

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.204 of 2013

Dated:29th May, 2014

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

In the matter of:

**Andhra Pradesh Ferro Alloys Producers
Association**

**No. 308, Nirmal Towers, Dwarakapuri Colony
Panjagutta, Hyderabad – 500 082**

... Appellant(s)

Versus

- 1. Andhra Pradesh Electricity
Regulatory Commission
Singareni Bhavan, Red Hills
Lakdikapul
Hyderabad – 500 004**
- 2. Central Power Distribution Company
of Andhra Pradesh Limited (APCPDCL)
6-1-50. mint Compound
Hyderabad – 500 063**
- 3. Eastern Power Distribution Company
of Andhra Pradesh Limited (APEPDCL)
APEPDCL, Beside Nakkavanipalem
Sub-station, New Gurudwara
Visakhapatnam – 530 013**

4. **Northern Power Distribution Company
of Andhra Pradesh Limited (APNPDCL)
H.No.1-1-478, 503 & 504
Chaitanyapuri, Hanamkonda
Warangal – 506 004**

5. **Southern Power Distribution Company
of Andhra Pradesh Limited (APSPDCL)
19-13-65/A, Srinivasapuram
Tirupati – 517 501**

...Respondent(s)

**Counsel for the Appellant (s)/: Mr. Shridhar Prabhu
Mr. Anantha Narayana M.G.**

**Counsel for the Respondent(s): Mr. P. Shiva Rao
Mr. Brahmananda Rao
Mr. K.V. Mohan**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Andhra Pradesh Ferro Alloys Producers Association is the Appellant.
2. Challenging the retail supply tariff order passed by Andhra State Commission on 30.3.2013 for the year 2013-14, the Appellant has filed this Appeal.
3. The short facts are as follows.

(a) The Appellant, Ferro Alloys Producers Association is an umbrella body of the Ferro Alloys Industry in the State of Andhra Pradesh.

(b) The Andhra Pradesh State Commission is the first Respondent. Respondents 2 to 5 are the Distribution licensees of the State of Andhra Pradesh.

(c) The State Commission issued a Regulation of 2005 on 14.11.2005 laying down the terms and conditions for determination of tariff for wheeling and Retail sale of electricity.

(d) In pursuance of the said Regulations, the wheeling tariffs were determined for the control period of 5 years, namely 2009 to 2014. However, the Distribution licensees, Respondents 2 to 5 expressed their inability to file retail supply business for a period of 5 years as per MYT scheme.

(e) Therefore, they sought for the approval of the State Commission to file the ARR on annual basis for the years 2009-10, 2010-11 and 2011-12. The same was permitted by the State Commission. Accordingly, the Applications for retail supply tariff were filed for the FY 2009-10, 2010-11 and 2011-12 and the same was determined.

(f) Thereupon the Respondents 2 to 5, the Distribution licensees filed ARR for their retail supply business for the year 2012-13. In that application, final order was passed by the State Commission on 30.3.2012. As against this order, the Appellant Association has filed the Appeal in Appeal no. 159 of 2012. The Judgment in this Appeal was ultimately pronounced on 4.9.2013.

(g) Even during the pendency of the above Appeal, the Respondent Licensees filed a fresh Application for retail supply business for the year 2013-14 before the State Commission. In that application public notice was issued. The Appellant Association and several other consumers and the representatives of various consumer organizations filed their objections to the tariff proposals made by the Respondent companies.

(h) At that stage, the State Commission addressed a letter to Andhra Pradesh Government informing that after examining the projected sales, the percentage of losses, the availability of power and the objections received from the consumers, the State Commission had determined revenue requirement for 2013-14 at Rs. 37,853.63 crores, as against the claim of Rs. 49,187.45 crores made by the Respondent companies.

(i) The State Commission gave further details about proposed action and informed the State Government that if the State Government wished to reduce any other tariffs for the retail supply tariff schedule, the consequential additional subsidy would have to be made by the State Government.

(j) In response to this letter sent by the State Commission, the State Government through its Principal Secretary to Government, Energy Department issued directions to the State Commission to make uniform supply tariff for all categories of consumers across the Respondent companies of the State Commission for 2013-14 in the public interest. Thereupon, the Respondent Licensees sent a letter to the State Commission on 26.3.2013 as per which the short term power cost was increased from Rs. 5.11 per unit as projected earlier to Rs.6.00 per unit.

(k) Thereupon, on the basis of the letter sent by the State Government, the State Commission re-determined the Retail supply tariff for FY 2013-14 and passed the impugned order dated 30.3.2013.

(l) The Appellant Association has filed this Appeal, challenging the impugned order on the ground that the

various objections raised by the Appellant Association and other consumers have not been taken into consideration by the State Commission while passing the Impugned Order. On the other hand, the State Commission entirely acted upon directions issued by the State Government and passed the Impugned Order which is illegal.

16. The Learned Counsel for the Appellant has made the following submissions to assail the impugned order dated 30.3.2013.

(a) The impugned order suffers from serious infirmities as it does not take into account various objections raised by the Appellant and other consumers and it is entirely based upon the directions issued by the State Government.

(b) The State Commission categorically recorded in the impugned order that the Distribution Licensees in their tariff petitions did not make any mention of how they intend bridging their revenue gap. If the Tariff Petitioner does not specify how it intends to fill gap, it amounts to gross violation of the Tariff Petition.

(c) Admittedly, even before passing the impugned order, the State Commission disclosed the tariff schedule to the State Government. The State Government intervened and interfered with entire tariff determination process by issuing various direction. Accordingly the State Commission passed the impugned order and as such the State Government has virtually authored the impugned order. By mandating the uniform tariff across the Distribution Licensees to purchase from a costly source of power namely RLN-G, the State government virtually dictated contents of the impugned order and State Commission simply obeyed the said direction and passed the order. This is illegal.

(d) It is settled in law that the State Government has to be distanced from the tariff determination process. Hence, the Government should not have made a excessive intervention into the tariff determination process. More importantly, the State Commission

should not have consulted the Government on the tariff regulating process.

(e) The State Commission initially determined the tariff. When the Government interfered in the process of the State Commission, it virtually re-determined the tariff. Therefore, the impugned order is nothing but the tariff re-determination at the instance of the State Government and as such this order cannot be construed to be an original tariff determination under Section 62 and 64 of the Act.

(f) The Distribution Licensees proposed ceiling prices of all short term purchase cost at Rs. 5.11 per unit. In the public hearing also the distribution companies reiterated their contention of Rs. 5.11 per unit. Then all of a sudden one of the Respondents wrote a letter after the conclusion of the public hearing seeking to revise the rate from Rs. 5.11 per unit to Rs. 6.11 per unit. Thereafter, the State Commission on the basis of the directions issued by the Government

without any justification increased the ceiling price for short term power purchase to Rs. 6.11 per unit without following the due process of law.

17. In reply to the above submissions the Learned Counsel of contesting Respondents 2 to 5 made submissions to justifying the impugned order. In the light of the rival contentions urged by both the parties the following questions would arise for our consideration:-

(i) Whether the tariff can be fixed in violation of the principles enshrined in National Tariff Policy and Regulations framed by the State Commission?

(ii) Whether tariff can be determined on the basis of the directions issued by Government, when it is settled law that the State Government has been totally distanced from the tariff determination process?

18. We have heard the learned Counsel from both the parties on these issues. The Appellant through this Appeal has sought for setting aside the retail supply tariff determined by the State Commission and the tariff order dated 30.3.2013 on the ground that it is contrary to the Multi Year Tariff principles and due to the interference of the State Government in the tariff determination process.
19. According to the Learned Counsel for the Respondents most of the issues raised in the Appeal have already been dealt with and decided in the earlier Appeal no. 126 & 159 of 2012 in which judgment was rendered on 4.9.2013 and as such the issues have already been covered.
20. The main allegation of the Appellant is that the Government of Andhra Pradesh interfered in the tariff determination process and consequently at the instance of the State Government, power procurement cost and tariff was revised by the State Commission.
21. Let us now first see as to whether the State Government interfered in the process of tariff determination and at their

instance the State Commission revised the tariff without application of mind.

22. We find that the State Commission vide letter dated 7.2.2013 sent to the Principal Secretary, Energy Department, Government of Andhra Pradesh, informed that the State Commission was conducting public hearing duly furnishing the schedule of the public hearings and that the State Government may make a statement before the State Commission on the proposals of the Distribution licensees.
23. In response to the above letter, the State Government vide letter dated 12.3.2013 informed the State Commission that the Government of Andhra Pradesh had decided to provide subsidy of Rs.5500 Cr in accordance with Section 65 of the Electricity Act, 2003 for the tariff proposal of the Distribution Companies for the FY 2013-14.
24. Accordingly, the State Commission after taking into consideration State Govt subsidy of Rs.5500 Cr modified the rates of Agricultural and Domestic Consumers and allowed a lower tariff for these categories.

25. The State Commission again on 18.3.2013 informed the Principal Secretary, Energy, Government of Andhra Pradesh that subsidy to the extent of Rs.5490.81 Crore had been adjusted and if the State Government wished to further reduce the tariff then additional subsidy would have to be borne by the State Government.
26. In response to the State Commission's letter dated 18.3.2013, the State Govt vide letter dated 23.3.2013 issued directions under Section 108 of the Electricity Act, 2003 to make uniform supply tariff for all the categories of consumers across all the DISCOMs of the State for FY 2013-14 in the public interest. The State Government also requested the State Commission for the following:
- (m) To provide for alternate fuel cost, either RLNG or any other Liquid Fuel like Naptha with due cost recovery through tariff order since there will not be any supply of Reliance KG Basin Gas starting from 1.4.2013 and as KG Basin Gas contributed about 5000 Million units to the Grid during the 11 months of the current year.

(n) To accommodate the higher cost of power procurement from available short term sources like last year.

(o) To indicate specific action to be taken by the Discoms for arranging alternate supply in the event of any deficit in hydel generation as the State Commission had considered 3500 MV extra hydel generation than the actual production during the FY 2012-13.

27. Thus, the only direction given by the State Government u/s 108 of the Act was to keep uniform tariff for similar consumer categories across the four Discoms in public interest. The other points were suggestions of the State Government on the assumption made in the tariff proposal and not any direction. The State Government had also not suggested any ceiling rate for the short term power procurement but had suggested to accommodate higher cost of power procurement for all available short term sources like the previous year. One important information provided by the State Government through the above communication was that Reliance's KG basis Gas that

contributed nearly 5000 MU to the State Grid during 11 months of FY 2012-13 would not be available from 1.4.2013 and therefore operation of gas based power projects on alternate fuel viz RLNG or Naptha would have to be planned which would result in increase in power procurement cost.

28. Subsequent to this communication by the State Government, the Distribution Licensees, vide letter dated 26.3.2013, informed the State Commission that they had received bids against their short term power procurement tender which varied between Rs.5.14 per unit to Rs.7.98 per unit and even the power exchange rates for short term had varied than the price arrived at earlier. Further, the quantum of power made available for FY 2013-14 had been arrived at based on data from the FY 2012-13 which was based on restricted supply as prevailing during FY 2012-13. Therefore, a request was made to the State Commission to assess the quantum of power on unrestricted supply basis.

29. State Commission noticed the following important points that emerged from the letter dated 23.3.2013 from the State Government and letter dated 26.3.2013 from the Distribution Licensees:

(a) There is need to revisit the issue of procurement of power through RLNG at least partially to manage the power supply situation during the summer months which is otherwise likely to be very critical.

(b) There is need to revisit the fixation of average price for market purchases in view of the reasons adduced in the letter dated 26.3.2013 of the Discoms.

30. We find that the State Commission has recorded under paragraph 51 of the Impugned order that the “ Commission has undertaken a thorough re-scrutiny of the facts and figures relating to the filing in the light of consumer’s objections, the suggestions of the State Government and above mentioned requests of the Distribution Licensees and has re-

determined the retail supply tariffs for FY 2013-14 as indicated in the following chapters”.

31. Let us now examine issue wise as to whether the State Commission has blindly adopted the directions/suggestions of the State Government or has applied its mind before taking a final decision:

(A) **Uniform Tariff in All Discoms:**

The State Government had issued direction u/s 108 of the Act to provide for uniform retail supply tariff across all the Distribution Licensees instead of different tariffs for similar categories of consumers. We find from the tariff order that earlier, the State Commission had proposed different tariffs for the four Distribution Licensees in LT domestic and Agriculture Categories. However, for Ferro Alloy units (Appellant’s consumer category) uniform tariff for all the four Distribution Licensees was proposed. However, after receipt of the first communication dated 12.3.2013 regarding subsidy u/s 65 of the Electricity Act, the State Commission revised the tariffs for LT domestic and agriculture categories and provided for uniform tariff for all the four Distribution Licensees. Thus, even before the communication dated 23.3.2013 from the

State Government giving direction u/s 108 of the Act for keeping uniform tariff across all the Distribution Licensees, the State Commission had proposed a uniform tariff after considering the subsidy of Rs.5000 Crores communicated by the State Government on 12.3.2013. Further, there was no impact of the directions of the State Government u/s 108 for uniform tariff on the Appellant's category as right from beginning for the Appellant's category, uniform tariff was proposed by the State Commission for all the Distribution Licensees. The Appellant Association has also not indicated how it has been aggrieved over the decision of the State Commission for levying uniform tariff for all the Distribution Licensees.

(B) Use of alternate fuel (RLNG/Liquid Fuel) due to non-availability of Gas from Reliance KG Basin:

(i) The State Government had informed the State Commission by communication dated 23.3.2013 that gas from KG Basin would not be available from 1.4.2013 and, therefore, alternate fuel would have to be utilised at the gas based station which contributed considerable energy to the Distribution Licensees. We feel that this was an important information which was made available to the State Commission and

which was privy to the State Government and was important for the State Commission to determine the Power Purchase cost in the Tariff Order. The State Government also did not give any direction or suggestions regarding the quantum of power to be procured from RLNG/Liquid Fuel based generation.

(ii) We find that the State Commission has considered in details, the objections/suggestions of the public on procurement of power from IPPs utilizing RLNG. The Appellant Association had also filed objections against the procurement of power based on RLNG on the proposal of the Distribution Licensees to procure power from RLNG based generation. The State Commission has rendered a detailed finding on this subject as under:

“Commission’s View: The proposals of DISCOMs for Generating power using RLNG through existing gas based IPPs have been examined in detail in the light of the following:

- *Availability of power from approved stations i.e. APGENCO (Thermal), CGS Stations and Non Conventional Energy Sources (NCEs).*
- *Lesser availability of power from IPPs as compared to the projection of the licensees, in view of the letter received in March, 2012 from MoP of Gol, regarding potential reduction in availability of natural gas, from D-6 (Reliance) of KG basin.*

- *Lesser availability of power based on tenders called for and received by DISCOMs under Medium and Short-term Procurements.*
- *Wide gap between demand and supply at present even after enforcement of R&C measures.*
- *Depletion of water levels in the main reservoirs affecting hydel generation during the summer of 2013.*

The State has been suffering from acute shortage of power since September, 2011. The demand supply gap is gradually increasing and the position may become even more difficult in the ensuing summer months (April to July 2013). In order to maintain the stability of grid, imposition of further restrictions on supply to industry and other categories may become necessary. To avoid the above situation, the Commission is of the view that generation of power using RLNG through the existing gas based IPPs is absolutely necessary, during the period of 4 months starting from April, 2013 to July, 2013.

The Commission will examine the need to relax the R&C measures in force, depending upon the demand and supply conditions, to certain extent to the industrial consumers.

DISCOMs shall stop purchase of power from the gas based IPPs using RLNG, if the generation at major hydel stations improves considerably”.

(iii) Thus, the State Commission has fully considered the suggestions of the State Government, objections/suggestions of the stakeholders,

submissions of Distribution Licensees and then decided that in view of acute power shortage in the State, generation of power using RLNG at the existing gas based IPPs was absolutely necessary during the summer months from April, 2013 to July, 2013. The State Commission also directed the Distribution Licensees to stop purchase of power from the gas based IPPs using RLNG if the generation at Hydel Stations improved considerably.

(iv) We find that the objectors had also raised concern about the restrictions and control measures resorted to by the Distribution Licensees due to the power shortage resulting in loss of industrial production. Under these circumstances procurement of power from RLNG based generation during the summer months, was rightly decided by the State Commission.

(v) We find that the decision to allow procurement of power from gas based station using RLNG was taken after taking into consideration the precarious power supply position in the State during the critical summer months and non-availability of gas from KG basin from 1.4.2013. The State Commission in fact has taken this decision after taking into consideration of the objections and suggestions of the stakeholders and

applying its mind after giving proper reasons in the interest of maintaining power supply during the summer months satisfactorily.

(vi) As such, do not find any infirmity or illegality in the findings of the State Commission in this regard. We find that the Appellant's objection on this issue had also been considered by the State Commission and rejected in view of the critical power supply position anticipated in the State during the summer months and due to non-availability of gas from KG Basin w.e.f 1.4.2013.

(C) Ceiling Price of Short Term Procurement:

(i) The State Government in its letter dated 23.3.2013 had only suggested that the State Commission may accommodate higher cost of power procurement from the available short term sources without indicating any ceiling price. We find that the Distribution Licensees had in their Petition proposed price of Rs.5.11 per unit for short term power procurement. We find from the Impugned Order (as referred to in para 82) that the some objector had raised objection on the basis of the price of Rs.5.11 per unit suggested by the Distribution Licensees for short term purchases and wanted an explanation whether the Distribution Licensees had

called for tenders and finalised the same and whether competitive bidding procedure was followed for such procurement. The Distribution Licensees in its response had informed that the price was based on the average cost of bilateral purchases during half year of the FY 2012-13 and the same was assumed for FY 2013-14 in terms of quantum and price. They further informed that they were procuring short term power through competitive bidding process through e-procurement and exchanges only and they were regularly submitting the information on additional power procurement and deviation therein to the Station Commission.

(ii) The Distribution Licensees by the letter dated 26.3.2013 informed the State Commission that they had invited bids for short term power procurement in which price had been quoted between Rs.5.14 per unit to Rs.7.98 per unit and requested the State Commission to consider the same. We feel that this information was only an update on price of short term power. The objectors during the proceedings before the State Commission had also raised query regarding tenders invited by the Distribution Licensees and in response if the Distribution Licensees had supplied

updated and factual information on the discovery of price for short term power in the tenders invited by them, this cannot be construed to be a violation of principle of natural justice.

(iii) In fact, the Appellant in their objection had also suggested that the price for bilateral purchases projected by the Distribution Licensees needed detailed examination.

(iv) We find that the State Commission has given detailed findings with reasonings on this issue after thorough examination of the matter as under:

“The Commission has examined the cost of short term purchases prevailing in the country, specially in southern region due to corridor constraint i.e. connectivity to NEW grid, and also examined the rates at which the DISCOMs have purchased power under short term procurement during FY 2012-13. The Commission after taking into consideration of additional data submitted is of the view to adopt the cost of short term purchases at Rs.6/- per unit while determining the ARR. The Commission in this order is proposing to stipulate the procurement of short term purchases shall have to be made based on the guidelines issued by the MoP of GoI on short term purchases”.

(v) Thus, only after examining the cost of short term purchases prevailing in the country especially in view

of transmission constraints experienced by the Distribution Licensee in importing power from Northern Eastern Western and North Eastern Grid (NEW Grid), the actual rates of short term power procured during FY 2012-13 and the additional information made available by the Distribution Licensees regarding price discovered in the tenders invited recently, the State Commission decided cost of short term purchase @ Rs.6 per unit. The State Commission also directed Distribution Licensees to procure short term power based on the guidelines for short term power procurement of Government of India. Thus, the State Commission has not blindly accepted the contention of the Distribution Licensees, but has decided to increase the ceiling price of short term power procurement on an independent examination. Hence we do not find any infirmity or illegality in the findings of the State Commission in this regard. In any case, the power procurement cost has to be trued-up on actual basis subject to prudence check by the State Commission.

(D) **Specific action to be taken by Distribution Licensees in the event of deficit in hydel Station:**

(i) We find that this was only a suggestion by the State Government to plan a strategy in case of deficit in hydel generation in the State and not a direction or specific suggestions for a back-up plan in the event of shortfall in hydel generation. It is noticed that the Distribution Licensees had proposed hydel generation of 3754 MU from hydel generation of APGENCO, the State Generating Company. However, the State Commission considered a higher hydel generation of 7057 MU considering normal monsoon. The State Commission did not accept the proposal of the Distribution Licensees and retained hydel generation of 7057 MU. However, the State Commission recorded in Paragraph 96 of the Impugned Order, that the generation from hydel plants had been reducing during the summer season and demand supply gap was expected to increase which would necessitate imposition of power cuts on industry. To avoid this situation, the State Commission considered generation of power using RLNG absolutely necessary during the period from April, 2013 to July, 2013 and allowed power procurement to the extent of

2431 MU from RLNG based generation. However, the Distribution Licensees were directed to stop procurement of power from RLNG based generation as and when the hydel generation picked up and/or a cheaper source of power from market sources became available.

(ii) We find that the State Commission has given a reasoned order in this regard. As such, we do not find any infirmity in the findings of the State Commission.

(iii) We also find that the Appellant raised objection regarding the Distribution Licensees projecting a low hydel generation. We find that the State Commission has considered a much higher hydel generation with normal Monsoon than proposed by the Distribution Licensees and if the State Commission had accepted the hydel generation as proposed by the Distribution Licensees, the cost of power procurement would have increased further. Thus, the State Commission has accepted the suggestions of the Appellant in the Impugned Order to decide a higher hydel generation corresponding to normal monsoon.

32. According to the Appellant, the tariff of Appellant's category has increased from that originally worked out by the State Commission as under:

Voltage	Originally Worked Out tariff by the Commission	Final Tariff approved
132 KV	Rs.4.26/unit	Rs.4.58/unit
33 KV	Rs.4.66/unit	Rs.4.98/unit
11 KV	Rs.5.09/unit	Rs.5.41/unit

Thus, the final tariff decided by the State Commission is higher by 32 p/kWh from that originally worked out.

33. Admittedly, the tariff for the Appellant's category decided by the Commission is higher than what was computed by the State Commission. But this was without taking into account the higher power purchase cost due to purchase of power from gas station with use of LNG due to non-availability of gas from KG basin and allowing procurement of short term power at ceiling rate of Rs.6/ per unit. These measures were necessitated as explained in the Impugned Order due to increase in gap between demand and supply during summer months, reduction in hydel generation during summer months and higher rates of power prevailing in short term market and transmission constraints in importing power from NEW Grid. These measures were found to be necessary

to manage the power supply position in the State in the interest of the consumers.

34. It is also pointed out by the Respondents that the tariff as decided by the State Commission is within $\pm 20\%$ of the average cost of supply in consonance with the tariff policy. In fact, we find that the tariff of the Appellant's category is well within $\pm 20\%$ of the cost of service at the relevant voltage level. Further, the tariff of the Appellant's category is much lower than other HT industrial categories.
35. As a matter of fact, we find that the Distribution Licensees had proposed to merge HT-1 (B) Ferro Alloy units category (Appellant's category) into HT-1 (A) Industry General Category but the Ferro Alloy Industry objected to this merger as it would have resulted in steep hike in their tariff per unit. However, the State Commission did not accept the proposal of the Distribution Licensees and retained a separate category for Ferro Alloy Units at a lower tariff than industrial general category.
36. In view of the above, we do not find any merit in the contention of the Appellant regarding the alleged intervention of the State Government in determination of tariff. We also do not find any infirmity in the tariff of the Appellant's category as determined by the State Commission.

37. The other issues raised by the Appellant are:
- i. MYT principles not followed.
 - ii. Impugned order passed without audited accounts.
 - iii. The State Commission failed to conduct truing-up exercise till date.
 - iv. Escalation of tariff is due to increased consumption of agricultural sector and un-metered agriculture supply and the same has to be loaded to State Govt.
 - v. Disproportionate tariff.
38. The first issue regarding non-adherence to MYT principles is covered by this Tribunal's judgment dated 4.9.2013 in Appeal Nos. 126 and 159 of 2012. We find that the FY 2013-14 is also the last year of the control period (2009-10 to 2013-14). For the previous years, the State Commission had given specific approval to the Distribution Licensees for filing the retail supply tariff on yearly basis instead of MYT Petition. FY 2013-14 being the last year of the control period, the specific approval of the State Commission for filing annual tariff was not necessary and is a natural consequence of earlier approvals for filing annual tariff

petition for the previous years of the control period This objection was also raised by the Appellant before the State Commission and the State Commission has rightly rejected the objection giving the above reasons in Paragraph 31 of the Impugned Order. Therefore, this issue is held against the Appellant.

39. The second and third issues are relating to the aspect that the Impugned Order was passed without the audited accounts and true-up exercise not undertaken till date. These issues have also been covered in the above judgment in Appeal No.126 and 159 of 2012 against the Appellant. These issues are also decided in terms of this Tribunal's judgment in Appeal No.126 and 159 of 2012.
40. Let us now take up the issue of (iv) regarding subsidy on agricultural supply and un-metered agriculture supply. We find that the State Commission has found that that the finalisation of tariff for agriculture and LT domestic category less than the fuel cost recovery tariff schedule would result in revenue gap of Rs.5481 Crore to the Distribution Licensees. The State Government had given specific approval for grant of subsidy of Rs.5500 Crores u/s 65 of the Electricity Act, 2003. Accordingly, the State Commission fixed lower tariffs for LT agriculture and LT domestic consumers. We do not find any infirmity in the

same. Metering of agriculture consumers is a universal problem being faced by all the Distribution Licensees in the country. In the absence of the individual meters, the State Commission has been assessing the agriculture consumption on the basis of meter reading of agriculture distribution transformers.

41. According to the Respondents, the agriculture consumption during FY 2013-14 has been kept at the same level as decided in previous year. Further they have been taking exemption from the State Commission for metering for the agriculture consumers u/s 55 of the Electricity Act, 2003 from time to time.
42. We find that this issue was raised by some objectors before the State Commission and the same has been considered while passing the Impugned Order. Hence, we do not intend to interfere with the Impugned Order on the ground of non-availability of meters on agriculture consumers.
43. Issue No. (v) regarding disproportionate tariff for the Appellant's category is already discussed in the earlier paragraphs. According to the Respondents, the tariff for Appellant's category is within $\pm 20\%$ of the average cost of supply in consonance with the tariff policy as under:

Voltage Level	Applicable tariff Rs./kWh	Average cost of Supply (CoS) Rs./kWh	%variation w.r.t average cost of supply
11 KV	5.4	5.20	4.04%
33 KV	4.98	5.20	-4.23%
132 KV	4.58	5.20	-11.92%

44. Thus, the tariff of Ferro Alloy units is much less than the lower end variation from average cost of supply as permissible under the Tariff Policy and the tariff at 33 KV and 132 KV is less than the average cost of supply. The tariff for Appellant's category is also less than other industrial consumers.

45. We do not find any infirmity in the tariff determined by the State Commission for the Appellant's category.

46. **Summary of Our Findings:**

(a) We find that the State Government's direction to the State Commission u/s 108 of the Act through letter dated 23.3.2013 was only with regard to uniform retail supply tariff across all the Distribution Licensees instead of different tariffs for similar categories of consumers. Even before the directions

of the State Government dated 23.3.2013, the State Commission had provided for uniform tariff for similar categories across the State after accounting for the subsidy of Rs.5000 Cr for Agriculture and Domestic Consumers communicated by the State Government by the letter dated 12.3.2013. The State Commission had right from the beginning had proposed uniform tariff for the Appellant's category. The Appellant has also not indicated how it has been aggrieved over the decision of the State Commission for having a uniform retail supply tariff for all the Distribution Licensees.

(b) The State Commission had taken a decision to allow procurement of power from gas based station using RLNG after consideration of the objections and suggestions of the stakeholders including that of the Appellant, precarious power supply position in the State during the critical summer months, non-availability of gas from KG basin from 1.4.2013 and transmission constraints in importing power from NEW Grid. As such we do not find any infirmity in the order of the State Commission. The State Commission had taken the decision by applying its mind and after giving proper

reasoning in the interest of maintaining satisfactory power supply position during the summer months in the interest of the consumers and not merely on the suggestions of the State Government.

(c) We do not find any infirmity in the State Government decision considering the updated information on the bids received by the Distribution Licensees for short term procurement of power before deciding the ceiling price of short term power procurement. The State Commission has given a detailed finding on the issue after independent examination and after considering the objections and suggestions of the stakeholders.

(d) Allowing procurement of power from gas based stations using RLNG during summer months and increasing ceiling price of short term power procurement by the distribution licensees were found to be necessary in the interest of managing power supply position in the State in the interest of consumers.

(e) We do not find any merit in the contention of the Appellant regarding the alleged interference of the State Government.

(f) We also do not find any infirmity in the tariff determined by the State Commission for the Appellant's category as their tariff is well within $\pm 20\%$ of the average cost of supply as also within $\pm 20\%$ of the cost of service and is lower than applicable for general industrial consumers.

(g) We also do not find any merit in other issues raised by the Appellant regarding MYT principles, non-availability of audited accounts, truing up and agriculture tariff.

47. In the light of the above findings, we find that there is no merit in the Appeal. Hence the Appeal is dismissed. However, there is no order as to costs.
48. Pronounced in the Open Court on this 29th day of May, 2014.

(Rakesh Nath)
Technical Member
Dated: 29th May, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~