

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

**Appeal nos. 126 & 159 of 2012**

**Dated: 4<sup>th</sup> September, 2013**

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

**Appeal No. 126 of 2012**

**In the matter of:**

**Abhijeet Ferrotech Limited,**

Plot No. 50 & 51, APSEZ, Achuthapuram,  
Visakhapatnam,  
Andhra Pradesh-531011

**... Appellant (s)**

Versus

1. **Andhra Pradesh Electricity Regulatory Commission,**  
Singareni Bhavan, Red Hills,  
Lakdikapul, Hyderabad.  
Andhra Pradesh-500 004.
2. **Eastern Power Distribution Company of Andhra Pradesh Ltd.,**  
P&T Colony,  
Seethammadhara,  
Visakhapatnam-530 013
3. **Northern Power Distribution Company of Andhra Pradesh Ltd.,**  
1-1- 503, NIT Main Road,  
Chaitanyapuri Colony, Hanmakonda,  
Warangal-506004
4. **Southern Power Distribution Company of Andhra Pradesh Ltd.,**  
Beside Srinivasa Kalyana Mandapam,  
Kesavayanagunta Road,  
Tirupati-517501
5. **Central Power Distribution Company of Andhra Pradesh Ltd.,**  
6-1-50, Corporate Office, Mint Compound,  
Hyderabad-500 063

**...Respondent(s)**



## **Judgment**

### **Mr. Rakesh Nath, Technical Member**

These Appeals have been filed by Andhra Pradesh Ferro Alloys Producers Association and Abhijeet Ferro Tech. Ltd. against the order dated 30.3.2012 passed by the Andhra Pradesh Electricity Regulatory Commission determining the Annual Revenue Requirement ("ARR") and Tariff for the four Distribution Licensees of the Andhra Pradesh for the FY 2012-13.

2. The Appellant in Appeal no. 159 of 2012 is an Association of Ferro Alloys Industry in the State of Andhra Pradesh. The Appellant in Appeal no. 126 of 2012 is an Industrial consumer with Ferro Alloy unit taking power supply at 220 kV. The State

Commission is the Respondent no. 1. The Respondent nos. 2 to 5 are the Distribution Licensees.

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

- (a) The State Commission issued Regulation 4 of 2005 on 14.11.2005 specifying the terms and conditions for determination of tariff for Wheeling and Retail Sale of Electricity. In the Tariff Regulations, the State Commission introduced Multi Year Tariff framework.
- (b) The Distribution licensees (R-2 to R-5) expressed their inability to make a filing for retail supply business for a period of five years from 2009-10 to 2013-14 as per the MYT scheme and sought the approval of the State Commission to file ARR and Tariff on annual basis from the years 2009-10 to

2011-12 and the same was permitted by the State Commission.

(c) The Distribution licensees again expressed difficulties in filing ARR for the 2<sup>nd</sup> Control Period i.e. FY 2012-13 and 2013-14 together and sought the permission of the State Commission to allow them to file the ARR and tariff proposal for FY 2012-13 only and the same was permitted by the State Commission vide its letter dated 18.10.2011.

(d) Accordingly, the Respondents 2 to 5 filed the ARR and Tariff Petition for FY 2012-13. Thereafter, after the issuance of public notice, the State Commission held public hearings. The Appellants participated in the public hearing and made submissions before the State Commission.

(e) Finally on 30.3.2012, the impugned order determining the ARR and Tariff of the Distribution licensees (R-2 to R-5) for FY 2012-13 was passed by the State Commission.

(f) Aggrieved by certain findings of the State Commission in the impugned order the Appellants have filed these Appeals.

4. As the impugned order is the same and some common issues have been raised by the Appellants, a common judgment is being rendered in both the Appeals.

5. Ferro Alloys Producers Association, the Appellant in Appeal no. 159 of 2012 has raised the following issues:

- i) **Violation of MYT principles:** The tariff filing of the Respondent Licensees before the State Commission was not maintainable on the ground that MYT regime contemplated in the Act, National Tariff Policy and the Regulations framed by the State Commission could not be violated by the State Commission itself. The State Commission could not have allowed the annual filing of the ARR without giving an opportunity of hearing to the Appellant. According to the MYT framework, the annual performance review has to be filed by the Distribution Licensees. This was not done. Truing up for FY 2010-11 was also not done.
- ii) **Non-production of audited accounts:** The audited accounts were never made part of the

tariff filing. The audited accounts should have been made available to the stakeholders for their comments to make the tariff determination exercise transparent and meaningful. The Appellant filed objections in this regard but the same were not considered.

**iii) Violation of the Regulations:** The conduct of business Regulations, 2000 mandates submission of expected cost of providing charges which is nothing but the cost of service contemplated under the Electricity Act, 2003 and the National Tariff Policy. Admittedly, this was not submitted. The Distribution Licensees have also not segregated the distribution and retail supply business in their tariff filings as per the Regulations. The Licensees have also not



submitted any proposals for sharing of gains and losses.

- iv) Losses:** The losses incurred by the Distribution licensees have gone up beyond the levels allowed by the State Commission. The State Commission should have penalized the Distribution licensees instead of increasing the tariff disproportionately.
- v) Power Purchase Cost anomalies:** The State Commission allowed procurement of a quantity of 13281.36 Million Units at a whopping cost of Rs. 5535.93 crores. The Distribution licensees have also not shown how they have adhered to the approved Power Procurement Plan.
- vi) Tariff shock inflicted upon 33 kV and 11 consumers:** The difference in tariff between

the 33 kV users and 132 kV users should be the difference in transmission losses and charges, if any. However, there is no nexus between the hike in the tariff and the proportionate transmission charges and losses. The increase in tariff of Ferro Alloy Units at 11 kV, 33 kV and 132 kV compared to the previous year has been 69%, 53% and 38% respectively. Even assuming that the difference between the tariffs across the voltage categories is justifiable and inevitable, the proportion of the tariff shock inflicted upon the tariff categories is not commensurate with the loss levels across the voltage levels.

**vii) Failure to determine the tariff for 220 kV**

**users:** The State Commission has erred in

not determining a separate tariff for consumers availing power supply at 220kV. Such consumers are a different class. The cost of supply at 220kV is lower than that of 132kV and 33kV users and, therefore, a separate tariff should have been determined for the consumers taking supply at 220kV.

**viii) Cost of service for Ferro Alloy Industry not**

**considered:** The determination of cost of service for Ferro Alloys industry's category is missing. Therefore, the tariff determination for Ferro Alloys Industry is bad in law.

**ix) Unjustified increase in uncontrollable**

**cost:** The State Commission has passed on even the controllable expenditure in the tariff order. The State Commission allowed the Power purchase cost which has been

considered as uncontrollable cost without any verification or prudent check. The power purchase cost as a percentage of total ARR has increased from 79% in the previous year to 81.5%.

6. The Appellant in Appeal no. 126 of 2012 has raised the issue of separate tariff for consumers availing power supply at 220kV level giving different methods for determining the cost of supply at 220kV and quoting tariff orders of various State Commission where separate tariff was specified for the consumers at 220kV.

7. The Distribution Licensees, the Respondent have filed replies and written submissions supporting the impugned order. We shall be elaborating the submissions of the Distribution Licensees while

considering the various issues in the following paragraphs.

8. We have heard the learned counsel for the Appellants and the Respondent Licensees. On the basis of the rival contentions raised by the parties, the following questions would arise for our consideration:

- i) Whether the tariff order is illegal due to violation of the MYT principles laid down in the Regulations?
- ii) Whether the impugned order is illegal on account of not making the audited accounts for the previous year as part of the tariff filing?
- iii) Whether the State Commission has violated the Regulations by not insisting on submission of cost of service and segregated

accounts of the licensee for distribution and retail supply business and by not deciding sharing of gain and losses on account of performance of the licensee and not truing up the accounts, making the impugned order illegal?

- iv) Whether the State Commission has erred in not penalizing the distribution licensee on account of having higher distribution losses than that allowed by the State Commission?
- v) Whether the State Commission has erred in determining the power purchase cost?
- vi) Whether the State Commission has erred in giving a disproportionate tariff increase to the consumers at 11kV and 33kV?
- vii) Whether the State Commission has failed to determine separate tariff for consumers

availing power supply at the voltage of 220kV?

viii) Whether the State Commission has erred in not determining the cost of service for Ferro Alloys Industry's category?

ix) Whether the State Commission has given an unjustified increase in uncontrollable costs?

9. The first issue is regarding legality of the order on account of violation of the MYT principles.

10. According to the Appellant, the State Commission could not have allowed the annual filing of ARR/ tariff petition, that too without the annual performance review and truing up petition.

11. Learned counsel for the Respondent Distribution Licensees argued that they have been following the MYT scheme for their distribution business for the 2<sup>nd</sup>

Control period i.e. 2009-10 to 2013-14 as per clause-6 of the Regulation 4 of 2005. According to the Regulation, while the ARR filing for the distribution shall be for the entire control period, for retail supply business the ARR could be on annual basis. They also could not file the ARR for retail supply business for the entire control period due to significant uncertainty prevalent on the availability of energy and the cost of power purchase for the second Control period. There was uncertainty in commissioning dates of the APGENCO Stations, central generating stations, UMPPs and other generating stations. The order on generation tariffs based on the generation regulation was not passed by the State Commission. The State Commission had been giving permission for filing ARR for retail supply business on annual basis. The permission for FY 2012-13 was given by the State



Commission by its order dated 18.10.2011, in terms of its conduct of business regulations. Further, the true up filings for the first Control Period had been submitted to the State Commission and was under consideration of the State Commission.

12. We find from the impugned tariff order that the Appellant Association had raised the issue regarding MYT filing and true up. The contention of the Appellant was that the Distribution Licensees had sought permission for annual tariff filing for FY 2009-10 and 2010-11 which was granted and the same permission could not be extended to the FY 2012-13 and the licensee could not have filed the petition without seeking leave of the State Commission.

13. The State Commission has dealt with the issue in the impugned order as under:

*“Commission’s View:*

*As regards filing the ARR and Retail Supply Tariff Proposals for FY 2012-13 separately, the licensees have applied for the same and obtained the permission of the APERC, vide Commission letter NO. APERC/Secy/DD(EAS)/ARR for RSB FY 2012-13, dated 18.10.2011. As regards the objection regarding true-up of earlier year, as a pre-requisite for filing of ARR and Retail Supply Tariff Proposals for FY 2012-13, it has to be noted that the ARR for Retail Supply Tariff Proposals for FY 2012-13 have to be filed four months in advance of the commencement of FY 2012-13 i.e., by 30.11.2011, and by this date, it is not possible to have true-up of FY 2011-12, since four months out of the FY 2011-12 would still be remaining uncompleted as on this date. The true-up exercise is a separate exercise in terms of Regulation 4 of 2005 and will be undertaken by the Commission separately. As regards the other objections*

*regarding the filings, it is important to note that the Electricity Supply Act, 1948 stands superseded by the Electricity Act, 2003 and the filings of the Licensees are in pursuance of the provisions of the Electricity Act, 2003 and the relevant Regulation of the Commission, namely, “Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity Regulation, 2005”. The replies given by the licensees are found to be reasonable and satisfactory”.*

14. The impugned order also indicates the reason given by the Respondent Licensees to the State Commission for filing Retail Supply Tariff proposal on annual basis.

15. The Tariff Regulation no. 4 of 2005 provides for determination of Annual Revenue Requirement for Distribution Business and Retail Supply Business. As per Regulation 6, the Distribution licensee has to file application for ARR for each of its licensed business

for each year of the Control Period. The ARR filing for Distribution business has to be for the entire Control Period and for Retail Supply business the ARR filing has to be on annual basis for the first Control Period and the entire Control Period for the subsequent Control Periods.

16. The State Commission had determined the ARR for the Distribution Business for the MYT Period from FY 2009-10 to FY 2013-14 separately vide its order dated 20.3.2009. The same approved costs for Distribution Business have been considered in the Retail Supply tariff for the FY 2012-13 in the impugned order. However, for Retail Supply Business, the Distribution Licensees indicated difficulties in submitting ARR for MYT Period due to uncertainties in power purchase costs due to various reasons. The State Commission considered the same and allowed

the Distribution licensee to file ARR for Retail Supply Business on Annual basis in exercise of its power under the Regulations. As such, we do not find any infirmity in the State Commission allowing the licensees to file Retail Supply Business ARR on annual basis.

17. Admittedly, as per the Regulations, the State Commission has powers to allow the filing of ARR/tariff proposal for retail supply business on annual basis and the State Commission has exercised its power after considering the reasons given by the Distribution Licensees and passed reasoned order granting the permission which is perfectly legal.

18. The objection of the Appellant Association before the State Commission was that the Licensees should have obtained approval of the State Commission for

annual filing. Now it is being argued before us that the State Commission should have first sought objections from the stakeholders before granting the approval for exempting the Licensees from MYT filing of ARR/Tariff.

19. We do not agree with the contention of the Appellant that the State Commission has to first seek objections from the stakeholders before exercising its power to exempt as exercised in this case. No such public consultation is required as per the Regulations or as per the provisions of the Electricity Act, 2003. However, the State Commission has considered the objections of the Appellant in this regard and have given a reasoned order.

20. As regards truing up for FY 2010-11, we find that the Licensees requested the State Commission to

consider and approve truing up proposals for FY 2010-11 for which audited accounts had already been furnished by them to the State Commission. However, the State Commission decided to carry out truing up in a separate proceeding in terms of Regulation 4 of 2005. Thus, we cannot hold the impugned order invalid only because the State Commission had decided to carry out the truing up for the previous year in a separate proceeding.

21. In view of above, we hold in regard to the issue of the legality of order for not following the MYT principles as against the Appellant.

22. The second issue is regarding the non-filing of the audited accounts.

23. According to the Appellant, the audited accounts for the previous year was not filed and therefore, the order could not be held valid.

24. According to the Respondent Licensees, by the time of ARR filing which is 120 days prior to the 1<sup>st</sup> April of the succeeding year, the audited accounts for the ensuing year are not available. However, as and when the audited accounts are received, the same are submitted to the State Commission. At the time of filing of ARR for FY 2012-13, the audited accounts for 2010-11 had already been filed. In the Regulation 4 also there is no stipulation of audited accounts to be filed with the petition for ARR/Tariff.

25. Let us now examine the finding of the State Commission on the issue of true up for the previous



year raised by the Appellant Association. The relevant extracts are as under:

*“As regards the objection regarding true-up of earlier year, as a pre-requisite for filing of ARR and Retail Supply Tariff Proposals for FY 2012-13, it has to be noted that the ARR for Retail Supply Tariff Proposals for FY 2012-13 have to be filed four months in advance of the commencement of FY 2012-13 i.e., by 30.11.2011, and by this date, it is not possible to have true-up of FY 2011-12, since four months out of the FY 2011-12 would still be remaining uncompleted as on this date. The true-up exercise is a separate exercise in terms of Regulation 4 of 2005 and will be undertaken by the Commission separately”.*

26. Thus, the State Commission decided that the true up exercise for FY 2011-12 would be taken up separately in terms of Regulation 4 of 2005.

27. At the time of filing of the Petition for ARR/Tariff for 2012-13, the audited accounts for FY 2010-11 had already been furnished by the Licensees to the State Commission. The Distribution licensees requested the State Commission to true up the financials for 2010-11. However, the State Commission decided to take up the true up separately.

28. We notice from the tariff petitions filed by the Appellants before the State Commission that the licensees have indicated the actual expenses for FY 2010-11 and estimated expenses for FY 2011-12 vis-à-vis that approved by the State Commission in the respective tariff orders. However, the State Commission decided to true up the expenses in a separate proceedings. Therefore, the audited accounts for FY 2010-11 and projected expenses for FY 2011-12 vis-a-vis the expenses approved in the respective Tariff

order were available to the State Commission. Thus, we feel that on this ground the impugned order cannot be held as illegal. However, the State Commission is directed to make available the audited accounts to stakeholder in the public hearing for true up of the accounts for FYs 2010-11 and 2011-12.

29. Thus, the second issue is also decided against the Appellants.

30. The third issue is regarding violation of the Regulations by the State Commission regarding segregation of accounts of the Distribution Licensees into distribution and retail supply business, sharing of gains and losses and truing up of accounts.

31. We find that the State Commission had determined the charges for Distribution business for the MYT period 2009-10 and 2013-14 earlier by its

order dated 20.3.2009 and the same costs have been considered in the impugned order. The State Commission has determined the retail supply ARR for the FY-2012-13 in the impugned order. Thus, the expenses for Distribution Business and Retail supply businesses have been decided separately by the State Commission.

32. Regarding truing up of accounts and sharing of gains and losses, as already indicated above, the Distribution Licensee had submitted the audited accounts for FY-2010-11 and had requested for truing up. However, the State Commission decided to carry out truing up in a separate proceeding by using its discretion as per the Regulations. Thus, we feel that it cannot be held that the impugned order is illegal on this account. Thus, the said issue is also decided against the Appellant.

33. Even though the Tariff Regulations do not clearly indicate that the Annual Performance Review for the current year and true up for the previous year have to be carried out along with the determination of ARR/tariff for the ensuing year, we feel that the APR for the current year based on available data for six months and true up for the previous year based on the audited accounts should be done in the tariff order so that the adjustment of the surplus/shortfall in revenue as a result of APR/True up is made while determining the ARR and tariff for the ensuing year. It would also help in realistic assessment on the ARR for the ensuing year. Thus, the State Commission may consider to review of its Tariff Regulations keeping in view the above directions.

34. The fourth issue is regarding penalizing the Distribution Licensees for higher distribution losses.

35. According to the Appellants, the distribution losses of the Licensees have exceeded the benchmark decided by the State Commission and, therefore, the distribution licensees should have been penalized.

36. According to the Respondents Distribution Licensees, the power purchase requirement has been computed with normative loss levels which were approved by the State Commission for FY 2012-13 and not the actual loss level proposed by the licensees. Thus, no prejudice has been caused to the Appellants on account of the Distribution Licensees not achieving the normative losses.

37. Let us examine the Power Purchase requirement decided by the State Commission in the impugned order. The relevant extract is reproduced below:

*“38. In their filings, the Licensees have applied transmission and distribution losses (as percentage) different from the losses approved by the Commission as part of Multi Year Tariff Regulatory Framework for FY 2012-13. Taking into account the T & D losses percentage already fixed in the MYT order (as amended) for the year 2012-13, the Commission has computed the power purchase requirement at 90402.36 MU. The power purchase quantities as per filings and present determination for FY 2012-13 are given in Table-11.*

**Table 11: Power Purchase Quantity (MU) (Million kWh)**

Power Purchase Quantity	Licensee				All Licensees
	CPDCL	EPDCL	NPDCL	SPDCL	
(1)	(2)	(3)	(4)	(5)	(6)
<b>Filed by Licensees</b>	<b>42558.07</b>	<b>15507.25</b>	<b>14011.37</b>	<b>21836.71</b>	<b>93913.40</b>
<b>Approved by APERC</b>	<b>40832.39</b>	<b>15164.57</b>	<b>12721.82</b>	<b>21683.58</b>	<b>90402.36”</b>

38. Thus, the State Commission has considered the losses approved by it in the MYT Tariff Regulatory

Framework for FY 2012-13 and not the actual losses or the losses proposed by the Respondent Licensees. Accordingly, the State Commission has reduced the power purchased quantity from that proposed by the Distribution Licensees. Thus, the Distribution Licensees will be penalized in terms of power purchase cost if they do not achieve the normative losses during the FY 2012-13.

39. Thus, we do not find any merit in the contentions urged by the Appellants regarding distribution losses.

40. The fifth issue is regarding power purchase cost.

41. According to the Appellants, the State Commission has allowed a very high cost of power purchase and the licensees have not shown how they have adhered to the approved power purchase cost.



42. The Respondents Distribution Licensees have submitted that the State Commission has computed the quantum of power procurement on the basis of projected sales and normative losses. The power purchase cost is then determined on the basis of tariffs contemplated in the existing PPAs and market price of electricity.

43. We find that the quantity of power purchase has been determined by the State Commission considering the projected sales of the Distribution Licensees and the normative losses. Thereafter, the State Commission has decided the power purchase cost after detailed analysis after considering the objections of the stakeholders' received during the public hearing. The State Commission has considered the availability from various sources along with the respective tariffs.

Thus, the State Commission has decided the power purchase cost after detailed analysis and discussions.

44. The Appellants have not indicated any infirmity in the computation of the power purchase cost but have only stated that the power purchase cost is high. They have also stated that Distribution Licensees have not shown how they have adhered to the approved power purchase plan. We feel that the actual power purchase cost will be scrutinized by the State Commission only in the true up of the accounts. The Appellants can raise their objections during the true up proceedings if they find any infirmity in the actual power purchase cost incurred by the Distribution Licensee.

45. Thus, we do not find any merit in the contention of the Appellants regarding power purchase cost.

46. The sixth issue is tariff shock to 33 kV and 11 kV consumers commensurate with the loss levels across the voltage levels.

47. According to the Appellants there is no nexus between the hike in tariff and the proportionate transmission charges and losses at 11kV, 33 kV and 132 kV.

48. According to the Respondent Distribution Licensees, the variation in tariff at different voltages of Ferro Alloy Producers is almost similar to variation in tariffs at different voltages for other category consumers. The hike in tariff is due to unavoidable steep increase in cost of service which is again due to increase in power purchase cost and the cost of network. The difference between tariffs of other consumers at 33 kV and 132 kV may not be equal to

the difference in losses between the said two voltage levels as the tariff at a particular voltage level not only depends on the losses at that level, but also on cost of network and its maintenance.

49. We find that the Respondent Distribution Licensees in their petition before the State Commission had proposed to merge Ferro Alloy Units with HT- I (A) Industrial, General Category. However, the State Commission decided to retain the Ferro Alloys Industry as a separate category under HT-I (B) keeping in view the higher power usage by the Ferro Alloys Units. The State Commission also did not levy any Maximum Demand Charges on Ferro Alloys Industry even though the Distribution Licensees had proposed the Maximum Demand Charges to Ferro Alloys Industry as applicable to other industrial consumers. The State Commission for the first time determined the

voltage-wise tariff for 11kV, 33 kV and 132 kV in the impugned order.

50. In the tariff order for financial year 2011-12, the State Commission had decided same tariff of Rs.2.65 per kWh for Ferro Alloy Units irrespective of voltage of supply. However, in the impugned tariff order for financial year 2012-13, the State Commission has evolved voltage-wise tariff for 11kV, 33kV and 132kV and above in respect of Ferro Alloys Industry. This step by the State Commission is in accordance to the Section 62 (3) of the Electricity Act which provide that the State Commission may differentiate in tariffs according to *inter alia*, voltage of supply.

51. We also find that in the financial year 2011-12, the average cost of supply was Rs.3.69 per kWh

whereas the tariff for Ferro Alloy Industry at 11kV, 33 kV, 132 kV and above was only Rs.2.65 per kWh i.e. (-) 28% of the average cost of supply. The Tariff Policy envisages tariff of all categories of consumers to be within  $\pm 20\%$  of the average cost of supply. Thus, the tariff of the Ferro Alloy Units was much less than the lower end variation from average cost of supply. In other words, the Ferro Alloys Industry was a subsidized category as its tariff was much less than that stipulated in the Tariff Policy.

52. In the impugned order the tariffs of the Ferro Alloy Units have been raised. The reason indicated by the State Commission in the impugned order for modification in tariff is as under:-

*“Limited the proposed hike by Licensees for 132kV and above at par with HT I (A) consumers and then evolved voltage wise tariff for 33 kV and 11kV*

*supply to ensure that the tariff aligns with the cost and limit cross subsidization”.*

53. Let us first examine if the tariffs of the Ferro Alloys Industry at different voltage levels are within  $\pm 20\%$  of the average cost of supply as per the Tariff Policy.

54. The average cost of supply for FY 2012-13 is Rs.4.41 per kWh and the tariff for Ferro Alloys Industry at 11kV, 33 kV, 132 kV & above is Rs.4.48/kWh, Rs.4.05 kWh and Rs.3.65/ kWh respectively. Thus, the tariffs for Ferro Alloys Industry at 11kV, 33 kV, 132 kV is (-)1%, (-)8% and (-)17% of the average cost of supply. This is well within  $\pm 20\%$  of average cost of supply as stipulated in the Tariff Policy to be achieved by FY 2010-11.

55. The cost of service determined by the State Commission for HT Category I Industry General for 11 kV, 33kV and 132/220 kV for all the Distribution Licensees is Rs. 4.46/kWh, Rs. 3.56/kWh and Rs. 3.31/kWh respectively. Thus, the tariff of Ferro Alloys Industry at 132/220 kV is about 10% above the cost of service at 132/220 kV, for 33 kV it is about 13% above the cost of service and at 11 kV about 2% below the cost of service.

56. We find no force in the contention of the Appellants regarding disproportionate tariff for Ferro Alloy Units at 11 kV and 33 kV compared to Ferro Alloy Units at 132/220 kV. The State Commission has taken the step in right direction to align the tariff of Ferro Alloy Units to voltage of supply and correctly differentiating the tariffs at different voltages of supply. The tariffs of all the categories of Ferro Alloy Units is in



the range of (-) 1 to (-) 17% of the average cost of supply thus providing a favourable tariff for Ferro Alloys Industry as compared to other HT industrial units taking power at similar voltage levels. Thus, the State Commission has been fair to the Appellants.

57. We do not find any force in the contention of the Appellants that the variation in tariffs of Ferro Alloy Units at different voltage levels should be strictly in proportion to the loss levels at the respective voltage levels. As rightly pointed out by the Distribution licensee, the cost of supply is dependent on network cost besides loss level. We, therefore, reject the contention of the Appellants in this regard.

58. The seventh issue is regarding determination of separate tariff for Ferro Alloy Units taking power at 220kV.

59. According to the Appellants, the cost of supply at 220 kV is lower than that of 132 kV and 33 kV users and, therefore, a separate tariff should have been determined for the consumers taking power at 220 kV.

60. According to the Respondent Distribution Licensees, the distribution network at 11 kV and 33 kV is operated in radial mode, whereas the EHT network at 132 kV, 220 kV and 400 kV is operated in ring mode or interconnected mode resulting in loop flows. The power flow path in the transmission system cannot be distinctly differentiated at different voltage levels. The power can flow from lower to higher voltage or higher to lower voltage in ring system depending on the physics of the system. Hence EHT system losses can only be determined and voltage wise losses cannot be determined separately. Therefore, the State

Commission considered the system losses for the entire EHT system since it is operated in integrated manner and hence only one tariff has been fixed by consumers connected to EHT system irrespective of their availing supply at 132kV or 220kV. On the other hand, losses at different levels of 11 kV or 33kV operating in radial mode is determined separately. Moreover, the cost of infrastructure for supply to consumers at 220 kV is higher than at 132 kV level.

61. We find that the State Commission in the impugned order has determined cost of service for different industrial consumer categories at 11 kV, 33 kV and 132/220 kV. While the cost of service has been determined separately for 11 kV and 33 kV for 132 kV and 220 kV it has been clubbed and a common cost of service has been indicated.

Accordingly, the respective tariffs have been determined for 11 kV, 33 kV and 132/220 kV. The objection of the Appellants is regarding clubbing 132 kV and 220 kV and not determining separate tariffs for 132 kV and 220 kV levels.

62. M/s. Abhijeet Ferrotech Ltd. in their comments before the State Commission had raised objection regarding non-determination of tariff at 220 kV. On this objection, the State Commission has made the following observations in the impugned order:

*“The 220 kV system is integrated with 400 kV system and operated in the ring. The system losses are measured for the entire EHT system i.e. 400 kV, 220 kV and 132 kV. Hence, the Commission is not envisaging a separate tariff for 220 kV system”.*

63. We find that the State Commission while determining the cost of service at different voltage

levels has taken the respective losses and transmission charges for the integrated intra-state transmission system and integrated inter-state transmission system. Thus, the charges and losses for intra-state transmission has been determined on postage stamp basis. As stated by the Respondents, the EHT system is operating in integrated manner and segregating the losses for 220 kV would be difficult. We feel that the State Commission has determined the cost to serve at different voltage levels at LT, 11 kV, 33 kV and combined cost for 132/220 kV. The State Commission did not segregate the losses for 220 kV due to integrated operation of the EHT system and complications in determination of segregated losses. Further, the tariff for Ferro Alloys Units at 220/132 kV has been kept lower much than the average cost of supply i.e. about 17% lower than the average cost of

supply. Thus, we find that the State Commission has adopted a reasonable approach in determining the tariff of Ferro Alloy Units availing supply at 220 kV/132 kV.

64. If the State Commission has decided to include the combined transmission charges and losses for the integrated intra-state transmission system and for the inter-State transmission system of POWERGRID in the cost of supply of consumers at all voltage levels including the 220 kV level, we cannot hold that this approach is illegal. The EHT transmission system is owned and operated by the transmission licensees whose transmission charges and losses are determined for the integrated system and not for supply at different voltage levels viz. 220 kV or 400kV. If the State Commission has not segregated the transmission

charges and losses for loading to cost of supply of consumers at 220 kV and 132kV, we cannot say that this is arbitrary or illegal.

65. Section 62(3) of the Electricity Act, 2003 permits differentiation in tariffs due to various specified factors including voltage of supply. The State Commission has already differentiated the tariffs on the basis of voltage of supply at 11 kV, 33 kV and 132/220 kV. If the State Commission has clubbed the EHT consumers at 132/220 kV, due to complexities in segregation of tariff and in view of a common charges and losses for the integrated intra-State and inter-State transmission system it could not be considered wrong. This issue is also decided against the Appellants.

66. The eighth issue is regarding cost of service to Ferro Alloys Industry Category.

67. According to the Appellants, the State Commission should have determined cost of service to Ferro Alloys Industry's category.

68. We find that the State Commission has determined cost of service for HT Industry including Ferro Alloys Units separately for 11 kV, 33 kV and 132/220 kV. Even though the Distribution licensees had proposed same tariff for HT Industry and Ferro Alloys Industry, the State Commission decided the tariff of Ferro Alloys Industry at lower rates compared to other HT industry. As already indicated above the tariff of Ferro Alloys Industry at 11 kV, 33 kV and 220/132 kV is lower than the average cost of supply and within  $\pm 20\%$  as per the Tariff Policy. The cost of service for HT category Industry including the Ferro Alloys Industry has been considered by the State



Commission while determining the tariff for Ferro Alloys Industry at different voltage levels.

69. The voltage-wise tariff for HT category-1 (A) Industry and Ferro Alloys Industry vis-à-vis the cost of service for HT category-I Industry including Ferro Alloy Industry and average cost of supply as determined by the State Commission is as under:

	Cost of service for HT category-I Industry Rs./kWh	Average cost of supply Rs./kWh	HT Category-1 (A) Industry		Ferro Alloys Industry HT-1(B) Rs./kWh
			KVA charges Rs./KVA	Energy charges Rs./kWh	
11 kV	4.46	4.41	250	4.80	4.38
33 kV	3.56	4.41	250	4.37	4.05
220/132 kV	3.31	4.41	250	3.97	3.65

Thus, the voltage wise tariff of Ferro Alloys Industry is much lower than the tariff for HT Category- 1(A) Industry. Further, the Ferro Alloys Industry has not been levied any KVA charge, which is

levied on HT-1(A) Industry. Thus, the tariff for Ferro Alloys Industry has been more favourable as compared to other HT Industry.

70. Voltage-wise cost to serve is an indicative figure taking into account various factors including loss in different voltage networks. Voltage-wise cost to serve is also one of the factors for determination of tariff. It is not the intent of the Act that the tariff has to be the mirror image of the cost to serve. Also tariffs for different categories could not be determined by a mathematical formula. Thus, if the State Commission has determined the cost to serve at different voltage for Ferro Alloys Industry and other HT consumers we cannot say that the same is illegal.

71. The last issue is regarding increase in uncontrollable cost.

72. According to the Appellants, there is 30% hike in controllable costs and the Power Purchase cost also has been allowed without prudent check.

73. We find that the Appellants have made general statements about increase in controllable and power purchase cost without giving cost specific issues. As already indicated the State Commission has carried out all detailed analysis of the power purchase cost from various sources. The Appellant has not indicated any specific error in determination of power purchase cost. Similarly, on controllable costs, the Appellants have not indicated any specific cost about which they are aggrieved. Therefore, we do not find any force in the contention of the Appellants on this issue.

**74. Summary of our findings:**

- (i) Violation of MYT principles:- The State Commission had determined the ARR for the Distribution Business of the Distribution Licensees for the Multi Year Tariff period from FY 2009-10 to 2013-14 separately vide its Order dated 20.03.2009. The same changes have been considered in the Retail Supply Tariff Order for FY 2012-13 in the impugned order. However, for Retail Supply Business, the Distribution Licensees indicated difficulties in submitting ARR for MYT period due to uncertainties in power purchase costs due to various reasons. The State Commission considered the same and allowed the**

**Distribution Licensees to file ARR for Retail Supply Business on annual basis in exercise of its powers under the Regulations. We do not find any infirmity in the State Commission allowing the filing of ARR for Retail Supply Business on annual basis after considering the reasons given by the Licensees. We do not agree with the contention of the Appellants that the State Commission has to first seek the objections from the stakeholders before exercising its power to exempt in this case.**

**(ii) Non-production of audited accounts:- We find that the Distribution Licensees had already filed the audited accounts for FY 2010-11 and in its petition, the**

**Distribution Licensee requested the State Commission to true-up the accounts for FY 2010-11. However, the State Commission decided to take up the true-up separately even though the audited expenditure for FY 2010-11 and projected expenses for FY 2011-12 was available with the State Commission. Thus, on this ground the impugned order cannot be held as illegal. However, we have directed the State Commission to make available the audited accounts to the stakeholders in the public hearing for the true-up of accounts for FYs 2010-11 and 2011-12.**

**(iii) Segregation of accounts of licensees into distribution and retail supply business and truing-up of accounts:- We do not find any**

**infirmity in the order on these accounts. However, we have given some directions to the State Commission to consider to review its Regulations as per the direction given in this judgment.**

**(iv) Distribution Losses:- The State Commission has determined power purchase requirement taking into account the losses on normative basis and not actual losses or the losses projected by the Distribution Licensee. Thus, the ARR and tariff has been decided on the basis of normative losses only and not actual losses. Therefore, no prejudice has been caused to the Appellants if the actual losses of the Appellants is higher than the normative loss allowed by the State**

**Commission, as the licensee has to bear the loss on this account.**

**(v) Power Purchase Cost:- We do not find any infirmity in the Order regarding power purchase cost.**

**(vi) Disproportionate hike in tariff of 33/11kV consumers:- We do not find any merits in the contentions of the Appellants.**

**(vii) Separate tariff for 220 kV supply:- We do not find any infirmity in determination of clubbing the tariff for 132/220 kV supply.**

**(viii) Cost of Service to Ferro Alloys Industry:-  
We do not find any infirmity in the order regarding determination of tariff for Ferro Alloys Industry.**



**(ix) Unjustified increase in uncontrollable costs:- We do not find any merits in the contentions of the Appellants in this regard.**

75. In view of our above findings, the Appeals are dismissed as devoid of merits. However, there is no order as to costs.

76. Pronounced in the open court on this 4<sup>th</sup> day of September, 2013.

**( Rakesh Nath)  
Technical Member**

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

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**REPORTABLE/~~NON-REPORTABLE~~**

VS