

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 209 OF 2012

Dated: 7th May, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF :

West Central Railway ,
General Manager Office,
IIIrd Floor Electrical branch,
Madhya Pradesh,
Through Shri H.P. Agarwal,
s/o Shri B.L. Agarwal, 53 years,
Working as Chief Electrical Distribution Engineer Appellant/
Petitioner

VERSUS

1. Madhya Pradesh Electricity Regulatory Commission
4th & 5th Floor Metro Plaza,
Bittan Market Areara Colony,
Bhopal-462016
2. MP Poorva Kshetra Vidyut Vitran Company
Shakti Bhavan, Rampur
Jabalpur-482008
3. MP Madhya Kshetra Vidyut Vitaran Company,
Bijalinagar Colony, Nistha Parisar, Govindpura,
Bhopal-462023
4. MP Paschim Kshetra Vidyut Vitaran Company,
Ground Polo House,
Indore-452015 Respondents

Counsel for the Appellant(s) ... Ms. Geetanjali Mohan

Counsel for the Respondent(s)... Mr. C.K. Rai for MPERC-R-1

Mr. G. Umopathy with
Ms. R. Mekhala for R-2 to R-4

JUDGMENT

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal is directed against the impugned tariff order 2012-13, dated 31.3.2012 passed by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called the '**State Commission**') for determination of railway traction tariff and bulk supply category to the Railway in Madhya Pradesh wherein the State commission had increased the Demand Charges for the Railway Traction supply for existing Rs.220/- per KVA to Rs. 265/- per KVA i.e. @ Rs.45/- per KVA and energy charges from Rs.4.70/KWH to Rs.5.00 /KWH i.e. @ Rs.0.30 per KWH unit for the year 2012-13, effective from 10.4.2012 based on the ARR and Tariff Applications made by the distribution licensees namely, Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (East Discom), Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (West Discom) and Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Central Discom), (Respondent No. 2 to 4 herein) in Petition No. 72/2011 (East Discom), 73/2011 (West Discom) and 74/2011 (Central Discom) (hereinafter called the '**Discoms/Distribution Licensees**'). These petitions were filed as per the requirements of the MPERC (Terms and Conditions for determination of tariff for distribution and retail supply of electricity and methods and principles for fixation of charges) Regulations, 2009.

2. The Appellant-West Central Railway is aggrieved, by the unreasonable tariff hike, implemented by the State Commission for the FY 2012-13 ignoring the fact that unlike the HT Bulk Consumer /Industrial (large power), who are working for personal gains, the Appellant is a public utility serving the common mass of the country and is a major contributor to the growth and development of the national economy. The unreasonable power tariff hike determined by the State Commission in the case of the Appellant would put additional burden on rail users and consumers and impede the Appellant's growth as a low cost mass transport system.

3. The relevant facts giving rise to the instant Appeal are as follows:-
- (a) that the Appellant-West Central Railway is a nodal railway for dealing tariff related issues in Madhya Pradesh state and operates under the Ministry of Railways and is one of the largest/bulk/EHT and prestigious consumer in Madhya Pradesh state and avails EHT power supply at 220 & 132 KV for electric traction at 34 Traction Sub-stations (TSS) and paying annual bills amounting to approximately Rs.1020 crores. The Appellant contributes very substantial portion of their revenue towards electricity supply and have never defaulted in payments and draw a consistent load throughout the year, in Madhya Pradesh state. The Appellant is therefore entitled to a reasonable tariff, lower than that fixed for other HT & EHT consumers.
 - (b) that the Respondent No. 2 to 4 are the Distribution Licensees and they have been awarded the Distribution Licenses by Respondent No.1, the State Commission, under the provisions of Madhya Pradesh, Electricity Reforms Act, 2000 as retail supply licensees in the State of Madhya Pradesh.
 - (c) that the benefits of the Railway Traction system to the society are as follows:
 - (i) Major contributor to the growth and development of National Economy and at the same time keeps it moving and accordingly called the life line of the country.
 - (ii) The Railway's electric traction is capable of utilizing any primary source of energy including renewable sources of energy, thereby leading to energy security for the nation.
 - (iii) The said system is the most efficient and eco friendly mode of transport with least Carbon Dioxide (CO₂)

emission, thereby helping in mitigating the problem of global warming and climate change.

- (iv) The energy consumption for freight trains hauled by electric traction is lower as compared to the equivalent load hauled by diesel on road which reduces import of diesel oil, thereby, saving precious foreign exchange and reducing dependency on petroleum based energy.
- (d) that the Government of India, Ministry of Energy, Department of Power had on 1.5.1991, issued a circular to all State Governments and State Electricity Boards emphasizing on the importance of providing electricity for Railway Traction at reasonable price so that electric traction does not prove to be costlier than diesel traction and requested the State Governments and State Electricity Boards to revise their tariff in such a way that Railways are provided electricity at a reasonable price.
- (e) that para 8.3 of National Tariff Policy dated January 6, 2006 issued by Ministry of Power, states that the tariff must be linked to cost of service. For achieving the objective that tariff progressively reflects the cost of supply of electricity, this Appellate Tribunal vide judgment dated 30.5.2011 in Appeal No. 102,103 &112 of 2010 directed the State Commission to notify roadmap within six months with a target that latest by the end of year 2010-2011, tariff are within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy. Accordingly, some State Commissions, like Andhra Pradesh Electricity Regulatory Commission (APEREC) and Chhattisgarh State Electricity Regulatory Commission (CSERC) in the country decreased the tariff for Railway Traction and other EHT consumers during the period but the learned Madhya Pradesh Electricity Regulatory

Commission (MPERC) has continued with the same tariff and never tried to reduce cross subsidy.

- (f) that the Respondent No. 1 has increased the Demand Charge per KVA from Rs 220/- to Rs 265/ i.e. by 21% and KWH energy rate from Rs 4.70 to Rs 5.00 i.e. by 6.38% during FY 2012-13 , for EHT Railway Traction Category, causing an extra burden to the Appellant.
- (g) that the cross subsidy loaded in case of Railway traction tariff continues to be unreasonably high.
- (h) that this Appellate Tribunal passed the Judgments dated 30.05.2011 & 02.09.2011 against Orissa Electricity Regulatory Commission (OERC) Tariff Orders for the years 2010-11 & 2011-12 respectively and directed the Orissa Commission:
 - (i) to determine voltage wise cost of supply
 - (ii) subsidy is to be calculated on the basis of cost of supply to the consumer category.
 - (iii) cross subsidy is not to be increased but reduced Gradually
 - (iv) the tariff of each of the consumer categories are within $\pm 20\%$ of average cost of supply
 - (v) to ensure in all future tariff orders that cross subsidies to different consumers are to be determined as per the directions given in the judgment
- (i) that the learned State Commission in the impugned tariff order dated 31.03.2012 for FY 2012-2013 considered Average Cost of supply for the whole state only and not determined the cost of supply consumer wise, category wise and voltage wise, in spite of Appellant' s request.
- (j) that the Appellant Railways from time to time approached the State Commission and sought reduction in the Railway traction tariff on the following among other EHT consumers :

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- (i) that the Appellant is drawing electricity at high voltage (132 KV/220 KV) which involves negligible Transmission and Distribution (T&D) loss, pilferage etc.
 - (ii) that the appellant draws power from Grid round the clock i.e. even during lean period which improves the system load factor.
- (k) that the Appellant's tariff is loaded by cross-subsidy given to other classes of consumers. The State Commission has completely disregarded the recommendations of the Government of India circular dated 1.5.1991, and undermined the importance of electrification of Railway traction and the need to ensure a tariff closer to the cost of supply.
- (l) that the Appellant cannot be made to suffer because of inefficiency of DISCOMs have in Madhya Pradesh. A considerable time has passed and DISCOMs yet have not worked out the category wise cost of supply and not ensured 100% metering of various consumers for billing purpose.
- (m) that the Appellant takes power from Licensee at 132 KV/220KV and bears all the cost of 220/25 KV and 132 KV/25 KV substations which are owned & maintained by the Appellant. In case of supply at 132 KV/220 KV, the system losses are at the lowest level as the technical losses are the least and distribution & other commercial losses are nonexistent
- (n) that the learned State Commission has failed to furnish any suitable reason, whatsoever for rejecting the Appellant's claim for reasonable tariff for the Railway Traction. No suitable reason or justification has been given by State Commission for fixing such high traction tariff for FY 2012-13.
- (o) that the Railway Traction is availing supply at higher voltage of 132 KV/ 220 KV in which there will be negligible losses. Hence the actual cost of supply to Railway Traction should be much less as compared to other EHT and HT category consumers.

- (p) that as approved by the State Commission, threshold limit for power factor incentive should also be 0.95 and power factor penalty for below 0.90 for Railway Traction tariff ,as Load on system depends on movement of traffic, therefore at some point of time there may be case that there will be very small load on system, which will cause power factor to go down, hence gives very strong justification for penalizing Railways for power factor below 0.85 and not 0.9
- (q) that the impugned tariff order has ignored that the electric traction system designed with single-phase system is in line with established international practice. Phases are cyclically tapped at reasonable distance to avoid imbalance. In fact, to neutralize the imbalance in the grid systems, the cyclic tapping of phases at 132 KV causes the Railway to incur extra expenditure than locating higher number of substations at relatively short intervals and in provision of phase break arrangements by way of neutral section midway between the adjacent traction substations. In view of the same the tariff for the Railway traction should be fixed at very reasonable rate and Railway Traction is to be treated as a separate category.
- (r) that the impugned tariff order of the learned State Commission has ignored that the Railway traction load is evenly distributed over the day. The traction load is moving load on the grid system and the load shifts from the movements of trains. But the overall load of all the traction sub-stations will fairly remain constant and form the base load to the grid throughout the day. Railways draw power from state Grid round-the clock i.e. even during off peak period which, improves the system plant load factor, thereby benefiting the supplier.
- (s) that the impugned tariff order violates the provisions of the Article 287 of the Constitution of India, whereby the power tariff for the Railways should be reasonable and should not be very

different from the actual costs incurred by supply companies for generation and distribution of power. However the Article 287 specifically prohibits States from charging tax on electricity supplied to Railways and hence in the broader sense, the price of electricity sold to the Government of India for consumption by the government, or to any such Railway company as aforesaid for consumption in the construction, maintenance or operation of any Railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity. This prohibits distribution licensees from charging from the Railways a tariff similar to other EHT consumers, thereby causing violation of Article 287 of the Constitution of India.

- (t) that the learned State Commission has acted arbitrarily and in complete disregard to the principles for determination of tariff enumerated in Section 61 and 62 of the Electricity Act, 2003. Further Railway tariff should be less than other EHT consumers as explained earlier, hence to be kept as a separate category like in other states. It appears that the State Commission has adopted a step-motherly attitude towards the Appellant and loaded it with unreasonable costs. The State Commission has failed to appreciate that sub-section (3) of Section 62 of the Electricity Act, 2003 mandates against undue preferential treatment to any consumer

4. The Appellant seeks the following relief from this Tribunal in the instant Appeal requesting that this Tribunal may be pleased to:

- (a) implement Single part Tariff.
- (b) Railway should be exempted from levying the excess Maximum Demand (MD) & excess energy charges.
- (c) giving incentive for Power Factor (PF) above 0.90 in place of existing 0.95 for Traction Supply & penalty on Power factor below 0.85 instead of 0.90.

- (d) giving a voltage rebate of 4.0% on 132 kV & 5% on 220 kV on Billed demand.
- (e) the billing be done on the total simultaneous Maximum Demands.
- (f) exemption from security & additional security deposit.
- (g) bring down/ Quash the hike the fixed and energy charges for 2012-13 for HV-6 & LV 2.2 respectively by declining the MPERC tariff order.

5. We have heard Ms. Geetanjali Mohan, the learned counsel for the Appellant, Mr. C.K. Rai, learned counsel for the Respondent No.1 and Mr. G. Umapathy, the learned counsel for the Respondent No.2 to 4 and perused the written submissions filed by the rival parties.

6. The learned counsel for the Appellant has made the following submissions:

- a) that the railway traction should be treated as a separate category because of its peculiar nature and importance as the Appellant is a nodal railway for dealing tariff related issues in Madhya Pradesh State and is one of the largest/bulk/EHT consumer at 132 and 220 KV for electric traction and draws a consistent load throughout the year. Railway provides the cheapest mode of transport throughout the entire country to common masses and, therefore, the Appellant is entitled to a reasonable tariff lower than that fixed for other HT & EHT consumers.
- b) that the tariff for railway traction is unreasonably high and is more than the other EHT / HT consumers and does not reflect the cost to serve and is not in consonance with Section 61(g) of the Electricity Act, 2003 and Clause 8.3 of the National Tariff Policy, 2006.
- c) that the State Commission has ignored that the Railway is a public utility and plays an important role of providing mass transportation. This Tribunal in its judgments in Appeal No.

78/2005, 148/2007 and 124/2008 in the matter of Union of India vs. Andhra Pradesh State Electricity Regulatory Commission, Northern Railway vs Punjab State Electricity Regulatory Commission, has observed that the Railways serve the public at large and should be supplied electricity at reasonable price.

- d) that the Railway Traction draws electricity from the distribution licensee at 132/220 KV and, therefore, there are hardly any transmission losses. The Appellant has also incurred the cost of infrastructure of stepping down of voltage to the required level of 25 KV at which the electric traction operates. Thus, the main emphasis of the Appellant is that Railway Traction utilizes its power at 25 KV but draws power at 132/220 KV and there are hardly any transmission losses. The Appellant has also incurred extra expenditure for balancing the system by providing neutral sections at short intervals. As the transmission and distribution losses are negligible in case of Railway Traction, the cost of supply should be much less as compared to many other EHT and HT category consumers.
- e) that Section 61(g) of the Electricity Act, 2003 contemplates that the tariff progressively reflects the cost of supply of electricity and also reduces and eliminates cross subsidies within the period to be specified by the appropriate Commission. Further Clause (b) of Section 61 lays down that the generation, transmission, distribution and supply of electricity are to be conducted on commercial principles.
- f) that the State Commission is also mandated by the Electricity Act and National Tariff Policy to reduce cross subsidy gradually and to decide tariff which is reflective of cost of supply which has been ignored by the State Commission.
- g) that this Appellate Tribunal in SIEL Ltd. Vs Punjab State Electricity Regulatory Commission in Appeal No. 413/2005 has

disapproved the view of the State Commission that word “cost of supply” means “average cost of supply” and the omission of the word “average” in Section 61(g) of the Electricity Act, 2003 is significant.

- h) that the Railway Traction tariff is more expensive than other EHT/HT category consumers as Railway is not getting the additional incentive/rebates such as of peak energy rebate, load factor incentive on the basis that Railway is taking two phases on a single point, but if whole system is considered it is actually three phase, reason being that though Railway Traction is drawing two phase load at a single point but phases at 132 KV are cyclically tapped at a reasonable distance and thus in effect it becomes three phase.
- i) that the State Commission has also ignored that the Railway Traction load is evenly distributed over the day and it draws power from the State Grid round the clock, even during off peak period, thus improving the system operation. The traction load is a moving load but the overall load of all traction substations remains constant.
- j) that the tariff is heavily loaded with cross subsidy and until consumer wise /voltage wise cost of supply is worked out, cross subsidy cannot be worked out correctly. The State Commission has worked out the cross subsidy on the basis of overall average cost of supply to all consumers (on the basis of overall average cost of supply) and not on the basis of actual cost of supply, against the dictum laid down by this Appellate Tribunal in its judgments dated 30.5.2011 and 2.9.2011 in Appeal No. 52/2012 M/s Ferro Alloys Corporation vs OERC and Others connected matters.
- k) that the levy of energy charges and fixed charges have not been worked out for the category of voltage level at which Railways are availing supply. Also the Railway Traction has been heavily

loaded with cross subsidy. The approximate average cost of energy works out to Rs.6.03 per unit due to change in the tariff, whereas considering the existing Policy references regarding the calculation of average cost of supply for that particular voltage level and without levying cross subsidy on Railways, the average cost would come out to Rs.4.76 per unit, which is 21.6% below the revised tariff. Therefore, considering this average cost, the Railways will be in a loss of Rs.100 crore. The tariff as provided by the Madhya Pradesh Discoms is not comparable in isolation and the entire tariff structure, the load profile of the consumer as well as cost of supply of particular Discom needs to be considered for reasonable comparison of references. It has further been submitted that since the consumption pattern of railways depends on the running of trains and thereby resulting in uneven distribution of load, Madhya Pradesh Discoms calculates minimum guarantee consumption at 20% load factor and below which also minimum charges are levied.

- l) that the distribution companies also charge a very high penalty from Railways for the jerk in the system due to simultaneous starting of electric engines, which in any case happens frequently.
- m) that the load on the system depends on movement of trains. Therefore, excess over contract demand happens only for a very small period of 10-15 minutes or so in a particular Traction sub-station when distributed operation of trains beyond railway control as is mostly caused by external causes such as grid failure, public agitation, accidents of road vehicles, law & order problem. In case of derailment as it happens for a very short period, least disturbance is caused to grids. Therefore, method for calculating excess over contract demand charges should be for the actual period and not for the whole month considering that excess demand for the whole month. Therefore, charging

of penalty for excess over contract demand is being done in very unreasonable and unjustifiable manner.

- n) that the Railways are bulk consumers for residential (HV-6) and non-domestic (LV-2.2) tariff category. Discoms have been requested by the Appellant to provide individual connections to various non-domestic installations and residential quarters as is being done for in the civil area but the Discoms have not considered the same stating that for railways establishment, they can give supply at one place only. The rate for this bulk domestic and non-domestic supply is more than the individual domestic consumer and also non-domestic consumer which has not been considered by the State Commission.
- o) that this Appellate Tribunal vide its judgment dated 7.1.2014 in Appeal No. 248/2012 (West Central Railway vs RERC & ors) has directed the State Commission and the Distribution Licensee for future regarding determination of voltage wise cost of supply. In spite of their direction, the Madhya Pradesh State commission, in its impugned tariff order, has taken an average cost for calculation of cross subsidy without there being any regulation in this regard, which is an extra burden on Railway.
- p) that the learned State Commission has not reduced the cross subsidy which remains at +24.84% during FY 2013-14 and has not complied with National Tariff Policy, 2006 para 8.3 even up to FY 2013-14, whereas cross subsidy should have been brought down within $\pm 20\%$ by 2011. The State Commission has not implemented its own roadmap notified on 6.10.2007. The cross subsidy of HT industry category is much less 19.9% within $\pm 20\%$ during FY 2013-14. On similar lines, cross subsidy burden on Railway Traction should have been brought down to within $\pm 20\%$ atleast. The cross subsidies have been worked out at same load factor for all categories as assumed. National Tariff Policy, 2006 does not specify $\pm 20\%$ subsidy limit

calculation by 50% load factor. There is no basis in the Electricity Act to workout cross subsidy at 50% load factor which is, therefore, not tenable.

- q) that the cross subsidy given in Table-112, page 137 of the tariff order FY 2012-13 (impugned tariff order) is obviously calculated at certain load factor though the load factor has not been shown in the tariff order. The calculation of cross subsidy for all categories has to be on the same criteria namely, load factor.
- r) that cross subsidy percentage with respect to average cost supply at 30% load factor is 129% and at 40% load factor is 123% as pleaded by the Respondent No. 2 to 4. Accordingly, it will be 126% at 35% load factor. According to Respondent No.2 to 4, the load factor of Railways on an average remains 35%. This Appellant Tribunal in its judgment in Appeal No. 75/2011 has mentioned that the effective tariff is calculated at 35% load factor and, on this load factor, the cross subsidy is 3.95% in FY 2010-11.
- s) that availing of supply by consumer at high voltage is always preferable by the Discoms. Hence, voltage rebate of 4% on 132 KV & 3% on 220 KV on energy charges should be given to Railways as given by other Discoms like Jaipur Vidyut Vitran Nigam Limited (JVNL) through Rajasthan Electricity Regulatory Commission.
- t) that due to frequent change in tariff structure, modalities and payment of penalties on excess demand, long term planning of Railway electrification for development of nation has become very difficult. As every time work of Railway Electrification is planned, Maximum Demand has to be enhanced, due to which additional charges are being levied by MP Discoms, therefore, simultaneous maximum demand recorded at various sub stations should be the basis for assessing the maximum demand used for tariff purposes. The demand of all the

Traction substations supplied can be integrated while calculating the maximum demand. Technically, these can be implemented by down loading the meter reading from each Traction substation and transferring the data to any spreadsheet software for assessment of the simultaneous maximum demand. Simultaneous maximum demand should be implemented for Railways as given by other Discoms like JVVNL.

- u) that the Railways being the largest department of the Central Government and also as a good paymaster, the State Commission was requested to consider the request for exempting Railways from depositing security deposits, by making necessary amendments to clause 1.6 of Regulation: MPERC (Security Deposit) (Revision-I) Regulation, 2009. The Appellant also requested the State Commission to permit the Railways to deposit the security deposit in terms of the Bank Guarantee in place of cash/bank draft till issue of the amendment in clause 1.6 of regulation: MPERC (Security Deposit) (Revision-I) Regulation, 2009 for exempting Railways from depositing security deposit but that request has not been accelerated.

7. The learned counsels for the Respondents have supported the tariff determined by the State Commission for Railway Traction. We shall be discussing their contention in the succeeding paragraphs while dealing with the issues.

8. In view of the contentions of the parties, the following issues arises for our consideration:

- (A) whether Railway Traction of the Appellant should be treated as a separate category because of its peculiar nature and importance?

- (B) whether the Circular issued by the Ministry of Energy, Government of India dated 1.5.1991 for providing electricity for Railway Traction at reasonable price is binding upon the learned State Commission?
- (C) whether the Appellant's Railway Traction tariff is unreasonably high and is more than other EHT/HT consumers?
- (D) whether the Railway Traction of the Appellant is heavily loaded with cross subsidy?
- (E) whether the tariff fixed by the State Commission for Railway Traction is arbitrary and illegal with excessive cross subsidy?
- (F) whether single part tariff for Railway Traction (HV-1) should be restored?
- (G) whether calculation of excess over contract demand charges should be for actual period and not for the whole month and charging of penalty for excess over contract demand is unreasonable and unjustified?
- (H) whether the Discoms are under obligation to provide separate connection to various residential and non-domestic installations of Railways as being done for the civil areas instead of providing supply at a single point?
- (I) whether simultaneous maximum demand recorded at various traction substations should be the basis for assessing maximum demand for tariff purposes?
- (J) whether the Appellant-Railways is entitled to exemption from depositing security deposits by making necessary amendment to Clause 1.6 of Regulation: MPERC (Security Deposit) (Revision-I) Regulation, 2009 and to permit the Railways to deposit in terms of bank guarantee in place of cash/bank draft till the said amendment?
- (K) whether the impugned order violates the provisions of Article 287 of the Constitution of India?
- (L) whether the Railway Traction should be allowed relaxation in power factor penalty?

9. Point-wise consideration are as follows:

9.1 **Issue No. (A)**

whether Railway Traction of the Appellant should be treated as separate category because of its peculiar nature and importance?

Issue No. (B)

whether the Circular issued by the Ministry of Energy, Government of India dated 1.5.1991 for providing electricity for Railway Traction at reasonable price is binding upon the learned State Commission?

Since both the issues are inter-connected, therefore, we are taking them up together and deciding simultaneously.

- (i) We are aware that while determining the tariff, the State Commission is guided by the provisions of Section 61 (Tariff Regulation) and Section 62 (Determination of Tariff) of the Electricity Act, 2003 and State Commission's Regulations. Section 62(3) of the Electricity Act, 2003 prohibits the State Commission from showing any undue preference to any consumer but it may differentiate tariff according to consumers load factor, power factor, voltage, total consumption of electricity or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Section 86(4) of the Electricity Act, 2003 states that the State Commission, in the discharge of its functions, shall be guided by National Electricity Policy, National Electricity Plan and Tariff Policy established under Section 3 of the Act.
- (ii) The learned counsels for the Respondents have submitted that any direction for the preferential treatment of the Appellant, under any enactment or by any authority or committee, is not binding upon the Commission. Circular issued by the Ministry of Energy, Government of India on 1.5.1991 for providing electricity for Railway Traction at reasonable price, does not have any role in tariff determination process. This Appellate Tribunal, regarding issue of applicability of the directive issued by the Ministry of Power, in Appeal No. 11/2011 in the case of Northern Railway Headquarters vs HERC & Ors. and also in Appeal No. 75/2011 in the case of Union of India through

Southern Railway, Chennai vs Tamil Nadu Electricity Regulation Commission & Ors. observed that even the policy directions issued under Section 108 of the Electricity Act, 2003, relating to fixation of tariff, are not binding on the State Commission and the powers of the State Commission in the matter of determination of tariff, cannot be curtailed. Thus, the directives contained in the Ministry of Power's letter dated 1.5.1991 cannot be held to be binding on the State Commission so far as the determination of tariff is concerned.

- (iii) The learned counsel for the Respondents have also submitted that the issues raised are similar to those considered and rejected by this Appellate Tribunal in the judgment passed in Appeal No. 11/2011 (Northern Railway Headquarter vs HERC) and 75/2011 (Union of India vs TNERC) dated 23.5.2012 reported in 2012 ELR(APTEL) 1041 and the latest judgment dated 7.1.2014 in Appeal No. 248/2012 West Central Railway vs Rajasthan Electricity Regulatory Commission & Anr. and the same ratio and principles of law laid down therein are applicable to the present Appeal.
- (iv) This Appellate Tribunal in its judgment dated 7.1.2014 in Appeal No. 248/2012 has observed as under:

“11. We notice that the Appellant neither filed any suggestions and objections nor participated in the public hearing in the proceedings of tariff determination before the State Commission, therefore, there was no occasion for the State Commission to consider the proposal now given by the Appellant in this Appeal for creation of a separate consumer category for Railway traction. By not creating a separate category for Railway traction, the State Commission has not violated any provision of the Electricity Act, or Tariff Policy or the Tariff Regulations. Admittedly in some other States the State Commissions have created a separate category for Railway traction. However, this could not be a sufficient ground for accepting the contention of the Appellant for directing the State Commission to consider creation of a separate consumer category for the Appellant for FY 2012-13. The State Commission is not bound by the practices followed by other State Commissions as

held by this Tribunal in the case of Union of India through Southern Railway vs. Tamil Nadu Electricity Regulatory Commission & Another reported as 2012 ELR APTEL 1041.”

- (v) This Appellate Tribunal in judgment dated 23.5.2012 in Appeal No. 75/2011 after going through the provisions of Section 62(3) of the Electricity Act, 2003 observed that operation of Section 62(3) of the Act would indicate that while the State Commission is debarred for showing undue preference to any consumer, it is merely to the discretion of the State Commission to differentiate between tariffs of the consumers based on various factors.
- (vi) We may note that this Appellate Tribunal, in its judgment dated 29.1.2014 in Appeal No. 153/2012 in the matter of East Coast Railways & Ors vs OERC & Ors has recently considered this issue that Railways as a public utility ought to be given different tariff category and not to be clubbed with other EHT & HT industries category and rejected the same contention. This Tribunal in its earlier judgment dated 23.5.2012 in Appeal No. 75/2011 has also rejected the same contention.
- (vii) However, we find that the State Commission in the impugned order has devised a separate tariff for Railway Traction under HV-1 category. The monthly fixed charges for Railway Traction on 132 KV/220 KV is Rs.265/KVA and energy charge Rs.5/unit. As against this, the fixed charges for industry taking supply at 132 KV is Rs.470/KVA and energy charge Rs.4.60/unit for energy charges upto 50% load factor and Rs.3.80 /unit for energy charges in excess of 50% load factor. The fixed charges for industry at 220 KV/400 KV supply is Rs.500/KVA and energy charge of Rs.4.40/unit for consumption upto 50% load factor and Rs.3.70/unit for consumption above load factor of 50%. Thus, the fixed charges for Railway Traction is much lower than similar industrial consumers and the energy charges of Railway Traction is much higher than the industrial

consumers. As the load factor of Railway is low around 30%, lower fixed charges are more beneficial to Railway.

- (viii) The comparison of tariffs of the industrial consumers at 132 KV and 220 KV/400 KV and the Railway Traction at different load factors for actual demand being less than 90% of the contract demand and power factor of 0.9 as computed as per the tariff decided in the impugned order is as under:

		Load Factor	25%	30%	40%	50%
(A)	Industrial Consumer at 132 KV	Fixed Cost (Rs./Unit)	2.57	2.15	1.60	1.29
		Energy Charges (Rs./Unit)	4.60	4.60	4.60	4.60
		Total...	7.17	6.75	6.20	5.89
(B)	Industrial Consumer at 220 KV/400 KV	Fixed Cost (Rs./Unit)	2.74	2.28	1.71	1.37
		Energy Charges (Rs./Unit)	4.40	4.40	4.40	4.40
		Total...	7.14	6.68	6.11	5.77
(C)	Railway Traction	Fixed Cost (Rs./Unit)	1.45	1.21	0.91	0.73
		Energy Charges (Rs./Unit)	5.00	5.00	5.00	5.00
		Total...	6.45	6.21	5.91	5.73

Thus, the tariff for Railway Traction is lower than industrial tariff upto load factor of 50%, which is relevant as load factor of Railway Traction is less than 50%.

In view of above, both the issues are decided against the Appellant.

9.2 **Issue No. (C)**

whether the Appellant's Railway Traction tariff is unreasonably high and is more than other EHT/HT consumers?

- (i) On this issue, we require to consider whether the Railway Traction tariff is unreasonably high and is more than the other EHT/HT consumers. The main contention of the Appellant's counsel on this issue is that Railway, being a public utility, provides for reliable and economical means of transportation within the State as well as the entire country and increase in per unit tariff for electricity has a significant effect on the cost of providing this service and the Commission has ignored this fact without looking to the Appellate Tribunal's observation that

reasonable tariff for Railway Traction needs to be given serious thought. This contention cannot be accepted in the aforesaid scenario. This fact is undisputed that Railway Traction draws electricity from the distribution licensee at 132/220 KV and the Appellant Railway has also incurred cost of infrastructure of stepping down of voltage to the required level of 25 KV at which the electric traction of the Railway operates. The Appellant Railway has also incurred extra expenditure for balancing the system by providing neutral section at short intervals.

- (ii) The legal position is also not disputed that in terms of Section 61(g) of the Electricity Act, 2003, the tariff should progressively reflect the efficient and prudent cost of supply of electricity, but at the same time, Clause (b) of Section 61 of the Electricity Act, 2003 says that the generation, transmission, distribution and supply of electricity are to be conducted on commercial principles. We are also conscious of the provisions of the Electricity Act, 2003 that the State Commission has been prohibited from giving any undue preference to any category of consumer unless permitted by the provisions of the Electricity Act, 2003.
- (iii) The Appellant's contention that the Commission has ignored the fact that Railway Traction load is evenly distributed over the day, the traction load is moving load, but the overall load of all the traction sub-stations remains constant, also does not bear any merit. The Appellant Railway is not entitled to any tariff concession just on the ground that Railway draws power from the State grid round the clock i.e. even during off peak period and thereby improving the system. We find that the State Commission has fixed monthly fixed charges of Rs.265/KVA and energy charge of 500 paise/unit for Railway Traction on 132 KV/220 KV. As against this, the tariff for industrial consumer at 220 KV is fixed charge of Rs.500/KVA and energy charge of 440 paise/unit for consumption upto 50% load factor

and 370 paise/unit for consumption in excess of 50% load factor. Thus, the fixed charge for Railway Traction is much less than industrial tariff. However, the energy rate for Railway Traction is higher than that applicable to industrial consumer. Thus, the tariff design for railway is favourable to them as the traction load has lower load factor. The average realization as percentage of cost of supply is higher for Railway Traction than industrial consumers due to low load factor of Railway Traction being 30 to 35% compared to industrial consumer category. In the like to like comparison of tariff of Railway Traction and Industrial consumer, we found that the tariff of Railway Traction is lower than industrial tariff upto load factor of 50%. In the light of the above rival contentions, we do not find any illegality or perversity in the State Commission's finding recorded on this issue in the impugned order. We also agree to the finding recorded in the impugned order and also find that the Railway Traction Tariff is not unreasonably high but it is quite reasonable, just and proper. **Thus, the issue is also decided against the Appellant.**

9.3 **Issue No. (D)**

whether Railway Traction of the Appellant is heavily loaded with cross subsidy?

- (i) The main contention of the Appellant on this issue is that the Railway Traction tariff of the Appellant is heavily loaded with cross subsidy and until consumer wise/ voltage wise cost of supply is worked out, cross subsidy cannot be worked out correctly. The State Commission has committed illegality in working out the cross subsidy on the basis of overall average cost of supply to all consumers and not on the basis of actual cost of supply which is against the dictum laid down by this Appellate Tribunal in its judgment dated 30.5.2011 in Appeal

No. 52/2012, in M/s Ferro Alloys Corporation vs OERC and Ors.

- (ii) One more contention of the Appellant on this issue is that the levy of energy charges and fixed charges has not been worked out for the category of voltage level at which Railways avail supply. The approximate average cost of energy works out to Rs.6.03 per unit due to change in the tariff, whereas considering the existing Policy references regarding the calculation of average cost of supply for that particular voltage level and without levying cross subsidy on Railways, the average cost would come out to Rs.4.76 per unit, which is 21.6% below the revised tariff, which will result in a loss of Rs.100 crore to the Railways. The learned counsel for the Appellant has again emphasized on the judgment dated 7.1.2014 in Appeal No. 248/2012 of this Appellate Tribunal whereby the State Commission and Distribution Licensee have been directed for future regarding determination of voltage wise cost of supply.
- (iii) The main grievance of the Appellant in this Appeal is that the State Commission has not reduced the cross subsidy which remains at +24.84% during FY 2013-14 and has not complied with para 8.3 of the National Tariff Policy, 2006, even up to FY 2013-14 whereas, cross subsidy should have been brought down to within $\pm 20\%$ by the year 2011. Contrary to it, the cross subsidy of HT industry category is much less than 19.9%, within $\pm 20\%$ during FY 2013-14 and on the similar lines cross subsidy burden on the Railway Traction should be brought down to within $\pm 20\%$ at least.
- (iv) One more grievance of the Appellant on this issue is that in the impugned tariff order for FY 2012-13, the cross subsidy has been calculated at certain load factor and the load factor has not been shown in the impugned tariff order, whereas the

calculation of cross subsidy for all the categories has to be on the same criteria namely, load factor. As per the judgment of this Appellate Tribunal in Appeal No. 75/2011, the effective tariff is to be calculated at 35% load factor because the Respondents pleaded that load factor for Railway on an average remains 35%. If this load factor of 35% is taken into consideration, the cross subsidy is 3.9% in FY 2010-11.

- (v) On this issue the counter submission on behalf of the Respondents are as under:
- (a) that the State Commission has made a conscious effort to progressively reduce the cross subsidy level as far as possible and issued cross subsidy roadmap intending to bring down the cross subsidy level within $\pm 20\%$ of the average cost of supply. The State Commission has made all efforts towards achieving the said roadmap. The reduction of cross subsidy level from 128% to 124% has been possible only by the conscious efforts of the State Commission.
 - (b) that further, considering the load factor, the cross subsidy level comes down. Even further it needs to be considered that the average cost of supply has been increasing over the past few years due to increase in input costs, which has been the case across the country, primarily on account of increase in fuel cost. The average tariff, therefore, has gone up for all consumer categories, including the Appellant.
 - (c) that in the tariff order for FY 2012-13 at para 7.6 (linkage to average cost of supply) due consideration has been given to the requirement of the Electricity Act, 2003 and tariff policy that consumer tariffs should reflect the cost of supply. The average cost of supply for the FY 2012-13 works out to Rs.4.90 per unit as against Rs.4.49 for FY 2011-12.

- (d) that for Railways Traction, average realization as % of average cost of supply in FY 2011-12 & FY 2012-13 has been kept almost at the same level.
- (e) that the tariff for Railway Traction on 132 KV/220 KV as monthly fixed charges of Rs. 265.00 per KVA of billing demand per month and 500 paise (i.e. Rs.5/-) per unit as Energy Charges have reasonably been fixed by the impugned order.
- (f) that tariff is different at various load factors, say, at 50% load factor, tariff for Railway is Rs.5.81 per unit, which is 119% of the average cost of supply of Rs.4.90 per unit. The above effective tariff will be further reduced through PF incentive, prompt payment, etc. In addition to incentive 10% rebate in energy charges for new Railway Traction projects is also allowed for a period of five years from the date of connection for such new projects for which agreements for availing supply from licensee are finalized during FY 2012-13. Generally, Railway draws power at low load factor, i.e 20% to 50% load factor and, therefore, its effective tariff increases.
- (vi) That the revenue has been calculated by the learned Commission towards fixed cost charges, energy charges, various incentives/penalty and, therefore, the average rate of realization of Railway Traction has been determined as Rs.6.09 per unit in the impugned tariff order, which is 124% of the average cost of supply of Rs.4.90 per unit. However, against this billing parameter only, actual realization from the Railway during the years 2012-13 was Rs.5.89 per unit, which is 120% of the approved cost of Rs.4.90 per unit, which is within the limit of cross subsidy road map as provided in National Tariff Policy.

(vii) After going through the rival contentions, we observe that in the National Tariff Policy, the word “Tariff” has been provided for limitation for $\pm 20\%$ of the average cost of supply and not the word “average realization”.

(viii) That para 8.3(2) of the National Tariff Policy provides:

*“For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-11 **tariffs are within $\pm 20\%$ of the average cost of supply.** The roadmap would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.”*

It is clear that in National Tariff Policy the words “Tariff” has been provided for limitation of $\pm 20\%$ of the average cost of supply and not the word “average realization”. In two part tariff, the consumer’s categories “Tariff” may depend upon its operative load factor.

(ix) In a two-part tariff structure, which has become mandatory for consumers having load of 1 MW and above, the effective (average) tariff for given category/sub-category of consumers, is influenced by the following factors:-

- (i) Energy charges;
- (ii) Fixed charges/demand charges/stipulated tariff minimums as component of the overall tariff;
- (iii) An indicator of energy usage pattern (most often, load factor).

(x) It is well known, that, in a two-part tariff structure, the effective (average) tariff reduces as the load factor increases with increasing weight-age of energy charges vis-à-vis fixed charge component. Hence, the effective tariff is ultimately determined by the so called representative energy consumption pattern (or load factor) selected from the historical data/trend.

(xi) We may note that this Appellate Tribunal in its judgment dated 7.1.2014 in Appeal No. 248/2012 in the matter of West Central

Railway vs. Rajasthan Electricity Regulatory Commission & Anr. in para 14, has observed as under:

“14. We do not agree with the contention of the Appellant that the tariff has to be determined according to the cost of supply or voltage-wise cost of supply. This Tribunal in the various judgments including judgment dated 30.5.2011 in Appeal no. 102 of 2010 & batch in the matter of Tata Steel Vs. Orissa Electricity Regulatory Commission has clearly held that the tariff need not be the mirror image of actual cost of supply or voltage-wise cost of supply. The voltage-wise cost of supply has to be determined to compute and reflect the cross subsidy transparently and to ensure that the cross subsidy is not increased but only reduced gradually. However, the variation of category-wise tariff with respect to overall average cost of supply has also to be determined to satisfy the provision of the Tariff Policy that the tariffs are within $\pm 20\%$ of the average cost of supply (overall) by FY 2010-11.”

15.

16. We agree that the State Commission has to determine the average cost of supply and to ensure that the tariffs are within $\pm 20\%$ of the average cost of supply (overall average cost of supply) to satisfy the provision of its Tariff Regulations and Tariff Policy. However, the voltage-wise cost of supply has also to be determined to transparently determine the cross subsidy with respect to actual cost of supply. Accordingly, we direct the distribution licensees to furnish the necessary data to the State Commission in the future tariff/ARR exercise and the State Commission shall determine the voltage-wise cost of supply in line with the dictum laid down by this Tribunal in various cases including Tata Steel case, to transparently reflect the cross subsidy. However, we are not suggesting that the tariffs should have been fixed as mirror image of actual cost of supply or voltage-wise cost of supply or that the cross subsidy with respect to voltage-wise cost of supply should have been within $\pm 20\%$ of the cost of supply at the respective voltage of supply. The legislature by amending Section 61(g) of the Electricity Act by Act 26 of 2007 by substituting ‘eliminating cross subsidies’ has expressed its intent that cross subsidies may not be eliminated.

17. The Tariff Policy provides that the State Commissions have to notify a road map for reduction of cross subsidy to ensure that tariffs are within $\pm 20\%$ of the cost of supply by FY 2010-11. From the example given in the Tariff Policy, it is clear that the intent of the Tariff Policy is to ensure that the tariffs should at least be $\pm 20\%$ of the overall average cost of supply by FY 2010-11. However, the Tribunal in the various judgments has laid down the dictum that the ‘cost of supply’ as referred to in Section 61(g) of the 2003 Act is the actual or voltage-wise cost of supply and not average (overall)

cost of supply for the distribution licensee. Thus, actual or voltage-wise cost of supply has also to be determined to transparently reflect the cross subsidy and to ensure that the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply is gradually reduced. Therefore, the State Commission has also to determine the voltage-wise cost of supply to transparently reflect the cross subsidy and to ensure that the cross subsidy is gradually reduced and not increased.

18, 19, 20, 21

22. It has been pointed out by the Learned Counsel for the State Commission that in the present case the average realization from Railway traction category is 103.20% of the average cost of supply. Thus, the tariff of the Appellant is well within $\pm 20\%$ of the average (overall) cost of supply in terms of the Tariff Policy. Further, it has been brought to our notice by Learned Counsel for the Respondent no.2 that Railway traction is also entitled to high voltage rebate of 5% at 220 KV and 4% at 132 KV. Thus, the Railway traction has been given rebate for reduced transmission and distribution loss by providing for high voltage rebate. If this rebate is accounted for, the tariff of Railway traction will be more or less at the average (overall) cost of supply.

23. We find that the energy charge and demand charge of the Railway traction has been increased by about 10% and 12% respectively to recover the revenue gap caused by increase in power purchase cost and other costs of the distribution licensees. Thus, we do not find that there has been unreasonable or abnormal increase in the tariff of the Appellant.

24. Thus, we do not find that the tariff fixed by the State Commission for Railway traction is arbitrary or illegal.”

- (xii) We may further note that the same issue regarding determination of category-wise cost of supply vis-à-vis average cost of supply and uneconomic tariff with cross subsidy was raised by East Coast Railways in Appeal No. 153/2012 and the same has not been appreciated and rejected by us in our judgment dated 29.1.2014. In view of the above discussion, we come to the conclusion that Railway Traction of the Appellant is not heavily loaded with cross subsidy and the learned State Commission, in the impugned order, has rightly recorded the finding on this issue, to which we also agree as **we do not find any convincing reason to deviate there from and**

consequently this issue is also decided against the Appellant.

9.4 **Issue No. (E)**

whether the tariff fixed by the State Commission for Railway Traction is arbitrary and illegal with excessive cross subsidy?

After considering the issue whether the tariff fixed by the State Commission for Railway Traction is arbitrary and illegal with excessive cross subsidy, we observe that tariff fixed by the State Commission for Railway Traction is perfect, just, legal and correct one and cannot be said to be arbitrary and illegal. We agree to the findings recorded by the learned State Commission in the impugned order as the findings are based on legal, correct and proper appreciation of the evidence and material available on record. **Thus, this issue is also decided against the Appellant.**

9.5 **Issue No. (F)**

whether single part tariff for Railway Traction (HV-1) should be restored?

In this issue, we have to consider whether single part tariff for Railway Traction (HV-1) should be restored? After going through the material available on record, it appears that the two part tariff had been introduced by the Commission vide Retail Supply Order – FY 2010-11. Earlier, two part tariff was in-force for Railways till FY 2006-07 and was removed for railway traction to be fixed on single part tariff from FY 2007-08 to 2009-10.

Clause 8.4.1 of the National Tariff Policy also provides for two part tariff, i.e. separate fixed and variable charges, and time differential tariff to be introduced on priority for large consumers like the Railways, whose demand exceeds 1MW within one year. We observe that the learned Commission has rightly maintained/adopted two part tariff for FY 2012-13, since it would help in implementing various energy conservation measures. In view of the fact that the fixed costs of the Distribution Licensee of State of Madhya Pradesh

are more than 70% of their total expenses, “Fixed charges” in addition to “Energy charges” have rightly been introduced, so as to align the tariff structure to other HT categories.

Apart from this, Section 45(3) of the Electricity Act, 2003, too, provides that the charges for electricity supplied by a distribution licensee may include a fixed charge in addition to the charge for actual electricity supplied. In this light, we observe that the impugned order of the learned Commission of two part tariff is wholly justified and the submission of the Appellant for restoration of single part tariff has been rightly rejected by the Commission by passing the impugned order.

On perusal of the rival contentions of the parties, we observe that the learned State Commission, in the impugned order, has rightly recorded the finding on this issue to which we also agree and we do not find any convincing reason to deviate there from and **consequently this issue is also decided against the Appellant.**

9.6 **Issue No. (G)**

whether calculation of excess over contract demand charges should be for actual period and not for the whole month and charging of penalty for excess over contract demand is unreasonable and unjustified?

The Appellant’s contention on this issue is that the load on the system depends on the movement of trains. Since excess over contract demand happens only for a very small period of 10 to 15 minutes or so in a particular Traction sub-station when distributed operation of trains beyond railway control as is mostly caused by external causes such as grid failure, public agitation, accidents of road vehicles, law & order problem. In case of derailment as it happens for a very short period, least disturbance is caused to grids. Therefore, method for calculating excess over contract demand charges should be for the actual period and not for the whole month considering that excess demand for the whole month. Penalty for

excess over contract demand is being charged by the Discoms in very unreasonable and unjustifiable manner. This contention of the Appellant is not appealing to our conscience because the principle that constant load ultimately remains the same, is not applicable to the said situation.

The learned Commission has dealt with this issue at length in the impugned order. The Discoms had proposed to charge the excess demand over contract demand at two times the fixed charges up to 15% of the contract demand and 2.5 times of fixed charges over and above 15% of contract demand and corresponding energy to be charged at two times of normal tariff on basis. The learned State Commission, in the impugned order, has rejected the proposal of the Discoms and continued the existing provision of levy of additional charges for excess drawl of demand. This contention of the Discoms, who are Respondent herein, that the current regime in electricity sector requires additional charges to be levied for excess drawl of energy, all the charges for excess demand are warranted, so that the consumers follow discipline, is not acceptable to us and since the existing provision of levy of additional charges for excess drawl of demand has been continued in the impugned order and the said findings are based on proper, just and correct appreciation of the evidence and material on record. **Thus, this issue is also decided against the Appellant.**

9.7 **Issue No. (H)**

whether the Discoms are under obligation to provide separate connection to various residential and non-domestic installations of Railways as being done for the civil areas?

The Appellant's contention on this issue is that since the Railways are bulk consumers for residential (HV-6) and non-domestic (LV-2.2) tariff category, Discoms were requested by the Appellant to provide separate connection to various residential and non-domestic installations as being done for in the civil area, but the Discoms have not considered the same stating that for railways establishment, they

can give supply at one place only. The rate for this bulk domestic and non-domestic supply is more than the individual domestic consumer and also non-domestic consumer which has not been considered by the State Commission in the impugned order. Refuting the Appellant's submissions, it has been submitted on behalf of the respondents that Discoms can give supply at only one place to large and scattered establishment like the Railways.

In view of the above discussions, we are of the view that the Discoms are under no obligation to provide various non-domestic installations as being done for the civil areas. **Consequently this issue is also decided against the Appellant.**

9.8 **Issue No. (I)**

whether simultaneous maximum demand recorded at various traction substations should be the basis for assessing maximum demand for tariff purposes?

The Appellant's submission on this issue is that due to frequent change in tariff structure, modalities and payment of penalties on excess demand, long term planning of Railway electrification has become a herculean task. Every time, work of Railway Electrification is planned, Maximum Demand has to be enhanced, due to which additional charges are being levied by MP Discoms, therefore, simultaneous maximum demand recorded at various substations should be the basis for assessing the maximum demand used for tariff purpose. The demand of all Traction substations supplied can be integrated while calculating the maximum demand. This can be implemented by down loading the meter reading from each Traction substation and transferring the data to any spreadsheet software for assessment of the simultaneous maximum demand. Simultaneous maximum demand should be implemented for Railways as allowed and given by other Discoms like Jaipur Vidyut Vitran Nigam Ltd. through Rajasthan Electricity Regulatory Commission.

The contention of the Appellant that Railways may be billed on the basis of simultaneous maximum demand recorded in their number of meters spread across the State is wholly misconceived and not acceptable by any stretch of imagination. Such suggestion of the Railway is illogical and in derogation to fact that every connection has a separate premises with separate metering and separate agreements. To maintain system stability, discipline regarding maximum demand is adhered to at each level. We agree to the findings recorded by the learned Commission in the impugned order and **consequently this issue is also decided against the Appellant.**

9.9 **Issue No. (J)**

whether the Appellant-Railway is entitled to exemption from depositing security deposits by making necessary amendment to Clause 1.6 of Regulation: MPERC (Security Deposit) (Revision-I) Regulation, 2009 and to permit the Railways to deposit in terms of bank guarantee in place of cash/bank draft till the said amendment?

As regard the issue of exemption from security deposit, the Electricity Act, 2003 does not exempt consumers like Railways from maintaining security deposits. Regulation 1.6 and 1.7 of the MPERC (Security Deposit) Regulation, Revision-1, 2009 provide for security deposits to be calculated by licenses from all consumers. Hence, we are unable to accept the said contention of the Appellant. So far as, meter rent revision is concerned, in view of Clause 4.5 of the MPERC (Recovery of expenses and other charges for providing electric lines or plant used for the purpose of giving supply) Regulations, Revision-1, 2009, the revision of meter rent is being done and the Appellant could not be granted exemption from the said statutory regulations. Consequently, the submissions of the Appellant on the issue of meter rent revision are also untenable.

In view of the above facts and circumstances, the Appellant-Railway is not entitled to exemption from depositing security deposits under the existing Regulations, 2009 in this regard. Unless the

relevant Regulation of 2009 is amended, the Appellant cannot be granted any exemption and the Railways cannot be permitted to deposit in terms of bank guarantee in place of cash/bank draft without effecting the said amendment. **This issue is also decided against the Appellant.**

9.10 **Issue No. (K)**

whether the impugned order violates the provisions of Article 287 of the Constitution of India?

This issue has already been decided by this Appellate Tribunal in the Appeal No. 75/2011 (Union of India through Southern Railway vs Tamil Nadu ERC & Anr.) dated 23.5.2012 reported in 2012 ELR (APTEL) 1041. In the said judgment, this Appellate Tribunal, while dealing with the applicability of the Article 287 of the Constitution of India in para 15 and 16, has observed as under:

“15. The perusal of the Article 287 would show that the contention of the Appellant is misconceived for the following reasons:

i. Article 287 bars any State Government to impose tax on the consumption of electricity by the Railways. The Tariff determined by the State Commission is in accordance with Electricity Act, 2003 which is a Central Act passed by the Parliament.

ii. The last portion of the Article 287 provides that where the retail tariff includes any tax imposed by the State Government, the tariff for the Railways would be lesser by an amount equal to such tax.

iii. The impugned Order determining the tariff for all categories of consumers did not have any component of any tax imposed by the State Government.

iv. The Article 287 does not deal with tariff much less with the plea of the Appellant that it provides for lower tariff for Railways as compared to other HT consumers.

16. Accordingly, the question is decided as against the Appellant.”

This issue is accordingly decided against the Appellant as we find that the impugned order is not violative of the provisions of Article 287 of the Constitution of India.

9.11 **Issue No. (L)**

whether the Railway Traction should be allowed relaxation in power factor penalty?

- (i) According to the Appellant considering the load of varying nature of Railway Traction, it is reasonable to keep the power factor below 0.85 for levying the penalties and incentive above 0.9 instead of 0.95.
- (ii) The penalty for power factor below threshold of 0.90 has been provided for to discourage the consumers in maintaining low power factor which is detrimental to the grid operation. The reactive power flow on the transmission and distribution system has to be discouraged as it adversely affects the voltage profile of the grid, results in increase in system losses, etc. Accordingly, penalties for low power factor have been provided for in the tariff. Conversely, there is incentive for maintaining high power factor for helping in availing flow of reactive power on the grid. The threshold for low power factor for penalty and high power factor for incentive have been specified by the Commission in the interest of the grid. We do not think that any concession can be allowed to Railway or any other consumer because they are not able to maintain the power factor within the specified limit. **Therefore, we decide this issue against the Appellant.**

10. **SUMMARY OF FINDINGS:**

- 10.1 We find that the State Commission has created a separate category for Railway Traction in the impugned order. The fixed charges for Railway Traction are much lower than the fixed charges for similar industrial category and the energy charges for Railway Traction are higher compared to similar industrial category. Thus, the tariff designed for the Railway Traction by the State Commission is more favourable to the Railway having low load factor.

- 10.2 The circular issued by the Ministry of Energy, Government of India dated 1.5.1991 for providing electricity for Railway Traction at reasonable price or any other policy directions issued under Section 108 of the Electricity Act, 2003, relating to fixation of tariff, are not binding on the State Commission and the powers of the State Commission, in the matter of determination of tariff, cannot be curtailed.
- 10.3 The learned State Commission has not committed any illegality or perversity in ignoring the Appellant's contention that Railway Traction load is evenly distributed over the day and the traction load is moving load but the overall load of all the Railway Traction sub-stations remains constant.
- 10.4 The learned State Commission has determined the cross subsidy with respect to average (overall) cost of supply and has not committed any illegality on this score. However, the voltage-wise cost of supply has also to be determined to transparently determine the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply and to ensure that the cross subsidy is gradually reduced and not increased in terms of the dictum laid down by this Tribunal in Tata Steel Ltd. & Ors cases. We, accordingly, direct the distribution licensees that they would furnish the necessary data to the State Commission in the future ARR/tariff determination and the State Commission shall determine the voltage-wise cost of supply to transparently reflect the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply in accordance with the dictum laid down by this Tribunal.
- 10.5 The tariff fixed by the State Commission, in the impugned order, for Railway Traction cannot be held arbitrary or illegal but the tariff fixed by the impugned order for Railway Traction is perfect, just and legal one.

- 10.6 The two part tariff had been introduced by the State Commission vide Retail Supply Order – FY 2010-11. Earlier, two part tariff was in-force for Railways till FY 2006-07 and was removed for railway traction to be fixed on single part tariff from FY 2007-08 to 2009-10. Considering Clause 8.4.1 of the National Tariff Policy and Section 45(3) of the Electricity Act, 2003, we observe that the impugned order of the State Commission of two part tariff is wholly justified and the State Commission has not committed any illegality or perversity in not restoring single part tariff for Railway Traction (HV-1).
- 10.7 The calculation of excess over contract demand charges for the whole month and not charging the same for actual period has been rightly done by the State Commission in the impugned order. The State Commission has rightly adopted the practice of calculating excess over contract demand charges for the whole month and not on the basis of actual period.
- 10.8 The simultaneous maximum demand recorded at various traction substations of Railway cannot be held to be the basis for assessing maximum demand for tariff purpose because every connection has a separate premises with separate metering and separate agreement.
- 10.9 The Appellant-Railway is not entitled to any exemption from depositing security deposits and to permit the Railway to deposit in terms of bank guarantee in place of cash/bank draft without effecting necessary amendment to Clause 1.6 of Regulation: MPERC (Security Deposit) (Revision-I) Regulation, 2009.
- 10.10 We also find that the impugned order passed by the learned State Commission is not violative of the provisions of Article 287 of the Constitution of India.

10.11 There is no merit in the contention of the Appellant for relaxation of threshold limit for low power factor for penalty and high power factor for incentive.

11. In view of the above, this Appeal is dismissed as devoid of merits with the aforesaid directions to the Appellant, State Commission and the Distribution Licensees for the future regarding consideration of separate category for Railway Traction on putting up a detailed proposal by the Appellant and for determination of voltage-wise cost of supply. No order as to costs.

PRONOUNCED IN OPEN COURT ON THIS 7TH DAY OF MAY, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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