In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal no. 174 of 2015

Dated: 2nd June,2016

Present: **Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson**
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:

Noida Power Company Limited,
Commercial Complex, H-Block,
Alpha-II Sector,
Greater Noida - 201 308
Uttar Pradesh **... Appellant**

Versus

Uttar Pradesh Electricity Regulatory Commission,
Kisan Mandi Bhawan,
II Floor, Gomti Nagar,
Lucknow - 226 010
Uttar Pradesh **...Respondent**

Counsel for the Appellant: **Mr. M. G. Ramachandran**
Mr Vishal Gupta
Mr Kumar Mihir

Counsel for the Respondent: **Mr. C K Rai**
Mr Sanjay Singh
Mr Paramhans

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against the Impugned Tariff Order dated 18.06.2015 passed by the Uttar Pradesh Electricity Regulatory Commission **(hereinafter referred to as the "State Commission")** in the Petition No 984 of 2014 filed by Noida Power Company Ltd. **(hereinafter referred to as the "Appellant")** for approval of its Annual Revenue Requirement for the FY 2015-16 and truing up for the FY 2013-14. In addition to above the State Commission has also changed/ altered the rate of interest on carrying cost for FY 2014-15 provisionally approved by it vide its earlier Tariff Order dated 01.10.2014 which was not the subject matter of the Petition No 984. of 2014.

2. The Appellant is a Company incorporated under the provisions of the Companies Act, 1956 and is a Distribution Licensee undertaking the distribution and retail supply of electricity in its area of distribution, namely, Greater Noida.

3. The Respondent is the Electricity Regulatory Commission for the State of Uttar Pradesh exercising jurisdiction and discharging functions in terms of the Electricity Act 2003.

4. Aggrieved by the Impugned Tariff Order dated 18.06.2015 passed by the State Commission, the Appellant has preferred the present appeal on following grounds:

I. Truing up for the Financial Year 2013-14

a. Rate of Interest on Working Capital:

The State Commission has arbitrarily approved the rate of interest on working capital @ 12.50% vis-a-vis 14.58% as claimed by the Appellant which was based on the weighted average of SBI-PLR prevailing during FY 2013-14. The net impact of such disallowance is Rs. 1.58 Cr.

b. **Finance charges on working capital:**

The State Commission in all its previous tariff orders have been approving finance charges on working capital based on actuals. However, vide the Impugned Tariff Order the State Commission has arbitrarily approved Rs. 0.61 Cr only towards finance charges on working capital during FY 2013-14 as against the actual expenses of Rs. 2.90 Cr. incurred by the Appellant.

c. **Non-tariff Income - Delayed Payment Surcharge (DPS)**

The State Commission in disregard of its own approved methodology determined by it under the Distribution Tariff Regulation, has arbitrarily approved the cost of financing of the DPS @ 12.50% as against actual weighted average SBI-PLR of 14.58% claimed by the Appellant on the basis of the Tariff Order dated 31st May 2013.

d. **Rate of Interest on Carrying Cost of Regulatory Asset:**

The State Commission has been consistently approving rate of interest for the purpose of computation of carrying cost of Regulatory asset at the rate equivalent to SBI - PLR on monthly compounding basis since the implementation of Distribution Tariff Regulation i.e. from FY 2007-08 and onwards. However, the State Commission has arbitrarily approved the rate of interest on carrying cost @ 12.50% vis-a-vis 14.58% as claimed by the Appellant on the basis of weighted average SBI-PLR prevailing during FY 2013-14.

II. FINANCIAL YEAR 2015-16

a. Disallowance of T & D Losses:

The State Commission in its Impugned Tariff Order has approved the distribution losses at 8% as against 8.41 % claimed by the Appellant. The State Commission is fixing T&D losses for the Appellant at a fixed unitary digit of 8% consistently year after year since FY 2000-2001 despite huge growth/expansion in the demand, network and consumer base over the years. In many instances, the State Commission has approved increased T & D losses for the other State Discoms in U.P., whereas, in case of the Appellant, it has disallowed even minor increase of less than 0.50%.

b. Disallowance of O&M Expenses:

The State Commission in Impugned Tariff Order has approved the O&M Expenses at Rs 46.80 Crs. on normative basis as against the estimated expenses of Rs. 65.49 Crs. submitted by the Appellant. It has projected O&M expenses for FY 2015-16 in view of its expansion plans, productivity and efficiency to be achieved by way of process and system automation, with reference to cost drivers and the expenditure related to specific activities and growth parameters. The O&M expenses should have been allowed at actuals or the amount worked out based on the independent study conducted by the M/s IMaCS on the directives of the State Commission.

c. Disallowance of Corporate Social Responsibility Expenses:

The State Commission erred in not allowing the Corporate Social Responsibility expenses amounting to 2% of the Company's profits as claimed by the Appellant. The State Commission has also failed to appreciate the fact that the Appellant by mandate of law is required to incur expenses on Corporate Social Responsibility (CSR) to the

extent of at least 2% of its profits on the activities as defined in provisions of the newly enacted Companies Act, 2013.

d. **Disallowance of Finance Charges:**

The State Commission, in disregard of its own established principles followed since FY 2007-08, arbitrarily disallowed the finance charges on working capital facilities availed for the purpose of funding regulatory asset during FY 2015-16. The State Commission, vide the Impugned Tariff Order has arbitrarily approved Rs. 0.64 Cr. only as against Rs. 1.76 Cr. projected by the Appellant. The State Commission in all its previous tariff orders have been approving finance charges on working capital based on actual.

e. Rate of Interest on Working Capital:

The State Commission has been consistently approving rate of interest on working capital @ equivalent to SBI - PLR since the implementation of the Distribution Tariff Regulation i.e. from FY 2007-08 and onwards. However, the State Commission has arbitrarily approved the rate of interest on working capital @ 12.50% vis-a-vis 14.75% claimed by the Appellant on the basis of weighted average of SBI-PLR. The net impact of such disallowance is Rs 1.18 Crs.

f. Non - tariff Income - Delayed Payment Surcharge (DPS)

While approving the non-tariff income for Financial Year 2015-16, the State Commission has, in disregard to its own established methodology consistently followed in its earlier Tariff Orders, approved the compensatory cost of financing Delayed Payment Surcharge at an arbitrary rate of 12.50% as against weighted average SBI-PLR rate.

g. Rate of Interest on Carrying Cost of Regulatory Asset:

The State Commission has been consistently approving rate of interest for the purpose of computation of carrying cost of regulatory

asset at the rate equivalent to SBI - PLR on monthly compounding basis since the implementation of the Distribution Tariff Regulation i.e. from FY 2007-08 and onwards. However, the State Commission has arbitrarily approved the rate of interest on carrying cost @ 12.50% vis-a-vis 14.75% claimed by the Appellant on the basis of weighted average SBI-PLR on monthly compounding basis.

h. Grant of Inadequate Tariffs vis-a-vis Annual Revenue Requirement for FY 2015-16:

The State Commission has not granted adequate retail tariff to the Appellant even to recover Annual Revenue Requirement so determined by State Commission after due diligence and has left revenue gap of Rs 84.77 Cr. for FY 2015-16. On the contrary the State Commission has adjusted 8% regulatory surcharge (which is given to recover/liquidate past accumulated regulatory asset) against current year's revenue gap on arbitrary basis. The State Commission has been unfair, unjust and discriminated the Appellant granting it retail tariff hike of merely 2.7% despite revenue gap whereas the other Discoms in State of Uttar Pradesh despite being revenue surplus were granted a retail tariff hike of approximately 8%.

i. 8% Regulatory Surcharge to recover past accumulated Regulatory Asset:

The State Commission based on Tariff Petition of the Appellant for FY 2015-16 approved regulatory surcharge @ 8% vide Impugned Tariff Order for recovery of accumulated regulatory asset. However the State Commission has wrongly adjusted the same against the revenue gap of the current financial year i.e. FY 2015-16 thereby granting lower retail tariffs.

III. Retail Tariff to be effective from 1st April as per clause 2.3.1 of the Distribution Tariff Regulations:

a. The Appellant has always been filing its ARR on time and also replying to all the queries to the satisfaction of the State Commission promptly. Even then the State Commission has been approving the retail tariffs invariably with a significant delay thereby causing revenue loss culminating into revenue gap or regulatory asset.

b. In the present case, Impugned Tariff Order was issued on 18.6.2015 and tariffs were made applicable from 28.06.2015 hence the Appellant has lost significant revenue for almost three months.

IV. FINANCIAL YEAR 2014-15

a. The Appellant has filed Petition No 984 of 2014 before the State Commission for approval of its Annual Revenue Requirement and retail tariff for the FY 2015-16 and truing up of the financials for the FY 2013-14 on the basis of its Audited Accounts for the year. The financials of the FY 2014-15 was not the subject matter of the Petition at all.

b. In addition to above the State Commission has also changed/ altered the rate of interest on carrying cost for FY 2014-15 provisionally approved by it vide its earlier Tariff Order dated 01.10.2014 which was not the subject matter of the Petition No. 984 of 2014.

c. The Distribution Tariff Regulations nowhere allow the State Commission to change the Annual Revenue Requirements of the Distribution Licensee as and when it desires.

5. Facts of the present Appeal:

a) The Appellant's Annual Revenue Requirements and Tariff for retail supply of electricity in its licensed area are determined by the State Commission u/s 62(1)(d) of the Electricity Act, 2003.

b) The State Commission in exercise of its powers u/s 61 read with section 181 of the Electricity Act, 2003 has notified the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions for Distribution Tariff) Regulations 2006 governing the approval of the Revenue Requirements and determination of tariff. The above Regulations have become effective from 5th October 2006.

c) The State Commission also undertakes the truing up of the financials of the Appellant based on Audited Annual Accounts of the Appellant after the tariff period is over.

d) On 28th November 2014, the Appellant herein filed the Petition being No. 984 of 2014 before the State Commission seeking approval for its aggregate revenue requirements for the Financial Year 2015-16 and for determination of retail tariff to be charged by the Appellant to its consumers in its area of supply.

e) In the proceedings in Petition No. 984 of 2014, the Appellant had also filed Audited Annual Accounts for FY 2013-14 for truing up the financials of that financial year, which was provisionally approved by the State Commission vide its Tariff Order dated 31.05.2013.

f) The State Commission vide the Impugned Tariff Order dated 18th June 2015 has decided Petition No. 984 of 2014 filed by the Appellant for determination of the revenue requirements and tariff for the Financial Year 2015-16 (provisional) and has also undertaken the truing up of the financial for the earlier Financial Year 2013-14.

g) As per Appellant, the State Commission has wrongly disallowed the various legitimate claims of the Appellant while passing the Impugned Tariff Order. Such disallowance/rejection would cause irreparable loss to the Appellant and it will not be able to recover all its legitimate costs and expenses and therefore will not effectively get a reasonable return which it is entitled in law for undertaking

distribution and retail supply of electricity in its area of supply. Hence this Appeal has been preferred by the Appellant.

6. We have heard at length Mr. M. G. Ramachandran, the learned counsel for the Appellant and Mr. C. K. Rai, learned counsel for the State Commission and considered the arguments put forth by the rival parties and their respective written submissions on various issues identified in the present Appeal.

7. QUESTIONS OF LAW

The following questions of law as per the Appellant arise in the present appeal:

a) **Whether the State Commission in applying Clause 4.8.2 (b) of the Distribution Tariff Regulations, 2006 dealing with the interest on working capital to be allowed and applying the provision that the rate of interest should be the bank rate as specified by the Reserve Bank of India plus margin to be decided by the State Commission is right in reducing such rate of interest from 14.58% already decided by the State Commission to 12.50% both under truing up of the finances of 2013-14 and also for computing the Annual Revenue Requirements for the year 2015-16 ?**

b) **Whether the State Commission having implemented Clause 4.8.2 (b) of the Distribution Tariff Regulations, 2006, by adopting a methodology for computing the working capital by following the SBI PLR Rate for the years 2007-08 till 2014-15 consistently, is entitled to vary the methodology of applying the base rate plus margin and reducing the rate of interest significantly while undertaking the truing up for the year 2013-14 and determining the revenue requirements for the year 2015 -16?**

c) **Whether the State Commission in dealing with the interest rate to be considered as compensatory for the delayed payment surcharge as non-tariff income, is right in applying the modified interest rate of 12.50% ignoring the rate of interest to be allowed as per the methodology consistently adopted since the year 2007-08 both for truing up of the finances of 2013-14 and also for computing the Annual Revenue Requirements for the year 2015-16?**

d) Whether the State Commission in computing the rate of interest to be applied for the carrying cost of the regulatory assets created by the State Commission is right in ignoring the interest rate for working capital determined at the SBI PLR rate and the methodology consistently applied for the period from 2007-08 onwards and reducing the interest rate to 12.50% per annum?

e) Whether in dealing with the interest to be allowed as compensatory for the delayed payment surcharge being treated as non-tariff income and the interest/carrying cost to be allowed for the regulatory assets, the State Commission has considered the relevant aspects, namely

i. The financing of such revenue gap cannot be at the same rate as is available for term loan or normal working capital,

ii. The financing of such revenue gap is not possible in the debt equity ratio of 70:30 as available in the case of term loan for tangible capital expenditure;

iii. The utilities need to contribute more equity for the aforesaid purposes;

iv. The utilities are required to pay interest to the Lenders on compounding basis and accordingly the interest allowed at 12.50% per annum is grossly inadequate.

f) Whether the State Commission has rightly determined quantum of increase in the tariff by restricting it to approximately the 2.70% only as against 8% allowed to other distribution licensees of the State, particularly, when the quantum of regulatory assets to be adjusted in the case of the Appellant is substantial, namely, Rs. 575.14 Crores and when in the past such regulatory assets were not allowed to be recovered due to restriction on the increase in the tariff of the Appellant?

g) Whether the State Commission erred in not equating the increase in tariff @ 8% in order to maintain uniform tariff throughout the State which would have also enabled the Appellant to recover additional amount of accumulated regulatory asset without giving any tariff shock to the consumers ?

h) Whether in the facts and circumstances of the case, the State Commission has rightly determined the financing charges incurred in obtaining the funds from the Lenders for meeting the working capital, the finances for bridging the revenue gap i.e. regulatory asset and also for meeting the finances for delayed payment on the part of the consumers ?

i) Whether in the facts and circumstances of the case, the State Commission has rightly determined the quantum of T&D Losses to be allowed and restricting such T&D Losses consistently at a unitary digit of 8% as against 8.41% claimed by the Appellant?

j) Whether in the facts and circumstances of the case, the State Commission has rightly determined the O&M Expenses to be allowed to the Appellant ignoring the specific plea of the Appellant of increase any such charges on account of various factors not attributable to any im-prudency on the part of Appellant?

k) Whether in the facts and circumstances of the case, the State Commission was right in disallowing the expenses claimed on account of the Corporate Social Responsibility Obligation to be met by the Appellant under the provisions of the Companies Act, 2013, a mandate of law ?

l) Whether in the facts and circumstances of the case the State Commission, having determined the tariff for the financial year 2015-16 only on 18.06.2015, is right in not providing for annualisation of the tariff so as to consider its impact from 01.04.2015 onwards ?

m) Whether in the facts and circumstances of the case, the State Commission was right in re-computing interest/ carrying cost on regulatory asset for Financial Year 2014-15 whereas the same was not the subject matter of Petition No. 984 of 2014?

8. On the various issues raised in the present Appeal, following issue-wise submissions were made before us for our consideration.

9. Interest on Working Capital:

i) On this issue of applicability of interest on capital, the learned counsel for the Appellant has made the following submissions;

a) As per Distribution Tariff Regulation, 2006 of the State Commission, calculation of working capital amount and interest thereon are on normative basis irrespective of the actual working capital and interest incurred thereon. As per clause 4.8.2(b) of the Distribution Tariff Regulations, 2006 the interest on working capital is being determined in the following manner;

"4.8 Treatment of Interest Costs:
2. Interest on Working Capital
(b) Rate of interest on working capital shall be the Bank Rate as specified by Reserve Bank of India for the relevant year plus a margin as decided by the State Commission."

b) The State Commission in all previous Orders, including the Order dated 31.05.2013, determining the revenue requirements for FY 2013-14 applied the above regulation providing the rate of interest at the SBI PLR rate at 14.58% being the bank rate plus the margin. However, in the Impugned Tariff Order dated 18.06.2015, both for truing up of the Financials for 2013-14 and for determination of revenue requirements for 2015-16 the rate of interest has been restricted to 12.50%, i.e. the actual interest rate incurred by the Appellant for the relevant years.

c) The reason given by the State Commission is that the Reserve Bank of India (RBI) changed the methodology for levy of interest on loan and has adopted Base Rate system in place of Benchmark Prime Lending Rate (BPLR) with effect from 1st July, 2010 and the loans of the Appellant are linked to the Base rate notified by the various banks from time to time, in line with the guidelines issued by the RBI. As per State Commission it would be unfair to burden the consumers with the additional interest rate being the difference of the above.

d) There is no rationale for the State Commission to have decided on basis of the change brought upon by the RBI. The concept of base rate came into force w.e.f. 1st July 2010. The State Commission had passed the order dated 31.05.2013 regarding FY 2013-14 revenue requirements as well as other orders after 01.07.2010 applying the Bank rate plus margin as the applicable rate. The margin is the

difference between SBI PLR and RBI Bank rate. Accordingly, there is no justification whatsoever to reduce from the applicable rate under the Regulation to the actual rate.

e) Vide Tariff Order dated 19th October 2012, 31st May 2013 and 1st October 2014 (which have been issued much after the implementation of RBI's Base Rate Policy) , the State Commission had knowingly approved interest on working capital at interest rate equivalent to SBI-PLR for FY 2010-11, FY 2011-12 and FY 2012-13 at the time of truing-up for the previous years.

f) The interest on working capital is allowed on normative basis. The actual being higher or lower is irrelevant. It is settled principle that determination of tariff elements on normative basis provided in the Regulations cannot be subjected to normative or actual whichever is lower. If the Appellant had incurred financial outflow at a rate higher than the SBI PLR rate, the State Commission would not have granted higher rate on the ground that the working capital is a normative amount and any increased outflow will be treated as inefficiency on the part of the Appellant.

g) Further another settled principle is that if in the main Order determining the revenue requirements for the year 2013-14, the SBI PLR rate has been applied, there cannot be a change in the methodology or application of any other rate at the time of truing up.

ii) On this issue of applicability of interest on working capital, the learned counsel for the Respondent has submitted that;

a. The State Commission has approved the rate of interest on working capital, which is rational and legitimate, and as per principles laid down by UPERC Distribution Tariff Regulation, 2006 as amended from time to time.

b. The Impugned Tariff Order passed by the UPERC is well reasoned Order. In its earlier orders the Commission has been considering the interest rate on working capital as per the SBI Prime Lending Rate. However Reserve Bank of India (RBI) changed the methodology for levy of interest on loan and adopted Base Rate system in place of Benchmark Prime Lending Rate (BPLR) which can be referred from "Master Circular - Interest Rates on Advances" dated July 2, 2012 issued by RBI. The State Commission also observed that all the loans of the Licensee are linked to the Base rate notified by the various banks from time to time, which are in line with the guidelines issued by the RBI.

c. The base rate as defined by the RBI is reproduced below:

"2.2 Base Rate

2.2.1 The Base Rate system has replaced the BPLR system with effect from July 1, 2010. Base Rate shall include all those elements of the lending rates that are common across all categories of borrowers. Banks may choose any benchmark to arrive at the Base Rate for a specific tenor that may be disclosed transparently. An illustration for computing the Base Rate is set out Annex 1. Banks are free to use any other methodology, as considered appropriate, provided it is consistent and is made available for supervisory review/scrutiny, as and when required.

2.2.2 Banks may determine their actual lending rates on loans and advances with reference to the Base Rate and by including such other customer specific charges as considered appropriate. The actual lending rates charged should be transparent and consistent and be made available for supervisory review/scrutiny, as and when required.

2.2.3 In order to give banks some time to stabilize the system of Base Rate calculation, banks were permitted to change the benchmark and methodology any time during the initial six month period, i.e. end-December 2010.This period was extended by a further period of six months i.e. upto June 30, 2011.

2.2.4 There can be only one Base Rate for each bank. Banks have the freedom to choose any benchmark to arrive at a single Base Rate which should be disclosed transparently.
2.2.5 Changes in the Base Rate shall be applicable in respect of all existing loans linked to the Base Rate, in a transparent and non-discriminatory manner."

d. It can be seen from above that the Base Rate system has replaced BPLR with effect from July 01, 2010 as per the notification of RBI. The State Commission has not only relied on the notification of the RBI but also checked the actual loans availed by the Appellant and found that all the loans are linked to the base rate notified by the respective banks from time to time. The State Commission, for the purpose of arriving at the appropriate margin over and above the bank rate notified by the RBI, analysed the actual loan portfolio of the Licensee during FY 2013-14. The State Commission found that the actual weighted average interest rate of the short term loans during FY 2013-14 to be around 12.24%. Accordingly, it approved the interest rate for the computation of interest on working capital as 12.50%, which was derived from the bank rate notified by the RBI and the appropriate margin decided by the State Commission and in line with the provisions of clause 4.8.2(b) of the UPERC Distribution Tariff Regulation, 2006.

e. Impugned Tariff Order has elaborated the same in the detail while truing up the interest on working capital for FY 2013-14 which is extracted below for reference;

"Commission Analysis
4.10.4 The Commission in its earlier order has been considering the interest rate on working capital as per the SBI Prime Lending Rate.

4.10.5 The Reserve Bank of India, which regulates the banking sector in India, has changed the method for levy of interest on the loan. The reserve bank of India has replaced the system of BPLR with the Base Rate system. The relevant extract of the "Master Circular - Interest Rates on Advances" dated July 2, 2012 issued by RBI is reproduced below:

"…..1.4 The BPLR system, introduced in 2003, fell short of its original objective of bringing transparency to lending rates. This was mainly because under the BPLR system, banks could lend below BPLR. For the same reason, it was also difficult to assess the transmission of policy rates of the Reserve Bank to lending rates of banks. Accordingly, based on the recommendations of the Working Group on Benchmark Prime Lending Rate which submitted its report in October 2009, banks were advised to switch over to the system of Base Rate with effect from July 1, 2010. The Base Rate system is aimed at enhancing transparency in lending rates of banks and enabling better assessment of transmission of monetary policy…"

4.10.6 ***Further the relevant extract regarding the base rate and its applicability is reproduced below****:*

"…….2.2 Base Rate
2.2.1 The Base Rate system has replaced the BPLR system with effect from July 1, 2010. Base Rate shall include all those elements of the lending rates that are common across all categories of borrowers. Banks may choose any benchmark to arrive at the Base Rate for a specific tenor that may be disclosed transparently…."
"……2.3 Applicability of Base Rate

2.3.1 With effect from July 1, 2010, all categories of loans should be priced only with reference to the Base Rate. Accordingly, the Base Rate system would be applicable for all new loans and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of the existing contracts, an option may be given to them, on mutually agreed terms. Banks, however, should not charge any fee for such switch-over…."

4.10.7 Therefore it is clear from the above that with effect from July 1, 2010 all the loans should be priced only with reference to the base rate. After the notification of the mentioned circular, gradually the interest rate on the existing loan of the companies changed from the

BPLR system to Base rate System. The Commission further analysed the actual loan drawn by the Licensee during FY 2013-14. The Commission observed that all the loans of the Licensee are linked to the Base rate notified by the various banks from time to time, which are in line with the guidelines issued by the RBI.

4.10.8 As per the Distribution Tariff Regulation, 2006 notified by the Commission, interest rate on the working capital loan shall be Bank Rate as specified by Reserve Bank of India for the relevant year plus a margin as decided by the Commission. The relevant provision of the regulation 4.8.2(b) of the U.P. Electricity Regulatory Commission (Terms and Conditions for determination of Distribution Tariff) Regulation-2006 is reproduced below:

"….(b) Rate of interest on working capital shall be the Bank Rate as specified by Reserve Bank of India for the relevant year plus a margin as decided by the Commission…"

4.10.9 Therefore, the Commission, for the purpose of arriving at the appropriate margin over and above the bank rate notified by the RBI, has analysed the actual loan portfolio of the Licensee during FY 2013-14. The Commission has observed that the actual weighted average interest rate of the short term loan during FY 2013-14 is around 12.24%. Therefore considering the reasons as stated above and actual weighted average interest rate of the licensee for FY 2013-14, the Commission hereby approves the interest rate for the computation of interest on working capital and carrying cost as 12.50%, which is derived from the bank rate notified by the RBI and the appropriate margin decided by the commission and is in line with the provisions of the Distribution Regulation, 2006 notified by the Commission."

f) The argument that the State Commission has deviated from the interest on working capital approved in its Tariff Order dated May 31, 2013 and should have considered the rate of interest as per Tariff Order, would defeat the entire purpose of truing up as truing up exercise is done for approval of actual expenses based on the audited annual accounts. The State Commission has approved the working capital requirement as per normative basis irrespective of the

actual working capital strictly as per the provisions of the UPERC Distribution Tariff Regulations, 2006.

10. Finance charges on Working Capital:

i. On this issue of finance charges on working capital, the learned counsel for the Appellant has made the following submissions;

a. In order to meet the day to day cash requirements including for funding Regulatory Asset approved by the State Commission, the Appellant secured sanction of facilities of Rs.295 Cr. during FY 2013-14 from various commercial banks on which finance charges of Rs. 2.90 Cr. were incurred and paid. On the similar reasoning, the State Commission has also restricted finance charges upto normative working capital irrespective of actual and legitimate finance charges claimed by the Appellant. Out of the above, the State Commission allowed Finance Charge of Rs.0.61 Cr. only on normative Working Capital of Rs.72.67 Cr. and wrongly disallowed the balance finance charges of Rs 2.29 Cr. incurred and paid by the Appellant. The State Commission has failed to appreciate the fact that the residual facilities are necessary for meeting the funding requirement of accumulated Regulatory Asset as approved by the State Commission.

b. The contention of the State Commission that the Appellant did not challenge its order dated 1st October, 2014 relating to FY 2011-12 truing up and ARR of FY 2014-15 on this aspect does not forfeit the right of the Appellant to challenge the same in future tariff orders.

c. The financing charges are part of the interest cost to be allowed on working capital. Without the financing charges, the Lenders do not provide the working capital facilities. The financing charges by the Banks are industry-wise prevalent practice and all the banks do raise financing charges.

d. The financing charges are to be allowed on actual basis. The contention of the State Commission, that it has been allowing carrying cost to the Licensee under separate head, so neither any cost nor part of cost related to regulatory asset should be claimed under the head of finance charges, is erroneous and misplaced. It is not the case that the Appellant is double counting the revenue requirements to be considered for financing charges namely once for working capital and again under the Regulatory Asset.

ii. On this issue of finance charges on working capital, the learned counsel for the State Commission has made the following submissions :

a. The summary of the Finance charges as claimed by the Appellant and as approved by the State Commission for FY 2013-14 in the Impugned Tariff Order are as follows:

(Rs. Crore)

Particulars	**Approved vide T.O. 31/05/13**	**True-up Petition**	**Approved upon Truing Up**
Credit Rating Charges	0.12	0.1	0.1
Processing Charges	5.25	10.39	8.11
Other Finance Charges	0.37	0.44	0.44
Total Finance Charges	**5.74**	**10.93**	**8.65**

b. It can be observed from the above that partial disallowance has been done in case of processing charges only. The detail breakup of the processing charges as claimed by the Appellant and approved by the State Commission in its Order dated June 18, 2015 is provided below:

(Rs. Crore)

S.No.	Financing Activity	Claimed by the Petitioner	Approved by the Commission
1	Fund Based WCF Renewal & CP Issue	2.42	0.61
2	Sanction of Fresh WCF	0.48	
3	Renewal of LC facility for PPA and other purposes	0.97	0.97
4	Sanction of Fresh Term Loans	5.2	5.2
5	Swapping of Existing Term Loans	1.33	1.33
	Total	**10.39**	**8.11**

c. It can be observed from the above that the difference in the claimed and approved Processing Charges is due to the approval of Rs.0.61 Crore in place of Rs. 2.90 Crore towards Fund Based Working Capital Fund Renewal & CP Issue and Sanction of Fresh Working Capital Fund. The summary of processing charges as submitted by the Appellant in its Petition is provided below:

(Rs. Crore)

S.No.	Financing Activity	Facility Amount	Charges Paid	Charges as % of Facility
1	Fund Based WCF Renewal & CP Issue	295	2.42	0.82%
2	Renewal of LC facility for PPA and other purposes	115	0.97	0.85%
3	Sanction of Fresh WCF	50	0.48	0.96%
4	Sanction of Fresh Term Loans	225	5.2	2.31%
5	Swapping of Existing Term Loans	280	1.33	0.47%
	Total	**965**	**10.39**	**1.08%**

d. The Appellant, in its reply to the State Commission regarding breakup of actual processing charges incurred for funding the normal working capital requirements has submitted that it is availing these WC facilities not only for the purpose of funding regulatory assets but also for the purpose of meeting its other working capital requirements.

These facilities are being utilized to meet its day to day operational requirements like payment of weekly power purchase bills vis-à-vis debtors collection period of 2 months or more , payment of TDS, income tax, loan repayment obligation etc. for which there is no provision of compensatory cost in the Distribution Tariff Regulations, 2006.

e. In absence of any clear cut distinction of processing charges towards working capital facilities, the State Commission proportionately distributed the processing charge of Rs 2.90 Crore for the normative Working Capital of Rs 72.67 Crore approved by the State Commission for FY 2013-14.

f. The similar methodology has been followed by State Commission while approving the financing charges for FY 2012-13. The Appellant has not challenged the Tariff Order for FY 2014-15 dated October 01, 2014. Therefore the approach of the State Commission of approving the finance charges on the pro-rata basis as per the approved normative working capital requirement has attained finality.

g. Further the State Commission has been allowing carrying cost to the Licensee under separate head, so neither any cost nor should any part of cost related to regulatory asset be claimed under the head of finance charges. So it is wrong on the part of Appellant to say that the State Commission has arbitrarily approved Rs 0.61 Cr. against the actual expenses of Rs 2.90 Cr incurred by the appellant towards finance charges on working capital during FY 2013-14.

h. When the normative working capital requirement worked out by the State Commission for FY 2013-14 as Rs 72.67 Crore, then how the finance charges on working capital loan amount of Rs.295 Crore can be allowed. It is clear that the Appellant has got sanctioned the much

higher amount of working capital as against its entitlement of Working Capital as per Regulations. Under such circumstances, the financing charges towards the additional loan amount in excess of normative working capital requirement needs to be borne by the Appellant and cannot be passed on to consumers.

11. INTEREST RATE TO BE CONSIDERED FOR COMPUTING CARRYING COST ON REGULATORY ASSET:

i. On this issue of interest rate to be considered for computing carrying cost on Regulatory Asset, the learned counsel for the Appellant has made the following submissions;

a. In the Impugned Tariff Order, the State Commission has restricted the interest rate for the purpose of computing the carrying cost on the revenue gap to 12.50% and also to simple rate without allowing monthly compounding.

b. The State Commission has been allowing normative interest rate for working capital based on SBI PLR (RBI's Bank rate plus margin) equivalent to 14.58% and that too on monthly compounding basis. While truing up till FY 2012-13 and approving the ARR uptill FY 2014-15, the State Commission followed the same principle of approving the interest on regulatory asset based on the rate equivalent to SBI - PLR prevailing in the respective Financial Years on monthly compounding basis.

c. The reason given by the State Commission is the same as in the case of interest rate on working capital, namely the changed environment when the Reserve Bank of India has implemented the methodology for levy of interest on loan and adopted Base Rate system in place of Benchmark Prime Lending Rate (BPLR). The State Commission has been leaving a revenue gap even on the admitted and allowed revenue requirements after due prudence

check. Such Revenue gap is treated as Regulatory Asset to be recovered in future through tariff/surcharge so as to avoid immediate tariff shock. The Appellant has to find resources to fund the Revenue Gap till the same is met in future year tariffs. Ordinarily, Banks / financial institutions do not provide funds for meeting such revenue gaps because of high risk and uncertainty attached to the recovery of the same. In such an event the Appellant should be fully compensated for the cost of borrowing. If the interest on all loan facilities provided by Banks/FIIs are on monthly compounding basis the same should be adopted by the State Commission.

d. The State Commission, earlier in its Tariff Orders, has approved the carrying cost equivalent to SBI-PLR for the 100% of the regulatory asset in order to effectively compensate the Appellant towards the cost of debt and equity.

e. In the Tariff Order dated 31.05.2013, the State Commission has already approved the interest rate on the basis of monthly compounded weighted average SBI-PLR i.e. 15.63% on provisional basis and while truing-up, the State Commission should have only trued-up the provisional rate with actual weighted average SBI-PLR i.e. 14.58%, as submitted by the Appellant.

f. While the State Commission states that in the order it has compensated the Interest cost for the regulatory asset, however if the interest rate is not allowed at SBI-PLR and on monthly compounding basis, the compensatory payment for deferment of revenue, admittedly accruing to the Appellant, is grossly inadequate and insufficient.

ii. On this issue of interest rate to be considered for computing carrying cost on Regulatory Asset, the learned counsel for the State Commission has made the following submissions;

a. The State Commission has always allowed the carrying cost of Regulatory Assets and same is also reflected in the past Orders issued by the State Commission. The Regulation 6.12 (3) provides for allowance of financing cost on regulatory assets. Further, this Tribunal has held that proper financing costs/carrying costs/interest charges on the regulatory assets has to be allowed by the State Commission(s).

b. The State Commission has not only been approving the carrying cost for the Regulatory assets but also has been consistently allowing return on the equity infused by the Licensee. But under the changed environment when the Reserve Bank of India has changed the methodology for levy of interest on loan and adopted Base Rate system in place of BPLR which can be referred from 'Master Circular - Interest Rates on Advances" dated July 2, 2012 issued by RBI, the State Commission has also considered it appropriate and suitable to allow interest rate as per the base rate under the present context.

c. The State Commission also observed that the interest rate allowed for computation of carrying cost is sufficient to cover the interest obligation on the loans drawn by the Appellant to meet the loan requirement due to creation of regulatory assets. The State Commission also observed that the actual weighted average interest rate of the short term loan during FY 2013-14 is around 12.24%, while the State Commission has allowed the normative interest on the short term loans equivalent to interest rate of working capital at 12.50% and not considered monthly compounding of interest for computation of carrying cost keeping consistency with the interest rate allowed for working capital and cost of delayed payment surcharge. The same reasoning has already been mentioned in the Impugned Tariff Order

and is reproduced below :-

"Commission's Analysis
4.27.3 The Commission for FY 2013-14 has computed the carrying cost at the rate of interest approved for the working capital for the reasons stated therein.
4.27.4 The Commission has not considered the monthly compounding on the interest rate for the purpose of computation of carrying cost as proposed by the Petitioner for FY 2013-14.The shortfall in capital due to regulatory assets is managed by the Licensee through short term loan taken from the market. The Commission observed that the interest rate allowed for computation of carrying cost approved by the Commission is sufficient to cover the interest obligation on the loans drawn by the Petitioner to meet the loan requirement due to creation of regulatory assets. The Commission also observed that the actual weighted average interest rate of the short term loan during FY 2013-14 is around 12.24%, while the Commission has allowed the normative interest on the short term loans equivalent to interest rate of working capital at 12.50% for the reasons as stated therein. Therefore, the Commission has not considered the monthly compounding of the interest for computation of carrying cost."

d. The carrying cost cannot be considered as a source to generate additional profits on accounts of additional carrying cost by allowing higher interest rate. The State Commission has not only allowed the carrying cost but also allowed reasonable interest rate considering the basis of actual interest rate availed by the Appellant, for computation of carrying cost. The State Commission while approving the carrying cost has relied on the UPERC Tariff Regulations, 2006, prevailing financial principles, actual loan portfolio and rate of interest availed by the appellant which is fair, equitable and legal. As a Regulator, the State Commission has to balance the interest of the utility as well as consumers in the larger benefit of the stakeholders.

12. The interest cost to be considered on the Delayed Payment Surcharge being treated as non-tariff income:

i. On this issue of interest rate to be considered Delayed Payment

Surcharge being treated as non-tariff income, the learned counsel for the Appellant has submitted that the interest rate for the aforesaid purpose should have been considered at the normative rate already decided at SBI PLR (RBI's Bank rate plus margin) i.e. 14.58% vide its Order dated 31.05.2013 as mentioned above under interest rate for working capital.

ii. On this issue of interest rate to be considered Delayed Payment Surcharge being treated as non-tariff income, the learned counsel for the Respondent has made the following submissions –

a. In the Impugned Tariff Order, the State Commission has consistently approved interest rate considering the revised norms of RBI as explained above. Same methodology has also been followed while approving the cost of financing the DPS in True Up for FY 2013-14. The relevant part of the said Order has been extracted below for reference:

"4.24.3 The financing cost of delayed payment surcharge is computed by the Commission based on the actual DPS for the year. The DPS is grossed up conservatively based on the highest applicable surcharge rate which is 1.5% per month. Further, the financing cost is arrived at on the grossed-up amount and interest rate of 12.50% as approved for working capital requirement. The computation of the financing cost for DPS is provided below:

COST OF BORROWING FOR DPS APPROVED BY THE COMMISSION FOR Y 2013-14 (Rs. Crore)

Particulars	Approved vide T.O. 31/05/13	True-up Petition	Approved upon Truing Up
Delayed Payment Surcharge (Rs. Crores)	3.00	2.24	2.24
DPS grossed up at 1.50% per month or 18% per annum	18%	18%	18%
Amount (Rs. Crores)	16.67	12.45	12.45
Financing cost	14.61%	14.58%	12.50%
Cost of Borrowing (Rs.Crores)	2.44	1.82	1.56

4. 24.4 The Commission approves the non-tariff income net of financing cost for DPS at Rs.2.13 Crore for the truing-up for FY 2013-14."

b. The State Commission has followed a consistent approach while approving interest rate. As the State Commission has changed the interest rate of working capital for FY 2013-14, the same interest rate has also been considered for cost of financing the DPS.

13. DISALLOWANCE OF T&D LOSSES CLAIMED (FY 2015-16):

I. On this issue of disallowance of T&D losses claimed during FY 2015-16, the learned counsel for the Appellant has made the following submissions;

a. In the impugned order the State Commission has considered the loss level to be allowed at 8% as against 8.41% claimed by the Appellant though the State Commission has appreciated the efforts put by the Appellant for reduction of the losses and has time and again mentioned the same in its various Orders including the Impugned Tariff Order.

b. The T&D Losses were to be allowed considering the aspects of the maintenance of the distribution system containing 220 KV, 33 KV, 11 KV and 400 V Line in an area of 335 Sq. KMs, the technical losses involved in the transformation and wheeling of power and more importantly that any significant reduction of Technical and Distribution losses below 8.41% claimed by the Appellant would involve significant investments. The cost benefit analysis of such investments clearly justifies the allowance of T & D losses @ 8.41% instead of incurring capital expenditure and servicing of such capital expenditure for the purpose of reduction of the same.

c. The State Commission ought to have considered the detailed submissions and reports filed by the Appellant on the network, ever-

increasing loss-prone rural load, sparsely populated, hence, low density of load per square kilometer, absence of separate Police Station and dedicated Special Court to deal with the Electricity Theft Cases, rampant political interference etc. and dynamics to decide on the Transmission and Distribution Losses to be allowed instead of mechanically maintaining it at 8%.

II. On this issue of disallowance of T&D losses claimed during FY 2015-16, the learned counsel for the Respondent has made the following submissions;

a. The distribution losses projected by the Appellant for FY 2015-16 are at 8.41%. There has been no significant improvement in loss levels, despite huge capital expenditure/system improvements undertaken by the Appellant every year. In the Tariff Order for FY 2015-16 the State Commission has already acknowledged the fact that Greater Noida area which was once occupied by rural population is gradually getting urbanized and requires huge capital expenditure to meet the demand of the changing consumer needs. But apart from improving the network, there are also commercial issues like sales booked under unmetered category, use of energy efficient methods etc. A major part of the consumers of the Appellant belong to the urban category and the licensee has itself agreed to convert all its consumers under unmetered category to metered category during this financial year. Considering all these facts the State Commission approved distribution loss for FY 2015-16 at 8.00% against 8.41% claimed by the Appellant.

b. As per the report of Consultant, PWC submitted to the Appellant the financial implications of technical loss reduction are significantly higher as compared to the savings accrued from reduction of existing

technical losses and suggested that the Appellant shall not incur this expenditure to reduce the existing technical loss levels.

c. It is also noteworthy to mention that the State Commission also approved EHV technical losses for FY 2015-16 at 0.60% against 0.44% claimed by the Appellant keeping in view the targets set in its previous Order for FY 2014-15.This approach is the same as followed by the State Commission in its previous Orders. The relevant part from the Tariff Order for FY 2015-16 is reproduced below;

"5.3.4 The distribution losses projected by NPCL for FY 2015-16 are at 8.41%. The Commission would reiterate that there has been no significant improvement in loss levels, despite huge capital expenditure/system improvements undertaken by NPCL every year.

5.3.5 The Commission acknowledges the fact that the Greater Noida area was largely a rural area and with development on year-to-year basis, more of the area is being urbanized. Hence, it requires a huge capital expenditure to cater to the demand of existing and new consumers. However, still the Distribution losses have been constant and are around 8% from so many years. The Commission has also gone through the technical study report submitted by the Petitioner. It has been observed that as per the findings noted in the study report, it would not be viable to put huge investment to reduce the losses further from the existing level.

5.3.6 Apart from network improvement issues, there are other commercial issues such as sales booked to unmetered consumers etc. The Commission is of the view that any improvement in the metering status of the Licensee would assist the Licensee to curtail the losses at below 8% levels. The Commission recognizing the fact that the distribution loss of 8% is one of the lowest in the country, the distribution losses for FY 2015-16 are being approved at 8%, however the Licensee should make best of its efforts to reduce the losses from the exiting level.

5.3.7 The Petitioner has submitted that the EHV technical losses have been estimated at 0.44% of the total import at 220 kV /132 kV level. Further as per the actual data submitted by the Petitioner for

FY 2013-14 such losses has been observed to be only 0.48%. The Commission in its previous Order dated October 1, 2014 had considered the EHV losses as 0.60%. In view of the above, the Commission provisionally approves additional EHV losses at 0.60% of the total import. The same is provisional and will be trued up based on the audited results.

5.3.8 Thus, the Distribution Losses approved for FY 2015-16 is 8.00% of energy available for distribution and EHV losses are approved at 0.60% of the Energy imported by the Licensee."

d. The relevant extract of the report submitted by the consultant PWC on this issue is reproduced below;

   "National Electricity Fund Scheme (NEF)" initiated by GoI states that any power Distribution Company availing NEF scheme shall have to reduce its AT&C loss levels gradually below 8%. These loss levels are acknowledged in the guidelines as the industry benchmark and once these loss levels are met, it thereafter mandates the Distribution Utility to sustain the same."

e. This Tribunal in its judgment dated 05.12.2011 passed in Appeal no. 4 of 2011 has acknowledged that the loss levels achieved by NPCL are lowest in the country. The extract of judgment is as follows:

   "Admittedly, the distribution loss at 8% achieved by the appellant is one of the lowest in the country. Any reduction below 8% has to be based on a proper study along with specific measures required to be undertaken to achieve the same."

f. It is to be noted from the above that after achieving the 8% AT&C losses, the utility is required to sustain the same. As per the direction of this Tribunal the State Commission has not only directed the Appellant to conduct the study but also did not reduce the AT&C losses' target further.

g. The State Commission has been approving the capital expenditure proposed by the Appellant from time to time, which has been increased substantially in recent past.

h. Also the majority of the energy sales realized by the Appellant are for HT consumers. The HT: LT energy sales ratio in last few years is almost in the range of 67-70% and it has been 69.89% as approved by the State Commission for FY 2015-16. It is worthwhile to note that the energy sale portfolio proposed by Appellant and approved by the State Commission has higher HT sales as compared to previous years.

i. The State Commission also believes that there is always a scope of improvement and the target of achieving 8% distribution loss is set keeping in view of the capability and achievement of the Appellant in previous years.

14. Disallowance of O&M Expenses:

I. On this issue of disallowance of O&M expenses claimed during FY 2015-16, the learned counsel for the Appellant has made the following submissions;

a. In the Impugned order, the State Commission has not allowed the O&M expenses to the extent claimed by the Appellant. The State Commission has calculated the O&M expenses based on the weighted average Inflation Index computed at 4.02% for the previous year FY 2014-15.The State Commission has held that if the O&M expenses are projected for ensuing year on the basis of actual O&M expenses for previous year as claimed by the Appellant, there will be no sanctity of fixation of norms in Distribution Tariff Regulations. It has been held that the linking the O&M expenses for ensuing year based on previous years' actual O&M expenses would amount to seeking amendment to Distribution Tariff Regulations, 2006.

b. The relevant regulation is Regulation 4.3 of the Distribution Tariff Regulations, 2006 and it reads as under;

"4.3 Operation & Maintenance Expenses (O&M):

The O&M expenses comprise of employee cost, repairs & maintenance (R&M) cost and administrative & general (A&G) cost. The O&M expenses for the base year shall be calculated on the basis of historical/audited costs and past trend during the preceding five years. However, any abnormal variation during the preceding five years shall be excluded. For determination of the O&M expenses of the year under consideration, the O&M expenses of the base year shall be escalated at inflation rates notified by the Central Government for different years. The inflation rate for above purpose shall be the weighted average of Wholesale Price Index and Consumer Price Index in the ratio of 60:40. Base year, for these regulations means, the first year of tariff determination under these regulations.

Where such data for the preceding five years is not available the Commission may fix O&M expenses for the base year as certain percentage of the capital cost.

Incremental O&M expenses for the ensuing financial year shall be 2.5% of capital addition during the current year. O&M charges for the ensuing financial year shall be sum of incremental O&M expenses so worked out and O&M charges of current year escalated on the basis of predetermined indices as indicated in regulation 4.3 (1)."

c. The above regulation does not prohibit the consideration of appropriate O&M expenses based on actual expenses of the previous year if the circumstances so warrant. The State Commission has also the power to relax and inherent power to consider appropriate amount even in deviation from those specified in the Specific Regulations. The present case is an appropriate case to consider slightly relaxed amount in view of the justification given by the Appellant supported by the consultant report.

d. The Appellant had given detailed justification for the above claim. In the petition filed, the Appellant duly provided its expansion plans, productivity and efficiency to be achieved by way of process and system automation in support of the claim. The independent consultant had also recommended the higher level of O&M expenses. The continued disallowance of the genuine and legitimate business expenditure under the head O&M expenses causes hardships such as punishing the efficiency and quality of service, stowing down IT and Automation expenses, repairs and maintenance expenses which adversely affect the productivity and efficiency of the Appellant.

e. The State Commission ought to have allowed the O&M expenses at actual or the amount worked out based on the independent study conducted by the M/s. IMaCS on the directives of the State Commission.

II. On this issue of disallowance of O&M expenses claimed during FY 2015-16, the learned counsel for the State Commission has made the following submissions;

a. The O&M expenses are comprised of Employee costs, Administrative and General (A&G) Expenses, and Repair and Maintenance (R&M) expenditure. Clause No. 4.3 of the Distribution Tariff Regulations, 2006.

b. In accordance with Clause No. 4.3.1 of Distribution Tariff Regulations 2006, the State Commission calculated the O&M expenses based on Inflation Index. Accordingly, the weighted average Inflation Index computed at 4.02% for FY 2014-15 has been used for computing the O&M expense for FY 2015-16. Further the Distribution Tariff Regulations also allow the incremental O&M Expenses based on the Capital additions during the year. The State Commission

believes that if the O&M expenses are projected for ensuing year on the basis of actual O&M expenses for previous year as suggested by the Appellant, there will be no sanctity of fixation of norms in Distribution Tariff Regulations. The Distribution Tariff Regulations, 2006 were issued after following the due public process. The Appellant has not challenged the Distribution Tariff Regulations, 2006.The Appellant by linking the O&M expenses for ensuing year based on previous years actual O&M expenses is in a way seeking amendment to Distribution Tariff Regulations, 2006 and Appeal on Tariff Order passed by the State Commission is not a correct approach for amendment of Tariff Regulations.

c. The Distribution Tariff Regulations, 2006 also provides the sharing mechanism of controllable elements and hence the State Commission has approved the O&M expenses on normative basis as per the provisions of Distribution Tariff Regulations, 2006 as amended from time to time. The relevant portion of the Impugned Tariff Order for FY 2015-16 is reproduced hereunder;

"Commission's Analysis:

5.7.6 In accordance with Clause No. 4.3.1 of Distribution Tariff Regulations, 2006 the O&M expenses are computed based on Inflation Index. Accordingly, the weighted average Inflation Index computed at 4.02% for FY 2014-15 has been used for computing the O&M expenses for FY 2015-16.

5.7.7 The gross O&M expenses also include additional O&M expenses towards capitalization of assets in the preceding year. The capitalized assets in the preceding year include assets handed over by GNIDA and UPSIDC free of cost in FY 2014-15. These assets have been considered on the basis of values declared by respective authorities.

5.7.8 The Commission has also gone through the Audited Accounts of NPCL wherein, the value of these assets has been ascertained by the auditor through communications received from GNIDA and

UPSIDC. Further, the Audited Accounts mention that the assets have been handed over for maintenance purpose only while the ownership is yet to be transferred to NPCL. Accordingly, the Commission has considered the additional O&M expenses for these assets to be allowed for O&M purposes only. Any other impact on parameters like depreciation, capital expenditure, capitalization etc. is not being allowed till the Petitioner takes ownership of these assets.

5.7.9 The Commission is of the view that if the O&M expenses are projected for ensuing year on the basis of actual O&M expenses for previous year as suggested by the Petitioner, there will be no sanctity of fixation of norms in Tariff Regulations. As per the Distribution Tariff Regulations, some of the elements of ARR are considered on normative basis and the actual expenses under some elements may be higher as compared to approved expenses, while the actual expenses under some elements may be lower as compared to approved expenses. Further, the Distribution Tariff Regulations, 2006 also provides the sharing mechanism of controllable elements and hence the Commission has approved the O&M expenses on normative basis as per the provisions of Distribution Tariff Regulations, 2006 as amended from time to time.

5.7.10 The computations of net O&M expenses approved for FY 2015-16 are shown in the Table below:

Particulars	***Petition***	***Approved***
Total additions to Fixed Assets	*65.49*	*241.55*
Less: Assets Retired/Scrapped		*3.1*
Net Addition to Fixed Assets		*238.45*
Preceding Year Gross O&M		*39.26*
Incremental O&M @2.5%		*5.96*
Inflation Index Applicable		*4.02%*
Net O&M Expenses		*40.84*
Gross O&M Expenses	***65.49***	***46.8***

”

d. Accordingly the State Commission approved Rs.46.80 Crore against Rs.65.49 Crore projected by the Appellant. This approach is in line with the approach followed by the State Commission in its earlier tariff orders.

15. Disallowance of CSR expenses:

I. On this issue of disallowance of CSR expenses claimed during FY 2015-16, the learned counsel for the Appellant has made the following submissions;

a. The expenditure of 2% of the Appellant's profit to be incurred necessarily on Corporate Social Responsibility is a mandatory requirement of the Companies Act, 2013. The expenditure has not been allowed by the State Commission. The reason given by the State Commission has been that the essence of the above provision in the Companies Act, 2013 is for the Companies to contribute some of their profits to corporate social developments and if such expenses are passed on to the consumers in the ARR it would indirectly mean that the CSR is being done by the consumers and not by the Companies. The State Commission has however not appreciated the following aspects:

i. The expenses are being incurred by mandate of law which came subsequent to the notification of the Distribution Tariff Regulations, 2006 and are therefore incurred on account of change in law. Regulation 4.3(5) of the Distribution Tariff Regulations, 2006 is as under:

"4.3.5 The Commission may consider additional O&M expenses on account of war, insurgency, and change in laws or like eventualities for a specified period."

In terms of the above, the expenditure claimed ought to be allowed.

ii. The reasoning for disallowing the expenses on Corporate Social Responsibility being out of the profit and is, therefore, not to be allowed as part of the tariff is erroneous. In terms of the provisions of the Electricity Act, 2003 as well as the Tariff Regulations, the

Appellant is entitled to a regulated Return on Equity after meeting all the legitimate costs and expenses.

iii. Unlike other businesses the Appellant cannot arrange its affairs and business to earn more profit. The consideration for regulated business should be different. There is a ceiling on the maximum reasonable return a power distribution company can earn unlike other business who can re-adjust/re-fix their sale prices to recover CSR expense and still maintain their profits. For example the income tax on return on equity is also allowed as a tariff element in the case of electricity regulated business even though taxes are paid out of profits. Similar treatment should be given to the expenditure of 2% of profit on corporate social responsibility.

iv. As per Schedule - III of the Companies Act, 2013, CSR expenses need to be shown as business expenses in the books of accounts and not as appropriation of profit.

v. The Return on Equity should therefore be determined after providing for the mandatory expenses to be incurred on Corporate Social Responsibility. Accordingly, 2% CSR expenses to be incurred should be grossed up to determine a reasonable return as provided under the Tariff Regulations.

b. The State Commission has been relying upon the order of MERC Vs TPL for FY 2012. It is pertinent to mention here that during FY 2011-12, there was no such statutory provision for making contribution towards CSR activities. The expense incurred by TPL was absolutely voluntarily and not statutorily mandated. Hence, the reliance on the above is not correct.

II. On this issue of disallowance of CSR expenses claimed during FY 2015-16 the learned counsel for the Respondent has made the following submissions;

a. The Appellant is statutorily bound to incur CSR expenses on the activities as defined in provisions of the newly enacted Companies Act, 2013. The Appellant had claimed an additional amount of Rs.0.95 Crore in its ARR Petiion for FY 2015-16.

b. The relevant part of the Companies Act, 2013 is reproduced herein below;

*“**135.** (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.*

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of

such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount."

c. It is very much clear from the above extract from Companies Act, 2013 that the company should spend, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy. If such expenses are passed on to the consumers in the ARR it would indirectly mean that the CSR is being done by the consumers and not by the Companies.

d. In the Impugned Tariff Order, the State Commission had cited the example of Tata Power in Case No. 105 of 2011 with MERC where the Maharashtra Electricity Regulatory Commission **("MERC")** in its Order dated 15th February, 2012 had disallowed such expenses stating as follows:

"The Commission observes that an expenditure of Rs. 8.09 Lakh was incurred in FY 2009-10 towards 'Ambulance Van - Tata Motor', which has been clarified to be Corporate Social Responsibility expenditure under 'HO and SS' asset additions. As regards such expenses, if

TPC as a Company or the shareholders of the Company wish to contribute towards Corporate Social Responsibility expenditure, the same should be contributed from the return earned out of the business, rather than passing on such costs to the Utility's consumers. On similar grounds, the Commission has also disallowed the revenue expenditure towards CSR. Hence, for Truing up purposes for FY 2009-10, the Commission has not considered this capital expense of Rs. 8.09 Lakh.“

e. The State Commission has mentioned in the Impugned Tariff Order that it may consider the CSR expenses during the Truing up for FY 2015-16 after analyzing the actual expenses and case laws in other States. The relevant portion of the order is reproduced herein below for ready reference:

"*5.8.14 It is important to note that the essence of the above provision in the Companies Act 2013 is that the companies shall shed some of their profits in corporate social developments and in case such expenses are passed on to the consumers in the ARR it would indirectly mean that the CSR is being done by the consumers and not by the companies.* ***The Commission at this stage has not allowed expenses separately under the ARR and may be considered during the Truing up for FY 2015-16 after analyzing the actual expenses and case laws in other States."***

16. Non-Grant Of Adequate Tariff And Creation Of Regulatory Assets (FY 2015-16):

I. On this issue of non-grant of adequate tariff and creation of Regulatory Assets during FY 2015-16, the learned counsel for the Appellant has made the following submissions;

a. In the Impugned Tariff Order, the State Commission has not granted tariff adequate to cover the annual revenue requirement duly approved for FY 2015-16. The revenue gap of Rs.84.77 Cr. for FY 2015-16 has been added to the Regulatory Asset and deferred to be recovered in the later years. This has been done even though

significant regulatory asset of the past of Rs.575.14 Cr. was yet to be recovered.

b. Such creation of regulatory asset in a cascading manner is contrary to the scheme, objective and the provisions of the Electricity Act, 2003 Section 61(d) which provides for recovery of all reasonable cost from the consumers, the National Electricity Policy and Tariff Policy notified by the Central a Government under section 3 of the Act and orders of this Tribunal.

c. The State Commission has deviated from the earlier orders of maintaining the same increase in tariff to the Appellant and other distribution licensees in the State. The retail tariff hike granted to the Appellant is only 2.70% despite revenue gap whereas other distribution licensees PVVNL and KESCO, despite having revenue surplus were granted a retail tariff increase of 8% approximately.

d. The State Commission had approved the tariff hike of 17.60% for FY 2012-13, 6.58% for FY 2013-14 and 8.90% for FY 2014-15.

e. In the circumstances increasing the tariff to fully cover the Revenue Requirements of FY 2015-16 or at least 8% tariff hike as allowed in the case of other State Distribution Licensees (especially PVVNL and KESCO, despite having surplus revenue) was fully warranted and it will be arbitrary not to do so on grounds of avoiding tariff shock that too Greater Noida Area only, which is comparatively effluent.

f. The regulatory surcharge has been allowed for the purpose of recovering the accumulated regulatory asset for previous years. However, the State Commission in the Impugned Tariff Order has considered the revenue of Rs. 88.07 Cr. from regulatory surcharge towards the ARR approved for FY 2015-16 i.e. current year. Considering revenue from approved tariff and without regulatory surcharge, the State Commission has left the Company with a

revenue gap of Rs 18.76 Cr to be carried forward to subsequent years.

g. Further, the State Commission has also not considered the amount of Rs 67.76 Cr towards carrying cost on accumulated regulatory asset approved by them for FY 2015-16. Without admitting, after considering the aforesaid carrying cost of regulatory asset of Rs.67.76 Cr. alongwith approved ARR of Rs.1121.76 Cr. for FY 2015-16 as per Impugned Tariff Order dated 18th June'15, the Appellant has been left with an immense deficit of Rs. 86.52 Cr., almost 7.71 % of the approved ARR for FY 2015-16 and 7.84% of the approved tariff vide the aforesaid order.

h. The State Commission has stated in its reply submission that due to difference in consumer mix, geographical area, HT/LT ratio, number of consumers etc., it has approved different tariff for the Appellant. It is pertinent to mention here that these differences were also prevailing at the time of earlier orders, when the State Commission had approved same tariff for all the licensee of the State. Even the aforesaid parameters are quite different in other Five (5) State Discoms, however, the State Commission has allowed same tariff to all of them. Thus, the State Commission is highly unreasonable and unjustified in approving lesser tariff for the Appellant despite having revenue deficit of Rs. 86.52 Cr. in the ARR as per their own Tariff Order causing irreparable loss to the consumers of Greater Noida.

II. On this issue of non-grant of adequate tariff and creation of Regulatory Assets during FY 2015-16, the learned counsel for the Respondent has made the following submissions;

a. The State Commission has approved the tariff hike of 17.60% for FY 2012-13, 6.58% for FY 2013-14 & 8.90% for FY 2014-15. In order to avoid tariff shock to the consumers the State Commission has

approved the tariff hike of 2.70% for the consumers of the Appellant for FY 2015-16 and continued with the past trend of regulatory surcharge, which is 8% of the rate as defined in the rate Schedule.

b. The State Commission has allowed the regulatory surcharge to meet carrying cost of the revenue gap and liquidation of revenue gap. The relevant extract of the State Commission's tariff order is reproduced below:

"8.1.5 Based on the approved % interest rate for computation of carrying costs and the revenue gap for the respective years, the table below highlights the approved / trued-up ARR, revenue at applicable tariffs, carrying cost and the revenue gap for respective years under consideration in the present Order.

(Rs Crs)

Particulars	*FY 2013-14*	*FY 2014-15*	*FY 2015-16*
	(Approved)	*(Approved in Order dated 1st October, 2014)*	*(Approved)*
ual Revenue Requirement	*684.8*	*836.17*	*1,121.76*
enue at applicable / approved Tariff (without regulatory surcharge)	*754.11*	*818.94*	*1,103.00*
enue from Regulatory Surcharge	*22.37*	*71.03*	*88.07*
enue gap from previous years	*593.34*	*565.8*	*576.7*
ying cost	*64.13*	*64.7*	*67.76*
enue Gap carried forward	***565.8***	***576.7***	***575.14***

*8.1.6 From the above table the State Commission observes that after revision of tariff including regulatory surcharge approved vide Tariff Order' dated October 1, 2014, the recovery of regulatory asset has still not completed. **The revenue gap carried forward for FY 2015-16 is approved on a provisional basis and shall be subject to final true-up during next ARR tariff petition process or as may be decided by State Commission and shall be recovered in future years.”***

c. That it is evident from the above that the there is marginal unabridged Revenue Requirement for the FY 15-16 however the State

Commission has shown the revenue from Regulatory Surcharge Separately and computed the revenue gap carried forward for FY 2015-16. The State Commission has also recognized that the revenue gap carried forward for FY 2015-16 is approved on a provisional basis and shall be subject to final true-up.

17. Non-annualisation of Tariff:

i. On this issue of non-annualization of Tariff during FY 2015-16, the learned counsel for the Appellant has made the following submissions;

a. As per the provisions of Section 64 (3) of the Electricity Act 2003, the State Commission is mandatorily required to provide tariff within 120 days of the receipt of Tariff petition. Thus, even after receiving the tariff petition on 28th November 2014, well within the prescribed date of 30th November 2014, the State Commission has passed the Tariff Order in almost 202 days from the date of receipt of the ARR petition. It is a settled principle that in case of contradiction between the State Commission's regulations and the Electricity Act, 2003, the Act will prevail.

b. The State Commission while determining the tariff by order dated 18.06.2015 for the tariff period 2015-16 and making it effective period from 01.04.2015 onwards by providing for the annualisation of the tariff.

c. The annualisation is an accepted process as laid down in the decision dated 16.10.2000 passed by the Hon'ble A.P High Court in S. Bharat Kumar and Ors. -v- Government of Andhra Pradesh [2000 (6)ALD 217] and the relevant extract is reproduced hereunder;

"112. There remains the question of annualisation of tariff. It is dealt with by the Commission in Para 6.3 which reads as follows :

"While on account of delayed submission of tariff proposals, there are only ten months left of the year 2000-2001 to levy and collect revenue, in the two months that passed by, the AP TRANSCO have suffered considerable revenue deficit as they realised revenues at existing tariffs only. The Commission therefore accepts the proposal of AP TRANSCO to annualise the revised tariffs so that AP TRANSCO fully covers its cost and a reasonable return."

113. The learned Counsel for the petitioner submits that the levy of tariff which is effective from 4-6-2000 is for 301 days. It is not the case of respondents that the tariff could be or has been brought into force with retrospective effect. If so, the revenue deficit which the licensee would have faced on account of belated commencement of new tariff cannot be taken into account while determining the tariff effective from 4-6-2000. It is contended that it amounts to doing something covertly or indirectly which the Commission cannot do directly. In other words, according to the learned Counsel, it virtually amounts to retrospective tariff. On the other hand, it is contended by the learned Counsel for respondents that the tariff determination is based on the expected revenue from charges in a financial year as a whole. When new tariff is brought into effect in the course of the year, the revenue deficit that had arisen preceding the effective date could be legitimately taken into account in fixing the new tariff, as otherwise it would result in erosion of revenue requirements for the purpose of efficiently running the undertaking. On a deeper examination, we find force in the contention of the learned Counsel for respondents. The annualisation of tariff is only a methodology of tariff fixation for the remaining part of the year having due regard to the expected annual revenue requirements and the reasonable return. It is an exercise to overcome the deficit after the tariff proposal was filed. Even if such methodology of filling up the revenue deficit in the financial year is erroneous or some other method is preferable, on that ground, we cannot strike down the tariff fixation exercise. As already indicated, an overall view has to be taken and unless the Court is satisfied that the tariff fixation is demonstrably unreasonable, the relief under Article 226 cannot be granted. We have already referred to the weighty observations of the Supreme Court in Cynamide 's case (supra) by which we are bound."

The decision was upheld by the Hon'ble Supreme Court in Association of Industrial Users v State of A.P. (2002) 3 SCC 711.

d. The delay in the finalisation of the tariff when the Appellant had duly filed its revenue requirements in time ought not to have adverse impact on the Appellant's annualisation of the tariff, namely, the amount of increased tariff for the period from 01.04.2015 to the date when the tariff became effective is an accepted concept in order to enable the Utilities to recover the full impact of increase in the tariff during the relevant financial year.

ii. On this issue of non-annualization of Tariff during FY 2015-16, the learned counsel for the Respondent has made the following submissions;

a. The Appellant has submitted its ARR/Tariff petition for FY 2015-16, within the timelines as prescribed in the UPERC Distribution Tariff Regulations, 2006 i.e. on November 28, 2014. The Relevant clause of the Regulation is reproduced hereunder:-

"2.1 Filing of Annual Revenue Requirement and Tariff Application

1. The Distribution Licensee shall file the Aggregate Revenue Requirement (ARR)/Tariff petitions complete in all respect along with requisite fee as prescribed in the Commission's Fee and Fine Regulations on or before 30th November of each year. The above ARR petition shall contain the details of the estimated expenditure and the expected revenue that it may recover in the ensuing financial year at the prevailing tariff. Information as per formats specified in Annexure A to these regulations shall form part of the ARR filings".

b. The State Commission carried out detailed scrutiny of the Petition and issued deficiency note directing it to provide the required information within specified timeline. On receipt of the replies to the deficiency notes the State Commission admitted the Petition on March 23, 2015. Accordingly the State Commission processed the Petition, conducted Public Hearing and other related formalities as

per UPERC Distribution Tariff Regulations, 2006 and Electricity Act, 2003 and issued the Tariff order on June 18, 2015.

c. The State Commission has issued the tariff order within 120 days of the admittance of the tariff petition after adopting detailed process of stakeholders' consultation including that of the Appellant and no delay has been made in this regard. The relevant portion of the UPERC Distribution Tariff Regulations, 2006 is reproduced below for reference:

"2.3 Additional Information Requirement for the admission of the petition:
1. The Commission, after the petition has been filed, may require the distribution licensee to furnish any further information, particulars, documents, public records, etc. as the Commission may consider appropriate to enable the Commission to assess the petitioner's calculations, assumptions and assertions. The period of 120 days as provided in section 64 (3) of the Electricity Act 2003 will be counted from the date of acceptance of ARR complete in all respects to the reasonable satisfaction of the Commission and thereupon its admittance by the Commission."

d. The State Commission while calculating the revenue from different category of consumers to be collected by the Licensee for the current year has considered a period of 9 months, for which the revised tariff would be applicable and accordingly calculated the revenue gap and regulatory surcharge required.

18. Modification of the rate of interest applicable on carrying cost for FY 2014-15:

i. On this issue of modification of rate of interest applicable on carrying cost for FY 2014-15, the learned counsel for the Appellant has made the following submissions

a. In terms of the Distribution Tariff Regulations, 2006, it is not open to the State Commission to vary the interest rate on matters and for

financials which are not the subject matter of the proceedings before the State Commission.

b. The rate of interest for FY 2014-15 was not a part of the proceedings in Petition No. 984 of 2014.The State Commission has acted contrary to the Regulations in attempting to vary the rate of interest.

ii. On this issue of modification of rate of interest applicable on carrying cost for FY 2014-15 the learned counsel for the Respondent has made the following submissions

The State Commission has not touched upon any of cost or revenue components of the Annual Revenue Requirement for FY 2014-15. The State Commission has only considered the revenue gap/surplus recognized by the State Commission in its Tariff Order for FY 2014-15 dated October 01,2014 for the projection of revenue gap/surplus and regulatory assets for FY 2015-16. The similar principle has been adopted by the State Commission in its past Tariff Orders for Appellant. The Revenue Gap/surplus of the FY 2014-15 is subject to truing up based on the audited annual accounts and the actual revenue gap/surplus would be considered based on truing up for the computation of the regulatory assets at the time of truing up. The State Commission has considered the carrying cost as per the carrying cost approved in the current tariff order which is provisional, the carrying cost would also be trued up based on the interest rate approved by the State Commission at the time of truing up for FY 2014-15.

19. After having a careful examination of all the issues brought before us as above , our observations are as follows:-

a. The factual issues in the present case pertains to the rate of interest and financing charges to be allowed for working capital, compensatory interest towards the delayed payment surcharge

treated as non-tariff income and financing charges, the rate of interest/carrying cost to be allowed during the period for recovery of the regulatory assets, disallowance of expenditure incurred on activities to be undertaken as Corporate Social Responsibility, grant of inadequate/differential tariff even to recover approved ARR, adjustment of regulatory surcharge against revenue gap of ensuing Financial Year as against recovery of accumulated regulatory asset, non-recognition of appropriate technical and distribution losses and non-recognition of appropriate O&M Expenses.

b. In addition, the issue involved is also whether the State Commission having determined and applied a particular rate of interest at the time of the main Tariff Order as per the applicable Regulation, can at the stage of truing up substantially reduce/change such rate of interest .

c. Some of the above issues commonly arise in the case of determination of tariff for the financial year 2015-16 and also in the truing up for the financial year 2013-14.

d. In addition to the above the State Commission changed/altered the rate of interest on carrying cost for Financial Year 2014-15 provisionally approved by it vide its earlier Tariff Order dated 01.10.2014 which was not the subject matter of the Petition No. 984 of 2014.

20. On issue no 1 i.e. Whether the State Commission in applying Clause 4.8.2 (b) of the Distribution Tariff Regulations, 2006 dealing with the interest on working capital to be allowed and applying the provision that the rate of interest should be the bank rate as specified by the Reserve Bank of India plus margin to be decided by the State Commission is right in reducing such rate of interest from 14.58% already decided by the State Commission to 12.50% both under truing up of the

finances of 2013-14 and also for computing the Annual Revenue Requirements for the year 2015-16, our consideration is as below:

a. The Distribution Tariff Regulations, 2006 issued by the State Commission on 6th October 2006 specifies the terms and conditions for determination of distribution tariff and shall apply for the purposes of ARR filing and tariff determination, to all the distribution licensees within the State of Uttar Pradesh. The relevant provisions of the same which are applicable for the present case are detailed out in the following paragraphs.

b. As per Clause 2.1 (5) of the Distribution Regulations, the controllable and uncontrollable costs of the licensees are classified and the relevant extract is reproduced below;

"The Commission may broadly classify costs incurred by licensee as controllable and non-controllable. Uncontrollable costs shall include (but not limited to) fuel cost, increase in interest rates, increase in cost on account of inflation, taxes & cess, variation in power purchase unit costs including on account of hydrothermal mix in case of adverse natural events. Till the implementation of Multi-year tariff framework, the Commission may set annual targets for all controllable costs. These targets shall be used for computing aggregate revenue requirement. However, **for checking the prudence of various costs incurred by the distribution licensee, the Commission may link them to appropriate indices/rates like consumer price index (CPI), wholesale price index (WPI) and bank rates etc."**

c. The clause 4.8.2 dealing with "Interest on Working capital" has been reproduced here as :-

"2. Interest on working capital

a) *Working capital shall be worked out to cover*

   i. *Operation and Maintenance expenses, which includes Employee costs, R&M expenses and A&G expenses, for one month;*

ii. *One-twelfth of the sum of the book value of stores, materials and supplies at the end of each month of such financial year.*

iii. *Receivables equivalent to 60 days average billing of consumers less security deposits by the consumers minus amount, if any, held as security deposits under clause (b) of sub-section (1) of Section 47 of the Act from consumers and Distribution System Users.*

b) ***Rate of interest on working capital shall be the Bank Rate as specified by Reserve Bank of India for the relevant year plus a margin as decided by the Commission*.”**

From the above clause 4.8.2, it is clear that the calculation of working capital amount and interest thereon are being considered based on normative basis irrespective of the actual working capital and interest incurred thereon by the Distribution Licensee.

d. The State Commission has been using SBI PLR rate for the relevant year being the bank rate plus the margin over the Bank Rate. The term ‘margin’ over the Bank Rate has not been defined in the said Regulations. However as per Appellant, the margin is the difference between the SBI PLR and RBI Bank Rate.

e. The Respondent’s contention is that Reserve Bank of India (RBI) has changed the methodology for levy of interest on loan and adopted Base Rate system in place of Benchmark Prime Lending Rate (BPLR) with effect from July 1st , 2010. The State Commission has also observed that all the loans of the Licensee are linked to the Base rate notified by the various banks from time to time, which are in line with the guidelines issued by the RBI.

f. The State Commission submitted that the actual weighted average interest rate of the short term loans during FY 2013-14 to be around 12.24%. Accordingly, it approved the interest rate for the computation of interest on working capital as 12.50%, which was derived from the

bank rate notified by the RBI and the appropriate margin decided by the commission and in line with the provisions of clause 4.8.2(b) of the UPERC Distribution Tariff Regulation, 2006.

g. After careful examination of the data submitted to us, we observe that the State Commission has adopted interest on working capital as actual weighted average interest rate on short term loans plus a margin of 0.26% as decided by them. Whereas the provision of Distribution Tariff Regulations clearly specifies that the Rate of interest on working capital shall be the Bank Rate as specified by Reserve Bank of India for the relevant year plus a margin as decided by the State Commission.

h. It has been brought to our notice that vide Tariff Order dated 19th October 2012, 31st May 2013 and 1st October 2014 (which have been issued much after the implementation of RBI's Base Rate Policy), the State Commission had knowingly approved interest on working capital as interest rate equivalent to SBI-PLR for FY 2010-11, FY 2011-12 and FY 2012-13 at the time of truing-up for the previous years.

i. In our view, the State Commission has deviated from the provisions of the applicable Distribution Tariff Regulations while computing the interest rate on working capital in the Impugned Tariff Order. If State Commission is of the opinion that after RBI guidelines of adopting Base Rate system in place of Benchmark Prime Lending Rate (BPLR) with effect from July 1st, 2010, there is a need to change the relevant provisions of Distribution Tariff Regulations, necessary amendments in these Regulations must have been carried out by them after due process of consultations with the Stakeholders.

j. As the Working Capital as well as Interest on Working Capital parameters are being decided based on normative values, actual

values for these parameters cannot be taken into consideration while allowing the same in the main petition or at the time of truing up.

k. Hence this issue is decided in favour of the Appellant.

21. On Issue No. 2 i.e. Whether the State Commission having implemented Clause 4.8.2 (b) of the Distribution Tariff Regulations, 2006, by adopting a methodology for computing the working capital by following the SBI PLR Rate for the years 2007-08 till 2014-15 consistently, is entitled to vary the methodology of applying the base rate plus margin and reducing the rate of interest significantly while undertaking the truing up for the year 2013-14 and determining the revenue requirements for the year 2015-16, our observations are as follows:-

a. We have deliberated the issue in detail and given our observations while deciding the issue no 1 above that the Distribution Tariff Regulations clearly specify the interest on working capital as Bank rate plus margin, as specified by the State Commission.

b. If need was felt by the State Commission due to changed scenario in view of RBI guidelines regarding adoption of Base Rate, necessary amendments must have been carried out in the said Regulations.

c. Hence on this issue too, we are of the opinion that the methodology adopted by the State Commission of considering SBI-PLR rate as 'Bank Rate plus Margin', since notification of Distribution Tariff Regulations 2006 should have been continued while deciding the ARR requirement of the Appellant for FY 2015-16 and Truing-up of the Financials for FY 2013-14 through the Impugned Tariff Order.

d. This issue is decided in favour of the Appellant.

22. **On Issue No. 3 i.e. Whether the State Commission in dealing with the interest rate to be considered as compensatory for the delayed payment surcharge as non-tariff income, is right in applying the modified interest rate of 12.50% ignoring the rate of interest to be allowed as per the methodology consistently adopted since the year 2007-08 both for truing up of the finances of 2013-14 and also for computing the Annual Revenue Requirements for the year 2015-16, our views are as below:**

a. As per Appellant, the interest rate for delayed payment surcharge should have been considered by the State Commission, as per existing methodology as normative rate at SBI-PLR, in line with the issue raised for considering interest rate for working capital.

b. As per Respondent, the State Commission has followed a consistent approach while approving interest rate. As the State Commission has changed the interest rate of working capital for FY 2013-14, the same interest rate has also been considered for cost of financing the Delayed Payment Surcharge.

c. In view of the observations expressed by us while deciding Issue No.1 and Issue No.2 above, this issue of applicable interest rate on delayed payment surcharge is being decided in favour of the Appellant. The State Commission should have considered the consistent approach of adopting existing methodology of applying interest rate as per SBI-PLR in the Impugned Tariff Order also.

23. **On Issue No. 4 i.e. Whether the State Commission in computing the rate of interest to be applied for the carrying cost of the regulatory assets created by the State Commission is right in ignoring the interest rate for working capital determined at the SBI PLR rate and the methodology consistently applied for the**

period from 2007-08 onwards and reducing the interest rate to 12.50% per annum, our observations are as hereunder;

a. The State Commission has been following principle of approving the interest on regulatory asset based on the rate equivalent to SBI – PLR on monthly compounding basis.

b. While truing up till FY 2012-13 and approving the ARR up till FY 2014-15, the State Commission followed the same principle of approving the interest on regulatory asset based on the rate equivalent to SBI - PLR prevailing in the respective Financial Years on monthly compounding basis.

c. In the Impugned Tariff Order, the State Commission has restricted the interest rate for the purpose of computing the carrying cost on the revenue gap to 12.50% and also to simple rate without allowing compounding at monthly rest.

d. The reason given by the State Commission is the same as in the case of interest rate on working capital, namely the changed environment when the Reserve Bank of India has implemented the methodology for levy of interest on loan and adopted Base Rate system in place of Benchmark Prime Lending Rate (BPLR).

e. The State Commission has been leaving a revenue gap even on the admitted and allowed revenue requirements after due prudence check. Such Revenue gap is treated as Regulatory Asset to be recovered in future through tariff/surcharge so as to avoid immediate tariff shock to the consumers.

f. The State Commission has submitted that the interest rate allowed for computation of carrying cost of Regulatory Assets is sufficient to cover the interest obligation on the loans drawn by the Appellant to meet the loan requirement due to creation of regulatory assets. The State Commission also observed that the actual weighted average

interest rate of the short term loan during FY 2013-14 is around 12.24%, while the State Commission has allowed the normative interest on the short term loans equivalent to interest rate of working capital at 12.50% and not considered monthly compounding of interest for computation of carrying cost keeping consistency with the interest rate allowed for working capital and cost of delayed payment surcharge. The same reasoning has already been mentioned in the Impugned Tariff Order vide its para 4.27.3 and 4.27.4.

g. We are in agreement with the views of Appellant that there is difficulty in finding resources to fund the Revenue Gap till the same is met in future year tariffs. Banks/financial institutions generally find it highly risky to provide funds for meeting such revenue gaps because of uncertainty attached to the recovery of the same.

h. We have ordered in favour of Appellant while deciding issues dealt above regarding Interest on working Capital and Interest on Delayed Payment Surcharge against the State Commission adopting Base Rate plus margin as the applicable interest rate. For the same reasons as detailed above, in this case of allowing interest rate for carrying cost of Regulatory Assets, we observe that the State Commission should have continued the earlier practice adopted by it since notification of Distribution Tariff Regulations in Impugned Tariff Order too i.e. SBI-PLR rate as the Interest Rate with monthly compounding basis.

i. Hence this issue is also decided in favour of Appellant.

24. As regards the Issue No. 5 i.e. Whether in dealing with the interest to be allowed as compensatory for the delayed payment surcharge being treated as non-tariff income and the interest/carrying cost to be allowed for the regulatory assets,

the State Commission has considered the relevant aspects, namely

i. **The financing of such revenue gap cannot be at the same rate as is available for term loan or normal working capital,**
ii. **The financing of such revenue gap is not possible in the debt equity ratio of 70:30 as available in the case of term loan for tangible capital expenditure;**
iii. **The utilities need to contribute more equity for the aforesaid purposes;**
iv. **The utilities are required to pay interest to the Lenders on compounding basis and accordingly the interest allowed at 12.50% per annum is grossly inadequate, Our observations are as follows;**

a. The creation of Regulatory Assets by leaving a revenue gap to the Distribution Licensee even after allowing revenue requirement, that too, after proper due diligence is a matter of concern. While this is being done by the State Commissions to avoid tariff shocks to the consumers, Distribution Licensees have to face a big financial challenge to arrange funding for this revenue gap.

b. In our view, the creation of Regulatory Assets needs to be avoided and past Regulatory Assets have to be liquidated in gradual manner while balancing the interest of both the Distribution Licensee as well as the Consumers.

c. Till such time the Regulatory Assets are fully liquidated, the cost incurred by Distribution Licensee needs to be properly reimbursed.

d. The State Commission while creating the Regulatory Assets or allowing the carrying cost of Regulatory Assets needs to consider these aspects. Our observation on Issue No – 4 while allowing the carrying cost on monthly compounding basis is a step in this direction.

e. Hence this issue is also decided in favour of the Appellant.

25. **Issue No. 6 i.e. Whether the State Commission has rightly determined quantum of increase in the tariff by restricting it to approximately the 2.70% only as against 8% allowed to other distribution licensees of the State, particularly, when the quantum of regulatory assets to be adjusted in the case of the Appellant is substantial, namely, Rs. 575.14 Crores and when in the past such regulatory assets were not allowed to be recovered due to restriction on the increase in the tariff of the Appellant and Issue No. 7 i.e. Whether the State Commission erred in not equating the increase in tariff @ 8% in order to maintain uniform tariff throughout the State which would have also enabled the Appellant to recover additional amount of accumulated regulatory asset without giving any tariff shock to the consumers,** deals with the issue of increase in Tariff allowed to the Appellant to the limited extent and not at par with other Distribution licensees of the State despite defying uniform tariff across the State even when there is substantial quantum of Regulatory Assets remain outstanding. We would like to take both these issues jointly and our observations are as follows;

a. As per the Appellant, the State Commission has not granted adequate tariff to it to recover the annual revenue requirement duly approved by it for the FY 2015-16 leaving a revenue gap of Rs 84.77 Cr for FY 2015-16. This revenue gap has been added to the Regulatory Asset and deferred to be recovered in the later years. The total outstanding Regulatory Asset of Rs 575.14 Cr of the past period are yet to be recovered.

b. Further with the creation of such additional Regulatory Assets, the State Commission has deviated from the earlier orders of maintaining the same increase in tariff to the Appellant and other distribution

licensees in the State. The retail tariff hike grated to the Appellant is only 2.70% despite revenue gap whereas other distribution licensees PVVNL and KESCO, despite having revenue surplus were granted a retail tariff increase of 8% approximately.

c. As per the Appellant, the State Commission should have acted in proper way by increasing the tariff to fully cover the Revenue Requirements of FY 2015-16 or at least 8% tariff hike as allowed in the case of other State Distribution Licensees (especially PVVNL and KESCO, despite having surplus revenue).

   Further for the purpose of recovering the accumulated regulatory asset for previous years, the regulatory surcharge has been allowed for Distribution Licensee in the State. However, the State Commission in the Impugned Tariff Order has considered the revenue of Rs. 88.07 Cr. from regulatory surcharge towards the ARR approved for FY 2015-16 i.e. current year. Considering revenue from approved tariff and without regulatory surcharge, the State Commission has left the Company with a revenue gap of Rs.18.76 Cr. to be carried forward to subsequent years.

d. As per submissions of the Respondent, the State Commission has approved the tariff hike of 17.60% for FY 2012-13, 6.58% for FY 2013-14 & 8.90% for FY 2014-15. In order to avoid tariff shock to the consumers the State Commission has approved the tariff hike of 2.70% for the consumers of Appellant for FY 2015-16 and continued with the past trend of regulatory surcharge, which is 8% of the rate as defined in the rate Schedule.

e. We have observed from the submissions of the parties that the revenue gap carried forward during past years is Rs.565.8 Crs., Rs.576.7 Crs. and Rs.575.14 Crs. for FY 2013-14, FY 2014-15 and for FY 2015-16 respectively. The Tariff hike approved by the State

Commission during past years is 17.60% for FY 2012-13, 6.58% for FY 2013-14, 8.90% for FY 2014-15 and 2.7% in the FY 2015-16.

f. We have maintained in various earlier orders that the creation of Regulatory Assets needs to be avoided by the State Commissions while issuing Tariff orders. There is a strong need for balancing of liquidation of outstanding Regulatory assets in a defined timeframe as well as avoiding tariff shocks to consumers.

g. In the present case, we observe that the tariff hike approved for the Appellant is limited to only 2.7% despite the outstanding Revenue gap. The State Commissions' are generally maintaining uniform tariff across the State, hence in the present case, there was an opportunity for the State Commission to provide increased tariff hike to the Appellant to liquidate outstanding Regulatory Assets, which the State Commission has not availed in the Impugned Tariff Order.

h. In our view, the State Commission should grant relief to the Appellant allowing reasonable tariff hike especially in light of its substantial regulatory assets.

i. Hence both the issues (Issue no 6 and Issue no 7) are remanded to the State Commission for appropriate action.

26. As regards the Issue No.8 : Whether in the facts and circumstances of the case, the State Commission has rightly determined the financing charges incurred in obtaining the funds from the Lenders for meeting the working capital, the finances for bridging the revenue gap i.e. regulatory asset and also for meeting the finances for delayed payment on the part of the consumers; our observations are as discussed hereunder;

a. As per the Appellant, in order to meet the day to day cash requirements including for funding Regulatory Assets approved by the State Commission, the Appellant secured sanction of facilities of

Rs.295 Cr. during FY 2013-14 from various commercial banks on which finance charges of Rs.2.90 Cr. were incurred and paid. The State Commission has restricted finance charges upto normative working capital irrespective of actual and legitimate finance charges claimed by the Appellant. Out of the finance charges of Rs. 2.90 Cr. incurred by the Appellant, the State Commission allowed Finance Charge of Rs.0.61 Cr. only on normative Working Capital of Rs.72.67 Cr.

b. The financing charges are part of the interest cost to be allowed on working capital. The financing charges by the Banks are industry-wise prevalent practice and all the banks do raise financing charges. As per Appellant, the financing charges are to be allowed on actual basis.

c. As per the detail submissions made by the State Commission, it is observed that there is partial disallowance under the head of Processing charges. The Appellant had claimed Rs.10.39 Crs. as processing charges in the True-up petition for FY 13-14 whereas the State Commission has allowed Rs.8.11 Crs. as the processing charges.

d. It can be observed from the Impugned Tariff Order that the difference in the claimed and approved Processing Charges is due to the approval of Rs.0.61 Crore in place of Rs. 2.90 Crore towards Fund Based Working Capital Fund Renewal & CP Issue and Sanction of Fresh Working Capital Fund.

e. The Appellant has submitted to the State Commission that it is availing these facilities not only for the purpose of funding regulatory assets but also for the purpose of meeting its other working capital requirements. These facilities are being utilized to meet its day to day operational requirements like payment of weekly power purchase bills

vis-à-vis debtors collection period of 2 months or more , payment of TDS, income tax, loan repayment obligation etc. for which there is no provision of compensatory cost in the Distribution Tariff Regulations, 2006.

f. In absence of any clear cut distinction of processing charges towards working capital facilities, the State Commission in the Impugned Tariff Order, has proportionately distributed the processing charge of Rs.2.90 Crore for the normative Working Capital of Rs.72.67 Crore approved for FY 2013-14. The State Commission has followed the similar methodology while approving the financing charges for FY 2012-13.

g. When the normative working capital requirement worked out by the State Commission for FY 2013-14 is to the tune of Rs.72.67 Crore, then the finance charges on working capital loan amount of Rs.295 Crore cannot be allowed. The financing charges towards the additional loan amount in excess of normative working capital requirement needs to be borne by the Appellant and cannot be passed on to consumers.

h. We agree with the view of the State Commission. The State Commission has been allowing carrying cost to the Distribution Licensee under separate head, so neither any cost nor should any part of cost related to regulatory asset should be claimed or allowed under the head of finance charges. Regarding interest rate for carrying cost of Regulatory Assets and Delayed Payment Surcharge, we have already given our views on the issues identified above. Therefore the approach of the State Commission of approving the finance charges on the pro-rata basis as per the approved normative working capital requirement has found to be in order.

i. Hence this issue is decided against the Appellant.

27. Issue No. 9 i.e. Whether in the facts and circumstances of the case, the State Commission has rightly determined the quantum of T&D Losses to be allowed and restricting such T&D Losses consistently at a unitary digit of 8% as against 8.41% claimed by the Appellant?

a. As per Regulation 3.2 of the Distribution Tariff Regulations, 2006, the State Commission has identified mechanism for setting up T&D loss reduction targets for the Distribution Licensee and the relevant extract of the same has been reproduced below:

"3.2 Energy loss:

1. *Energy loss in the distribution system shall be called Distribution Loss.*
2. *Distribution loss above ....*

....

.... distribution system.

3. ***To set the base line of distribution loss estimate, the Commission may either require the licensee to carry out proper loss estimation studies for assessment of technical and commercial losses under its supervision, or initiate a study itself.***
4. ***The study shall segregate voltage-wise distribution losses into technical loss (i.e. Ohmic/Core loss in the lines, substations and equipment) and commercial loss (i.e. unaccounted energy due to metering inaccuracies/inadequacies, pilferage of energy, improper billing, no billing, unrealized revenues etc.).***
5. ***The Commission shall based on the opening loss levels as derived from the above study, fix targets both long term and short term, for loss reduction to bring down the distribution losses (both technical and commercial) gradually within the acceptable norms of efficiency.***
6. ***Till such time the results of such a study become available, the Commission shall consider loss levels based on licensees proposal, the effort put in by the licensee for reducing the losses viz-a-viz desirability of such efforts, reality prevailing in the ground as well as achieved loss levels of similarly placed utilities within the State or other States. Based on the above considerations the long-term***

trajectory for distribution losses as specified in the first Tariff Order issued under these regulations shall be considered for determination of the ARR of the Distribution licensees for the future years.

....
.............”

As per Regulations 3.2.3, 3.2.4, 3.2.5 and 3.2.6 of the Distribution Tariff Regulations, 2006, the base line for Distribution loss estimate should be based on study conducted by the Distribution licensee or the State Commission. In the study, voltage-wise Distribution losses shall be segregated into technical loss (i.e. Ohmic/Core loss in the lines, substations and equipment) and commercial loss (i.e. unaccounted energy due to metering inaccuracies/inadequacies, pilferage of energy, improper billing, no billing, unrealized revenues etc). Based on opening loss levels as derived from the above study, distribution loss reduction targets for both long term and short term, shall be set by the State Commission. Further for future years, based on long-term trajectory for distribution losses as specified in the first Tariff Order issued under these regulations shall be considered for determination of the ARR of the Distribution licensees.

b. In the Impugned Tariff Order, the State Commission has based on audited accounts of the Appellant, approved Distribution loss as 7.94% and EHV losses as 0.48%.

c. As per Appellant, the State Commission in the Impugned Tariff Order has considered the T&D loss level to be allowed at 8% as against 8.41% claimed by it. The T&D Losses were to be allowed considering the aspects of the maintenance of the distribution system containing 220 KV, 33 KV, 11 KV and 400 V Line in an area of 335 Sq. KMs. Any significant reduction of Technical and Distribution losses below 8.41% claimed by the Appellant would involve significant

investments. Any capital expenditure to be incurred for achieving loss level below 8.41% is not economical. The State Commission ought to have considered constraint expressed by the Appellant to approve loss level at 8.41% due to ever-increasing loss-prone rural load, sparsely populated, hence, low density of load per square kilometer, absence of separate Police Station and dedicated Special Court to deal with the Electricity Theft Cases, rampant political interference etc.

d. As per the State Commission, there has been no significant improvement in loss levels, despite huge capital expenditure/system improvements undertaken by the Appellant every year. Greater Noida area which was once occupied by rural population is gradually getting urbanized and requires huge capital expenditure to meet the demand of the consumer needs. A major part of the consumers of the Appellant belong to the urban category and the licensee has itself agreed to convert all its consumers under unmetered category to metered category during this financial year. Considering all these facts the State Commission has approved distribution loss for FY 2015-16 at 8.00% against 8.41% claimed by the Appellant.

e. We have observed that in the Impugned Tariff Order, the State Commission has also approved EHV technical losses for FY 2015-16 at 0.60% against 0.44% claimed by the Appellant keeping in view the targets set in its previous order for FY 2014-15. The majority of the energy sales realized by the Appellant are for HT consumers. The HT: LT energy sales ratio as approved by the State Commission is 69.89% for FY 2015-16.

f. This Tribunal in its judgment dated 5.12.2011 passed in Appeal no 4 of 2011as acknowledged that the loss levels achieved by the

Appellant are lowest in the country. The extract of judgment is as follows:

"Admittedly, the distribution loss at 8% achieved by the appellant is one of the lowest in the country. Any reduction below 8% has to be based on a proper study along with specific measures required to be undertaken to achieve the same."

g. We have observed that the Appellant is consistently maintaining Distribution losses at a very efficient level. Even during the FY 2013-14 it had over achieved the Distribution loss reduction target set by the State Commission. The target set by the State Commission for Distribution loss has not been further reduced to below 8% in the Impugned Tariff Order. There can be no going back to set the loss reduction target to such higher level of 8.41% considering the fact that the State Commission is allowing the capital expenditure required to sustain/lower the losses and the fact of growing urbanization of the consumer mix, increasing HT:LT sales ratio and also considering the capability and achievement of the Appellant in previous years.

h. The distribution losses are to be brought down and there is always scope for improvement and the fact that the Appellant has been achieving these targets, hence we are in agreement with the State Commission on the issue of T&D loss reduction target being set at 8% for FY 2015-16. Accordingly, this issue is decided against the Appellant.

28. Now we shall proceed to decide Issue No. 10 i.e. Whether in the facts and circumstances of the case, the State Commission has rightly determined the O&M Expenses to be allowed to the Appellant ignoring the specific plea of the Appellant of increase any such charges on account of various factors not

attributable to any imprudency on the part of Appellant. On this issue, our detailed observations are as hereunder;

a. **For the O&M expenses the Clause No. 4.3 of the Distribution Tariff Regulations, 2006 stipulates as "***Incremental O&M expenses for the ensuing financial year shall be 2.5% of capital addition during the current year. O&M charges for the ensuing financial year shall be sum of incremental O&M expenses so worked out and O&M charges of current year escalated on the basis of predetermined indices as indicated in Regulation."*

b. As per Impugned Tariff Order, the State Commission has allowed O&M expenses on normative basis as per the provisions of its prevailing Regulations. This approach is in line with the approach followed by the State Commission in its earlier Tariff Orders.

c. As per the Appellant, the State Commission in its Impugned Tariff Order, has not allowed the O&M expenses to the extent claimed by the Appellant. The State Commission has calculated the O&M expenses based on the weighted average Inflation Index computed at 4.02% for the previous year FY 2014-15.The State Commission has held that if the O&M expenses are projected for ensuing year on the basis of actual O&M expenses for previous year as claimed by the Appellant, there will be no sanctity of fixation of norms in Distribution Tariff Regulations. It has been held that the linking the O&M expenses for ensuing year based on previous years actual O&M expenses would amount to seeking amendment to Distribution Tariff Regulations, 2006.

d. The Appellant stated that the Regulation 4.3 of the Distribution Tariff Regulation does not prohibit the consideration of appropriate O&M expenses based on actual expenses of the previous year if the

circumstances so warrant . The State Commission also has the power to relax and inherent power to consider appropriate amount even in deviation from those specified in the Specific Regulations.

e. We have observed that the Distribution Tariff Regulation provides that O&M expenses for the ensuing year shall be determined on normative basis. Normative O&M expenses for the ensuing year shall be base year O&M expenses suitably escalated based on predefined escalation indices which have been identified as weighted average of Wholesale Price Index and Consumer Price Index in the ratio of 60:40. The incremental O&M expenses for the ensuing financial year shall be 2.5% of capital addition during the current year.

f. Further Regulation 4.3(5) of the Distribution Tariff Regulations, 2006 provides for consideration of allowance of any additional O&M expenses in situation like war, insurgency, and change in laws or like eventualities for a specified period, which is not the case in present Appeal.

g. The State Commission in the Impugned Tariff Order has allowed O&M expenses based on norms as per the provisions of the Distribution Tariff Regulations which has been followed by it in its earlier Tariff orders. We do not find any infirmity in this approach followed by the State Commission.

h. Hence this issue is decided against the Appellant.

29. On the Issue No. 11 i.e. Whether in the facts and circumstances of the case, the State Commission was right in disallowing the expenses claimed on account of the Corporate Social Responsibility (CSR) Obligation to be met by the Appellant under the provisions of the Companies Act, 2013, a mandate of law , our analysis is as follows:

a. On this issue of disallowance of CSR expenses claimed during FY 15-16 reference has been made by the Appellant on the provisions of Companies Act 2013 which has mandated Appellant to incur expenses on Corporate Social Responsibility @ 2% of the Appellant's profit .

b. The Appellant had claimed an additional amount of Rs 0.95 Crore in its ARR Petition for FY 2015-16. The CSR expenditure has not been allowed by the State Commission in the Impugned Tariff Order stating that the essence of the above provision in the Companies Act, 2013 is for the Companies to contribute some of their profits to corporate social developments and if such expenses are allowed in the ARR, it would indirectly mean that the CSR is being done by the consumers and not by the Companies.

c. The Appellant contended that the CSR expenses is being incurred by mandate of law which came subsequent to the notification of the Distribution Tariff Regulations, 2006 and are therefore incurred on account of change in law

d. As per the Respondent, the Appellant is statutorily bound to incur CSR expenses on the activities as defined in provisions of the newly enacted Companies Act, 2013.

e. It is very much clear from the relevant extract from Companies Act 2013 that the company should spend, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

f. We are of the considered opinion that if such expenses are passed on to the consumers in the ARR, it would defeat the very purpose . in fact, such expenses are for the social development which should not be passed on to the consumers.

g. We have noted from the Impugned Tariff Order that the State Commission may review during the Truing up for FY 2015-16 after analysing the actual expenses and case laws in other states.

h. We are in agreement with the views of State Commission in the Impugned Tariff Order.

i. Hence this issue is decided against the Appellant.

30. On the Issue No. 12 i.e. Whether in the facts and circumstances of the case the State Commission, having determined the tariff for the financial year 2015-16 only on 18.6.2015, is right in not providing for annualisation of the tariff so as to consider its impact from 1.4.2015 onwards, our analysis is hereunder;

a. The State Commission while determining the tariff by its Impugned Tariff Order dated 18.6.2015 for the tariff period 2015-16 and making it effective thereafter, ought to have considered the tariff implication for the period from 1.4.2015 onwards by providing for the annualisation of the tariff.

b. On careful examination of the case, we observe that pursuant to receipt of all requisite data/information as sought by the State Commission, it admitted the Appellant's petition on 23rd March 2015'. The State Commission after due process of consultation and other formalities as per UPERC Distribution Tariff Regulations, 2006 and Electricity Act, 2003 issued the Tariff order on June 18, 2015. We have perused the entire sequence of the events happened after submission of the petition and the data sought by the State Commission on various occasions and then finally admitted it. We do not intend to interfere with the findings of the State Commission on this issue in its Impugned Tariff Order.

Hence, this issue is decided against the Appellant.

31. Now on the Issue No.13 i.e. Whether in the facts and circumstances of the case, the State Commission was right in re-computing interest/ carrying cost on regulatory asset for Financial Year 2014-15 whereas the same was not the subject matter of Petition No. 984 of 2014, our observations are as follows;

a. This issue has been raised by the Appellant that State Commission has in the Impugned Tariff Order recomputed the interest/ carrying cost on Regulatory Assets for FY 2014-15 in the Petition filed for determination of ARR for FY 2015-16 and Truing Up of the financials for FY 2013-14. While in terms of the Distribution Tariff Regulations, 2006, it is not open to the State Commission to vary the interest rate on matters and for financials which are not the subject matter of the proceedings before the State Commission.

b. On our perusal, we observe that the State Commission has not touched upon any of cost or revenue components of the Annual Revenue Requirement for FY 2014-15. The State Commission has only considered the revenue gap/surplus recognized by the State Commission in its Tariff Order for FY 2014-15 dated October 01, 2014 for the projection of revenue gap/surplus and regulatory assets for FY 2015-16. The similar principle has been adopted by the State Commission in its past Tariff Orders for the Appellant. The Revenue Gap/surplus of the FY 2014-15 is subject to truing up based on the audited annual accounts and the actual revenue gap/surplus would be considered based on truing up for the computation of the regulatory assets at the time of truing up. The State Commission has considered the carrying cost as per the carrying cost approved in the current tariff order which is provisional, the carrying cost would also

be trued up based on the interest rate approved by the State Commission at the time of truing up for FY 2014-15.

c. Regarding rate of interest used for determining carrying cost of Regulatory Assets for FY 2015-16, we have already expressed our view in this judgment.

d. In view of above, we do not find any shortcoming on this issue. Hence this issue is decided against the Appellant.

ORDER

In light of the above, the Appeal is hereby partially allowed. The Impugned Order dated 18.06.2015 passed by the State Commission is hereby remanded to the State Commission in respect of Issue nos. 6 and 7 dealt in para 25 relating to the quantum of increase in tariff as ordered above.

No order as to costs.

Pronounced in the Open Court on this **2nd day of June, 2016.**

(I.J. Kapoor) **Technical Member**	**(Mrs. Justice Ranjana P. Desai)** **Chairperson**

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REPORTABLE/~~NON-REPORTABLE~~

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