

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

Appeal no. 01 of 2013 and 19 of 2013

Dated: 10th November, 2014

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

Appeal no. 01 of 2013

In the matter of:

**Kerala State Electricity Board
Vydyuthi Bhavanam
Thiruvananthapuram
Kerala – 695004**

...Appellant(s)

Versus

**Kerala State Electricity Regulatory
Commission
KPFC Bhavanam, CV Raman Pillai Road
Vellayambalam
Thiruvananthapuram – 695 010**

...Respondent(s)

Appeal no. 19 of 2013

**Kerala State Electricity Board
Vydyuthi Bhavanam
Thiruvananthapuram
Kerala - 695004**

...Appellant(s)

Appeal no. 19 of 2013 is against the order dated 28.04.2012 regarding Aggregate Revenue Requirements and Expected Revenue Charges (ARR &ERC) for the FY 2012-13.

2. A number of issues raised in both the Appeals are common.

The common issues are as under:

- i) Employees cost
- ii) Repair and Maintenance Expenses
- iii) Administrative and General Expenses
- iv) Return on Equity
- v) Depreciation
- vi) Capitalization of Expenses

3. Other issues raised in Appeal no. 1 of 2013 are as under:

- i) Inconsistency in approach of the State Commission in approving the revenue gap in the absence of the Regulations.
- ii) Subsidy from Government

4. Other issues raised in Appeal no. 19 of 2013 are as under:

- i) Interest and Finance charges
 - ii) Transmission and Distribution (T&D) Reduction target
 - iii) Cost of Generation
 - iv) Energy Sales Approved
 - v) Energy availability from Kudankulam Nuclear Power Plant
5. Since most of the issues raised in these Appeals are similar, a common judgment is being rendered.
6. On the above issues we have heard Shri M.T. George, Learned Counsel for the Electricity Board and Shri Ramesh Babu, Learned Counsel for the State Commission. They have also filed the written submissions.
7. We shall be dealing with the issues raised by the Appellant Board one by one. In respect of common issues, for the sake

of brevity, we shall be referring to the facts of the case in Appeal no. 19 of 2013.

8. Employees cost:

8.1 According to the Appellant, the State Commission has disallowed Rs.567.80 crores from the employees expenses projected by the Appellant for FY 2012-13. The deduction has been made in the basic pay, DA, other allowances, earned leave surrender, provision for pay revision and pension liabilities. The Appellant had to curtail release of payment to its employees and reduce the pension payments. However, it is not possible for a public utility like the Electricity Board to adopt such drastic steps which might end up in employee unrest and legal hurdles. Further, the salaries and wages are governed by bilateral wage settlement agreement entered into between the Electricity

Board and trade unions. The Electricity Board cannot unilaterally withdraw from the wage settlement mutually agreed with trade unions. The State Commission is yet to specify the norms as per Section 61 of the Electricity Act 2003. In the absence of proper regulations, the State Commission has adopted a wrong methodology for approving employees cost.

8.2 Learned Counsel for the State Commission has submitted that the State Commission has followed a method of WPI/CPI based indexation of employees cost considering 2008-09 as the base year. The State Commission has used the same method as adopted in FY 2011-12. The base year is FY 2008-09 as the truing-up for the year is complete. Increase of 3% of basic pay is as per the norms at the national level as the Pay Commission allows 3% annual increase in basic pay. Other components of the employees

cost have been escalated as per CPI and WPI indices with weightage of 70% to CPI and 30% to WPI. The State Commission has since its inception has been issuing several directions to the Electricity Board to control/limit the employees expenses and to improve productivity so as to justify high employees cost. However, the Board has not paid much attention to the directions of the State Commission as well as the concern expressed by the consumers on the increasing employees cost. The Board has not implemented the directions of the State Commission regarding the wage negotiation. The directions of the State Commission on initiating a manpower study was not complied with even after two years. Without a specific study on manpower requirements, the recruitments are continuing and about 1000 persons are added every year.

8.3 We find that the State Commission in the impugned order dated 28.04.2012 has shown concern about the high employees cost and non-compliance of the directions given by the State Commission in this regard. The State Commission has noted that without a scientific study on manpower requirements, the recruitments are continuing and about 1000 persons are added every year. The State Commission has decided to benchmark employees expenses based on the base year expenses escalated at price indices. The State Commission has used FY 2008-09 as the base year since latest true-up was carried out for 2008-09. The State Commission provided 3% increase in basic pay for accounting for increments. The other components are benchmarked based on CPI/WPI indices with weightage of 70:30 for estimating the increase in employees cost. Thus, while basic pay was increased by 3% the other components of employees expenses viz. DA,

allowances, terminal benefits, pay revision, etc., were increased as per CPI/WPI indices with weightage of 70:30 (CPI:WPI).

8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honoured. The terminal benefits have also to be provided for.

8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State

Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed.

8.6 Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above directions.

9. Repair and Maintenance cost.

9.1 The Appellant has submitted that the projected R&M cost for FY 2012-13 based on R&M plan was Rs. 326.07 crores

against which only Rs. 195.95 crores was approved. The State Commission has not considered the business growth i.e. growth of fixed assets which would require higher R&M cost.

9.2 We find that the State Commission in the order dated 28.04.2012 has noted that the Electricity Board has proposed R&M expenses for 2011-12 which are 41% more than the actual R&M expenses for FY 2010-11. The State Commission after detailed analysis has approved R&M expenses on the basis of expenses for FY 2008-09 as the base and estimating the expenses for the subsequent years with escalation linked to CPI and WPI indices with weightage of 70% and 30% respectively.

9.3 We find that the State Commission has given detailed findings in this regard. In order dated 28.04.2012, the State Commission's findings are as under:

“The R&M expenses of the Board has been increasing over the years. The Board has stated that the R&M expenses is linked to the increase in assets. However, the Commission in the previous orders have analysed the matter in detail. There is no direct evidence to benchmark the R&M expenses given by the Board. While analyzing the R&M expenses in the previous years, the Commission has noted that one of the reasons for increase in cost is misclassification of expenses. Hence, the actual level of R&M expenses of the Board is not as projected by the Board.”

The Commission in the case of employee costs has decided to follow the methodology employed for approving the R&M expenses in the previous year. Thus based on the CPI:WPI index, the allowable R&M expenses for the year 2012-13 is estimated as follows:”

9.4 In order dated 30.10.2012 the findings of the State Commission are:

“74.The Commission analysed the reasons for the increase in R&M expenses. Regarding inflationary factors, the Board has stated that the inflation is about 12%, where as the actual increase over the previous year is about 24%. Another reason given by the Board is the increase in growth of fixed assets. Though in the petition the

Board has stated that about 50% of assets are more than 15 years old, the details given by the Board in the letter dated 18-5-2012 show that 'out of the total assets of Rs.10185.02 crore, the assets worth Rs.7909.89 crore have been created in the past 12 years, clearly showing that about 78% of the assets are below 12 years old and new. Another reason given by the Board is that implementation of standards of performance is the reason for increase in R&M expenses. However, this is also not true. The Board has not implemented the Standards of performance regulations in 2009-10 and the Commission has analysed the action the Board in its Order dated 17-5-2010 of ARR&ERC of the Board for the year 2010-11 as shown below:"

"The Commission views the non-implementation of distribution standards of performance by the Board very seriously. Hon. APTEL has directed all distribution licensees to implement the standards of performance specified by the Commission. The Commission has practically extended the date of effect by about 30 months for KSEB. The Commission also reviewed and relaxed the standards based on requests of KSEB. It is not the standards that is an issue, but proper system have not been created to evaluate the performance. After the lapse of considerable time, the so called 'model' sections are not seen maintaining the basic registers. Considering this issue in detail the Commission directs that KSEB shall within in one month prepare a status report on implementation of standards of performance regulation at the circle levels of KSEB and the monitoring mechanism if any created by higher offices. The baseline data on standards shall

also be provided for each circle with the status report. It may also be noted that KSEB had requested only one year period with effect from 1-4-2009 to implement the standards of performance without compensation and hence the compensation clause shall be applicable from 1-4-2010 onwards. The amount of compensation paid to consumers may be reported monthly as envisaged in Section 59(a) & (b) of the Act.

"75. Thus, the argument of the Board that increase in R&M expenses is due to the implementation of Standards of Performance regulations turns out to be incorrect. Thus, it is proved beyond doubt that the increase in expenses is due to lack of cost control measures taken by the Board.

76. The Commission has been harping on the increase in controllable expenses over the years. By nature, such expenses cannot increase in a normal situation by about 30% compounded level. In order to understand the nature of increase, the Commission has decided to examine the accounts of R&M expenses on a sample level at the distribution office. Accordingly, staff of the Commission visited Electrical Division, Kundara and examined the nature of expenses undertaken at the Division for a sample month (December, 2010) on 20-1-2012. The team noticed substantial misclassification of expenses, especially like booking capital items as revenue expenses. It was noted on a sample level that about 36% of the total expenses booked are misclassified as revenue expenses. Main misclassification noted was in respect of re-

conducting & conversion of lines which were classified as revenue expenses. Further, out of the total expenses about 5% of the expenses constitutes salary to meter readers, which is ideally to be booked under employee expenses. It is clear that even though such items are small by nature it will boost up the revenue expenses.

77. *Thus, as against the reasons pointed out by the Board, prima facie, increase in R&M expenses is mainly on account of misclassification of capital expenses into revenue expenses, though a detailed study is required to arrive at a final conclusion. The Commission in almost all ARR&ERC orders have flagged the issue of rising O&M expenses and also directed the Board to take action for controlling the expenses. However, none of the directions have been implemented. The Commission is duty bound to ensure that the approved expenses, which are passed on to the consumers are reasonable and prudent. Hence, the Commission has attempted to benchmark the costs with respect to well defined parameters in the ARR&ERC order in 2011-12. Accordingly, the O&M Expenses were linked to inflationary parameters of CPI & WPI with a weightage of 70:30. Taking 2008-09 as base year, the O&M expenses worked out for 2010-11 based on CPI:WPI at 70:30 basis as given below:*

9.5 The State Commission has made the following observations regarding Repair and Maintenances expenses:

- i) The Repair and Maintenances expenses have been increasing over the years and one of the reasons for the same is misclassification of expenses.
- ii) One of the reasons given by the Board is the increase in growth of fixed assets. In the Petition the Board indicated that 50% of the assets are more than 15 years old. However, the details given by the Board in letter dated 18.05.2012 show that the 78% of the assets are less than 12 years old and new.
- iii) Another reason given by the Board for increase in Repair and Maintenance expenses is implementation of Standards of Performance. However, after detailed analysis the State Commission came to the conclusion that this is incorrect.
- iv) The State Commission also conducted examination of Repair and Maintenance expenses of one of the Divisions of the Board through its staff in order to understand the nature of increase in Repair and Maintenance expenses and found

that 36% of the expenses booked as Repair and Maintenance expenses were misclassified as revenue expenses.

9.6 In view of above findings of the State Commission, we do not incline to interfere with the findings of the State Commission. Thus, this issue is decided against the Appellant.

10. Administrative and General Expenses:

10.1 According to Shri George, Leraned Counsel for the Electricity Board, even though A&G expense is a controllable item, the same would increase in proportion to the business growth of the utility including new service connections provided, increase in energy sale volume, new capital works in progress, etc., in addition to inflationary factors. However, the State Commission has not considered the business growth of the utility while approving the A&G expenses. He

has also referred to the Tribunal's judgment in Appeal no. 190 of 2009 and 46 of 2010 and judgment dated 10.05.2012 in Appeal no. 14 of 2011, 26 of 2011 and 27 of 2011 in which the State Commission has been directed to consider the A&G expenses as per the audited accounts, after prudence check and also frame the Regulations.

10.2 It is noticed that for FY 2012-13, the Appellant had claimed A&G expenses of 118.85 crores (excluding electricity duty) as compared to Rs. 60.99 crores actually incurred during 2008-09. Thus, the projected A&G expenses were almost double of the actual incurred during 2008-09. Thus, rise was considered as unreasonable by the State Commission.

10.3 We find that the State Commission has allowed escalation on the basis of CPI & WPI indices with weightage of 70:30 over the actual A&G expenses for FY 2008-09. The

Appellant Board has not been able to give a satisfactory reply to the substantial increase in A&G expenses.

10.4 We do not find any infirmity in the findings of the State Commission.

11. Return on Equity:

11.1 Mr. George, Learned Counsel for the Appellant has submitted that the State Commission has allowed ROE @ 14% instead of 15.5% as allowed in the Central Commission's Regulations.

11.2 Shri Ramesh Babu, Learned Counsel for the State Commission has argued that the Appellant is still functioning as a single entity and no separation of assets or liabilities has taken place. Hence the contention that higher return for

distribution business is to be allowed cannot be granted at present.

11.3 We find that the State Commission has allowed ROE at the rate of 14% in its Tariff Regulations for generation and transmission omission. No Tariff Regulations have been framed by the State Commission. Section 61 of the Electricity Act, 2003 provides that the State Commission in specifying the terms and conditions for determining the tariff will be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to the generating companies and transmission licensees. The Central Commission's Regulations provide for ROE of 15.5%. In the absence of State Commission's own Regulations, the State Commission should have followed the Central Commission's Regulations and allowed ROE of 15.5%. However, the State Commission has decided

ROE of 14% without giving any reason. Learned Counsel for the State Commission is now giving reasons for not allowing ROE of 15.5% which is not permissible at appellate stage. Accordingly, we direct the State Commission to allow ROE of 15.5%, as per the Central Commission's Regulations.

12. Depreciation

12.1 According to the Appellant, the State Commission while approving the tariff has wrongly not allowed depreciation to the extent applicable to contributions and grants. Further, the State Commission had been allowing the depreciation as per the Central Commission's Regulations. However, in the true-up of accounts for FY 2010-11, the State Commission has denied the depreciation as per Central Commission's Regulations of 2009 and allowed the same at the pre-revised rates of depreciation for the period 2004-09. The Appellant

vide letter dated 14.05.2012 had submitted the yearwise with details of the assets created during the last 12 year period.

12.2 Shri Ramesh Babu, Learned Counsel for the Appellant has made the following submissions:

“This Respondent in its order on ARR&ERC for 2009-10 and 2010-11 for the appellant had provisionally allowed the depreciation as per the CERC norms applicable for the tariff period 2009-14, on the condition that in the truing up, the appellant has to update the accounts and furnish depreciation calculated strictly in accordance with the revised CERC norms applicable for the tariff period 2009-14. The respondent had also mentioned that in its absence, depreciation as per CERC norms applicable for the tariff period 2004-09 shall be applicable. It is submitted that the appellant, in the truing up petition for 2010-11, had claimed depreciation of Rs. 473.43 crore as per the audited accounts, estimated based on depreciation rates notified by Government of India notification dated 26-3-1994. However, Hon. APTEL in its Orders in Appeal No 5 of 2009 dated 18-8-2010 (KSEB VS KSERC) and Appeal Nos. 190 of 2009 & 46 of 2010 (KSEB Vs KSERC) dated 4-9-2012 had upheld the decision of the Respondent in allowing depreciation as per CERC norms and rejected the claim of the appellant for depreciation as per the Government of India Notification dated 26-3-1994.

It is submitted that the appellant has to maintain its accounts as per the norms prescribed by CERC in order to claim depreciation as per revised CERC norms effective for the tariff period 2009-14. As pointed out above, the appellant in its petition submitted estimation of depreciation as per accounts prepared under the Government of India Notification dated 26-3-1994, there by not complying with the direction of this Respondent to maintain accounts as per the CERC norms effective for the period 2009-14 tariff period. Hence, the respondent has no other option but to allow depreciation as per CERC norms effective for the tariff period 2004-09, as the respondent did not update and submit the accounts as per CERC norms.”

12.3 Further in Appeal no. 19 of 2013 the submissions made by the Learned Counsel for the State Commission are:

“The respondent had allowed depreciation as per the revised CERC norms effective for the tariff period 2004-09. As per the order of this respondent dated 13-4-2012, deprecation is not allowable on consumer contributions and grants. The appellant has not challenged the order and hence it has become final. The depreciation on consumer contribution was deducted accordingly. Hence the contentions of the appellant may be rejected.”

12.4 Let us examine the findings of the State Commission in the impugned order dated 28.04.2012.

“6.4.2. Analysis and decision of the Commission:

The Commission has noted the objections of the stakeholders. The Commission has suo-motu taken up the proceedings on clawing back the depreciation claimed on assets created out of consumer contribution. The order on the same has been issued on 13-4-2012. As per the decision of the Commission, the Board is not eligible for the depreciation on contributions and grants. As per the ARR filing, the contributions/grants as on 1-4-2012 is Rs.3558.5 crore. The total Gross Fixed Assets as on 1-4-2012 is Rs.11,211 crore. ie., the contribution is about 31.7% of GFA. At present the details of contribution/grants relating to each function is not available. Hence, on a broad level, it can be concluded that about 29% of the Gross Assets are funded by the grants and contribution and the balance is only eligible for depreciation. Accordingly, the Commission provisionally allows Rs.414.67 crore as the depreciation for 2012-13.”

“As per the revised CERC norms, depreciation is linked to repayment period of loans/repayment obligations and the balance depreciation is spread over the useful life of the assets. In the ARR&ERC Order 2009-10, the Commission has pointed out that in the absence of estimation of depreciation as per the above provision is not possible due to non-availability of data from the

Board or otherwise, the Commission would revert to 2004 norms in the truing up process. The Commission would reiterate the above position this year also.”

12.5 Thus, in the absence of the data to be furnished by the Appellant, the State Commission has allowed the depreciation as per the 2004 Tariff Regulations. The State Commission has also estimated the consumer contribution in the absence of the requisite data. Therefore, we are not inclined to interfere with the impugned orders of the State Commission. However, we grant liberty to the Appellant to file the complete data as per the CERC Regulations 2009 and the State Commission shall reconsider the same as per the Central Commission’s 2009 Regulations.

13. Capitalization of Assets:

13.1 According to the Appellant, the Board has been recognizing the capitalization on interest and finance charges,

employees cost and A&G expenses as per the provisions of ESARR – 1985. Though the State Commission has disallowed part of the employees cost and A&G expenses, no reduction on amount booked under capitalization has been made. The State Commission erred in retaining the capitalization of expenses since the State Commission has disallowed considerable amount from the audited accounts.

13.2 According to the Learned Counsel for the State Commission, no substantial change has been made in the capital expenditure programme of the Appellant. The capitalization of expenses can reasonably be known only on finalization of accounts, as capitalization depends on the capital expenses, IDC and account of employee expenses involved in capital additions. Further, the amount of depreciation is estimated on Gross Fixed Assets which is based on the amount of capitalization. The State Commission has not adjusted the

GFA while approving the depreciation. Hence the argument of the Appellant has no merits.

13.3 We find that the State Commission for FY 2012-13 has accepted the capital expenditure of Rs.980 crores, as against Rs. 1397.12 crores claimed by the Appellant. However, the State Commission has mentioned that the amount approved by the State Commission is not a ceiling figure and the Board may in its wisdom provide higher estimates and invest more in projects in a prudent manner and submit supporting details for approval.

13.4 Thus, the capitalization will be subjected to true-up as per actuals on submission of the accounts by the Board at the true-up stage. In view of this, we find no reason to interfere with the finding on this issue in the impugned order.

14. Inconsistent approach in the absence of the Regulations: (Appeal no. 1 of 2013)

14.1 The Appellant has submitted that the State Commission is yet to notify any Regulations under Sections 61 of the Electricity Act. In the absence of any Regulation for preparing the regulatory accounts and truing up process and reviewing requirements, the Appellant has been following the Electricity (Supply) Annual Accounting Rules, 1985. Each year, the State Commission, however, has been disallowing many genuine expenses from the audited accounts of the Appellant and adopting different approaches for approving truing up petitions and ARR which are not consistent with the above accounting rules.

14.2 According to the Appellant, the State Commission vide work order dated 26.08.2011 has engaged a consultant to develop the tariff norms for filing the ARR and truing up

petitions. In the absence of any Regulations, the State Commission has been adopting totally inconsistent approach every year while approving the ARR. This Tribunal in judgment dated 19.04.2012 in Appeal no. 110 of 2010 and judgment dated 04.09.2012 in Appeal nos. 190 of 2009 and 46 of 2010 had directed the State Commission to take immediate steps to formulate specific Tariff Regulations.

14.3 According to the Learned Counsel for the State Commission, the State Commission has already notified the Tariff Regulations for retail sale of electricity. Since the Appellant is functioning as bundled utility for generation, transmission and distribution, they have to follow the Tariff Regulations of 2006 as far as applicable and wherever there is no specific Regulation, the Central Commission's Regulations have to be followed. The Appellant is also not maintaining separate accounts for generation, transmission and retail supply. The State Commission can make Regulations only under Section

61 and Section 181 of the Electricity Act for the utilities which are constituted and re-constituted as per the provisions of the Electricity Act, 2003. It is also submitted that the Electricity Board constituted under Electricity (Supply) Act 1948 is not in existence any more. It was in existence prior to 25.09.2008, the day on which functions, assets, liability, rights etc. of the said Board stood transferred to and vested in the State Government in accordance with the Electricity Act 2003. The State Government vide its order dated 25.09.2008 has approved the Transfer Scheme in accordance with Section 131 and 133 of the Electricity Act, 2003. Consequently functions, properties, interests, right, obligation and liability of the erstwhile Kerala State Electricity Board stood vested in Government and it is administrated by the Government by constituting a Managing Committee and appointing a Special Officer for Managing Committee. Till date, the State Government has not issued the Transfer

Scheme under sub Section 2 of Section 131 of the Electricity Act for re-vesting the properties, assets, liabilities, rights, obligations, etc., of the Electricity Board to the newly formed company. Thus, the functions, assets etc. of erstwhile Electricity Board are being temporarily managed by Managing Committee on adhoc basis till such time that these properties assets etc. are re-vested in new company. There is absolutely no need for framing rules and regulations for such a transient entity.

14.4 We are in agreement with the State Commission that the accounts of the generation, transmission and distribution functions have to be separately maintained by the Appellant Without maintenance of separate accounts for generation, transmission and transmission functions, it may not be possible to apply the norms specified in the Regulations fully. The Regulations have to be formulated for generation, transmission and distribution. There is no justification in

blaming the State Commission when the Appellant itself is not maintaining separate accounts for its generation, transmission and distribution function. We feel that there is need for early notification of a transfer scheme for assets and liabilities of the Board in separate companies with separate accounts for generation, transmission and distribution as per the provisions of the Electricity Act, 2003. We hope that the State Government will take expeditious steps for the same.

14.5 We also feel that the State Commission in the meantime should initiate framing of Regulations for generation, transmission and distribution. The existing Regulations for Retail Supply Tariff of 2006 are only general Regulations and there is a need to have more specific Regulations and norms for operational and financial parameters in accordance with the provisions of the Electricity Act for generation, transmission and distribution functions. The

State Commission has also to specify the manner in which the Appellant has to furnish the information for approval of ARR and determination of tariff. We, therefore, direct the State Commission to initiate the formulation of Regulations for generation, transmission and distribution. The Appellant is also directed to give the requisite date for the generation, transmission and distribution functions as desired by the State Commission.

14.6 With the above directions, this issue is disposed of.

15. Subsidy from Government : (Appeal no. 1 of 2013)

15.1 According to the Appellant, the State Commission vide order dated has allowed to impose fuel surcharge @ Rs. 0.25 per unit on all consumers from 1st April, 2010 to 30th September, 2010. However, the State Government has ordered to exempt domestic consumers with monthly consumption upto 120 units from payment of fuel surcharge

and provided Rs. 54 crores as subsidy. However, as ordered by the State Commission, while issuing the demand notice, the Board had been raising the bills at the tariff approved by the State Commission and out of the total demand, a part was shown as subsidy provided by the State Government and the balance only collected from the consumers. The Board had been preparing the accounts on accrual basis and accordingly the total demand raised as per the bills at the tariff approved by the State Commission was shown as revenue from tariff. The gross demand of the domestic consumers as per the annual accounts for FY 2010-11 was Rs. 1363.44 crores which is inclusive of the subsidy provided by the State Government. While approving the true-up petition, the State Commission has considered the total demand of domestic categories as per the audited accounts i.e. Rs. 1366.44 crores, as revenue. In addition, the State Commission has wrongly considered the subsidy amount

provided by the State Government amounting to Rs. 54 crores as additional revenue.

15.2 We find that the State Commission in the impugned order has mentioned that if the Appellant approaches the State Commission with full details, the matter will be considered.

15.3 Accordingly, we grant liberty to the Appellant to approach the State Commission with full details and the State Commission shall consider the same to examine if there has been double accounting of the Government subsidy of Rs. 54 crores, and if it is so, necessary adjustment will be carried out in the ARR of the subsequent year with carrying cost.

16. Interest and Finance Charges: (Appeal no. 19 of 2013):

16.1 According to the Appellant, the State Commission has disallowed provision of interest on working capital by Rs.

76.25 crores from the Appellant's projections and allowed only a provision of Rs. 20 crores for the FY 2012-13. The State Commission has also disallowed interest for additional borrowings proposed for the FY 2012-13. The State Commission has disallowed Interest and Finance charges to the extent of Rs. 74.77 crores claimed on additional borrowings proposed by the Appellant for the FY 2011-12 and 2012-13. The State Commission has approved additional borrowings of Rs. 500 crores for the year 2012-13 as against Rs. 1200 crores projected by the Appellant.

16.2 According to the Learned Counsel for the State Commission, the State Commission had come to a reasonable conclusion on the requirements of interest and finance charges. The State Commission has also correctly kept an adhoc provisions of Rs. 20 crores as interest on working capital to meet the short term fund requirements.

16.3 We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital. The interest on working capital is also decided on adhoc basis only. We feel that there is a need to make Regulations for the financial parameters. Till the Regulations are framed, the State Commission should follow the Central Commissions Regulations. As the FY 2012-13 is already over, we direct the State Commission to true up Interest and Finance charges for the FY 2012-13 based on the audited accounts.

17. T&D Loss Reductions Target: (Appeal no. 19 of 2013)

17.1 According to the Appellant, the State Commission has arbitrarily approved loss reduction target of 0.5% as against the 0.25% proposed by the Electricity Board, without any scientific study and data, investment requirement and

without considering actual achievement of loss reduction upto FY 2011-12.

17.2 According to the Learned Counsel for the State Commission, the Appellant has failed to provide a complete study on T&D loss in the system and accordingly, the State Commission has assessed the T&D loss at reasonable level based on the available data.

17.3 We find that the Electricity Board had projected the loss level of 15.32% for the FY 2012-13 compared to 15.56% estimated for FY 2011-12 i.e. reduction of about 0.25% during FY 2012-13. However, in FY 2011-12, the Board has estimated loss reduction of 0.53%. The loss level of 15.32% proposed by the Board for FY 2012-13 was almost the same level as approved by the Commission for FY 2011-12. The State Commission in the previous order had directed the

Electricity Board to submit a workable action plan within 6 months to replace the faulty meters with good quality meters. However, the Board did not comply with these directions. During the year 2010-11 the Electricity Board achieved a reduction of 1.62% and for FY 2011-12 reduction of 0.53% has been projected. Accordingly, reduction of 0.5% as decided by the State Commission seems to be reasonable.

17.4 We also find that the State Commission has directed that consistent with the directions issued in the previous orders, the Electricity Board shall study and report the voltage level loss as well as technical and commercial separation of T&D loss within four months from the date of the order which will help the State Commission to devise policies for targeting the loss reduction programme.

17.5 We feel that no interference is warranted in regard to the T&D losses.

18. Cost of Generation: (Appeal no. 19 of 2013)

18.1 According to the Appellant, the State Commission had adopted different methodology for approving the variable cost of its LSHS based power plants, namely BDPP and KDPP. The State Commission has not approved any operating norms such as Station Heat Rate, Fuel Consumption Factor, Auxiliary Consumption, Lube Oil, etc., for these plants. In the absence of the norms, the Appellant has been furnishing the actual operating details of these plants to the State Commission and based on the actuals the Appellant has been claiming the variable cost. However, in the impugned order the State Commission has adopted normative approach by assuming the various parameters without either prescribing any Regulations or giving an

opportunity to the Appellant to explain the matter. This has resulted in disallowing the generation cost.

18.2 Learned Counsel for the State Commission stated that the State Commission has approved benchmark parameters based on the actual values reported by the Appellant for the period October, 2011 to December, 2011. Hence the contention of the Appellant is not sustainable.

18.3 We find that the State Commission has taken the variable charges based on the average parameters reported by the Electricity Board from October to December 2011 for arriving at the average benchmark parameters. The State Commission has so far not decided any operational norms for the generation. In the absence of Regulation, the State Commission has considered the actual parameters as reported by the Board for the period from October to

December, 2011. We feel that this approach is wrong as the data has been considered for a short period of 3 months only for establishing the benchmark parameters. The State Commission should have considered at least the annual operational data of the plants, the design parameters, actual operating conditions, age of plants, operating parameters of similar plants elsewhere, etc., before establishing benchmark. Therefore, we direct the State Commission to true up the generating cost of these plants after examining the annual data for these plants, after prudence check.

19. Energy Sale approved: (Appeal no. 19 of 2013)

19.1 According to the Appellant, the State Commission has curtailed the energy sale estimation by 753.70 MU and accordingly disallowed the cost of power purchase by Rs. 272.60 crores and cost of generation from its own diesel station by Rs. 185.48 crores. The actual energy sale for the

year was very close to the estimate by the Board and the actual cost of power purchase was much higher than that approved by the State Commission. Therefore, necessary directions be issued to the State Commission to approve the actual cost of power purchase after prudence check and allow carrying cost for actual cost of power purchase over approved level.

19.2 The FY 2012-13 is already over. The accounts of FY 2012-13 are required to be trued up. The Appellant shall submit the audited accounts along with the Application for true-up. The State Commission shall approve the true-up energy sales and cost of power purchase after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any. Accordingly, directed.

20. Energy available from Kudankulam (Appeal no. 19 of 2013):

20.1 The Appellant has submitted that they had not considered the energy availability from Kudankulam Nuclear Power Plant while projecting the energy available for the FY 2012-13. However, while approving the ARR, the State Commission has considered energy availability from the Kudankulam plant as 700 MU during the FY 2012-13. It is a fact that Kudankulam plant could not be commissioned during the FY 2012-13. The shortfall in energy available from Kudankulam was made up by scheduling power from liquid fuel based stations and also by purchasing costly energy through short term market and energy exchange. Thus, the Electricity Board has incurred additional liability on this account. The Appellant has, therefore, requested to allow the additional Power Purchase Cost with carrying cost.

20.2 We have already directed under paragraph 19 above for truing up of Power Purchase Cost and allowing carrying cost on the additional Power Purchase Cost. Accordingly, decided.

21. Summary of our findings:

A) Issues common to Appeal no. 1 of 2013 and Appeal no. 19 of 2013

i) Employees cost:

We direct the State Commission to true up the employees cost from FY 2010-11 to FY 2012-13 as per the directions given in paragraphs 8.5 and 8.6.

ii) Repair and Maintenance cost:

We do not find any reason to interfere with the findings of the State Commission.

iii) Administrative and General Expenses:

We do not find any infirmity in the findings of the State Commission.

iv) Return on Equity:

We direct the State Commission to allow Return on Equity at the rate of 15.5% as per the Central Commission's Regulations.

v) Depreciation:

In the absence of data to be furnished by the Appellant the State Commission has allowed depreciation as per the 2004 Tariff Regulations. In the absence of the data to be furnished by the Appellant, the State Commission has allowed the depreciation as per the 2004 Tariff Regulations. The State Commission has also estimated the consumer contribution in the absence of the separate data. Therefore, we are not inclined to interfere with the impugned orders of the State Commission. However, we grant liberty to the Appellant to file the complete data as per the CERC

Regulations 2009 and the State Commission shall reconsider the same as per the Central Commission's 2009 Regulations.

vi) Capitalization of Assets:

Capitalization will be subjected to true-up as per actuals on the submissions of the accounts by the Court at the true up stage. In view of this, we do not find reason to interfere with the impugned order.

B) Appeal no. 1 of 2013

i) Inconsistent approach in the absence of the Regulations:

We have given certain directions to the Appellant as well as the State Commission under paragraphs 14.4 and 14.5.

ii) Subsidy from Government:

We grant liberty to the Appellant to approach the State Commission with full details and the State

Commission shall consider the same to examine if there has been double accounting of the Government subsidy of Rs. 54 crores, and if it is so, necessary adjustment will be carried out in the ARR of the subsequent year with carrying cost by the State Commission.

C. Appeal no. 19 of 2013

i) Interest and Finance charges:

We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital arbitrarily. The interest on working capital is also decided on adhoc basis only. We feel that there is a need to make Regulations for the financial parameters. Till the Regulations are framed, the State Commission should follow the Central Commissions Regulations. As the FY 2012-13 is

already over, we direct the State Commission to true up Interest and Finance charges for the FY 2012-13 based on the audited accounts.

ii) T&D Loss Reductions Target:

We feel that no interference is warranted in regard to T&D losses.

iii) Cost of generation:

We direct the State Commission to true-up the generating cost of the LSHS based power plant of the Appellant as per the directions given in paragraph 18.3.

iv) Energy sales approved:

The State Commission is directed to true-up of the energy sales and Power Purchase Cost after prudence check and also allow carrying cost on the excess cost of power purchase over the approved

level, if any, as per the directions given in paragraph 19.2.

v) Energy available from Kudankulam:

We have already directed for truing up of Power Purchase Cost and for allowing carrying cost for additional Power Purchase Cost.

21. The Appeals are allowed in part as indicated above. The State Commission is directed to pass consequential orders in terms of our findings at the earliest.

22. Pronounced in the open court on this 10th day of November, 2014.

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice M. Karpaga Vinayagam)
Chairperson