Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal no. 195 of 2013

Dated: 9th February, 2015

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

In the matter of:

Arun Kumar Datta
222 Pocket E
Mayur Vihar – II
Delhi – 110 091

Versus

1. **Delhi Electricity Regulatory Commission**
   Viniyamak Bhawan
   Shivalik 'C' Block
   Malviya Nagar
   New Delhi – 110 92

2. **BSES Yamuna Power Ltd.**
   Shakti Kiran Building
   Karkardooma
   Delhi – 110 092

Counsel for the Appellant: **Ms. Swapna Seshadri, Amicus Curiae**
Ms. Mandakini Ghosh
Mr. Arun Kumar Datta

Counsel for the Respondent : **Mr. Pradeep Misra,**
Mr. Daleep Kr. Dhayani and
Mr. Manoj Kr. Sharma
Mr. Suraj Singh for R-1

Mr. Amit Kumar,
Mr. Vishal Anand and
Mr. Gaurav Dudeja for R-2

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Mr. Arun Kumar Datta, a consumer, taking supply from BSES Yamuna Power Ltd., the distribution licensee. The Appellant has challenged the tariff order dated 13.07.2012 read with amendment dated 23.10.2012 passed by Delhi Electricity Regulatory Commission ("State Commission") regarding true up for FY 2010-11 and ARR for the control period 2012-13 to 2014-15 of the distribution licensee.

2. The State Commission is the first Respondent. BSES Yamuna Power Ltd. ('BYPL'), the distribution licensee, is the second respondent.

3. The Appeal had been prepared and filed by an individual consumer. However, during the proceedings, the Tribunal appointed Ms. Swapna Seshadri as an Amicus Curiae Counsel to deal with the matter.

4. Ms. Swapna Seshadri, Learned Amicus Curiae upon instructions received from the Appellant (consumer), made submissions before us and also filed written submissions.

5. The following issues have been raised in the present Appeal.

   i) The tariff order dated 13.07.2012 was not passed within 120 days of the admission of the tariff petition by the State Commission which is the requirement under Section 64 of the Electricity Act, 2003.

ii) An arbitrary Power Purchase Cost Adjustment formula (PPCA) being prescribed by the State Commission.

iii) Very relaxed Transmission and Distribution Loss (T&D Loss) reduction target fixed for BYPL, the Respondent no.2.

iv) Collection efficiency

v) Zero billing

vi) Self consumption

vii) Creation of large revenue gap

viii) Wrong concept of fixation of 'K' factor.

6. On the above issues we have heard Ms. Swapna Seshadri, Learned Amicus Curiae, Mr. Pradeep Misra, Learned Counsel for the State Commission and Mr. Amit Kapur and Mr. Vishal Anand, Learned Counsel for the Respondent no.2.

7. Let us examine the issues raised by the Appellant one by one.

8. The first issue is regarding delay in issuance of the tariff order.

8.1 According to Ms. Swapna Seshadri, Learned Amicus Curiae, the State Commission after validation admitted the petition on 05.02.2012. In terms of Section 64(3) of the Electricity Act, the State Commission was required to pass the tariff order within 120 days of 05.02.2012 i.e. by 05.06.2012. The public hearings were held on 26.04.2012 and 28.04.2012. However, the tariff order was passed only on 13.07.2012, namely, after more than 150 days of the admission of the petition. The Tribunal has time and again reiterated that the tariff order needs to be passed strictly in terms of the time line given in Section 64(3) of the Electricity Act, 2003. In this regard, she also referred to order dated 11.11.2011 of this Tribunal in OP No. 1 of

2011 in which the timely determination of tariff by the State Commission was emphasized.

8.2 Shri Pradeep Misra, Learned Counsel for the State Commission stated that some time has been taken as the Commission had to consider the various information called from the licensee. However, the delay was not intentional. The State Commission also issued the tariff schedule on 26.06.2012 to avoid further delay in implementation of the tariff and the tariff order was issued on 13.07.2012 and uploaded on the website of the Commission.

8.3 We find that the public notice was published in different newspapers from 10th to 14th March, 2012 inviting comments from the stakeholders latest by 30.03.2012. However, on the request of the stakeholders the Commission extended the last date for filing objections and suggestions to 10.04.2012. Thereafter, the public

hearing was held on 26th and 28th April, 2012 in which concerns were raised by various stakeholders, which required examination by the Commission. The comments of the Distribution Licensee were obtained on the stakeholder's suggestions and objections. We also find that State Commission sought various clarifications and additional data from the licensee and the same were furnished by the Distribution Licensee upto 19.06.2012. The tariff schedule was issued by the Commission on 26.06.2012 with the revised tariff made applicable from 01.07.2012. The tariff order was passed on 13.07.2012.

8.4 The State Commission has to pass the tariff order within 120 days from the receipt of the application as per Section 64(3) of the Electricity Act, 2003. This Tribunal has also been emphasizing on timely issuance of the tariff order. In the present case we find that the delay in issuance of the tariff order was not deliberate and is explainable. However, the State Commission is directed

to make all efforts to maintain the timeline as specified in the Electricity Act, in future.

9. The second issue is regarding Power Purchase Cost Adjustment Formula ('PPCA').

9.1 According to the Learned Amicus Curiae, the MYT Regulations, 2011 do not provide for Power Purchase Cost Adjustment formula. There were no discussions or hearing on the implementation of the PPCA formula and, therefore, the consumers could not present their views on this aspect while the MYT Regulations were being framed. The State Commission based on the formula passed certain orders specifying PPCA in percentage terms. While in the order dated 03.05.2013, the PPCA for BYPL (R-2) was fixed as 4.5%, in the order dated 31.01.2014, the same was fixed at 8% which has continued till date. However, the actual figure for FY 2012-13 and FY 2013-14 as given in the truing up petition filed by BYPL, shows that actual PPCA is much less than

1%. Thus, the PPCA formula needs to be set aside and the State Commission should be directed to hear all consumers and notify a formula which is reflective of actual cost being incurred by the Distribution Licensee on account of Power Purchase Cost Adjustment.

9.2 In reply, the Learned Counsel for the State Commission has reiterated the findings of the State Commission.

9.3 Shri Amit Kapur, Learned Counsel for the Respondent no.2 argued that the PPCA formula also formed part of the MYT petition and some stakeholders filed their comments on the PPCA. As such there is no substance in the allegation that no opportunity was granted to the consumers to comment on the PPCA formula. In fact PPCA formula prescribed by the Commission does not include the full variation in Power Purchase Cost of BYPL

and they have challenged the same in Appeal no. 178 of 2012.

9.4 Shri Amit Kapur, Learned Counsel for the Respondent no.2 denied that the truing up petition for FY 2012-13 filed by BYPL showed that actual PPCA for FY 2012-13 and FY 2013-14 was around 1%. The Form F1 referred to by the Appellant is the information submitted by BYPL with regard to Power Purchase Cost of BYPL which includes various components like fixed charges, variable charges, Fuel Purchase Adjustment charges and other charges charged by the generating companies. Form F1 nowhere reflects the Power Purchase Adjustment. The figure of 1 paise per unit, 2 paise per unit and 4 paise per unit for FY 2012-13, FY 2013-14 and FY 2014-15 respectively referred to by the Appellant relates to FPA charges per unit paid to the generating companies during a Financial Year and not PPCA. PPCA is the difference between the

actual rate of power purchase and the rate approved in the impugned tariff order (base rate).

9.5 We find that the Power Purchase Cost Adjustment formula formed part of the MYT petition filed by the Respondent no. 2 and the same was put to public notice. Some stakeholders also offered their comments on the introduction of the PPCA. The State Commission after giving detailed findings decided to allow PPCA and also decided the PPCA formula.

9.6 This Tribunal vide order dated 11.11.2011 in OP No.1 of 2011 had given the following directions to all the State Commissions to provide for periodic PPCA after considering the provisions of the Act and the Tariff Policy.

"(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such

formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism."

9.7 We find that the PPCA formula decided in the impugned order provides for adjustment for variation in Power Purchase Cost in respect of power plants with which the Respondent no.2 has long term PPA, with respect to the cost decided in the impugned order while determining the Power Purchase Cost. The Appellant has also not pointed out any error in the formula.

9.8 In view of above we do not find any merit in the contentions of the Appellant on this issue.

10. The third issue is regarding relaxed T&D loss norms fixed by the Commission.

10.1 According to the Appellant, the State Commission was fixing the loss level reduction target close to 4% per annum in most of the years from 2002-03 onwards. However, for the second control period i.e. (2012-15), the loss reduction target has been fixed at around 1.21% for each year (AT&C target of 16.82%, 15.66% and 14.5% respectively for the first, second and third year). The State Commission ought to have considered the past trend of the loss reduction, loss targets of similarly placed urban distribution companies such as Torrent Power Ltd., CESC, Tata Power, Mumbai before fixing the loss targets for BYPL.

10.2 Learned Counsel for the State Commission has submitted that reduction in AT&C loss will depend on various factors including the consumer load mix. Therefore, comparison of the Respondent no.2 with other licensees only on the basis of reduction in AT&C losses is not possible without

considering other factors. The Commission has fixed the target for FY 2012-13 as 16.82% as against the target of 34.77% in the FY 2007-08.

10.3 Learned Counsel for the Respondent no.2 has submitted that the AT&C loss targets fixed by the Commission are very stringent and unachievable. The Respondent no.2 has already challenged the AT&C loss targets fixed by the Commission in Appeal no. 178 of 2012. The State Commission has not considered the actual loss achievement by the Respondent no.2 in the past and past trends, which is a mandatory requirement while fixing the AT&C loss targets. The State Commission has also been very conservative in approving the capital expenditure of the Respondent no.2 which has negative bearing on their loss reduction plans.

10.4 We find that the loss reduction targets and actual achievement from 2002-03 onwards of the Respondent

no. 2 from 2002-03, as given in the impugned order, are as under:

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Target	56.45	54.70	50.7	45.5	39.95	34.77
Achievement	61.89	54.29	50.12	43.89	39.03	29.80
Target Reduction (year on year) (% age)	0.75 (1.3%)	1.75 (3.1%)	4.0 (7.3%)	5.2 (10.3%)	5.55 (12.2%)	5.18 (13%)
Actual Reduction (year on year) (% age)	(-)4.69 (-8.2%)	7.6 (12.3%)	4.17 (7.7%)	6.23 (12.4%)	4.86 (11.1%)	9.23 (23.6%)

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Target	30.52	26.26	22.00	18.00	16.82	15.66	14.50
Achievement	24.02	24.32	21.95	-			
Total Reduction (year on year) (% age)	4.25 (12.2%)	4.26 (14%)	4.26 (16.2%)	4.0 (18.2%)	1.18 (6.6%)	1.16 (6.9%)	1.16 (7.4%)
Actual Reduciton (% age)	5.78 (19.4%)	(-)0.30 (-1.2%)	2.37 (9.7%)				

10.5 We find from the impugned order that the opening level of AT&C loss for FY 2002-03 was assessed as 57.2% and gradually by the end of 2010-11 the Respondent no.2 has been able to reduce the same to 21.95%. The target for FY 2011-12 was fixed as 18%. In the past from 2004-05 to 2011-12, the State Commission had been fixing the year on year AT&C loss reduction target of 4 to 5% and

the Respondent no.2 has been achieving the AT&C target till FY 2010-11. The actual position of FY 2011-12 is not available. However, after the AT&C loss level came done to below 20%, the State Commission has given a lower target for the control period 2012-15. When the loss level is very high, it is possible to reduce the same at higher percentage with reasonable efforts and little expenditure. However, when the loss level target has come down to around 18% it becomes more difficult to achieve high loss reduction. In the examples of Tata Power, Mumbai, CESC, Torrent Power Co., Ahmedabad, etc., given by the Appellant, the Respondent no.2 has furnished the loss reduction target. We find that the loss reduction fixed by the respective State Commission has been negligible or nil as their losses have already came down to the minimum level (6 to 8%). The Tribunal in Appeal no. 61 of 2012 has already directed the State Commission to refix the AT&C loss target for FY 2011-12. The Respondent

no.2 has also challenged the fixation of AT&C loss level in Appeal no. 178 of 2012 giving various reasons to plead that the target loss level has been fixed at a high level. The Respondent no.2 has also submitted data regarding non-approval of loss reduction capital schemes submitted by them to the State Commission which were not approved having negative impact on loss reduction. We shall be dealing with the issues raised by the Respondent no. 2 in Appeal no. 178 of 2012 regarding stringent loss reduction target and non-approval of the capital schemes for reduction of loss level.

10.6 In view of above we do not find any reason to give directions to enhance the AT&C loss reduction targets.

11. The fourth issue is regarding collection efficiency.

11.1 According to the Appellant the State Commission should have fixed the collection efficiency as 100% for all three years of the control period instead of 99.5% as fixed in the impugned order. The actual collection efficiency for FY 2013-14 and FY 2014-15 has been more than 100%.

11.2 According to the Respondent no.2, they had prayed to fix the collection efficiency at 98.5% as there had been a change in provision for calculation of collection efficiency from MYT Regulations, 2007 to MYT Regulations, 2011 namely, the collection efficiency in MYT Regulation 2011 excludes realization from arrears, electricity duty and late payment surcharge. However, despite the change in methodology for calculation of collection efficiency, the State Commission has fixed the collection efficiency at 99.5%. The same has been challenged by the Respondent no.2 in Appeal no. 178 of 2012.

11.3 The Respondent no.2 has denied that it has claimed that it has achieved AT&C loss levels of above 100% during 2013-14 and 2014-15. The corresponding document relied by the Appellant is tariff order dated 31.07.2013 wherein the Commission approved the collection efficiency for FY 2011-12 as 100.83% and not for FY 2013-14. With regard to collection efficiency for 2014-15, the Respondent no.2 in its ARR petition has projected collection efficiency of 98.5% and not 101.72% as indicated by the Appellant. The Appellant has furnished data for month-wise and division-wise actual collection efficiency for FY 2013-14. The total collection efficiency for FY 2013-14 has been indicated as 98.97%

11.4 We find force in the arguments of the Respondent no.2. We find that in the past the Appellant has been able to achieve collection efficiency of over 100% due to inclusion of collection of arrears in the determination of

the collection efficiency. The calculation of collection efficiency has been changed in the MYT Regulations, 2011 to exclude the realization of arrears in calculation of the collection efficiency. Further, MYT Regulations 4.8 provide for incentive on over achievement of AT&C loss target and disincentive for non-achievement of the target. Additional recovery due to higher AT&C loss above the norm helps in enhancing the revenue which benefits the consumers. Therefore, there should be some incentive available to the licensee to improve their AT&C loss. If the target is fixed at 100% then it will render Regulation 4.8 meaningless. The issue of lowering the collection efficiency as sought by the Respondent no.2 shall be dealt by us separately in Appeal no. 178 of 2012. Therefore, we do not find any reason to interfere with the order the State Commission to increase the collection efficiency above 99.5% as decided by the Commission.

12. The Fifth issue is regarding zero billing.

12.1 According to the Appellant, several discrepancies in billing of tariff by the Respondent no.2 were found by the State Commission. By analyzing data for one month, i.e. March 2011, 40.85 MU energy has been found to be billed at zero rate which has been disallowed by the Commission. The exercise should have been carried out for the entire year to show the actual discrepancy in data of BYPL which would have led to a further reduction in tariff of consumers. The State Commission has been issuing directions to the licensee to not to bill units at zero rate for the last several years but the licensee has been continuing to do so. The State Commission ought to have penalized BYPL by extrapolating the figure of 40.85 MU for the entire year and disallowed the entire computed energy billed at zero rate.

12.2 According to Learned Counsel for the State Commission, the data supplied by the Respondent no.2 for zero billing has been considered and applied to the entire year, thereby disallowing 40.85 MU for the entire year. For further analysis of zero billing, the Commission has obtained the billing data for the period January – March 2011.

12.3 Learned Counsel for the Respond*ent no.* 2 has submitted as under:

a) The case of the Appellant on the issue of Zero Billing is based on conjectures and surmises. It is submitted that during the technical validation session held by the State Commission for truing up ARR of BYPL for FY 2010-11, the Commission directed BYPL to produce live data base for the entire financial year to substantiate the claim of 4707 MU for FY 2010-11. The complete data for FY

2010-11 was duly installed by BYPL at the State Commission's office through LAN connectivity.

b) The State Commission while analyzing the aforesaid data observed variation in the average rate for sale of energy (revenue billed on account of energy charges excluding fixed charges divided by energy billed) for some consumer category. As observed in para 3.18 of the impugned order, the State Commission after analyzing the average rate for sale of energy, found the same to be lower than the tariff approved by the State Commission in the Tariff Order. The State Commission did not find any discrepancy in the average rate for sale of energy and Tariff approved in the Tariff Order for the months April to December, 2010. Accordingly, the State Commission directed BYPL to give clarification for the same with supporting data. By letter dated 25.04.2011, BYPL submitted the complete data before the State (both

consumer wise and month wise) indicating that certain units corresponding to the previous years billing were considered during FY 2010-11 as adjustments accounted at zero rate during the last three months of the financial year. This was done for the purpose of correction and proper accounting in terms of energy billed and amount billed to the consumer.

c) The Commission duly analyzed the data submitted by BYPL and verified that there is no variation in the actual average rate of sale per unit and the rate approved by the Commission in Tariff Order for the period April 2010 to December 2010. Therefore, there was no question of bills raised in that period with Zero rate. The Commission verified the entire data and found that total of 40.85 MUs were billed at zero rate during a particular period of January to March 2011 only. Accordingly, the

Commission disallowed the said units. Hence, there cannot be any grievance to the Appellant on this account.

12.4 Let us examine the relevant paragraph of the impugned order which is reproduced below:

> *"3.19 The Commission directed the Petitioner to extract consumer-wise record for billing in the Month of March 2011 from the SAP database. On analysing the consumer-wise record for March 2011, the Commission observed that a large number of bills were raised at zero rate. The Commission directed the Petitioner's officials for explanation, however the Petitioner could not provide any explanation. The Commission directed the Petitioner to submit details of all such cases where energy has been billed at zero rate. The Petitioner through its letter dated April 25, 2011 submitted that it had billed 40.85 MU at zero rate in SAP and EBS database between January – March 2011during FY 2010-11."*

12.5 We find from above that the State Commission has scrutinized the consumer-wise data for only March 2011 and has only relied on the statement of the Respondent no.2 that 40.85 MU has been billed at zero rate between

January – March 2011 during 2010-11. The Learned State Commission in its written submissions has also not given a clear statement that it has scrutinized the data for the entire year or has extrapolated the scrutinized date over the entire financial year. On the other hand it has stated it that for further analysis it has sought the data for the period January – March 2011. While the State Commission in the written submissions has stated that the zero billing has been applied to entire FY 2010-11, it is not borne out by the impugned order and the written submissions read comprehensively.

12.6 In view of above, we remand the matter to the State Commission to consider the discrepancy for the entire FY 2010-11, if not already done, and decide the matter accordingly.

13. The sixth issue is regarding self consumption in the true up of FY 2010-11.

13.1 The Appellant has submitted that the State Commission has been directing BYPL to meter its own consumption from or the year 2005 onwards. However, no effort was made by them to meter own consumption and BYPL has been simply taking own consumption arbitrarily. On the other hand BYPL has been including the own consumption in energy sales figures for calculating AT&C loss, thus inflating the energy sales.

13.2 According to Learned Counsel for the State Commission, the Commission has allowed only normative consumption in case of non-metered supply.

13.3 The Respondent no.2 has submitted as under:

a) The Appellant cannot seek change in methodology for AT&C determination at the stage of truing up since the Commission in the MYT order dated 23.02.2008 had

categorically included self consumption in sale forecast, which is not under challenge in the present Appeal.

b) The State Commission has not allowed the self consumption as claimed by them and has only allowed a normative self consumption of 0.25%. This has been challenged by the Respondent no.2 in Appeal no. 178 of 2012.

c) The State Commission has allowed 44% units less for FY 2010-11 as compared to the units allowed in the previous year i.e. FY 2009-10 towards self consumption.

d) The Commission in the previous tariff order dated 28.08.2011, directed the Respondent no.2 to meter electricity in its offices, grid sub-stations etc., within 2 months, which has been undertaken by BYPL.

13.4 We feel that the Appellant should have installed meters for self consumption in all its offices, call centres, sub-stations, etc. The Respondent no.2 does not need specific instructions for the same. When the Respondent no.2 is including self consumption in its energy sale figures, then it was legally bound to supply electricity for own consumption only through correct meters. We feel that the State Commission should have allowed self consumption only to the extent of actual consumption for metered installations. The formula proposed by the Respondent no. 2 for calculating own consumption in its installations is for calculating energy consumption for consumers in case of faulty/tempered meters. Accordingly, we direct the State Commission to re-determine the self consumption based on the metered data only. We also do not feel that this would result in change in procedure in true up with respect to the MYT order dated 23.02.2008. In the MYT order the

consumption is based on the projections. In the MYT order the State Commission has not approved that the self consumption would not be metered and would only be assessed by a formula considering the load, number of days/hours, load factor, etc.

13.5 As regards contention of the Appellant for determination of AT&C loss, we feel that if the self consumption is deducted from energy sales figures then corresponding reduction has to be effected in the energy input into the distribution system also. In view of our directions in para 13.4, we do not want to give any direction with regard to procedure for determination of AT&C loss in the true-up of FY 2010-11.

14. The seventh issue is regarding creation of large revenue gap for FY 2010-11.

14.1 The Appellant has raised this issue of non-issual of the tariff order for FY 2010-11 due to alleged intervention of the Government of NCT of Delhi and has furnished internal noting on the file of the Commission to stress his point. The Appellant has also alleged sale of surplus power at low price thus creating a large revenue gap. Learned Amicus Curiae has argued that the Respondent no.2 is bound to sell surplus power at minimum 25% over the regulated purchase rate to avoid any loss to consumer.

14.2 Learned Counsel for the State Commission has submitted that the tariff order could not be issued due to pendency of writ petition before the High Court, hence no reliance can be placed on the internal noting on the files of the Commission.

14.3 The Respondent no.2 has submitted as under:

a) The High Court of Delhi in case of Nand Kishore Garg Vs. Government of NCT of Delhi and Ors. has held that the tariff order was not signed and hence no order was made. The High Court had directed the State Commission to issue a fresh order by following due procedure and determine the tariff.

b) Thereafter, Delhi Commission issued tariff order dated 26.08.2011 wherein the Commission approved revenue gap of Rs. 506.65 Crores for BYPL till FY 2009-10. The said order deals with the fact that the projection on the basis of which surplus was calculated was incorrect. The tariff order dated 26.08.2011 has not been challenged and has attained finality.

c) Due to non-determination of tariff and creation of large regulatory assets, the respondent no.2 is facing financial losses and cash flow problem.

d) The rate at which power is sold/purchased in short term depends on demand/supply requirements as also the market conditions.

e) The Respondent no.2 has submitted the data for average power sale per unit for the Power exchange to establish that during the period from June 2010 to March 2011, the average power sale per unit was below Rs. 4 per unit.

14.4 In view of submissions made by the Respondent no.2, we feel that we cannot go into the issue of tariff order for FY 2010-11 as the same was considered by the High Court of Delhi and consequential tariff order dated 26.08.2011 has been passed by the State Commission which is not under challenge.

14.5 Regarding sale of surplus power, we do not agree with the contention of the Appellant that the surplus power has to be sold at a tariff 25% higher than the purchase price. The Respondent no. 2 has entered into long term PPAs

with the generating companies with the approval of the State Commission to meet the demand of the consumers. The total power demand in the distribution area changes from instant to instant, day to day, month to month and season to season. In certain periods, particularly during non-peak hours, the Respondent no.2 is surplus. Therefore, it sells power in short term market. The short term market price varies during different hours of the day, from day to day and month to month depending on the demand and supply position in the grid. Therefore, there is no guarantee of getting a price higher than the buying price covering entire fixed and variable cost of power tied up by the Respondent no.2 through long term PPAs. If the sale is effected even at a price higher then the incremental cost of power, it would be beneficial to the consumer than not selling any power. The Respondent no. 2 has submitted data of rate in short term market

showing that the average rate of power was less than Rs. 4 per unit.

14.6 In view of above, we do not find any merits in the contention of the Appellant on this issue.

15. The eighth issue is computation of K factor.

15.1 According to the Appellant, the State Commission has wrongly calculated the K factor. The Appellant has given the following reasons for the same:

a) The Commission has copied the R&M expenses for the FY 2010-11 to 2014-15 in Table 100 as if it were R&M expenses for FY 2007-08 to 2011-12. Therefore, the resultant K factor was wrongly calculated. If the above error is corrected then the K factor will be 3.7%.

b) If the GFA for FY 2012-13, 2013-14 and 2014-15 is divided by the R&M expenses decided for the corresponding years, then K factor will be 1.67%, 2.1.% and 2.16% respectively.

c) R&M expenses for nth year has to be computed with reference to the GFA for the previous year or the $(n-1)^{th}$ the year. However, the State Commission in Table 102 has taken the GFA as well as R&M for the same year instead of GFA for the previous year. If the correct figure is taken then the K factor will be 1.87%, 2.49% and 2.49% respectively for 2012-13, 2013-14 and 2014-15 respectively.

15.2 The State Commission in its written submission has stated that the R&M expenditure considered by the Commission to determine the cost for the base year for second MYT period has been based on actual R&M cost in Table 100 of the Tariff order. However, there is a typographical error in the particulars column of heading which has to be read as 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. In column 4 of Table 102 instead of FY 2014-15, FY 2015-16 has been mentioned due to

typographical error. There is, however, no error in the determination of K factor.

15.3 MYT Regulations, 2011 provide as under for determination of R&M expenses

$$R\&M_n = K * GFA_{n-1}$$

$R\&M_n$ is repair and Maintenance costs of the licensee for the nth year

K is a constant. Value of K for each year of the control period shall be determined by the Commission in the MYT tariff order based on licensee's filing, benchmarking, approved cost by the Commision in past and any other factor considered appropriate.

GFAn-1 is not defined but logically it has to be closing Gross Fixed Assets of $(n-1)_{th}$ year as R&M for n_{th} year has to include repair and maintenance expenditure on the assets which have been capitalized as at the end of the $(n-1)_{th}$ year.

15.4 We find that Table 100 indicates particulars for FY 2010-11 to FY 2014-15. However, the R&M expenses indicated in the table are the actual R&M expenses of the Respondent no.2 for the period 2007-08 to 2011-12. Comprehensive reading of paragraphs 4.217, 4.218 and 4.219 indicates that the particulars given in Table 100 are for the period from FY 2007-08 to FY 2011-12. The State Commission in its written submission has also clarified that there was a typographical error in heading of Table 100 showing the Financial Years.

15.5 We find that the Appellant has given contradictory submissions for calculation of K factor. The Appellant has given one calculation of K factor for FY 2007-08 to FY 2011-12 taking into account the GFA as approved by the Commission and R&M expenses as approved for the respective years to calculate K factor as 3.70%, same as is being pleaded by the Respondent no.2.

15.6 The Appellant has then calculated K factor for FY 2012-13, 2013-14 and 2014-15 by using opening GFA for FY 2012-13, FY 2013-14 and FY 2014-15 and actual R&M expenses less rentals for FY 2009-10, 2010-11 and 2011-12 to calculate K factor of 1.67%, 2.1% and 2.16% for FY 2012-13, FY 2013-14 and FY 2014-15 respectively. This is wrong, as there is no corelation between GFA and R&M expenses considered by the Appellant.

15.7 The Appellant has again calculated K factor for 2012-13, 2013-14 and 2014-15 by using opening GFA for FY 2011-12, FY 2012-13 and FY 2013-14 respectively and actual R&M expenses less lease rentals for FY 2009-10, 2010-11 and 2011-12 to calculate K factor of 1.87%, 2.49% and 2.49% for FY 2012-13, FY 2013-14 and FY 2014-15 respectively. This is also wrong.

15.8 The Distribution Licensee incurs R&M expenses on the Gross Fixed Assets as existing at the end of the previous year and the assets capitalized during the ensuring financial year. However, the formula in the Regulations provides for R&M to be calculated on the closing fixed assets as existing at the end of the previous year. Thus it is incorrect to consider the opening fixed assets of $(n-1)^{th}$ year in calculating K factor.

15.9 We do not find any merits in the submissions of the Appellant with regard to K factor.

16. Summary of our findings:

16.1 Delay in issuing of tariff order:

We find that the delay in issuance of tariff order is not deliberate and is explainable. However, the State Commission has to pass the tariff order within 120 days from the receipt of the application as per

Section 64(3) of the Electricity Act, 2003. This Tribunal has also been emphasizing on timely issuance of the tariff order. In the present case we find that the delay in issuance of the tariff order was not deliberate and is explainable. However, the State Commission is directed to make all effort to maintain the timeline as specified in the Electricity Act in future.

16.2 Power Purchase Cost Adjustment:

We do not find any merit in the contentions of the Appellant on PPCA.

16.3 Relaxed T&D loss norms:

We do not find any reason to enhance the AT&C loss reduction targets.

16.4 Collection efficiency:

We do not find any reason to enhance the collection efficiency to above 99.5% as decided by the Commission.

16.5 Zero building:

We find merits in the contentions of the Appellant and remand the matter to the State Commission to consider the discrepancy for the entire FY 2010-11, if not already done, and decide the matter accordingly.

16.6 Self consumption for FY 2010-11:

We direct the State Commission to re-determine the self consumption on the basis of metered data only.

16.7 Creation of long revenue gap for FY 2010-11 and sale of surplus power:

We do not find any merits in the contentions of the Appellant.

16.8 Determination of K factor:

We do not find any merits in the submissions of the Appellant.

17. In view of above, the Appeal is allowed in part on two issues as indicated above. The State Commission is directed to pass consequential order. No order as to costs.

18. We wish to record our appreciation for the services rendered by Ms. Swapana Seshadri, Learned Amcus Curiae to have effectively argued the points of the Appellant, a consumer.

19. Pronounced in the open court on this **9th day of February, 2015.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/~~NON-REPORTABLE~~

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