

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

**Appeal No.89 of 2011 &
I.A. No. 57 of 2012**

Dated:14th August,2012

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

In the matter of:

Chhattisgarh State Power Distribution Co. Ltd.,

4th Floor, Vidyut Seva Bhavan,

Danganiya, Raipur-492013,

Represented by its Superintending Engineer ... **Appellant**

Versus

1. **Chhattisgarh State Power Generation Co. Ltd.,**
3rd Floor, Vidyut Seva Bhavan,
Danganiya, Raipur-492013.
2. **Chhattisgarh State Power Transmission Co. Ltd.,**
3rd Floor, Vidyut Seva Bhavan,
Danganiya, Raipur-492013.
3. **Chhattisgarh State Power Holding Co. Ltd.,**
2nd Floor, Vidyut Seva Bhavan,
Danganiya, Raipur-492013.
4. **Chhattisgarh State Power Trading Co. Ltd.,**
2nd Floor, Vidyut Seva Bhavan,
Danganiya, Raipur-492013.
5. **Chhattisgarh State Load Dispatch Centre,**
C/o Chhattisgarh State Power Transmission Co. Ltd.,
3rd Floor, Vidyut Seva Bhavan,
Danganiya, Raipur-492013.
6. **Chhattisgarh State Electricity Regulatory Commission,**
Irrigation Colony, Shanti Nagar,
Raipur-492 001. **...Respondent(s)**

Counsel for the Appellant(s) : Mr. K. Gopal Chaudhary with
Mr. A. Bhatnagar (Rep.)
Counsel for the Respondent(s) : Ms. Suparna Srivastava &
Mr. Sudhir Kathpalia for R.1,2 & 5
Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri &
Ms. Sneha Venkataramani for R-6

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Chhattisgarh State Power Distribution Company Limited, a distribution licensee, against the order of the Chhattisgarh State Electricity Regulatory Commission (“State Commission”) dated 31.03.2011 determining the tariff for the FY 2011-12 and the true up for previous years. Respondent nos. 1 to 5 are the other successor entities of the erstwhile Chhattisgarh State Electricity Board, besides the Appellant. Respondent no. 6 is the State Commission.

2. The brief facts of the case are as under:

2.1 On 15.06.2005, the State Commission passed the Tariff Order for the FY 2005-06. On 17.02.2006 the

Tariff Regulations, 2006 were issued which came into effect on 1.03.2006. The Tariff Orders for the FYs 2006-07 and 2007-08 for the Electricity Board were passed by the State Commission on 13.09.2006 and 22.10.2007 respectively according to the Tariff Regulations, 2006. For the FY 2008-09 also the Tariff Order for 2007-08 was continued, pending issue of Multi-Year Tariff Regulations. On 25.06.2008 the Multi-Year Tariff Regulations, 2008 were issued by the State Commission which were to be made applicable from the FY 2009-10 onwards.

2.2 Pursuant to a Statutory Transfer Scheme Notification issued by the State Government on 19.12.2008, all assets, liabilities, rights and obligations of the Electricity Board were vested in the State w.e.f. 1.1.2009. The Transfer Scheme further vested with specific assets, liabilities, rights and

obligations out of the assets vested in the State in five companies w.e.f. 1.1.2009. Subsequently, a revised Transfer Scheme was issued on 31.03.2010 superseding the earlier transfer scheme. On 29.10.2010, the State Government notified the provisional opening balance sheets pursuant to the Transfer Scheme which was subject to changes as may be notified subsequently by the State Government.

2.3 Tariff Order for the FY 2009-10 for the successor companies of the Electricity Board for Generation, Transmission and Distribution was passed by the State Commission on 30.05.2009. In this order the provisional true up was also carried out for the FY 2007-08.

2.4 On 09.01.2010, the State Commission issued the Multi-Year Tariff Regulations, 2010, which was made applicable from the FY 2010-11 onwards. However,

the tariff as determined in the Tariff Order for the FY 2009-10 was also continued for the FY 2010-11.

2.5 The Distribution Company, the Appellant herein, as also Generation and Transmission companies, filed their respective tariff petitions for determination of ARR for the control period 2010-11 to 2012-13 and for the determination of tariff for the FY 2011-12. On 31.03.2011, the State Commission passed a common order deciding the true up for the previous years and ARR for the control period and tariff for the FY 2011-12 for all the successor entities of the Electricity Board.

2.6 Aggrieved by the order dated 31.03.2011, the Appellant has filed this Appeal.

3. The Appellant has raised the following issues:

3.1 The State Commission has erroneously applied a different methodology for depreciation than that

adopted in the Tariff Order for the FY 2005-06 while carrying out the true up in the impugned order. Consequently, the State Commission allowed only Rs. 31 crores towards depreciation for FY 2005-06 whereas it ought to have allowed Rs. 89.80 crores on the basis of the methodology adopted in the original tariff order.

3.2 The State Commission incorrectly applied a different methodology for the reasonable return than that adopted in the Tariff Order for the FY 2005-06 while carrying out the true up. The State Commission wrongly followed the methodology based on the 2006 Regulations which were not applicable to the FY 2005-06. Consequently, the State Commission only allowed a return of Rs. 155.84 crores for the FY 2005-06 as against Rs. 176.44 crores which was

allowed in the original Tariff Order for the FY 2005-06.

3.3 The State Commission has not allowed interest on working capital on normative basis for the FY 2006-07 to 2009-10, contrary to the 2006 Regulations.

3.4 The State Commission erroneously considered the revenue and the surplus accruing from the trading of electricity into the ARRs for the distribution and retail supply business of the Electricity Board whereas the State Commission ought to have excluded the revenue earned from inter-state bilateral sales of Rs. 219 crores and Rs. 839 crores respectively for the FY 2007-08 and 2008-09 and should have excluded the corresponding power purchase costs of Rs. 108 crores and Rs. 493 crores while carrying out the true up for the respective years. Accordingly, the surplus of

Rs. 457 crores ought to have been excluded in the ARR.

3.5 The State Commission has omitted the power purchase from the Trading Company during the period January-March, 2009 and consequently understated the power purchase cost by Rs. 38.64 crores for the FY 2008-09.

3.6 The State Commission has erred in increasing the revenue from the sale of LV 1.1 Domestic (BPL) and LV-3 Agriculture consumers by Rs. 52 crores and Rs. 60 crores respectively in the provisional true up for the FY 2009-10 even though the State Commission had specified optional flat rate tariffs for these consumers.

3.7 The State Commission has wrongly restricted pass through of the Employees' Gratuity and Pension fund

liabilities particularly when the fund requirements are admittedly much more than the available fund in respect of past service liabilities at various periods of time. The Commission also did not adjust the surplus as far as possible against the shortfall of contribution so that past consumption by the consumers and the revenue from them contributes to the past service liability for the past period so that the future consumers and consumption are not burdened by unfunded contributions of the past. The State Commission ought to have allowed the amounts that were actually provided for, or paid or allowed, whichever was higher, for each of the years so that the fund is brought to the appropriate level at the earliest.

3.8 The State Commission has no jurisdiction to carry out the allocation of surplus of the State Electricity Board amongst the successor entities of the

Board as such allocation of such liability of the Board amongst the successor entities was within the power and competence of only the State Government. The State Commission was incorrect to make the allocation in the ratio of 35:5:60 to generation, transmission and distribution utilities respectively on the basis of vague mention about the trend in average expenditure of the successor companies. Assuming that the State Commission has jurisdiction, the State Commission ought to have made the allocation in the ratio of 59:19:25 between Generation, Transmission and Distribution Companies respectively based upon the respective utilization of the surpluses in the funding of assets.

3.9 The State Commission has erroneously computed the average cost of supply for the FY 2011-12 at Rs. 3.78 per unit. The Commission ought to have

computed the average cost of supply at Rs. 3.63 per unit and accordingly decided the cross subsidy surcharge.

3.10 The State Commission has wrongly restricted the ARR for the FY 2011-12 leaving an uncovered deficit of Rs. 343 crores making the Appellant to bear cash shortage and inability to meet the expenditure.

3.11 On the above issues we heard the learned counsel for the Appellant, learned counsel for the State Commission and learned counsel for the Respondent nos. 1,2 and 5.

3.12 The learned counsel for the Appellant made detailed submissions in respect of its claim on the above mentioned issues. On the other hand, the learned counsel for the State Commission explained

the findings of the State Commission on the various issues.

3.13 Learned counsel for Respondent nos. 1,2 and 5 repelled the contentions made by the Appellant with reference to allocation of surplus/deficit made by the State Commission amongst the successor entities of the Electricity Board while supporting the contentions of the Appellant on other issues. She also submitted that the State Commission had jurisdiction to decide the allocation of surplus for the period of Electricity Board amongst the successor entities. According to her, distribution of surplus/deficit between the successor entities of the Electricity Board has neither been addressed to nor deliberated with by the State Commission between the successor companies prior to passing of the Tariff Order. Thus, neither of the successor companies have been afforded an

opportunity to plead or agitate before the State Commission on the issue of allocation of surplus/deficit between them. As such, the Appellant ought to have invoked the review jurisdiction of the State Commission for correction of the alleged error.

4. On the basis of rival contentions placed before us by the parties, the following questions would arise for our consideration:

- i) Whether the State Commission has erred in applying a different methodology for determination of depreciation than that adopted in the Tariff Order for the FY 2005-06 while carrying out the true up?
- ii) Whether the State Commission was correct in applying a different methodology for the reasonable return than that adopted in the Tariff Order for the FY 2005-06 in carrying

out the true up for the FY 2005-06 on the basis of 2006 Regulations which were not applicable to the FY 2005-06?

- iii) Whether the State Commission has erred in not allowing interest on working capital for the period 2006-07 to 2009-10 contrary to 2006 Regulations?
- iv) Whether the State Commission was correct in considering the revenue and surplus accruing from the trading of electricity into the ARRs for the distribution and retail supply business of the Electricity Board while carrying out the true up for the FYs 2007-08 and 2008-09?
- v) Whether the State Commission has erred in omitting the power purchase cost during the period January-March 2009, thus

understating the power purchase cost for the FY 2008-09?

- vi) Whether the State Commission has wrongly increased the revenue from sale to Domestic (BPL) and Agriculture consumers in the provisional true up for the FY 2009-10 without considering that these categories had optional flat rate tariffs as per the orders of the State Commission?
- vii) Whether the State Commission was correct in restricting pass through of the Employees' Gratuity and Pension fund liabilities?
- viii) Whether the State Commission had jurisdiction to carry out the allocation of surplus of the State Electricity Board amongst the successor entities of the

Electricity Board and whether the allocation decided in the impugned order was rational?

ix) Whether the State Commission has erred in computing the average cost of supply for the FY 2011-12?

x) Whether the State Commission has erred in giving an uncovered deficit of Rs. 343 crores in the ARR of the Appellant for the FY 2011-12?

5. The first issue is regarding truing up of depreciation for the FY 2005-06:

5.1 According to learned counsel for the Appellant, the State Commission should have used the same methodology as adopted in the Tariff Order for the FY 2005-06 while truing up.

5.2 The learned counsel for Respondent nos. 1,2 and 5 has supported the contentions of the Appellant.

5.3 According to learned counsel for the State Commission, the Commission strictly allowed the depreciation in terms of petition for true up filed by the Appellant.

5.4 In reply to the above contention of the State Commission, the learned counsel for the Appellant has argued that the accounts of the Electricity Board and the true up of the years prior to unbundling of the Board were to be handled by the Respondent no. 3, the Holding Company in terms of statutory Transfer Scheme which provided for the Holding Company to deal with all the matters in the name of Electricity Board. The Appellant had repeatedly represented to the State Commission that the Board's accounts and

details be obtained from the Holding Company. However, the Commission insisted that the accounts be filed by the Appellant. Accordingly, the Appellant as also the first and second Respondents filed the accounts and data exactly as received from the third Respondent. It appears that the third Respondent erroneously worked out the depreciation for the FY 2005-06 according to the 2006 Regulations which were not applicable to the FY 2005-06. This error came to light after the impugned order was passed.

5.5 We notice that the Appellant has not filed a copy of its petition and data submitted to the State Commission. However, the learned counsel for the State Commission presented a copy of the relevant data submitted by the Appellant before the State Commission. The data submitted by the Appellant before the State Commission clearly indicates that

against the depreciation of Rs. 111 crores allowed in the Tariff Order for the FY 2005-06 the actual (audited) depreciation was Rs. 41 crores. The foot note below the data submitted by the Appellant also stated that the depreciation was calculated on straight-line method and as per the rates specified in the Tariff Regulations governing the respective years. The State Commission accordingly allowed the depreciation of Rs.41 crores but deducted the amount on account of share of consumer contribution in opening Gross Fixed Assets (GFA) and allowed net depreciation of Rs. 31 crores for the FY 2005-06.

5.6 We notice that the State Commission has allowed the depreciation as per the audited accounts submitted by the Appellant. When the audited accounts of the Electricity Board indicate a depreciation of Rs. 41 crores, the Appellant cannot

claim that the Holding Company (R-3) had submitted wrong data. The Holding Company (R-3) has also not chosen to appear before us to give their version about the depreciation figure adopted in the audited account. Thus, we do not find any infirmity in the finding of the State Commission on this issue.

6. The second issue is regarding true up of reasonable return for the FY 2005-06.

6.1. According to the learned counsel for the Appellant, the State Commission has erroneously considered return on equity @ 14% on a normative equity according to 2006 Tariff Regulations instead of 14% return on equity on the net worth as at the beginning of FY 2005-06. Learned counsel for Respondent nos. 1,2 and 5 has supported the contentions of the learned counsel for the Appellant.

6.2. According to the learned counsel for the State Commission the return on equity has been allowed in terms of the petition of the Appellant based on the audited accounts of the Electricity Board for the FY 2005-06 except that the return on equity claimed on capital works in progress has not been allowed.

6.3. We notice that the State Commission has determined the return on equity in terms of the audited accounts furnished by the Appellant in its petition to the State Commission. The Appellant has taken a plea now that the information was furnished as obtained from the Holding Company. We do not find any substance in the submission of the Appellant. When the Appellant was furnishing the information, it should have properly scrutinized and then only submitted the same to the State Commission. The Holding Company has also not chosen to appear

before us to present their position. We do not find any infirmity in the finding of the State Commission. Thus, this issue is also decided against the Appellant.

7. The third issue is regarding interest on working capital for the FYs 2006-07 to 2009-10:

7.1 According to the learned counsel for the Appellant, the State Commission did not allow any interest on working capital for the years 2006-07 to 2009-10 contrary to Clause 21 of the 2006 Regulations. Respondent nos. 1,2 & 5 have supported the contentions of the Appellant.

7.2. The learned counsel for the State Commission has argued that the interest on working capital has not been allowed in true up as the same was not allowed as a separate element of expenditure in the Tariff Order.

7.3 We notice that Clause 15 of Tariff Regulations 2006 stipulates the determination of working capital for the distribution licensee. Clause 21 stipulates that the interest on working capital shall be on normative basis even when the licensee has not taken working capital loan from any outside agency or his working capital loan exceeds the normative figures. Thus, the Regulations clearly provide for interest on working capital on normative basis, irrespective of the actual interest on working capital. The Appellant in the true up application had sought interest on working capital but the same was not allowed by the State Commission on the plea that interest on working capital was not allowed as a separate component in the respective Tariff Orders.

7.4 The learned counsel for the Appellant has relied on this Tribunal's finding in its Judgment dated

21.4.2011 reported as 2011 ELR (APTEL) 0830 July-Aug.,2011 in the matter of Madhya Pradesh Power Generation Co. vs. Madhya Pradesh State Electricity Regulatory Commission (Appeal No. 24 of 2010). In this Judgment, the Tribunal has held that if in the main order an error has been committed by the State Commission by not following the Regulations without assigning any reasons, the same error cannot be perpetuated and is required to be corrected in the true up. This decision of the Tribunal squarely applies in the present case. When the Regulation provide for interest on working capital, the same ought to have been allowed. Accordingly, this issue is decided in favour of the Appellant.

8. The fourth issue is regarding Inter-State sales and associated Power Purchase cost for consideration in the ARR of Distribution & Retail Supply business.

8.1. According to the Appellant, the State Commission has erroneously considered the revenue and the surplus accruing from the trading of electricity in the course of inter-state sales into the ARR for the distribution and retail supply business of the Electricity Board. The Commission ought to have excluded the inter-state bilateral sales revenue and corresponding power purchase costs while carrying out the true up for the FY 2007-08 and 2008-09. The Electricity Board had entered into the short-term power purchase contracts with Captive Power Plants and IPPs for purchase of power beyond its requirement of power for meeting its retail supply sales. Such power procured under short-term power purchase contracts were for the purpose of trading and only a small part of such purchases was utilized for the Electricity Board's retail supply requirements.

Therefore, the power purchase under short-term power purchase contracts which had been sold in inter-state transactions were not part of the retail supply business of the Electricity Board. Learned counsel for the Respondents 1, 2 & 5 has supported the Appellant on this issue.

8.2 The learned counsel for the State Commission has submitted that the entire trading activity has been undertaken by the Electricity Board acting as a distribution licensee and the trading activity is only incidental to the distribution activities undertaken by the Electricity Board. The primary responsibility of the Electricity Board was to supply electricity to the consumers in the State of Chhattisgarh and only such surplus electricity which is not consumed by the consumers in the State was to be sold to third parties by way of trading in electricity. The entire revenue

requirements of the Electricity Board are met by the consumers in the State and, therefore, any surplus generated by the trading could not be allowed to be retained by the distribution licensee on account of its trading activities.

8.3 We are in agreement with the State Commission that the ARR of the Board for the FY 2007-08 and 2008-09 has to be tried up on a composite basis. The trading of power by the erstwhile Electricity Board was an incidental activity and the profit earned by the Electricity Board in trading of surplus electricity could not be allowed to be retained by any successor entity of the Electricity Board. When all the expenses incurred by the Electricity Board in carrying out its functions have been passed on to the consumers, it would be unreasonable not to pass on the surplus generated by the Electricity Board on account of

trading of electricity to the consumers. We do not find any infirmity in the findings of the State Commission. Accordingly, this issue is decided against the Appellant.

9. The fifth issue is regarding power purchase from the trading company during the period January-March, 2009.

9.1 According to the Appellant, the State Commission has omitted the power purchase cost of Rs. 38.64 crores for 160.21 million units of energy from the Trading Company (R-4) during the period January to March, 2009.

9.2 As per learned counsel for the State Commission, the power purchase cost as submitted in the accounts filed by the Appellant has been allowed. The Appellant had produced only the extract of the High Power Committee Report wherein the said figure of

Rs. 38.64 crores is mentioned corresponding to 160.21 MU of electricity claimed to have been purchased. However, the Appellant could furnish the relevant details for the power purchase cost and the State Commission would verify and consider the claim.

9.3 In view of the submission made by the State Commission we direct the Appellant to furnish the necessary details in support of its claim to the State Commission and the State Commission shall consider the same for approval after verification.

10. The sixth issue is regarding true up of revenue from sale to LV-1.1 Domestic (BPL) and LV-3 Agriculture Category of consumers for the FY 2009-10.

10.1 According to the Appellant, the State Commission has arbitrarily increased the revenue from the sale to LV 1.1 Domestic (BPL) and LV-3 Agriculture

consumers in the provisional true up for the FY 2009-10.

10.2 According to the learned counsel for the State Commission, the tariff order for the FY 2009-10 provided for two sub-categories of BPL and agriculture consumers, viz., metered tariff and unmetered tariff. For unmetered consumers, the Appellant was required to charge the unmetered category tariff and for metered consumers the metered category tariff. In the year 2009-10, 100% metering was achieved for agriculture and BPL consumers. In view of above, the Appellant was required to charge the tariff as applicable for metered consumers and not as applicable for unmetered consumers. On verification of provisional data as submitted by the Appellant it was observed that the sales against these categories had not risen proportionately to the metered

consumption as reported by the Appellant. No explanation was given by the Appellant for unreasonably low revenue from these categories. In view of above, the State Commission took into account the revenue at the Average Billing Rate for such consumers.

10.3 Let us first examine the findings of the State Commission. The relevant extracts from the impugned order are reproduced below:

“9.76 CSPDCL has submitted in its petition that it has completed 100% metering of all its BPL and agricultural consumers in FY 2009-10. Accordingly, it has not restated its agricultural and BPL sales for the year. Consequently, the sales for these two categories have risen sharply in FY 2009-10. However, the revenue earned against these sales has not increased proportionately.

9.77 For BPL consumer category (LV 1.1) the sales and revenue for FY 2009-10 has been submitted at 729 MU and Rs. 60 Cr. respectively, which works out to be Rs. .83/unit. Given that 100% metering has been achieved for all BPL consumers and average tariff of Rs. 1.50/unit has been approved for metered consumers in the category, the average realized revenue of Rs. .83/unit is unreasonably low. CSPDCL was also unable to provide any suitable explanation for the low revenue realization.

9.78 Similarly, for the agriculture category (LV-3), the sales and revenue for FY 2009-10 have been submitted at 1690 MU and Rs. 74 Cr. respectively, which works out to be Rs. 0.44/unit. The Commission in its previous tariff order has approved an average tariff of Rs. 0.79/unit for this category. CSPDCL was unable to provide any suitable explanation for the low revenue realization in this category as well.

9.79 The Commission finds such low realization of revenue inexplicable and it seems

that either the correct revenue for the category is not being reported by CSPDCL or the sales to this category have been stated incorrectly. The Commission for this provisional true up has provisionally computed revenue for BPL and agriculture category at Rs. 112 Cr. and Rs. 134 Cr. respectively, using the Average Billing Rate (ABR) of Rs. 1.53/unit and Rs. .79/unit as approved by the Commission for the BPL and agriculture category in its previous tariff order. The same shall be trued up during the final true up for FY 2009-10 based upon the audited accounts of CSPDCL”.

10.4 The findings of the State Commission are summarized as under:

- i) The Appellant has completed 100% metering for BPL and agriculture consumers in the FY 2009-10.
- ii) The average rate of realization from BPL consumer category (LV 1.1) works out to be

Rs. 0.83/unit as compared to tariff of Rs. 1.50/unit approved for metered consumers in the BPL category.

iii) For agriculture consumers, the average rate of realization is Rs. 0.44/unit as against average tariff of Rs. 0.79 per unit for this category.

iv) The State Commission has provisionally computed revenue for BPL and agriculture category using Average Billing Rate of Rs. 1.53/unit and Rs. 0.79/unit respectively.

10.5 Let us now examine the tariff approved by the State Commission for BPL and agriculture consumers in the FY 2009-10. The relevant tariff schedule for the

FY 2009-10 is as under:

“2. Tariff

	Category of consumers	Unit Slab (Non-Telescopic)	Fixed Charge (In Rupees)	Energy charge (Rs. per unit)	Minimum Fixed Charge
	<i>LV-1: Domestic</i>				
1.1	<i>BPL consumers</i>	-	<i>Rs.50/Connection/M</i>	-	<i>Nil</i>
1.1.1	<i>Un-metered</i>	<i>0-30 units</i>	<i>Rs. 0.75 per unit</i>	<i>0.75</i>	
1.1.2	<i>Metered</i>				
1.2	<i>Other Domestic Consumers (Metered)</i>	<i>0-200 units</i> <i>0-500 units</i> <i>0-700 units</i> <i>0-Above 700 units</i>	<i>0.90 per unit</i> <i>1.00 per unit</i> <i>1.20 per unit</i> <i>1.50 per unit</i>	<i>0.70</i> <i>0.90</i> <i>1.25</i> <i>1.50</i>	<i>Single phase- Rs.30/- p.m.</i> <i>Three phase- Rs. 100/- p.m.</i>

Notes:

- i. LV 1.1 tariff is applicable only to such consumers – who fulfill all of the following three conditions:-*
 - a. whose connected load is not more 120 Watts,*
 - b. whose consumption in the previous year is not more than 360 units, and*
 - c. who hold BPL card*
- ii. The existing un-metered BPL consumers shall be billed according to tariff 1.1.1. In case the connected load at any time is found more than 120*

Watts, then the consumer will cease to be covered under LV tariff 1.1.1 and thereafter monthly billing shall be done according to LV tariff 1.2 and the consumption shall be assessed on 35 % load factor”.

“1. Tariff

	<i>Category of consumers</i>	<i>Fixed Charge</i>	<i>Energy charge (Rs. per unit)</i>
	<i>LV-3: L.T. Agriculture</i>		
<i>3.1</i>	<i>Metered Supply</i>	<i>Rs. 20/HP/Month</i>	<i>1.00</i>
<i>3.2</i>	<i>Flat Rate Supply Upto 3 HP</i>	<i>Rs. 65/HP/Month</i>	<i>Nil</i>

One 40W incandescent bulb/CFL of appropriate wattage not exceeding 20 W is permitted at or near the motor pump set in the power circuit.

Notes:

i) Existing connections up to 3 HP load shall have the option of being billed on actual consumption in meter or on flat rate.

ii) All existing connections above 3 HP load not provided with meters so far, the monthly billing of such consumer shall be done according to LT tariff 3.1 for consumption assessed on 25% load factor.

iii) All new agriculture connections shall be served only with meters and connections above 3 HP load

shall be billed on the basis of actual consumption recorded in the meter as per L.T. tariff 3.1”.

10.6 It may be seen that the BPL consumers in unmetered category will be charged a flat rate of Rs. 50/connection per month (Tariff 1.1.1). For metered BPL consumers the tariff is Rs. 1.50 per unit (Rs. 0.75 per unit as fixed charge and Rs. 0.75 per unit as energy charge). However, once a meter is installed at the premises of a BPL consumer, such consumer will be billed at tariff for metered BPL category (1.1.2). There is no option available to metered BPL consumer to continue with the flat rate tariff applicable to unmetered BPL consumer. On the other hand, according to the Tariff Order, the existing agriculture consumer upto 3 HP load has option of being billed on actual consumption in meter or on flat rate.

10.7 There are two points which the State Commission has not considered in its computation of revenue in the impugned order. Firstly, the 100% metering was completed during the FY 2009-10. Thus at the beginning of the year some BPL and agriculture consumers were having unmetered supplies which were converted into metered supply during the FY 2009-10. Secondly, the agriculture consumers upto 3 HP had the option of being billed as per metered consumption or at a flat rate. Thus the agriculture consumers upto 3 HP even after installation of meters had option of flat rate tariff as per the tariff order passed by the State Commission. Thus, the State Commission has erred in computing the revenue for BPL and Agriculture consumers for the FY 2009-10 on account of the above two points.

10.8 The State Commission has pointed out in the impugned order the provisionally computed revenue from BPL and agriculture category will be trued up during the final true up for FY 2009-10 based on the audited accounts of the Appellant.

10.9 We, therefore, direct the State Commission to consider the points described in 10.7 above while truing up the accounts for the FY 2009-10. The Appellant shall also furnish justification for its claim for revenue from BPL and Agriculture consumers with supporting data and the State Commission shall consider the same while deciding the final true up.

11. The seventh issue is regarding employees' pension and gratuity fund contributions to the fund.

11.1 According to the Appellant, the State Commission wrongly restricted pass through of the

Employees' Gratuity and Pension Fund liabilities without considering that the fund requirements were admittedly much more than the available fund in respect of past service liabilities. The Commission should have adjusted the surplus as far as possible against the shortfall of contribution to the fund.

11.2 According to the State Commission, it has consistently been allowing contributions to be made by the Electricity Board/unbundled utilities to meet the terminal benefit payable to the employees. The State Commission has also been holding that the terminal benefits ought to be made from the said fund and ought not to be separately paid by the Utilities. Since the year 2006-07, the net income of the Pension and Gratuity Fund Trust has been more than the payments made to the pensioners. Further, no actuarial valuation of the fund has been carried out

after the recommendations of the 6th Pay Commission were announced, due to which the fund requirements may increase.

11.3 Let us now discuss the claims of the Appellant for the various years. For the year 2005-06 the Appellant had made actual contribution of Rs. 79.62 crores which has been allowed in the true up. The Appellant wants that the State Commission should have allowed Rs. 200 crores as the Electricity Board had made a provision of Rs. 200 crores over and above the actual contribution of Rs. 79.62 crores, so that the contribution may be paid later, perhaps without suffering the Fringe Benefit Tax or at least the State Commission should have allowed Rs. 111.01 crores which was approved in the Tariff Order for FY 2005-06. We feel that the State Commission has correctly allowed the amount of

Rs. 79.62 crores in the true-up corresponding to the actual contribution to the Fund. Increased amount cannot be allowed merely because the Electricity Board kept a higher provision in the accounts to be paid later for avoiding fringe Benefit Tax or a higher allowance made in the Tariff Order for the FY 2005-06. The true up has been made correctly by the State Commission to the extent of actual payment contribution to the Fund.

11.4 For the FY 2008-09 also the State Commission has correctly allowed Rs. 295.59 crores to the Electricity Board and its successor entities corresponding to their actual contribution to the Fund. In the provisional true up of FY 2009-10 also the State Commission has allowed Rs. 176.54 crores corresponding to the actual contribution by the Appellant to the Fund. The Appellant has claimed

consideration of direct payment made to the Employees which has not been allowed by the State Commission. According to the State Commission, it had held several times to make terminal benefit payment from the fund and not to make direct payment to the Employees.

11.5 We do not find any infirmity in the findings of the State Commission as it has allowed the actual contribution to the Fund in the true up. There is no substance in the argument of the Appellant that the amount approved in the Tariff Order should be allowed in the True-up as the Tariff Order only provides for estimated amount which has to be trued up as per the actuals.

11.6 According to the Appellant, for the MYT period 2010-13, the Commission has allowed only

Rs. 121.75 crores per year as contributions to the Fund as against the Appellant's proposal for Rs. 257.09 crores in each year.

11.7 We notice that the State Commission has recognized in the impugned order that no actual evaluation for the Fund has been carried out after the recommendations of the Sixth Pay Commission were announced and the requirement of Pension fund may increase when the effect of the Sixth Pay Commission is evaluated. Therefore, we direct the Appellant to carry out actuarial valuation for the Employees' Gratuity & Pension Fund after announcement of the Sixth Pay Commission recommendations and submit a proposal for the contribution required to the State Commission on the basis of the actuarial valuation. The State Commission after the receipt of the proposal from the Appellant shall review the contribution

required for the FY 2012-13 and consider the findings of the report in future Tariff Orders.

12. The eighth issue is regarding jurisdiction of the State Commission in allocation of surplus between the successor entities of the Electricity Board and the quantum of allocation made in the impugned order.

12.1 According to learned counsel for the Appellant, the State Commission has no jurisdiction to carry out the allocation of the surplus of the Electricity Board amongst its successor entities as the same is within the competence of the State Government. Even if it is assumed that the State Commission has jurisdiction to decide the allocation, it was not correct in making the allocation to the Generation, Transmission and Distribution Companies in the ratio of 35:5:60 respectively on the basis of trend in average

expenditure. The allocation should have been in the ratio of 59:19:25 respectively to generation, transmission and distribution companies based upon the utilization of the surplus of the Electricity Board in the funding of respective assets.

12.2 According to the learned counsel for the Respondent nos. 1,2 and 5, the issue regarding distribution of surplus/deficit as between the successor companies of the Electricity Board has neither been addressed to nor deliberated with by the State Commission between the three companies prior to passing of the impugned Tariff order. Thus, neither of the three companies have been afforded an opportunity to effectively plead or agitate over the issue of allocation of surplus before the State Commission. As such, this issue should have been agitated by the Appellant before the State Commission

by filing a Review Petition. Therefore, the present Appeal on this issue is not liable to be entertained by the Tribunal. However, according to her, the State Commission has jurisdiction to decide the allocation of surplus/deficit arising out of true up of financials of the Electricity Board. She also supported the principle adopted by the State Commission in allocation of surplus on the basis of respective expenditure of the successor companies.

12.3 According to the State Commission, the surplus which has been allocated by the State Commission is a regulatory surplus which has been derived in the tariff determined by the State Commission and is the excess revenue earned by the Electricity Board over the Annual Revenue Requirements. The regulatory surplus is not dealing with physical assets and liabilities or reserves and

surplus of the Electricity Board for which the Balance sheet is to be drawn up by the State Government. Thus allocation of surplus is within the exclusive jurisdiction of the State Commission. The revenue requirements and revenue of the utilities are directly proportioned to their expenditure incurred. Consequently, the surplus, which is the excess of revenues over the expenditure also needs to be apportioned in the same proportion as the expenditure.

12.4 Let us first discuss the jurisdictional issue.

12.5 According to Section 131 of the Electricity Act, 2003, with effect from the effective date of transfer scheme, any property, interest in property, rights and liabilities of the Electricity Board immediately prior to the effective date shall vest in the State Government.

Such property, interest in property, rights and liabilities shall be re-vested by the State Government in Government companies in accordance with the transfer scheme.

12.6 Chhattisgarh State Electricity Board was unbundled in terms of the transfer scheme notified by the State Government vide notification dated 19.12.2008. According to the notification dated 19.12.2008, all interests, rights and liabilities and proceedings of the Board stand transferred and vested in the State Government w.e.f. 1.1.2009. Thereafter, the different companies viz., generation, transmission, distribution, holding company and trading company are to be transferred to and vested in the respective companies. The opening balance sheet of the transferees is to be finalized and notified by the State

Government any time during the provisional period of 12 months from the appointed date.

12.7 The above transfer scheme has been replaced by Transfer Scheme Rules, 2010. According to Rule 7 (j) of the Transfer Scheme Rules, 2010 the opening balance sheet of the Transferees may be finalized and notified by the State Government at any time during the provisional period of forty eight months from the Appointed Date as mentioned in Rule 11 of the Scheme. According to Rule 11 the classification and transfer of undertakings including Personnel under the scheme, unless otherwise specified in any order of the State Government, shall be provisional and shall be final upon the expiry of 48 months from the Appointed Date or any other date notified by the State Government.

12.8 In exercise of power conferred by above Rule, the State Government has also notified the opening balance sheet of the four successor companies including the Appellant based on the provisional consolidated balance sheet of the Electricity Board as on 31.12.2003 provided by the Holding Company, the Respondent no. 3 herein.

12.9 The true up of the financials of the Electricity Board for the period prior to unbundling falls within jurisdiction of the State Commission as it is in exercise of determination of tariff under Section 86(1)(a) of the Electricity Act, 2003. The surplus may be generated as the expenditure allowed in the tariff order was more than the expenditure actually incurred or approved in the True-up or as a result of higher revenue. The surplus arising out of true up may not be fully reflected in the books of accounts of the utility either

on asset side or on the liabilities side. The surplus after true up period is either the expenditure not incurred or expenditure disallowed by the State Commission or as a result of higher revenue. Thus, it may not be reflected as mirror image in the balance sheet of the erstwhile Electricity Board as drawn up immediately prior to the transfer.

12.10 The power of the State Commission in pursuance of Section 131 of the Act read with the Transfer Scheme Rules is with respect to unbundling of the Electricity Board and notifying the Transfer Scheme revesting the properties, rights and liabilities of the Electricity Board into the successor entities. The power of the State Commission is limited to allocation of assets and liabilities of the Electricity Board as existing in the closing balance sheet at the time of unbundling to the successor entities.

Something which does not form the part of closing balance sheet cannot be allocated by the State Government under Section 131. Thus the surplus arising out of the true up of the ARR by the State Commission cannot be apportioned by the State Government in terms of the transfer scheme. Further the impact of surplus has to be accounted for in the ARR of the subsequent years of the successor companies which has to be decided by the State Commission.

12.11 In view of above, the apportioning of the surplus of the Electricity Board arising out of the true up of ARR of the Electricity Board carried out after the unbundling to the successor entities, falls within the jurisdiction of the State Commission.

12.12 Now let us examine the apportioning of the surplus decided by the State Commission. To answer this question it would be necessary to first examine on which account the surplus of Rs. 1842 crores from FY 2005-06 to FY 2008-09 has occurred as per the impugned order and whether the surplus was only on account of denial of expenditure actually incurred or due to surplus generated due to lower expenditure or higher revenue generated in the hands of the Electricity Board.

12.13 The surplus (+)/deficit (-) from truing up of the previous years from FY 2005-06 to FY 2008-09 for the Electricity Board as submitted by the Appellant and as per the True-up decided by the State Commission was as under (paragraph 10.1 of the

impugned order)

S.No.	FY	'Figures in Rs. Crores'	
		Petitioner's Submission	Commission's Analysis
1.	2005-06	-146	358
2.	2006-07	114	331
3.	2007-08	88	220
4.	2008-09	252	933
		308	1842

12.14 The surplus for the Electricity Board period from 2005-06 to 2008-09 according to submissions of the Appellant and as per the findings of the State Commission was Rs. 308 crores and Rs. 1842 crores respectively. Thus, it is clear that there was a surplus in the hands of the Electricity Board, both according to the Appellant and as per the True up by the State Commission. It also appears that the surplus as determined by the State Commission during the above years was mainly on account of reduction in power purchase cost or due to sale of surplus power outside

the state as per details given below:

<u>FY</u>	<u>Amount</u>	<u>Remarks</u>
FY 2005-06 & FY 2006-07	Rs. 803 crores	The proceeds from sale of UI was deducted from power purchase cost.
FY 2007-08	Rs. 219 crores	Due to sale of power outside the State
FY 2008-09	Rs. 945 crores	Due to reduction in power purchase cost and Rs. 839 crores due to sale of power outside the State.
Total	<u>Rs.1967 Cr.</u>	

12.15 It is seen that the sale of surplus power outside the State including on account of UI and reduction in power purchase cost contributed to revenue of about Rs. 1967 crores during the period 2005-06 to 2008-09. Thus, the reason for surplus as a result of true up of accounts for the Electricity Board appear to be sale of surplus power outside the state and reduction in power purchase cost. Therefore, it may not be correct to assume that no cash surplus

was available with the Electricity Board during the period 2005-06 to 2008-09.

12.16 According to learned counsel for the Respondents 1,2 & 5, expenditure actually incurred on various heads of ARR's but disallowed by the State Commission making approved expenditure in excess of that which is allowed during true up, leaves a surplus which is what has happened in instant case. This is not correct as the surplus appears to have been generated due to revenue from sale of surplus power/income from UI.

12.17 According to the learned counsel for the Appellant, the surplus should be apportioned in the utilization of the internal funds utilized to finance the additions to the Generation, Transmission and Distribution assets of the Electricity Board respectively

to the Generation, Transmission and Distribution Companies. In view of the fact that surplus was available with the Board as a result of sale of surplus power, it may not be desirable to brush aside the submissions of the Appellant. This issue, in our view, requires further examination by the State Commission.

12.18 We notice that the State Commission has not heard the Appellant and other successor entities before deciding the apportioning of the surplus amongst them. As pointed out by the learned counsel for the Respondent nos. 1,2 and 5 the State Commission has not given any opportunity to hear the successor companies on this issue. Accordingly, we direct the State Commission to consider the issue afresh after giving opportunity to all the successor companies of the Electricity Board and decide the matter. We want to make it clear that we are not

giving any opinion on this issue and the State Commission has to decide the issue independently after hearing the parties, including the Holding Company (R-3). The analysis made by us in this Judgment regarding the surplus funds is from the picture which emerges from the information available in the Tariff Order and may need further deliberation.

13. The ninth issue is regarding cost of supply and cross subsidy surcharge.

13.1 According to the learned counsel for the Appellant, the State Commission has wrongly computed the average cost of supply for the FY 2011-12 at Rs.3.78 per unit and consequently the cross subsidy surcharge has to be re-computed.

13.2 According to the State Commission the average cost of supply has been computed correctly.

Actual ARR of the Appellant decided by the State Commission for the FY 2011-12 is Rs. 5707 crores. The net ARR after adjusting previous year's surplus is Rs. 5151 crores. However, the State Commission has left a revenue gap of Rs. 343 crores. The ARR less the revenue gap comes to Rs. 5364 crores. The State Commission has decided the average cost of supply by dividing Rs. 5364 crores by the total energy supplied viz. 14195 MU; to work out the average cost of supply as Rs. 3.78 per unit.

13.3 On the other hand, the contention of the Appellant is that the average cost of supply should be computed by dividing ARR of Rs. 5151 crores divided by the energy supplied at Rs. 3.63 per unit.

13.4 We find force in the contention of the Appellant. The ARR approved for the FY 2011-12 after

adjusting previous year's surplus is Rs. 5151 crores. This is the ARR which is required to be recovered by tariff by the Appellant. Therefore, the average cost of supply should be computed based on the adjusted ARR. Accordingly, this issue is decided in favour of the Appellant.

14. The tenth issue is regarding uncovered deficit in ARR for the FY 2011-12.

14.1 According to the Appellant, the State Commission has wrongly restricted the ARR for the FY 2011-12 leaving an uncovered deficit of Rs. 343 crores, resulting in cash flow problem for the Appellant. On the other hand, the Generation and Transmission Utilities have been allowed to recover their full ARR. The State Commission has also not

provided for any interest on the funding of the deficit from borrowing.

14.2 According to the State Commission the revenue to the extent of Rs. 343 crores have been left un-recovered to avoid tariff shock to consumers. Let us first examine the observations of the State Commission in the impugned order in this regard:

“14.193. It has been estimated that with the prevailing tariff CSPDCL would get Rs. 4212 crores as revenue during 2011-12 leaving deficit of Rs. 1495 crores which after adjustment of surplus of Rs. 556 crores from previous years would still leave a deficit of Rs. 930 crores for FY 2011-12. To meet this deficit during the year an average increase in tariff of 22% will be required which will result in tariff shock to the consumers in the state.

14.194 Accordingly, to avoid tariff shock to the consumer, the Commission has decided to limit the tariff hike to an average increase of 14% in the

retail tariff of FY 2011-12. This would result in additional revenue of Rs. 596 crores to CSPDCL in FY 2011-12. The remaining deficit of Rs. 343 crores has been carried forward to FY 2012-13”.

14.3 This Tribunal in its order dated 11.11.2011 in the suo-motu proceedings in O.P. no. 1 has dealt with the issue of uncovered revenue gap in ARR. The relevant extracts of the judgment are as under:

“62. Let us now refer to some of the strange features that we noticed from the information furnished by the State Commissions. It is seen that some of the Commissions are leaving uncovered revenue gap in the ARR as a routine, with or without creating regulatory assets. The interest charges on the regulatory assets are also not being allowed in the ARR of the Tariff Order. This, in our view, is not in order as it may create a problem of cash flow for the distribution licensees which are already burdened with heavy debts. The cash flow problem may result in constraints in procurement of

power by the distribution licensees and operation and maintenance of the distribution net work affecting the reliability of power supply to the consumers. This Tribunal in a recent Judgment in Appeal no. 192 of 2010 dated 28.07.2011 in the matter of Tamil Nadu Electricity Consumers' Association vs. Tamil Nadu Electricity Board, etc. has dealt with the issue of Regulatory Assets. The relevant extracts are reproduced below:

“8.4. Let us first examine the provisions of the Tariff Policy in this regard. The relevant extracts are as under:

“8.2.2. The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:

a. The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through

transition financing arrangement or capital restructuring;

b. Carrying cost of Regulatory Asset should be allowed to the utilities;

c. Recovery of Regulatory Asset should be time-bound and within a period not exceeding three years at the most and preferably within control period;

d. The use of the facility of Regulatory Asset should not be repetitive.

e. In cases where regulatory asset is proposed to be adopted, it should be ensured that the return on equity should not become unreasonably low in any year so that the capability of the licensee to borrow is not adversely affected”.

The Tariff Policy stipulates creation of the regulatory asset only as an exception subject to the guidelines specified above. According to the guidelines the circumstances under which the regulatory assets should be created are under natural causes or force majeure conditions.”

“8.8. We are of the opinion that the regulatory asset created by the State Commission is not in consonance with the Tariff Policy and its own Regulations. Moreover, the impugned order does not provide for recovery of the regulatory assets with the carrying cost as envisaged in the Regulations and the Tariff Policy.”

“8.10. Now, the question arises whether the creation of the regulatory asset is in the interest of the distribution company and the consumers. The respondent no. 1 will have to raise debt to meet its revenue shortfall for meeting its O&M expenses, power purchase costs and system augmentation works. It is not understood how the respondent no. 1 will service its debts when no recovery of the regulatory asset and carrying cost has been allowed in the ARR. Thus, the respondent no. 1 will suffer with cash flow problem affecting its operations and power procurement which will also have an adverse effect on maintaining a reliable power supply to the consumers. Thus, creation of

the regulatory asset will neither be in the interest of the respondent no. 1 nor the consumers”.

“8.12. According to Shri Rajah, learned Senior counsel for the appellants, the regulatory assets could not be created for the anticipated shortfall in revenue. We are in agreement with the contention of the Senior counsel. The Regulations clearly state that the Regulatory Asset can be created when the licensee could not fully recover the reasonably incurred cost at tariff allowed for reasons beyond his control under natural calamities and force majeure conditions. Thus, we hold that the creation of the regulatory assets on the basis of projected shortfall in revenue, that too without any directions for time bound recovery for the regulatory asset alongwith its carrying cost, is in contravention of the Tariff Policy and the 2005 Regulations.

63. In this case the Tribunal held that the regulatory asset created by the State Commission was not in consonance with the Tariff Policy and the Tariff Regulations of the State Commission which clearly define the circumstances under

which the regulatory asset can be created. Further, the creation of the regulatory asset without any directions for carrying cost and time bound recovery was neither in the interest of the distribution licensee nor the consumers.

.....

“65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

.....

(iv) In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are

created to avoid problem of cash flow to the distribution licensee”.

This Tribunal in O.P. no. 1 of 2011 has given clear direction to the State Commissions regarding creation of Regulatory Assets.

14.4 In this case the State Commission has left the revenue gap uncovered in contravention of the Tariff Policy. Also, the State Commission neither decided the time schedule for recovery of the revenue gap nor provided for financing cost for the revenue gap left in the ARR of the Appellant.

14.5 Learned counsel for the Appellant has intimated that in the subsequent Tariff Order passed by the State Commission on 28.4.2012 for the FY 2012-13, the State Commission has again left recovered gap of Rs. 828 crores, to be recovered in next three years on the plea of tariff shock. Thus,

according to the Appellant the revenue gap is going to snowball in future.

14.6 In view of our findings in O.P. no. 1 of 2011, we hold that the revenue gap left in the ARR in the impugned order was not correct. The State Commission also did not provide for interest cost and the time bound programme for recovery of the revenue gap. However, creation of the revenue gap for the FY 2011-12 is now a *fait accompli*. We accordingly, direct the State Commission to provide for recovery of the revenue gap in a time bound manner and also grant carrying cost on the revenue gap in the subsequent tariff order.

15. **Summary of our findings:**

i) **True up of depreciation for the FY 2005-06:**

We find that the State Commission has determined depreciation in terms of the audited

accounts furnished by the Appellant. We do not find any infirmity in the order.

ii) True up of reasonable return on equity for the FY 2005-06:

We find that the State Commission has determined the reasonable return on equity in terms of the audited accounts furnished by the Appellant. We do not find any infirmity in the order.

iii) Interest on working capital for the period 2006-07 to 2009-10:

The State Commission has not provided for the interest on working capital in the true up in contravention to its own Regulations which provide for normative interest on working capital irrespective of actual interest on working capital, on the plea that the same was not provided for in the Tariff Order. The findings of the Tribunal in its judgment dated 21.4.2011 reported as

2011 ELR (APTEL) 0830 in the matter of MPPGCL vs. MPERC that if an error has been committed by the State Commission by not following the Regulations without assigning any reason, the same error cannot be perpetuated and is required to be corrected in the true up, will also apply in this case. Accordingly, this issue is decided in favour of the Appellant.

iv) Consideration of Inter-state sales in the ARR:

We agree with the State Commission that the profit earned by the Electricity Board from trading of the surplus power could not be retained by successor entity and the benefit of the same has to be passed on to the consumer in the ARR.

v) Power purchase cost during the period January-March, 2009:

We direct the Appellant to furnish the necessary details in support of its claim to the

State Commission and the State Commission shall consider the same for approval after verification.

vi) True up of revenue for sale to Domestic BPL and Agriculture consumers:

The State Commission has erred in computing the revenue for BPL and Agriculture consumer for the FY 2009-10 on account of two points mentioned in paragraph 10.7 of our judgment. The State Commission is directed to consider these points while carrying the final truing up of the accounts for the FY 2009-10. The Appellant is also directed to furnish justification for its claim for revenue from BPL and Agriculture consumers with supporting data to the State Commission which shall be considered by the State Commission in the final true up.

vii) Employees Pension and Gratuity Fund contributions:

We do not find any infirmity in the order of the State Commission to allow the contribution to the Funds by the Appellant for the FY 2005-06 to 2009-10 as per the actual contribution made to the Fund. We have also given some directions to the Appellant in paragraph 11.7 for carrying out actuarial valuation for the Employees' Gratuity & Pension fund after the announcement of the Sixth Pay Commission Report.

viii) Jurisdiction of the State Commission in allocation of surplus of Electricity Board between the successor entities and quantum of allocation:

The State Commission has the jurisdiction to decide the allocation of surplus of Electricity Board as a result of true up of its ARR for period prior to the unbundling, amongst the successor entities.

As the State Commission had not heard the successor entities on this issue while deciding the apportioning of the surplus, we direct the State Commission to consider the issue afresh after giving opportunity to all the successor companies of the Electricity Board including the Holding company and decide the matter. We have made it clear that we are not giving any finding on this issue.

ix) Cost of supply and cross subsidy surcharge:

The State Commission has erred in calculating the average cost of supply. Accordingly, the issue is decided in favour of the Appellant.

x) Uncovered deficit in ARR for FY 2011-12:

The Tribunal has given directions to the State Commission in Judgment dated 11.11.2011 in O.P. no. 1 of 2011 *inter alia* on the issue of

uncovered deficit in the ARR. Accordingly, we hold that the revenue gap left by the State Commission in the impugned order was not correct. The State Commission also did not provide for interest cost on the revenue gap and time schedule for recovery of the revenue gap. We direct the State Commission to provide for recovery of the revenue gap in a time bound manner and also frame carrying cost on the revenue gap in the subsequent tariff order.

16. The Appeal is allowed in part, as indicated above.

No order as to costs.

17. Pronounced in the open court on this

14th day of August, 2012.

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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REPORTABLE/NON-REPORTABLE

vs