

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

Appeal Nos.190 of 2009 & 46 of 2010

Dated: 4th September, 2012

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

In the matter of:

Kerala State Electricity Board,

Vydyuthi Bhavanam, Pattom

Thiruvananthapuram,

Kerala-695 004

... **Appellant**

Versus

Kerala State Electricity Regulatory Commission,

KPFC Bhavanam, CV Raman Pillai Road,

Vellayambalam,

Thiruvananthapuram-695010

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri
Mr. M.T. George, Mr. G. Sreenivasan
Ms. Kavitha, Ms. Smitharani,
Mr. Shivaprasad

Counsel for the Respondent(s) : Mr. Ramesh Babu M.R. for R-1

JUDGMENT

MR. RAKESH NATH, TECHNICAL MEMBER

Appeal nos. 190 of 2009 and 46 of 2010 have been filed by the Kerala State Electricity Board against the orders dated 17.4.2009 and 2.12.2009 respectively

passed by Kerala State Electricity Regulatory Commission (“State Commission”).

2. While Appeal no. 190 of 2009 is against the tariff order dated 17.4.2009 passed by the State Commission for the FY 2009-10, Appeal no. 46 of 2010 is against the State Commission’s order dated 2.12.2009 regarding rationalization of tariff structure and recovery of revenue gap.

3. The brief facts of the cases are as under:

3.1 Kerala Electricity Board is the Appellant. On 29.12.2008, the Appellant filed the Aggregate Revenue Requirement and Expected Revenue from Charges (ARR & ERC) for the financial year 2009-10. The State Commission after conducting public hearing passed the impugned order dated 17.4.2009.

3.2 The Appellant is aggrieved by the impugned order on account of refusal of the State Commission to accept the estimates of the Appellant in respect of power purchase cost, interest and finance charges, depreciation, administrative and general expenses, other expenses and transmission & distribution losses, etc.

3.3 In the order dated 17.4.2009, the State Commission further directed the Appellant to file Tariff rationalization proposal to bridge the revenue gap of Rs. 335.30 crores which was left in the ARR for the FY 2009-10. Accordingly, the Appellant filed a petition being no. 66 of 2009 on 24.7.2009 before the State Commission seeking rationalization of tariff structure.

3.4 The State Commission after holding a public hearing, on 2.12.2009 passed the order impugned in

Appeal no. 46 of 2010. The Appellant is aggrieved that the State Commission has decided the petition no. 66 of 2009 without allowing any tariff rationalization for meeting the revenue gap of Rs. 335.30 crores left in the ARR for the FY 2009-10.

3.5 Since the issues raised in both the Appeals are inter-connected, a common judgment is being rendered.

4. The Appellant has raised the following issues in Appeal no. 190 of 2009:

4.1 Reduction in Power Purchase Cost: The Appellant had estimated the energy availability from power stations of NTPC and NLC at 7026 MU according to the Central Commission's norms for target availability and auxiliary consumption. However, the State Commission approved the

availability based on the past performance of the power stations which was higher than the Central Commission's norms. This resulted in higher energy availability from comparatively cheaper power stations of NTPC and NLC to the tune of 629 MUs. Accordingly, the State Commission did not approve the power purchase cost of equivalent quantum of energy from open market/power exchange/traders. In the ARR Petition, the Appellant had claimed power purchase of 589.32MU through traders at an average variable cost of Rs. 7.50 per unit which has not been accepted by the State Commission, thus reducing the power purchase cost by Rs. 242.62 crores. The State Commission has also ignored to take into account the reduction in energy availability from central generating stations during the FY 2008-09 due to fuel shortage and other reasons. The State Commission has also

ignored the likely increase in variable cost due to use of imported coal in view of shortage of domestic coal.

4.2 Interest & Finance Charges: The State Commission has disallowed a part of the interest and finance charges for capital investments approved in full for the FY 2009-10 without any finding of imprudence. In the ARR Petition the Appellant had proposed a capital investment of Rs. 1377.10 crores which has been approved. However, the interest on fresh borrowing to meet the capital investment has been reduced to just 50% i.e. Rs. 30.40 crores as against the claim of Rs. 71.80 crores.

4.3 Interest on Working Capital: The State Commission has approved interest on working capital of Rs. 5.31 crores as against the claim of Rs. 18.0 crores.

4.4 Depreciation: The State Commission has not allowed the depreciation as per the rates notified by the Ministry of Power vide its notification dated 29.3.1994. Against the Appellant's estimation of Rs. 489.41 crores, only Rs. 477.90 crores has been allowed based on the revised norms of the Central Commission.

4.5 Electricity Duty as part of A&G expenses: The State Commission has denied the inclusion of electricity duty payable by the Electricity Board to the State Government which involves cash out flow of Rs. 79.86 crores in the ARR.

4.6 A&G expenses (excluding Electricity Duty): The State Commission has allowed A&G expenses of Rs. 64.22 crores as against the projection of

Rs. 75.36 crores made by the Appellant, without giving any reason.

4.7 Prior period expenses: The State Commission has denied the prior period expenses of Rs. 27.30 crores on the ground that the same could be covered in the truing up exercise.

4.8 Other debits: The State Commission has denied the provisions to be made for the amount proposed to be written off by the Appellant, which is not likely to be recovered and which is prior to the constitution of the State Commission.

4.9 Transmission & Distribution Loss Reduction

Targets: The State Commission has fixed the loss reduction target without any scientific study and data, actual achievement of target for the FY 2008-09, investment requirements and also without fully

allowing the capital expenditure required to reduce the losses. The State Commission set the loss target for the FY 2009-10 as 16.92% instead of 17.43% proposed by the Appellant.

4.10 Revenue shortfall due to withdrawal of power restrictions w.e.f. 1.5.2009: Power restriction was introduced in the State of Kerala during the FY 2008-09 on account of acute power shortage. Any consumption over the restriction was charged at the marginal cost for additional power purchase approved by the State Commission on month to month basis. In the ARR, the Appellant proposed to continue the power restriction upto 31.5.2009. Vide the impugned order dated 17.4.2009, the State Commission approved the excess consumption projected by the Appellant and estimated the revenue from the excess sale @ Rs. 5.50 per unit. However, vide order dated

27.4.2009, the State Commission directed to withdraw the power restriction with effect from 1.5.2009 and thus the Appellant has been billing the entire energy consumption at normal tariff. For the month of May 2009 there has been excess consumption of 83.70 MUs resulting in revenue shortfall of Rs. 19.08 crores on account of difference between Rs. 5.50 per unit and average revenue from tariff of Rs. 3.22 per unit. The shortfall in revenue needs to be accounted for in the true up of the accounts.

5. In Appeal no. 46 of 2010, the Appellant has raised the following issues:

5.1 Recovery of revenue gap: The State Commission has not allowed the appropriate tariff increase to enable the Appellant to recover the revenue gap of Rs. 335.30 crores left in the ARR in the tariff order for the FY 2009-10. The State Commission allowed only

Rs. 153.94 crores as the remaining amount of Rs. 181.36 crores could be adjusted against the alleged surplus in the earlier truing up. The State Commission should not have left any revenue gap.

5.2 Adjustment of revenue gap: The State Commission erred in not allowing tariff increase to recover the revenue gap on the wrong presumption that there is possibility of further revenue surplus during the year 2006-07 to 2008-09 or because of efficiency of operation of the Appellant there could be surplus income during the FY 2009-10. The State Commission also erred in rejecting the proposal of the Appellant for tariff rationalization on the ground of tariff shock to consumers.

5.3 Fuel Price Adjustment Formula: The State Commission has erred in not specifying a clear

formula for Fuel Price Adjustment (FPA). In the absence of FPA Mechanism, the Appellant will have to avail loans to meet the short term financial requirement resulting in the burden of carrying cost on delayed recovery of revenue on the consumers.

6. On the above issues, we have heard the Learned Counsel for the Appellant and the State Commission.

7. After hearing the rival contentions of the parties, the following questions would arise for our consideration:

- i) Whether the State Commission has erred in estimating the power purchase cost of the Appellant from the Central Generating Stations?

- ii) Whether the State Commission has erred in determining the interest & finance charges on the capital investments?
- iii) Whether the State Commission is correct in reducing the amount of interest on working capital against the claim of the Appellant?
- iv) Whether the State Commission has erred in not allowing depreciation as per the Central Government tariff notification dated 29.3.1994?
- v) Whether the State Commission has erred in not allowing the electricity duty paid to the State Government by the Appellant in the ARR?
- vi) Whether the State Commission has determined the Administrative & General Expenses correctly?

- vii) Whether the State Commission was correct in denying the prior period expenses in the ARR of the Appellant?
- viii) Whether the State Commission has erred in denying the other debits?
- ix) Whether the State Commission has correctly set up a realistic T&D loss reduction target?
- x) Whether the Appellant is entitled to recovery of the revenue shortfall due to withdrawal of power cuts with effect from 1.5.2009 instead of 31.5.2009 proposed earlier?
- xi) Whether the State Commission has erred in not allowing appropriate increase in tariff to cover up the revenue gap left in the ARR?
- xii) Whether the State Commission has erred in not allowing Fuel Price Adjustment

Mechanism to cover up the increase in power cost due to increase in fuel price during the financial year?

8. The first issue is regarding power purchase cost.

8.1 According to learned counsel for the Appellant, the State Commission has adopted higher plant availability of Central Stations of NTPC and NLC to compute more energy availability from comparatively cheaper power plants and the State Commission ought to have adopted the availability as per the norms decided by the Central Commission.

8.2 According to learned counsel for the State Commission, the Commission has adopted the higher figures based on the past performance of the power plants of NTPC and NLC. Further, the Central Commission has also revised the norms for the central

generating stations with effect from 1.4.2009. The State Commission has considered the actual plant load factor of the various power plants in the past and based on the actual past performance of the power stations has decided the energy availability from these stations. The PLF based on the past performance of the power plant is a better indicator of energy availability than the norm for availability factor.

8.3 We find that the State Commission has given detailed reasoned findings for adopting higher plant load factors for NTPC and NLC stations. The relevant extracts from the impugned tariff order dated 17.4.2009 is reproduced below:

“5.2.6.1 Availability of power from CGS

The Board has estimated generation from CGS stations based on the norms and target availability fixed by CERC. Further, two stations NLC Expansion stage II and Kudamkulam are expected

to be operational from August 2009 and December 2009 respectively. The total energy available from CGS at the generator bus is estimated at 7025.97 MU. Compared to previous years, the estimation of the availability from CGS is lower. CERC has revised the operational norms including Auxiliary Consumption for the tariff period starting from 1-4-2009. The Commission has considered the revised norms, which is as follows”.

“The Commission has analysed the past trends in the availability of power from CGS stations. The average PLF of central stations are much higher than the target availability norms especially in the case of Ramagundam and Talcher as shown below”.

“Considering the much higher PLF achieved by the station especially Ramagudam and Talcher, the Commission is of the view that the average PLF achieved by the stations is to be used for estimation of energy availability, besides the lower PLF (70%) used for NLCII Stage II. Further, the Board has proposed Rs.78.31 Crore as other

charges for CGS, which is inclusive of incentives payable on account of better performance. Since, incentives are allowed as part of the cost, considering the past average performance is justified. Accordingly, the Commission re-estimates the availability from CGS stations as below”.

8.4 The findings of the State Commission are summarized below:

- i) The Appellant has estimated the generation from Central Generating Stations based on the norms and target availability fixed by the Central Commission. Compared to previous years, the estimated energy availability from the central station is lower.
- ii) The Central Commission has since revised the norms for auxiliary consumption and availability, the availability norms for NTPC stations have been revised from 80% to 85%.

Similarly, the availability norm for NLCI Exp. has been raised from 75% to 80%. The auxiliary consumption norms for NTPC stations have also been reduced.

- iii) The State Commission has considered the actual plant load factor achieved by the various NTPC and NLC stations from 2002-03 to 2007-08 and found that the actual PLF at certain stations has been much higher than the availability norms.
- iv) The State Commission has considered actual average PLF for past five years for Talchar & Ramagudam stations of NTPC and NLC Exp.
- v) However, for NLC II Stage I where the actual average PLF was lower than the normative availability, the State Commission has

considered the actual average PLF i.e. lower of the two.

8.5 We do not find any infirmity in the above findings regarding energy availability from NTPC and NLC power stations.

8.6 The learned counsel for the Appellant has submitted that the actual energy availability from various sources was about 373MU less than that approved by the State Commission and in order to meet the shortfall the Appellant had to procure additional quantity of energy through traders and energy exchange at a higher cost. The Appellant has also claimed carrying cost on the additional power purchase cost.

8.7 We notice that in the impugned order availability of 215MU was considered from Kudamkulam Nuclear

Power Project of NPCIL. However, the unit from Kundamkulam could not be commissioned during the FY 2009-10 resulting in corresponding shortfall in Appellant's energy availability.

8.8 In view of above, we direct the State Commission to true up the Power Purchase Cost and allow the same along with carrying cost, after prudence check.

9. The second issue is regarding interest and finance cost.

9.1 According to the Appellant, the State Commission has not allowed the interest and finance charges on capital investment of Rs. 1377.10 crores which has been approved. The interest charges on fresh borrowing have been reduced to just 50%.

9.2 According to learned counsel for the State Commission, the Appellant has been over estimating

the interest and finance charges in the past. The actual additional borrowing for the FY 2008-09 was only Rs. 85.15 crores as against Rs. 304.97 crores proposed by the Appellant, so the opening balance of additional borrowing was only Rs. 85.15 crores as against Rs. 304.97 crores projected by the Appellant.

9.3 The relevant finding of the State Commission in the impugned order dated 17.4.2009 is as under:

“Considering the planned redemption proposed to the tune of Rs.227.65 crore and depreciation and other non-cash expenses available to the Board, the Commission is of the view that the borrowing proposed to the tune of Rs.764.87 Crore may not be required for 2009-10. From the experience of previous years, the Commission could not judge reasonably the actual amount of capital investment to be incurred in 2009-10 over the projection of Rs.1377 Crore. Further, the Commission has allowed depreciation in the revised norms of CERC, which also provides additional cash to the Board.

Hence, the Commission would stick on to the stand taken in the previous order that 50% of the borrowing (Rs.382.44 Crore) would only be needed in the year 2009-10. Hence, the interest for the additional borrowing would be limited to Rs.30.40 Crore as against Rs.71.80 Crore proposed by the Board.”

9.4 We find that the State Commission has allowed interest for additional borrowing for 2008-09 and 2009-10 as Rs. 30.40 crores as against the claim of Rs. 71.80 crores of the Appellant considering the past performance of the Appellant.

9.5 It cannot be denied that the full interest cost need to be allowed on the permitted capital expenditure. However, Learned counsel for the State Commission has submitted that the revised estimates submitted by the Appellant for the FY 2009-10, as part of ARR & ERC for the FY 2010-11 shows that as against the

additional borrowing of Rs. 695.37 crores proposed in 2009-10, the revised estimate of borrowing is only Rs. 140 crores. As against this, the State Commission had allowed Rs. 382.44 crores. Thus, the fund requirement projected by the Appellant was over estimated. The Appellant has not contested the same.

9.6 In view of above, we do not find any need to interfere with the finding of the State Commission. However, the State Commission shall consider the actual interest and finance charges in the true up of the financials for the FY 2009-10.

10. The third issue is regarding interest on working capital.

10.1 According to learned counsel for the Appellant, a nominal amount of Rs. 18 crores was claimed by the Appellant based on past actuals, but

the State Commission allowed only Rs. 5.31 crores under this head.

10.2 According to learned counsel for the State Commission, the interest on working capital has been allowed based on the past records. Further, in case the actual interest on working capital is higher, the same will be allowed in the truing up after prudence check.

10.3 In view of above, the State Commission shall consider the actual interest on working capital in the true up and allow the same with carrying cost, subject to prudence check.

10.4 Learned counsel for the Appellant submitted a normative approach should be followed in all these matters instead of adopting a new approach each year. There is a point in the submission of the Appellant.

We also feel that suitable Regulations regarding normative parameters for various expenses may be framed by the State Commission so that there is Regulatory certainty about the allowable costs under various heads. Accordingly, directed.

11. The fourth issue is regarding amount of depreciation.

11.1 This issue has been decided by the Tribunal in judgment dated 18.8.2010 in Appeal no. 5 of 2009 in the matter of Kerala State Electricity Board vs. Kerala State Electricity Regulatory Commission. The relevant finding is as under:

“We are of the view that the State Commission is perfectly in its right to disregard the directive through a letter by the Government, on rates of depreciation as applicable for determination of ARR and ERC. Therefore, the contention of the Appellant would fail”.

Accordingly, the contention of the Appellant is rejected.

12. The fifth issue is regarding electricity duty.

12.1 This issue has also been decided by the Tribunal in its judgment dated 13.1.2011 in Appeal no. 177 of 2009 in the matter of Kerala State Electricity Board vs. Kerala State Electricity Regulatory Commission. The relevant finding is as under:

“iv. The State Commission has not allowed Rs. 63.26 crores of electricity duty to be paid to the Government under Section 3(1) of the Kerala Electricity Duty Act. This issue has already been decided by this Tribunal in Appeal no. 94 of 2008 in view of the provisions of the Kerala Electricity Duty Act, according to which electricity duty cannot be passed on to the consumers.....”.

12.2 Accordingly, this issue is decided against the Appellant.

13. The sixth issue is regarding A&G expenses.

13.1 According to the learned counsel for the Appellant, the State Commission has incorrectly disallowed Rs. 11.13 crores in the various expenses under A&G expenses. The actual expenses as per the audited accounts are Rs. 86.17 crores as against Rs. 75.35 crores projected in the ARR and Rs. 64.24 crores approved by the State Commission.

13.2 According to learned counsel for the State Commission, the Commission has given elaborate reasons in the impugned order for disallowance of a part of A&G expenses.

13.3 We notice that the State Commission has given explanation for reducing the legal expenses from

Rs. 9.98 crores to Rs. 5 crores and donations from Rs. 1.73 crores to Rs. 1 crore. It has been indicated that any increase in legal expenses will be considered at the true up stage. Further, the State Commission “in order to give a signal to the Board on controlling the A&G expenses” the Commission has allowed 10% increase over the approved expenses for 2008-09 for other heads under A&G expenses.

13.4 We find that there are presently no Regulations providing for norms for various expenses including A&G expenses. The State Commission has allowed an increase of 10% over the approved expenses for the FY 2008-09 for various heads of A&G expenses while allowing some assumed figure for legal expenses. We agree with the point raised by the Appellant regarding norms to be specified through statutory Regulations by the State Commission. We

have already given a direction to the State Commission regarding specifying the Regulations providing for norms for various expenses.

13.5 Regarding A&G expenses for the FY 2009-10, we direct the State Commission to consider the actual A&G expenses as per the audited accounts of the Appellant in the true up and allow the same with carrying cost, after prudence check.

14. The seventh issue is regarding prior period expenses.

14.1 This issue has been decided by the Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of 2009. The relevant finding is as under:

“27. The Learned Counsel for the Appellant, on this point, contended that the State Commission ought to have allowed Prior Period Expenses at the stage of tariff fixation itself and it ought not to have

deferred it to the stage of truing up which may take more than 5 to 6 years. With regard to the claim of Rs. 41.26 crores made by the Appellant as Prior Period charges for the FY 2008-09, the State Commission has observed that the expenses under this head cannot be projected at this stage accurately. The Board has also not provided any substantiation for projecting various items. These charges could be captured only at the stage of truing up and not at the time of passing tariff order on the basis of the estimates”.

14.2 Accordingly, the State Commission shall consider the prior period expenses at the time of truing up.

15. The eighth issue is regarding other debits.

15.1 This issue has been decided by this Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of

2009. The relevant finding is as under:

“38..... The Appellant has made the claim completely in an improper manner without proper authority as certified by the CAG. The illegal acts cannot be allowed as defence in the ARR estimates and later correct in the truing up. If that is done, it would mean that the consumers have to pay in advance which would have to be returned. In view of the said situation, the State Commission decision not to accept the proposal of writing off the dues is correct.”

Accordingly, this issue is decided against the Appellant in terms of the decision taken in the above judgment.

16. The ninth issue is regarding T&D loss reduction targets.

16.1 This issue has also been decided by the Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of 2009. The relevant finding is as under:

“35. The Aggregate Revenue Requirement and Expected Revenue from Charges proceedings are meant to assess the financial requirement of the utility as realistic as possible and fix the tariff accordingly. The figures are on the basis of projections. The actual figures are available at the time of truing up proceedings. According to Regulation 2006 dated 23.03.2006, the licensee shall carry out proper loss estimation study as required by the State Commission. As such, it cannot be said that the State Commission has fixed the transmission and distribution losses on its whims and fancies”.

Accordingly, this issue is also decided as against the Appellant.

17. The tenth issue is regarding revenue shortfall due to withdrawal of power restrictions w.e.f. 1.5.2009.

17.1 According to learned counsel for the Appellant, it has been denied revenue of Rs. 19.08 crores due to withdrawal of power restrictions w.e.f. 1.5.2009 and has sought allowance of the same in the true up with interest charges.

17.2 The State Commission in its reply has conceded that the effect of its order withdrawing power restrictions w.e.f. 1.5.2009 will be considered in the truing up.

17.3 Accordingly, the State Commission shall consider the impact of withdrawal of power restrictions w.e.f. 1.5.2009 on the revenue of the Appellant and allow necessary cost with carrying cost.

18. The eleventh issue is regarding disallowance of increase in tariff to cover up the revenue gap left in the ARR.

18.1 According to learned counsel for the Appellant the Appellant had filed a proposal for rationalization of tariff in compliance of the directions of the State Commission in its order dated 17.4.2009 impugned in Appeal no. 190 of 2009. The Appellant had made the proposal for tariff rationalization for an additional revenue of Rs. 153.94 crores after accounting the revenue surplus of Rs. 181.36 crores for the year 2005-06, against the approved revenue gap of Rs. 335.30 crores for the FY 2009-10. However, the State Commission has rejected the proposal of the Appellant by the impugned order dated 2.12.2009, without any justification. The Learned counsel has relied on the directions given by this Tribunal to the State Commission by order dated 11.11.2011 in O.P. no. 1 of 2011.

18.2 The State Commission in its rejoinder has pointed out that in the absence of truing up for the years 2006-07, 2007-08 and 2008-09, the State Commission could not arrive at the correct picture of the revenue gap. On the basis of the preliminary information available there is substation surplus available with the Appellant for which truing up has to be undertaken. In the FY 2006-07, the revenue surplus was Rs. 1035.85 crores after truing up on account of sale of surplus electricity and miscellaneous write offs.

18.3 Let us examine the reasons given by the State Commission for not allowing tariff increase. The relevant extracts from the order dated 2.12.2009 are reproduced below:

“22.However, the exact revenue gap position could not be ascertained in the absence of truing

up for the years after 2005-06 for which audited accounts were not available then. The Commission vide letters dated 28-8-2009 & 10-11-2009, directed KSEB to submit the truing up proposal for the years 2006-07, 2007-08 and 2008-09. This has not been complied with yet. In the absence of truing up, the Commission vide letter dated 31-10-2009, called for the audited accounts/ provisional accounts for the last 3 years for perusal. Preliminary scrutiny of the accounting statements submitted by KSEB reveals that sufficient surplus will be available to meet the estimated net revenue gap for the year 2009-10, thereby exposing the redundancy of a tariff revision at this juncture. The Commission is of the view that because of the various measures adopted by the Board in improving productivity and efficiency in operations during the last three years sufficient surplus will be available to meet the estimated net revenue gap for the year 2009-10 once the truing up exercise is carried out for the years 2006/07, 2007/08 and 2008/09. Increasing efficiency through better

management practices is noticeable during this period.

23. The Commission noticed that during this period capital expenditure remained much less than the approved level. Opening cash & bank balance for the year 2009-10 was about Rs. 1178.80 Crore, one reason for such accumulation was lack of capital expenditure coupled with substantial payables to the Government. However KSEB is found to be concentrating on achieving targets under capital expenditure during 2009-10. The status of arrears as on 30-06-2009 shows Rs. 1672 Crore including arrears from KWA. It is observed that the arrears to be collected from State Govt. departments itself is Rs. 157.08 Crore and from State Undertakings excluding KWA is Rs. 220.39 Crore. These arrears have to be collected immediately to reduce borrowing for meeting working capital requirements. KSEB should take up this matter with Government and the Government should help the Board by timely payment of its electricity dues which will ultimately

benefit the ordinary consumer. Considering these factors, the Commission decided that, the proposal for additional revenue through tariff revision is not required at present and expressed the view that the present Board appears to be capable of improving its finances with better management avoiding the necessity of a tariff revision in the near future. However, the Commission is positive to any tariff revision proposal in line with the provisions of the law, if the Board can substantiate the need for it”.

18.4 We find that the State Commission has given detailed reasons for not allowing the increase in tariff.

18.5 This Tribunal in its order dated 11.11.2011 in O.P. no. 1 of 2011 has given clear directions regarding revenue gap and truing up as under:

“(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.

(v) Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12”.

18.6 In this case we find that the Appellant has so far not filed truing up application for the FY 2006-07 to 2008-09. On preliminary screening of the accounts, the State Commission has observed surplus. In view of this, we do not want to interfere with the impugned

order dated 2.12.2009. However, the Appellant is directed to file petition for truing up of accounts for the previous years and the State Commission shall consider the same and decide expeditiously.

19. The twelfth issue is regarding State Commission not allowing the Fuel Price Adjustment Mechanism.

19.1 According to the Appellant, the State Commission has failed to provide for FPA Mechanism.

19.2 This Tribunal in its order dated 11.11.2011 in O.P. no. 1 of 2011 has given directions regarding Fuel Price Adjustment Mechanism. The relevant portion is extracted below:

“64. We also notice that most of the State Commissions have not provided in their Regulations Fuel & Power Purchase Cost Adjustment Formula for allowing the increase in fuel and power purchase cost during the tariff year.

The fuel and power purchase cost adjustment mechanism provided in most of the states is after completion of the financial year through a separate proceeding which takes a long time. The power purchase cost is a major expenditure in the ARR of the distribution licensee. The fuel and power purchase cost is also uncontrollable and it has to be allowed as quickly as possible according to the Tariff Policy. The Electricity Act, 2003 under Section 62(4) has specific provision for amendment of the tariff more frequently than once in any financial year in terms of Fuel Surcharge Formula specified by the Regulations. A major part of power procured by the distribution company comes from the Central Sector Generating Companies whose tariff is regulated by the Central Commission and the State owned Generation Companies whose tariff is regulated by the State Commissions. The Central Commission in its Tariff Regulations has already provided a formula for fuel price adjustment and the charges of the generation companies are increased as and when the fuel prices are increased. In view of the present

precarious financial conditions of the distribution companies, it would be necessary that the State Commissions also to provide for Power Purchase Cost Adjustment Formula as intended in the section 62(4) of the Act to compensate the distribution companies for the increase in cost of power procurement during the financial year. In the above situation, as indicated above it has become necessary for this Tribunal to give appropriate directions, to correct this situation by invoking the powers under Section 121 of the Act which is permissible under law. So, the second question is also answered accordingly.

(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a

quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism”.

19.3 In view of above, the State Commission is directed to take immediate action in the matter, if not done already.

19.4 Accordingly, this issue is decided in favour of the Appellant.

20. **Summary of our findings:**

(i) **Power Purchase Cost:**

We do not find any infirmity in the findings of the State Commission regarding energy availability from the power stations of NTPC and NLC based on the past performance of the stations. However, the State Commission is directed to true up the Power

Purchase Cost and allow the same along with carrying cost, after prudence check.

ii) Interest and finance cost:

We do not want to interfere with the findings of the State Commission. However, the State Commission shall consider the actual interest and finance charges in the true up of the financials for the year 2009-10.

iii) Interest on working capital:

The State Commission shall consider the actual interest on working capital in the true up and allow the same with carrying cost, subject to prudence check. We have also given directions in paragraph 10.4 above to the State Commission to frame regulations regarding norms for various

expenses so that there is regulatory certainty about the allowable costs.

iv) Depreciation:

This issue has already been decided by the Tribunal in judgment dated 18.8.2010 in Appeal no. 5 of 2009. Accordingly, this issue is decided as against the Appellant.

v) Electricity duty

This issue has been decided by the Tribunal in its judgment dated 13.1.2011 in Appeal no. 177 of 2009. Accordingly, this issue is also decided as against the Appellant.

vi) A&G Expenses:

The State Commission shall consider the A&G expenses as per the audited accounts of the Appellant in the true up and allow the same with

carrying cost, after prudence check. We have also given directions to the State Commission regarding framing of Regulation for normative expenditure to be allowed for various costs including A&G expenses in paragraph 13.4.

vii) Prior period expenses:

This issue has already been decided by the Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of 2009. Accordingly, the State Commission shall consider the prior period expenses at the time of truing up.

viii) Other debits

This issue has been decided by this Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of 2009. Accordingly, this issue is decided against

the Appellant in terms of the decision in the above judgment.

ix) T&D loss reduction targets

This issue has also been decided by the Tribunal in its judgment dated 18.8.2010 in Appeal no. 5 of 2009. Accordingly, this issue is decided against the Appellant.

x) Revenue shortfall due to withdrawal of power restrictions w.e.f. 1.5.2009:

The State Commission shall consider the impact of withdrawal of power restrictions w.e.f. 1.5.2009 on the revenue of the Appellant and allow necessary cost with carrying cost in the true up of FY 2009-10.

xi) Recovery of revenue gap

The Tribunal in its order dated 11.11.2011 in O.P. no. 1 of 2011 has given clear directions regarding revenue gap and truing up. In this case, we find that the Appellant has so far not filed truing up application for the previous years. On the preliminary screening of the accounts, the State Commission has observed surplus. In view of this, we do not want to interfere with the impugned order dated 2.12.2009. However, the Appellant is directed to file petition for truing up of accounts for the previous years and the State Commission shall consider and decide the same expeditiously.

xii) Fuel Price Adjustment Mechanism

This Tribunal in its order dated 11.11.2011 in O.P. no. 1 of 2011 has given directions regarding

Fuel Price Adjustment Mechanism. The State Commission is directed to take immediate action in the matter, if not done already.

21. The Appeals are allowed in part as indicated above. No order as to costs.

22. Pronounced in the open court on this 4th day of September, 2012.

**(Rakesh Nath)
Technical Member**

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

√

REPORTABLE/~~NON-REPORTABLE~~

vs