugned order that the gross and net power purchase claimed by the Appellant and that allowed by the State Commission for FY 2011-12 are as under:

	As claimed by the Appellant			As allowed by the State Commission		
	Purchase 'MU'	Rate Rs./kWh	Amount (Rs. Cr.)	Purchase 'MU'	Rate Rs./kWh	Amount (Rs. Cr.)
Gross Power Purchase	20156	2.21	4458	20482	2.22	4539.40
Surplus Energy	645	3.25	210	476	3.40	161.86
Power purchase rebate	-	-	-	-	-	25.41
Net power Purchase	19511	2.18	4249	20006	2.18	4352.13

11. We notice that the Appellant had submitted before the State Commission net purchase of 19511 MU at average rate of Rs. 2.18 per kWh which included energy of 572 MU drawn through UI mechanism at the rate of Rs. 3.40 per unit and 1269 MU procured in short term at the rate of Rs. 2.94 per unit for FY 2011-12. However, the State Commission allowed net power purchase of 20006 MU at average rate of Rs. 2.18 per kWh which included purchase from short term of 1493 MU at the rate of Rs. 3.00 per unit. Thus, the State Commission allowed net power purchase cost of Rs. 4352.13 crores as against Rs. 4249 Cr. claimed by the Appellant i.e. higher than what was claimed by the Appellant.

12. According to the Appellant, the State Commission should have either considered the actual UI drawal of first six month of FY 2011-12 and cost thereof in

addition to the short term power purchase cost considered by the State Commission or alternatively considered the said actual UI drawal and the cost thereof and taken only the balance of the short term power purchase quantity considered at the average of Rs. 3 per unit.

13. We are not in agreement with the contention of the Appellant. We find that the State Commission has estimated the power purchase quantum, rate and amount from the various sources of long term power purchase and found that about 1493 MU has to be procured in short term as against the claim of the Appellant of 1269MU in short term and 572 MU through UI i.e. total of 1841 MU. If the Appellant had been allowed 572 MU through UI at Rs. 3.40 per unit in addition to 1493MU allowed as purchase from short term, it would have resulted in excess availability of

572 MU and sale of surplus energy of 572 MU at Rs. 3.40 per unit. Thus, it would not have made any difference in the net power purchase quantity and amount allowed to the Appellant. If the State Commission had allowed UI drawal of 572 MU and allowed balance 921 MU from short term sources as against 1493 MU allowed from short term purchases, the quantum of short term purchase would have been lower than what was projected by the Appellant.

14. We feel that the UI drawal and power purchase thereof should be trued up at the stage of truing up of the accounts after considering the audited accounts and prudence check of the UI drawals by the State Commission. We do not find any reason to interfere with the review of power purchase cost based on the un-audited data for six months carried out by the State Commission in the impugned order as we do not

find any infirmity or illegality with the impugned order, particularly when the State Commission has allowed higher power purchase cost to the Appellant than submitted by them before the State Commission. The Appellant may file details of UI drawals along with justification with the True up Petition for FY 2011-12 for truing up of the power purchase cost of the Appellant and the State Commission shall consider the same.

15. According to the learned counsel for the State Commission, the Appellant ought to have filed the true up petition alongwith the audited accounts but it has not been done. The Appellant is accordingly directed to file the true up petition along with the audited accounts for claiming necessary relief from the State Commission. This issue is decided accordingly.

**16. The second issue is regarding O&M escalation rate for FY 2011-12 and 2012-13.**

17. According to the Appellant, while carrying out the true up for FY 2010-11, the State Commission has considered the actual increase in WPI and CPI indices and then decided the weighted average inflation rate at 9.74% as against 5.72% considered in the MYT order based on inflation rate between 2003-04 and 2008-09. However, while undertaking review of ARR for FY 2011-12 and 2012-13, the State Commission has considered the inflation factor of 5.72%. The State Commission should have considered the actual WPI and CPI indices for FY 2011-12 for determining the O&M escalation rate for FYs 2011-12 and 2012-13.

18. According to learned counsel for the State Commission, the cost of inflation during a year is

known only after completion of the year and the first opportunity to make adjustments with respect to actual inflation from the projected inflation arises at the time of true up of that year. As true up was filed by the Appellant for FY 2010-11 only, the adjustment has been made for that year only. As and when the true up is filed for FY 2011-12 and 2012-13, the inflation factor will be trued up as per actual WPI and CPI for the year.

19. We find that while carrying out the provisional true up of O&M for FY 2010-11, the State Commission has considered the escalation rate of 9.74% based on the actual WPI and CPI with weightage in the ratio of 80:20. However, for FYs 2011-12 and 2012-13, the State Commission has taken escalation rate of 5.72% as determined in the MYT order. However, the State Commission has decided that the escalation rate for

O&M shall be trued up considering the actual inflation during the year on similar lines as done for FY 2010-11.

20. Normally, the true up for the previous year, the Annual Performance Review for the current year and ARR for the ensuing year have to be decided during the current year and before the commencement of the ensuing year. Therefore, the escalation factor for the current year and ensuing year is to be taken as per the MYT order to be trued up only at the stage of truing up of the accounts for the respective years. According to the Tariff Regulations, 2010, the operation & maintenance expenses are controllable but Regulation 13.3 of the said Regulations allows for truing up of the expenses of the licensee on account of inflation. Thus, there is no infirmity with the approach of the State Commission to adopt the same escalation factor as

determined for the MYT order for APR of FY 2011-12 and ARR of 2012-13, which is to be trued up later at the time of truing up of accounts of FY 2011-12 and FY 2012-13 respectively. Further, there is no force in the argument of the Appellant that the actual escalation factor for 2011-12 should also be considered for ARR of FY 2012-13.

21. In the impugned order it has been held that the escalation rate used for approving O&M expenses (excluding terminal liabilities) would be trued up considering the inflation during the year as per the methodology adopted by the State Commission while approving the provisional true up of O&M expenses for FY 2010-11. Thus, the Appellant may claim the escalation rate as per the actual WPI and CPI in the true up petition for the respective years. Accordingly, decided.

**22. The third issue is regarding rate of interest on working capital for FY 2011-12 and 2012-13.**

23. According to the learned counsel for the Appellant, the State Commission has erroneously applied interest @11.75% for FY 2011-12 and FY 2012-13 in contravention of the MYT Regulation 2010. Clause 47.1 of the MYT Regulation, 2010 states that the interest and finance charges on loan capital and working capital shall be computed in accordance with Regulations 23 and 25 respectively. Clause 25.3 of the MYT Regulation of 2010 relating to the tariff of generating plants and transmission systems provides that the rate of interest on working capital shall be on normative basis and shall be equal to the latest available short-term Prime Lending Rate of State Bank of India in which the generating station or a unit thereof or the transmission system, as the case may be, is declared under commercial operation. Thus, according to the Regulations, the rate

of interest on working capital shall be equal to the latest available short-term prime lending rate of the SBI. The prime lending rate of SBI as on 14.02.2011 was 13% and as on 13.8.2011, 14.75%, therefore, rate of interest for FY 2011-12 and 2012-13 should be taken as 13% and 14.75% respectively.

24. According to the learned counsel for the State Commission, there is no specific Regulation for the interest on working capital pertaining to the distribution business of the licensee. Under the MYT regime for normative computation, the reference point has to be considered as the 1<sup>st</sup> April of the first year of the control period. At times the actual for a year may be higher than the reference date and at other times it may be lower than the reference date. In normative computation, the interest rate has to be taken as the base rate. The MYT Tariff Regulations also do not

provide for re-setting of year wise interest rate at the time of true up for interest on normative working capital.

25. We find from the impugned order that the Appellant had sought rate of interest of 13% for FY 2011-12 and 14.75% for FY 2012-13 on the working capital requirement, being the SBI Prime Lending Rate as on 1<sup>st</sup> April of the respective year. However, the State Commission has decided the rate of interest at 11.75% for FY 2011-12 and FY 2012-13 on the working capital requirement as had been considered by the State Commission in the MYT order. The State Commission has not given any reason for not accepting the prayer of the Appellant and retaining the rate of interest as on 1.4.2010 i.e. at the beginning of first year of the control period of FY 2010-11. However, while deciding the working

capital for the State generating company in the impugned order for FY 2011-12 and 2012-13, the State Commission has stated that for determination of rate of interest, the MYT Regulations, 2010 do not allow for change in normative rate of interest on working capital on year to year basis during the control period and accordingly, the State Commission approved the normative interest rate @ 11.75% as approved in the MYT order. The same argument has now been extended by the learned counsel for the State Commission with regard to interest on working capital for distribution licensee, i.e. the Appellant.

26. Thus, the moot point that is to be decided by us is whether the Regulation provide for interest rate on working capital as on the 1<sup>st</sup> day of the first year of the control period or it has to be considered as the SBI

Prime Lending Rate as on 1<sup>st</sup> day of each financial year of the control period for the respective financial years.

27. Let us examine the Regulations.

28. Regulation 47.1 relating to interest and finance charges applicable to distribution licensee states that the interest and finance charges on loan capital and working capital shall be computed in accordance with regulations 23 and 25 respectively. Regulation 25.2 provides for the rate of interest on working capital as applicable to the generating station and transmission system. Regulation 25.2 states that the interest on working capital shall be on normative basis and shall be equal to the latest available short term Prime Lending Rate of State Bank of India in which the generating station or a unit thereof or the transmission system, as the case may be, is declared

under commercial operation. According to the Regulation 25.4, the interest on working capital shall be payable on normative basis notwithstanding that the generating company or the transmission licensee or the distribution licensee has not taken loan for working capital from any outside agency. Regulation 47.2 stipulates that the normative working capital for distribution licensee shall cover operation and maintenance expenses for one month, maintenance spares @ 15% of O&M expenses and receivable equivalent to two months' average revenue.

29. While the regulations provide specified norms for quantum of working capital, the norm for the interest rate is the latest available short-term Prime Lending Rate of State Bank of India. Thus, as per the Regulations, the PLR of SBI as prevailing in the respective year has to be taken into consideration for

computing the interest on working capital in the APR or truing up. We are not in agreement with the State Commission that the PLR of SBI as prevailing on the first day of the first year of the control period will be applicable for all the years during the control period. In fact the construction of the Regulations indicate that the PLR of the respective year has to be taken into account.

30. According to the State Commission, the interest on working capital as allowed in the MYT order will not be reviewed in the APR or truing up as the regulations do not permit the same. We are not in agreement with the contention of the State Commission. Regulation 25.4 only provides that the interest on working capital has to be allowed on normative basis notwithstanding that the licensee has not taken loan for working capital from any outside agency. Thus, if the distribution licensee does not take any loan for maintaining its working capital requirement, and uses its own funds for the same, the

interest on working capital on normative basis would still be admissible to the licensee. However, the normative interest on working capital has to be computed based on the prevailing PLR of SBI for the respective year. Accordingly, the working capital for FY 2011-12 and 2012-13 need not be trued up but the interest rate on working capital and thereby the interest on working capital has to be trued up as per the actual SBI PLR rate in the truing up of the accounts.

31. Accordingly, this issue is decided in favour of the Appellant.

**32. The fourth issue is regarding rate of interest on consumer security deposit for FY 2012-13.**

33. According to the learned counsel for the Appellant, the State Commission has erred in considering the rate of interest payable on consumer security deposits at 6% when the Appellant is bound to pay interest @ 9.5% which is the rate determined by

the Reserve Bank. Clause 8.1 of the CERC (Security Deposit) Regulations, 2005 repealed w.e.f. 28.11.2011 by the State Commission Electricity Supply Code, 2011 states that the licensee has to pay interest at the prevailing bank rate on the security deposits and it shall be the responsibility of the licensee to ascertain the prevailing bank rate from RBI and to inform the consumers through the billing mechanism. Clause 6.13 of the Electricity Supply Code, 2011 states that the licensee shall pay interest as per directive/guidelines of Reserve Bank of India on the security deposits and it shall be the responsibility of the licensee to ascertain such rate from RBI and to inform the consumers through the billing mechanism. As per the Notification of the RBI dated 13.2.2012, the bank rate was increased from 6% to 9.5% with effect from 14.2.2012. Since the Appellant is bound to pay interest to the consumers on the consumer security

deposits at 9.5% following the revision of the interest rate by the RBI, the State Commission ought to have considered and allowed the interest on consumer security deposits at 9.5% for FY 2012-13.

34. According to the learned counsel for the State Commission, the interest on security deposit for the whole control period has been considered at a constant rate of 6% which was the prevailing rate on the 1<sup>st</sup> April of the first year of the control period i.e. as on 1.4.2010. However, as it is an actual expense and not a normative expense, it has also been made explicitly clear in the tariff order that the interest on consumer security deposit shall be trued up as per the actual interest paid during the respective year. The interest to be paid on the security deposit depends on two variables viz., the actual weighted average amount of security deposit held by the licensee during the

period and the average interest rate applicable during the year. Both of these variables can be ascertained with certainty only after the completion of the year and it is for the Appellant to file the actual data applicable for the year in the true up petition for that particular year. In the impugned Tariff Order, the State Commission had allowed Rs. 37.65 crores as the interest on security deposit while actual as per accounts is only Rs. 34.70 crores. Thus, even after the change in interest rate in February 2012, for FY 2011-12, the actual interest paid by the Appellant is substantially lower than what was allowed in the ARR.

35. We find from the impugned order that the Appellant had claimed expenditure of Rs. 38 crores and Rs. 41 crores respectively for the FY 2011-12 and 2012-13 as interest on security deposit in its petition

before the State Commission. The State Commission allowed Rs. 37.65 crores and Rs. 41 crores for FY 2011-12 and 2012-13 respectively. The relevant paragraph of the impugned order is reproduced below:

*“6.271 The Commission has considered the interest on consumer security deposit as projected by CSPDCL. The same shall be trued up as per the actual interest paid during the respective year.*

**Table 152: Interest on Security Deposit (Rs Cr)\***

	FY 2011-12			FY 2012-13		
	Approved in MYT order	Submitted in the Petition	Approved in this Order	Approved in MYT order	Submitted in the Petition	Approved in this order
Interest on Consumer Security Deposit	32.15	38	37.65	34.08	41	41.25

*\*the difference in the submitted and approved numbers for FY 2011-12 and FY 2012-13 is on account of rounding off”.*

Thus, the State Commission has allowed the interest on consumer security as per the petition of the Appellant.

36. We are in agreement with the learned counsel for the State Commission that the actual interest on consumer security deposit is dependent on actual weighted average rate of interest during the year and actual weighted average quantum of consumer security deposit. Thus, the interest on consumer security deposit will have to be trued up at the time of truing up of the accounts for the FY 2012-13.

37. Thus, there is no infirmity or illegality in the findings of the State Commission in this regard. Accordingly, this issue is decided against the Appellant.

**38. The fifth issue is regarding under recovery of revenue on account of delay in implementation of the revised tariff for FY 2012-13.**

39. According to the Appellant, the State Commission has erred in not taking into account the impact of the revenue loss to the Appellant due to delayed implementation of the tariff determined in the impugned order for FY 2012-13.

40. According to the learned counsel for the State Commission, the issue of under recovery of revenue is subject to determination only during the true up.

41. Admittedly, the State Commission calculated the additional revenue for the FY 2012-13 at the revised tariff determined by the impugned order dated 28.4.2012 whereas the revised tariff was made applicable after 7 days from the public notice before the implementation of the revised tariff. Thus, there is substance in the contention of the Appellant that there is under recovery of the revenue due to delay in

implementation of the tariff for the FY 2012-13. The State Commission has underestimated the revenue gap. The State Commission should have determined the additional revenue generated at the revised tariff taking into account only the period from the date of implementation of the revised tariff till the end of the financial year. Accordingly, the State Commission is directed to true up the revenue for FY 2012-13 and also allow carrying cost on the same.

**42. The last issue is regarding carrying cost on the Regulatory Assets created in the impugned order.**

43. According to the learned counsel for the Appellant, the State Commission has erred in not providing for the carrying cost on the regulatory asset created in determining the revised ARR for FYs 2011-12 and 2012-13.

44. According to learned counsel for the State Commission, the State Commission has made amply clear its intention for bridging the revenue gap with suitable carrying cost.

45. Let us examine the finding of the State Commission in the impugned order.

*“6.315 Accordingly, to avoid tariff shock to the consumers, which may affect adversely the agriculture as well as industrial growth of the State the Commission has decided to increase the tariff only to a limited extent. The new retail supply tariff approved by the Commission in this Order will result in an estimated additional revenue of Rs. 924 Cr. in FY 2012-13 against the estimated cumulative deficit of Rs 1752 Cr. The remaining deficit of Rs 828 Cr shall be carried forward to FY 2013-14 and thereafter but not for more than period of three years. The suitable carrying cost on the same may be allowed”.*

46. We find that the State Commission has created regulatory asset or untreated gap of Rs. 828 crores to avoid increase in tariff. Even though the State Commission has agreed to allow carrying cost on the revenue gap, it has not been provided for in the ARR. The approach of the State Commission in creating the regulatory asset that too without providing for the financing cost for the same in the ARR is contrary to the directions given by this Tribunal under Section 121 of the Electricity Act, 2003 in its order dated 11.11.2011 in O.P. no. 1 of 2011 and in judgment dated 14.8.2012 in Appeal No. 89 of 2011 between the same parties as this Appeal. This Tribunal in judgment dated 14.8.2012 -Appeal no. 89 of 2011 in the matter of Chhattisgarh State Power Distribution Co. Ltd. vs. Chhattisgarh Electricity Regulatory

Commission & Ors. in the light of the directions of the Tribunal in O.P. no. 1 of 2011 has held as under:

*“14.3 This Tribunal in its order dated 11.11.2011 in the suo-motu proceedings in O.P. no. 1 has dealt with the issue of uncovered revenue gap in ARR. The relevant extracts of the judgment are as under:*

*“62. Let us now refer to some of the strange features that we noticed from the information furnished by the State Commissions. It is seen that some of the Commissions are leaving uncovered revenue gap in the ARR as a routine, with or without creating regulatory assets. The interest charges on the regulatory assets are also not being allowed in the ARR of the Tariff Order. This, in our view, is not in order as it may create a problem of cash flow for the distribution licensees which are already burdened with heavy debts. The cash flow problem may result in constraints in procurement of power by the distribution licensees and operation and maintenance of the distribution network affecting the reliability of power supply to the consumers. This Tribunal in a recent Judgment in Appeal no. 192 of 2010 dated 28.07.2011 in the matter of Tamil Nadu Electricity Consumers’*

*Association vs. Tamil Nadu Electricity Board, etc. has dealt with the issue of Regulatory Assets. The relevant extracts are reproduced below:*

*“8.4. Let us first examine the provisions of the Tariff Policy in this regard. The relevant extracts are as under:*

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

*a. The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring;*

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

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

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

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

*The Tariff Policy stipulates creation of the regulatory asset only as an exception subject to the guidelines specified above. According to the guidelines the circumstances under which the regulatory assets should be created are under natural causes or force majeure conditions.”*

*“8.8. We are of the opinion that the regulatory asset created by the State Commission is not in*

*consonance with the Tariff Policy and its own Regulations. Moreover, the impugned order does not provide for recovery of the regulatory assets with the carrying cost as envisaged in the Regulations and the Tariff Policy.”*

*“8.10. Now, the question arises whether the creation of the regulatory asset is in the interest of the distribution company and the consumers. The respondent no. 1 will have to raise debt to meet its revenue shortfall for meeting its O&M expenses, power purchase costs and system augmentation works. It is not understood how the respondent no. 1 will service its debts when no recovery of the regulatory asset and carrying cost has been allowed in the ARR. Thus, the respondent no. 1 will suffer with cash flow problem affecting its operations and power procurement which will also have an adverse effect on maintaining a reliable power supply to the consumers. Thus, creation of the regulatory asset will neither be in the interest of the respondent no. 1 nor the consumers”.*

*“8.12. According to Shri Rajah, learned Senior counsel for the appellants, the regulatory assets could not be created for the anticipated shortfall in revenue. We are in agreement with the contention of the Senior counsel. The Regulations clearly state that the Regulatory Asset can be created when the licensee could not fully recover the reasonably incurred cost at tariff allowed for reasons beyond his control under natural calamities and force majeure conditions. Thus, we hold that the creation of the regulatory assets on the basis of projected shortfall in revenue, that too without any directions for time bound recovery for the regulatory asset alongwith its carrying cost, is in contravention of the Tariff Policy and the 2005 Regulations.*

*63. In this case the Tribunal held that the regulatory asset created by the State Commission was not in consonance with the Tariff Policy and the Tariff Regulations of the State Commission which clearly define the circumstances under which the regulatory asset can be created. Further, the creation of the regulatory asset without any*

directions for carrying cost and time bound recovery was neither in the interest of the distribution licensee nor the consumers.

.....

“65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

.....

**(iv) In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee”.**

*This Tribunal in O.P. no. 1 of 2011 has given clear direction to the State Commissions regarding creation of Regulatory Assets.”*

*“14.6 In view of our findings in O.P. no. 1 of 2011, we hold that the revenue gap left in the ARR in the impugned order was not correct. The State Commission also did not provide for interest cost and the time bound programme for recovery of the revenue gap. However, creation of the revenue gap for the FY 2011-12 is now a fait accompli. We accordingly, direct the State Commission to provide for recovery of the revenue gap in a time bound manner and also grant carrying cost on the revenue gap in the subsequent tariff order.”*

47. The above finding will apply to the present case as well. The State Commission should not have created the regulatory asset in a routine manner. Even if the regulatory asset was created, the State Commission should have allowed financing cost for the regulatory

asset or uncovered revenue gap in the ARR for FY 2012-13 to be recovered through retail supply tariff for FY 2012-13. Thus, the tariff for FY 2012-13 should have been decided taking into account the financing cost on the regulatory asset/uncovered revenue. Thus, we find that the State Commission has acted in contravention of the directions issued by this Tribunal in O.P. 1 of 2011 by order dated 11.11.2011. We strongly feel that the action of the State Commission in not following our directions violating the judicial discipline is highly reprehensible.

48. According to learned counsel for the State Commission, on receipt of audited accounts, the final true up for the period 2007-08 to 2010-11 has recently been carried out and in the said order the State Commission has allowed interest on under recovery and over recovery for all the respective years and the

methodology used is similar to what has been contended by the Appellant. Thus, according to the learned counsel for the State Commission the issue no longer survives.

49. We do not agree with the contention of the learned counsel for the State Commission. Firstly, this reasoning is not found in the order of the State Commission. Secondly, the period for which the un-recovered revenue gap pertains is FY 2011-12 and 2012-13 which has not been covered in the order being referred to by the learned counsel for the State Commission.

50. Accordingly, the State Commission is directed to allow financing cost on the un-recovered revenue gap in the next tariff order of the Appellant to be recovered through the retail supply tariff during the year.

51. The State Commission in the impugned order has indicated that the deficit of Rs. 828 crores shall be carried forward to FY 2013-14 and thereafter but not more than period of three years. FY 2013-14 is going to be over shortly. Therefore, the State Commission is also directed to allow for part recovery of the revenue gap in the next tariff order. This issue is decided in favour of the Appellant.

**52. Summary of our findings:**

**i) We feel that the UI drawals and power purchase thereof should be trued up only at the stage of truing up of the accounts after considering the audited accounts and prudence check of the UI drawals by the State Commission. We do not find any reason to interfere with the review of power purchase cost carried out by the State Commission for FY 2011-12 in the impugned order.**

**ii) We do not find any infirmity with the escalation factor used for determining the O&M expenses for the FY 2011-12 and 2012-13. However, the State Commission shall true up the escalation factor in the truing up on the basis of the actual CPI and WPI indices.**

**iii) We do not find any reason to interfere with interest rate on working capital decided by the State Commission for FYs 2011-12 & 2012-13 in the impugned order. However, the State Commission is directed to true up the interest on working capital in the truing up of the accounts for FYs 2011-12 & 2012-13, taking into account the Prime Lending Rate of SBI in the respective financial years.**

**iv) We do not find any infirmity regarding the finding of the State Commission on interest on consumer security deposit for FY 2012-13 which has been allowed as per the petition of the Appellant. However, the interest on consumer security deposit has to be trued up at the time of truing up of accounts for FY 2012-13.**

**v) We are in agreement with the contention of the Appellant that there is under recovery of the revenue due to delay in implementation of the tariff for the FY 2012-13. The State Commission should have determined the additional revenue generated at the revised tariff taking into account the period from the date of implementation of the revised tariff till the end of the Financial Year 2012-13. Accordingly, the State Commission is**

**directed to true up the revenue for the FY 2012-13 and also allow carrying cost on the same.**

**vi) The approach of the State Commission in creating regulatory assets that too without providing for the financing cost for the same in the ARR and retail supply tariff is contrary to the directions given by this Tribunal in its order dated 11.11.2011 in O.P. no. 1 of 2011. We strongly feel that the action of the State Commission in not following our directions violating the judicial discipline is highly reprehensible. Accordingly, the State Commission is directed to allow financing cost on un-recovered revenue gap created in the ARR for FY 2012-13 in the next tariff order to be recovered through the retail supply tariff and also allow for part recovery of the revenue gap in**

**accordance with the findings given in the impugned order in the next tariff order.**

53. The Appeal is allowed in part to the extent indicated above. The State Commission is directed to pass the consequential orders in terms of our findings. However, no order as to costs.

54. Pronounced in the open court on this **18th day of December, 2013.**

**( Rakesh Nath)  
Technical Member**

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

√  
**REPORTABLE / ~~NON-REPORTABLE~~**  
Vs