IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 311 of 2016,
Appeal No. 325 of 2018
&
Appeal No. 60 of 2021 & IA No. 1810 of 2019

Dated: 09.09.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

APPEAL No. 311 of 2016

IN THE MATTER OF:
M/s. Rimjhim Ispat Limited,
Reg. Office - 123/360, Fazalganj,
Kanpur-208012, U.P. **....Appellant(s)**

Vs

1. Uttar Pradesh Electricity Regulatory Commission,
Through Its Secretary.
2nd Floor, Kisan Mandi Bhawan,
Vibhuti Khand, Gomti Nagar,
Lucknow, 226010, U.P.

2. Dakshinanchal Vidyut Vitran Nigam Ltd.
Through Its Managing Director
Urja Bhawan, NH-2 (Agra-Delhi By-Pass Road)
Sikandra, Agra, 282007, U.P.

3. U.P. Power Transmission Corporation Ltd.
Through Its Managing Director.
Shakti Bhawan, 11th Floor,
14-Ashok Marg, Lucknow-226001. **…Respondent(s)**

Counsel for the Appellant(s) : Mr. Desh Deepak Chopra, Sr. Adv.
Mr. Syed Shahid Husain Rizvi
Mr. Shailesh Verma

Counselfor the Respondent(s) : Mr. C. K. Rai
Mr. Sumit Panwar for R-1

Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for R-2

Appeal No. 325 of 2018

IN THE MATTER OF:

M/s. Rimjhim Ispat Limited,
Reg. Office - 123/360, Fazalganj,
Kanpur-208012, U.P. **....Appellant(s)**

Vs

1. Uttar Pradesh Electricity Regulatory Commission,
Through Its Secretary.
Vidyut Niyamak Bhawan,
Vidhuti Khand-II, Near Mantri Awas,
Gomti Nagar, Lucknow, 226010, U.P.

2. Dakshinanchal Vidyut Vitran Nigam Ltd.
Through Its Managing Director
Urja Bhawan, NH-2 (Agra-Delhi By-Pass Road)
Sikandra, Agra, 282007, U.P.

3. U.P. Power Transmission Corporation Ltd.
Through Its Managing Director.
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14-Ashok Marg, Lucknow-226001. **…Respondent(s)**

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Mr. Syed Shahid Husain Rizvi

Counselfor the Respondent(s) : Mr. C. K. Rai for R-1

Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for R-2

Appeal No. 60 of 2021 & IA No. 1810 of 2019

IN THE MATTER OF:

M/s. Rimjhim Ispat Limited,
Reg. Office - 123/360, Fazalganj,
Kanpur-208012, U.P. **....Appellant(s)**

Vs

1. Uttar Pradesh Electricity Regulatory Commission,
Through Its Secretary.
Vidyut Niyamak Bhawan,
Vidhuti Khand-II, Near Mantri Awas,
Gomti Nagar, Lucknow, 226010, U.P.

2. Dakshinanchal Vidyut Vitran Nigam Ltd.
Through Its Managing Director
Urja Bhawan, NH-2 (Agra-Delhi By-Pass Road)
Sikandra, Agra, 282007, U.P.

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14-Ashok Marg, Lucknow-226001.

4. U.P. Power Corporation Limited
Through its Managing Director,
Shakti Bhawan, Ashok Marg,
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Mr. Sumit Panwar for R-1

Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. This Batch of Appeal has been filed by the Appellant (M/s. Rijhim Ispat Limited) challenging the following Impugned Orders passed by the Uttar Pradesh Electricity Regulatory Commission.

Appeal No.	Impugned Order
Appeal No. 311 of 2016	Tariff Order 2016 dated 01.08.2016
Appeal No. 325 of 2018	Tariff Order for F.Y. 2017 dated 30.11.2017 in Petition No. 1206 of 2017
Appeal No. 60 of 2021	Approval of Aggregate Revenue Requirement (ARR) and Tariff for FY 2018-19 dated 22.01.2019

Description of the Parties

2. The Appellant, M/s. Rimjhim Ispat Ltd. is a Public Limited Company, incorporated under the Companies Act, 1956, which was set up in the year 1995 for manufacturing of the Stainless Steel/ Alloy Steel/Mild Steel products like bright bar, flat round & billets etc. with the help of the AOD (Argon Oxygen Decarbonizer plant), gas plant and induction furnace plant.

3. The Respondent No.1 is the Uttar Pradesh Electricity Regulatory Commission (in short "UPERC" or "Commission") which was constituted on 10.09.1998 under the Electricity Regulatory Commission Act, 1998, inter alia, deemed to have been appointed as the Commission constituted under Section

3 of the UP Electricity Reforms Act, 1999 and continues to exercise jurisdiction as the State Electricity Regulatory Commission under Section 82 of the Electricity Act, 2003.

4. The Respondent No.2 is Dakshinanchal Vidyut Vitayan Nigam Ltd. (in short "DVVNL"), hereinafter referred to in brief as DISCOM, inter alia, is a distribution licensee operating in the State of UP.

5. The Respondent No. 3 U.P. Power Transmission Corporation Ltd. (in short "UPPTCL") is responsible for maintaining and operating an efficient, coordinated, and economical system of intra-state transmission lines for the smooth flow of electricity from generating stations to the load centres.

6. The Respondent No. 4 in Appeal No. 60 of 2021 is Uttar Pradesh Power Corporation Limited (UPPCL), a state government company responsible for electricity transmission and distribution within the State of Uttar Pradesh.

Factual Matrix of the Case (Appeal No. 311 of 2016) (as submitted by the Appellant)

7. On 01.10.2014, the Tariff Order for the FY 2014-15 was passed by the U.P. Commission. In the Tariff Order, the Commission considered the value of "L-system loss for the applicable voltage level" in the prescribed formula for the determination of Cross Subsidy Surcharge payable by open access consumers at 4% for HV Categories above 11 KV.

8. On 16.12.2014, the Appellant filed a Review Petition No. 995 of 2014 seeking a review of the order dated 01.10.2014 on the ground that the

Commission, in its in-house paper, had considered losses for consumers connected to the high voltage network at 7.8% whereas the Commission had considered the system losses at 4% without any justification by the Commission.

9. On 03.11.2015 the Commission while disposing of Review Petition No. 995 of 2014 held that the provisions of open access cross subsidy surcharge has failed in operationalization of open access in the state and therefore to promote open access in the state the U.P. Commission directed UPPCL to file detailed report within a month on the various aspects of open access and reasons why it is not being operationlized. While doing so, the Commission ordered that the Commission would be revisiting the issue of cross-subsidy surcharge, etc., in its next tariff order with a view to promoting open access. The Commission further kept in abeyance the provisions regarding open access surcharge made in tariff orders for FY 2014-15 & 2015-16.

10. On 16.11.2015, the Dakshinanchal Vidyut Vitaran Nigam Ltd. filed Appeal No. 11 of 2015 before the Tribunal, and on 18.12.2015, the I.A. No. 8 of 2016 seeking amendment in the appeal filed and to include the order dated 03.11.2015 in the appeal.

11. On 06.04.2016 the above amendment application was allowed by the Tribunal and further in response to public Notice issued by the Commission inviting objections/suggestions from various stakeholders on ARR for FY 2016-17 filed by Respondent No. 2 for the F.Y. 2016-17, the Appellant filed its suggestions/objections dated 18.04.2016 before the Commission suggesting therein that as the provisions of open access cross subsidy surcharge has failed in operationalization of Open Access in the state despite power prices being low in the power exchanges, the Commission may consider computation of Cross

Subsidy Surcharge considering transmission losses as projected by DVVNL at 5.26% for the F.Y. 2016-17.

12. Tariff Order 2016 was passed by the Commission and in Tariff Order based on submission made by UPPTCL that it is going to increase its transmission capacity shortly to address the problem of inter-state transmission and also considering the reply to the deficiency note filed by the Respondent No. 2 that value for system loss at applicable voltage levels Cross Subsidy Surcharge of HV Consumers above 11 KV is 4%, determined cross subsidy surcharge considering value of "L" at 4% and also withdrew its order of abeyance dated 03.11.2015.

13. Thus, being aggrieved by the Impugned Tariff Order 2016 dated 01.08.2016 passed by the Commission, the Appellant has preferred the present Appeal.

Our Observations and Analysis

14. Since the issues raised in all three Appeals are identical in nature, all three Appeals are being decided together, and Appeal No. 311 of 2016 shall be the lead Appeal in this judgment.

15. The Appellant has claimed the following relief before us:

> *"i) Allow the appeal and set aside the impugned order dated 01.08.2016 to the extent challenged in the above paragraphs,*

ii) Award costs to the appellant, and

iii) Pass such order or orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case."

16. Later vide amendment in 2020, the Appellant has prayed for the following relief in Appeal No. 311 of 2016:

"i) Allow the appeal and set aside the impugned order dated 01.08.2016 to the extent challenged in the above paragraphs.

ia) Pass orders directing Respondent No. 1 i.e. Uttar Pradesh Regulatory Commission to compute Cross Subsidy Surcharge (CSS) for F.Y. 2014-15 as per details filed in Tariff Order 2016 dated 01.08.2016 considering the system losses at 4.96% and to consider tariff relatable to the appellant at Rs. 7.07 after removal of Regulatory Surcharge from the tariff.

ii) Award costs to the appellant, and

iii) Pass such order or orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case."

17. The above amendment was allowed by the daily order of this Tribunal dated 10.11.2020:

*"**IA-51/2020&IA-50/2020***

(For amendment of the memo of Appeal)

The applications for amendment of memo are not opposed. We treat the averments in these applications as pleadings additional to those already set out in the memo of appeal. Respondents do not wish to file

additional reply and instead wish to come up with response by written submissions at the time of hearing. The applications are disposed of."

18. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

1. ***Whether the Uttar Pradesh Electricity Regulatory Commission has erred in computing the Cross Subsidy Surcharge by:***

   a) Adopting a fixed value of System Loss ("L") at 4% for consumers above 11 kV and 8% at 11 kV without any actual voltage-wise technical data, working, or supporting evidence of losses as required under the UPERC Distribution Tariff Regulations, 2006 and Tariff Policy;

   b) Failing to undertake or direct the determination, segregation, and disclosure of the cost of supply and losses on a voltage-wise basis, in compliance with directions of the Hon'ble Supreme Court and this Tribunal;

   c) Failing to allocate and publish voltage-wise ARR components and actual voltage-wise sales data to support proper CSS determination.

2. ***Whether the methodology adopted by UPERC for the calculation of Wheeling Charges and CSS is arbitrary and not in accordance with the law, regulations, and judicial decisions due to reliance on assumptions and absence of relevant data (such as voltage-wise losses and allocation of ARR components)?***

3. ***Whether the inclusion of Regulatory Surcharge within the "Average Billing Rate" ("T") for the purposes of CSS computation is legally sustainable under the Electricity Act, 2003, the Tariff Policy, and established judicial precedent in view of the Appellant's contention that Regulatory Surcharge is a separate, distinct levy and not a component of tariff for CSS calculation?***
4. ***Whether in the absence of proper voltage-wise technical data and compliance with regulatory/judicial standards, the CSS collected from the Appellant is liable to be refunded, and whether the Commission ought to be restrained from determining or levying CSS in the future until such data is produced?***

19. The main grievance of the Appellant is the decision of the Commission whereby it has computed the Cross Subsidy Surcharge (CSS) and Wheeling Charges applicable to the Appellant, a High Voltage consumer availing short-term open access in the State of Uttar Pradesh.

20. The grounds of challenge relate to the alleged arbitrary adoption of a fixed system loss factor (L) without actual voltage-wise technical data, inclusion of Regulatory Surcharge within the average billing rate (T) for CSS computation, and the consequent impact on tariff design, ARR allocation, and consumer cost of supply. The Respondents, namely the State Commission (R-1) and the distribution licensee Dakshinanchal Vidyut Vitran Nigam Limited (R-2), have opposed the appeals, contending that the impugned determinations conform with the applicable Regulations, tariff policy guidelines, and that several issues sought to be raised are beyond the original pleading in the appeals.

21. The Appellant is a high voltage (HV-2) consumer connected at above 11 kV in Uttar Pradesh and has been availing short-term intra-state open access since 16.07.2014. For the relevant tariff years 2016-17, 2017-18 and 2018-19, the Uttar Pradesh Electricity Regulatory Commission issued Tariff Orders including the impugned order dated 01.08.2016 in Petition No. 1065 of 2015 determining the Aggregate Revenue Requirement (ARR), retail tariffs, wheeling charges and Cross Subsidy Surcharge (CSS) for the distribution licensees including Respondent No. 2 Dakshinanchal Vidyut Vitran Nigam Limited.

22. In these orders, the Commission, while computing CSS in terms of Regulation 6.6 of the UPERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2006 adopted a fixed system loss parameter ("L") of 4% for consumers connected at voltages above 11 kV (and 8% for supply at 11 kV), and included the applicable Regulatory Surcharge within the Average Billing Rate ("T") component of the formula.

23. The Appellant contends that such adoption was without any actual voltage-wise technical studies, loss measurement, or segregation of ARR components, contrary to the provisions of the Electricity Act, 2003, the Tariff Policy, and binding directions of this Tribunal and the Hon'ble Supreme Court requiring determination of voltage-wise cost of supply. It is further alleged that the inclusion of Regulatory Surcharge in 'T' is impermissible, being a distinct levy meant solely for the recovery of regulatory assets.

24. The Appellant seeks setting-aside of the CSS determinations for FY 2016-17, 2017-18, and 2018-19, refund of amounts already recovered, and a prohibition on further CSS determination until the requisite data is made available.

Issue No. 1:

25. The Appellant contends that UPERC erred in adopting a fixed system loss value of 4% for consumers connected above 11 kV and 8% at 11 kV for the purpose of CSS computation. UPERC accepted these values without any actual supporting voltage-wise technical data or evidence of measured losses, contrary to the requirements under UPERC Distribution Tariff Regulations, 2006, and the National Tariff Policy.

26. The Appellant highlights that the Commission has repeatedly acknowledged the absence of relevant voltage-wise loss data and ARR allocation in its orders, including the impugned order dated 01.08.2016. Despite repeated directions from this Tribunal and the Hon'ble Supreme Court mandating actual determination of voltage-wise cost of supply and losses, UPERC has merely relied on normative assumptions and undifferentiated system loss figures.

27. The Appellant further submits that the failure of UPERC to undertake or direct a detailed determination and disclosure of voltage-segregated cost of supply and losses contravenes settled legal requirements. The Tribunal's earlier judgments, such as in ***Siel Ltd. v. PSEB 2006 SCC Online APTEL 49*** and ***Punjab Power Corporation Ltd. v. PSEB (2015) 7 SCC 387,*** have emphasized the imperative of moving from the average cost of supply to a voltage-wise cost of supply basis for reducing cross subsidies and determining a just CSS.

28. Moreover, the absence of allocation and publication of voltage-wise ARR components and corresponding actual sales data deprives stakeholders of

transparency and undermines the validity of CSS. The Appellant thus prays for setting aside the CSS determinations for the affected years, refund of amounts collected, and directions that CSS not be levied till proper voltage-wise data is provided.

29. The Appellant submitted that in FY 2013-14, a different approach using total distribution losses (28%) yielded nil CSS; to make open access viable without distorting cost recovery, a voltage-appropriate loss factor was adopted thereafter.

30. The Commission clarifies that, as per UPERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2006, CSS is computed using the prescribed formula:

> *"S=T−[C(1+L/100)+D]*
> *Where, S is the cross-subsidy surcharge*
> *T is the tariff payable by the relevant category of consumers*
> *C is the Weighted cost of power purchase of top 5% at the margin excluding liquid fuel-based generation and renewable power*
> *D is the wheeling charges for transmission and distribution of power*
> *L is the system loss for the applicable voltage level express as a percentage."*

31. The interpretation of the term system losses for CSS purposes has been drawn to mean aggregate transmission and distribution losses up to the voltage level at which the open access consumer is connected.

32. In the case of HV consumers connected at voltages above 11 kV (e.g., 132 kV supply), the losses at that level are low because the distribution network

involvement is minimal; for such consumers, the Commission used a normative figure of 4%. For HV consumers at 11 kV, system losses of 8% were applied.

33. The Commission points out that in earlier tariff orders (FY 2014-15, FY 2015-16) and in the impugned FY 2016-17 order, the same approach was followed, and this has gone unchallenged in prior years.

34. UPERC admits that full voltage-wise segregated technical loss data is not yet available, and until the data is available, the Commission claims it is reasonable to use normative values vetted over time, derived from T&D loss studies at relevant system levels.

35. The Commission submitted that suitable directives have been issued to the licensees to provide actual-voltage wise cost/voltage wise losses so that voltage wise cost of supply may also be determined going forward for the sake of transparency and to ensure that the cross-subsidy is reduced as laid down by the full bench judgments in ***Maruti Suzuki, M/s Ferro Alloys, West Central Railways*** cases.

36. UPERC denies any deliberate omission, stating that the tariff order presents cost of supply and wheeling charges at levels permitted by presently available accounts segregation. Complete allocation is a work in progress, and the methodology adopted aligns with both the 2006 Regulations and Tariff Policy.

37. DVVNL repeats that system loss in the CSS formula refers to T&D losses up to the voltage level where the open access customer is connected (in Appellant's case, 132 kV). Losses at such high voltages are inherently minimal.

38. According to DVVNL, 132 kV losses are between 4-5%. The adopted 4% is thus realistic, reflecting reduced distribution involvement and is consistent with FY 2014-15 & 2015-16 determinations.

39. The approach was accepted in prior periods without challenge and ensures a non-nil CSS outcome, which is critical for compensating Discoms for the loss of subsidising consumers opting for open access.

40. For FY 2013-14, considering the entire system loss (28%) in the formula yielded zero CSS, which discouraged Discoms from facilitating open access. Hence, from FY 2014-15 onwards, voltage-specific loss norms were introduced to align better with ground realities and regulatory objectives.

41. DVVNL claims statistics reflecting the 4-5% loss level at 132 kV were indeed produced before the Commission. Therefore, the allegation that the figure is unsupported is unfounded.

42. It is argued that the Commission's adoption of 4% is lawful and within its regulatory domain, as per Clause 6.6 of the 2006 Regulations. The methodology serves the tariff policy intent and practical system loss realities.

43. We have given anxious consideration to the rival submissions and perused the impugned tariff orders. The controversy essentially turns on three connected facets:

- the legal and factual propriety of adopting a fixed normative 'L' value in CSS determination without contemporaneous voltage-wise measured data;

- the Commission's admitted failure to determine, segregate, and disclose the cost of supply and losses on a voltage-wise basis; and
- the consequential effect of not publishing voltage-wise ARR and actual sales data.

44. Regulation 6.6 of the UPERC Distribution Tariff Regulations, 2006 read with the Tariff Policy, mandates that CSS be computed having regard to the system losses for the applicable voltage level. This necessarily implies that the figure for 'L' should reflect actual technical losses at the consumer's connection voltage, based on credible data. The Electricity Act, 2003 (Sections 61(g) and 62) read with Clauses 8.3 and 8.5 of the National Tariff Policy require progressive movement towards the determination of voltage-wise cost of supply, which in turn presupposes accurate voltage-wise loss ascertainment.

45. The Commission in the impugned order acknowledges the non-availability of relevant voltage-wise data. Despite this, it has adopted fixed normative values (4% for >11 kV, 8% for 11 kV) based on past practice and inputs from UPPCL/DVVNL. The Respondents urge that such adoption is reasonable, pointing to historical acceptance and to indicative operational statistics showing 4-5% technical loss at or near 132 kV.

46. However, the point is that indicative estimates and historical usage are not in themselves substitutes for the actual data-driven determination required by law and reinforced by our precedent. The decisions in ***SIEL Ltd. v. PSEB*** and ***Punjab State Power Corporation Ltd. v. Punjab SEB (2015) 7 SCC 387*** leave no ambiguity that Commissions must steadily replace average or normative approaches with voltage-specific, evidence-based determinations so that CSS

truly mirrors cost of supply dynamics, thereby enabling a fair and progressive reduction of cross subsidies.

47. While we appreciate that at high voltages system losses are indeed lower and often within the 4-5% range, the justification for selecting 4% in a given year must be explicit and supported by contemporaneous measured data from metering at interface points, energy audit records, and reconciled feeder-level loss computations. The record here shows no such measurement-based study was undertaken, nor does the tariff order detail the workings behind the selection of 4%.

S.No.	**FY**	**Transmission losses as approved in ARR in %**	**Value of system loss as given by Licensee in %**	**CSS In Rs./kWh**
1	2016-17	5.24	4	0.63
2.	2017-18	5.26	4	0.60
3.	2018-19	4.96	4	0.63

48. The table provided by the Appellant, showing ARR approved transmission losses (5.24% in FY 2016-17, 5.26% in FY 2017-18, and 4.96% in FY 2018-19), highlights the lack of correlation or explanation for fixing 'L' at exactly 4%.

49. The admitted absence of voltage-wise allocation of ARR components, cost of supply tables, and actual sales data is indeed an infirmity. Without such segregation, stakeholders cannot verify the correctness of CSS calculations or meaningfully participate in tariff proceedings. This undermines the transparency

principles embedded in Sections 61, 62, and 64 of the Act and erodes the accountability expected of the Commission in quasi-judicial tariff determinations.

50. Several State Commissions, including UPERC, operate in a transitional environment where full voltage-wise data availability awaits system metering upgrades, energy audit discipline, and IT-enabled accounting.

51. But this Tribunal has consistently held that transitional difficulty cannot indefinitely postpone compliance with statutory mandates and binding judicial directions. Each year's tariff exercise must demonstrate progress towards full compliance, including interim steps such as sample feeder audits, provisional voltage-wise reporting, and the commissioning of studies alongside normative assumptions.

52. Here, while UPERC has shown its intent to improve future determinations, its present CSS computation rests on an unverified, non-transparent assumption. The adoption of a fixed 'L' at 4% and 8% in the impugned orders, without an underpinning of an actual voltage-wise study or transparent working, is unsustainable in law.

53. The failure to undertake and publish voltage-wise segregation of ARR, losses, and sales data not only contravenes the Tariff Policy mandate but also disregards this Tribunal's and the Hon'ble Supreme Court's settled position. While the technical plausibility of a 4% loss at 132 kV is not doubted in principle, the manner of its incorporation into CSS without evidence deprives it of regulatory legitimacy.

54. In view of the above, the computation of CSS in the impugned tariff orders suffers from procedural infirmities, since the 'L' value of 4% (for >11 kV) and 8% (for 11 kV) has been adopted without actual voltage-wise technical measurement or publicly disclosed computation.

55. UPERC's admitted failure to determine and disclose voltage-wise cost of supply, losses, ARR allocation, and sales data amounts to non-compliance with the statutory, policy, and judicial mandate for transparency and fairness in tariff and CSS determination.

56. **For future years, UPERC is directed to ensure that:**

- **a) Voltage-wise losses are determined from actual metering and energy audit data, which is duly verified;**
- **b) ARR, cost of supply, and sales data are published voltage-wise along with tariff proposals; and**
- **c) Stakeholders are given ample opportunity to scrutinise such data before CSS is finalised.**

Issue No. 2:

57. The Appellant contends that the methodology adopted by UPERC for calculating both Wheeling Charges and Cross Subsidy Surcharge is arbitrary and legally unsustainable. The principal grievance is the Commission's reliance on assumptions and the lack of actual voltage-wise segregation of losses and allocation of Aggregate Revenue Requirement components between wheeling and retail supply businesses.

58. The Appellant emphasizes that the tariff order reveals that the Commission did not base wheeling charges on a transparent, data-driven allocation of costs and losses. Instead, the Commission employed normative or historical percentages without concrete technical studies supporting these figures. According to the Appellant, this undermines the regulatory mandate to ensure that tariffs and surcharges reflect the true cost of service as per Sections 61 and 62 of the Electricity Act, 2003, and the Tariff Policy.

59. The Appellant further submits that the Commission itself admitted in past orders that relevant voltage-wise data is largely absent or incomplete. This absence compromises the precision and fairness of wheeling charge determinations and further the CSS, which depends on the cost of wheeling. The Appellant relies on the Tribunal's prior decisions that Courts and Regulators must insist on progressive efforts to segregate costs and losses by voltage to reduce cross subsidies. (***Siel Ltd vs. PSEB 2006 SCC Online APTEL 49*** and Hon'ble Supreme Court in ***Punjab Power Corporation Ltd vs. PSEB (2015) 7 SCC 387***).

60. The Appellant also asserts that the Respondents' defense that these issues were not raised before the Commission or in the original appeal is untenable. Under the Tribunal's powers and in the interest of justice, issues relating to wheeling charges and ARR component allocation ought to be examined since they are intrinsically linked to the CSS calculation and directly affect the Appellant's entitlement.

61. The Appellant prays for setting aside of the impugned wheeling charges and CSS on account of flawed methodology and absence of necessary data.

62. The Commission states that wheeling charges have been determined based on the best available information comprising a broadly accepted allocation of expenses between wheeling and retail supply and the use of normative loss factors calibrated according to voltage levels. UPERC emphasizes that the tariff regulations and Tariff Policy allow a transitional approach till full segregation is achieved.

63. UPERC notes that the present methodology has been in place for multiple tariff years and has gone unchallenged until the present appeals. Furthermore, UPERC contends that the methodologies adopted did not contravene any judicial decisions. The Commission has acted prudently in applying normative loss levels to ensure that wheeling charges are not punitive but rather reflect the actual financial burden on the Distribution Licensee. The Commission underscores that the allocation of ARR components and wheeling charges is published in tariff orders and filings and is subject to scrutiny.

64. UPERC presses that the issues relating to methodology and allocation were not explicitly raised in the original appeals or before the Commission and thus should not be permitted at this appellate stage.

65. DVVNL supports the Commission's stance, highlighting the practical limitations of precise voltage-wise cost allocation and loss segregation at present. The Distribution Licensee argues that, given the complexity of distribution networks, varied consumer categories, and the transitional nature of accounting systems, reliance on normative assumptions and historical loss data is reasonable and widely prevalent.

66. The Electricity Act, 2003, and Tariff Policy envision tariff design and surcharge determination based on accurate, transparent, and just cost allocations. While acknowledging the practical challenges of data collection and segregation, regulatory practice demands steady progress towards detailed voltage-wise cost accounting and loss measurement.

67. **We took strong objection to such submissions by the Respondents; their utter failure to acquire voltage-wise data on the pretext of practical difficulties cannot be accepted, with the availability of advanced technology for years together, such data can be acquired with accuracy and precision.**

68. The Commission's approach of applying normative loss values and using pro rata allocation of costs derived from audited accounts is an interim method. Notwithstanding, the absence of comprehensive voltage-wise loss data and precise segmentation of ARR components are significant shortcomings. These deficiencies raise concerns regarding transparency and fairness, as tariffs and surcharges should ideally correspond to the actual cost causation and risk profile associated with the consumer category and voltage level.

69. **The Appellant's reliance on cases mandating progressive advancement towards voltage-wise costing and data-driven tariff design is well-founded. However without actual evidence of efforts undertaken or timelines envisaged for complete data or cost segregation, mere acknowledgment of data limitations does not fulfill the regulatory obligation. Consistency with earlier tariff orders and practice, while relevant, cannot serve as an indefinite justification for perpetuating assumptions in place of data.**

70. The Commission's position that these challenges were not pleaded earlier is noted, yet the Tribunal recognizes that wheeling charges and ARR allocation issues are inseparable from the CSS dispute. Given the material impact of these factors on surcharge determination and consumer charges, excluding their examination would undermine substantive justice.

71. However, the Tribunal also appreciates that tariff determination involves balancing technical rigor, data availability, and practical constraints. The use of normative data in the current regulatory environment is permissible only as a provisional interim measure.

72. It is imperative that the Commission prioritizes establishing a concrete roadmap and firm timelines for developing robust voltage-wise loss measurement mechanisms and ARR cost segregation. This will enable transparent and equitable tariff determinations and prevent arbitrary surcharge computations. Thus, while the methodology applied by UPERC is flawed in its reliance on assumptions and lack of supporting data, it is not, per se, illegal or outside regulatory discretion. The impropriety lies in the absence of sufficient regulatory action to transition to data-driven costing.

73. **In view of the above, the methodology adopted by UPERC for the calculation of wheeling charges and CSS based on normative loss factors and unsegregated ARR cost allocations is found to be flawed due to a lack of actual voltage-wise data and technical validation. The reliance on assumptions without undertaking segregation of losses and ARR components diminishes transparency and fairness, contrary to the Electricity Act, 2003, and the Tariff Policy.**

74. **Nevertheless, given the practical realities and transitional status of the regulatory framework, the Commission's adoption of normative data as an interim measure is permissible, provided there is a clear commitment and demonstrable progress to improve data availability and cost allocation.**

75. **The Commission is directed to urgently finalize and disclose a comprehensive plan with timelines for achieving effective voltage-wise loss measurement and ARR segregation, ensuring future wheeling charges and CSS are determined on a robust data-driven basis.**

Issue No. 3:

76. The Appellant submits that the inclusion of Regulatory Surcharge within the Average Billing Rate ("T") used in the Cross Subsidy Surcharge formula is legally impermissible and contrary to the Electricity Act, 2003, the Tariff Policy, and established judicial precedent. The Appellant argues that the Regulatory Surcharge is a distinct levy imposed for the recovery of regulatory assets and should not be treated as a component of the tariff for the purpose of CSS calculation.

77. It is contended that the principle underpinning CSS computation is to measure the cross-subsidy embedded within the tariff payable by consumers for electricity supply. Since Regulatory Surcharge represents an additional charge over and above the tariff, recovering regulatory assets unrelated to the current cost of supply, its inclusion inflates the tariff component artificially, resulting in an excessive, unjust, and illegal CSS amount.

78. The UPERC has erred in including the Regulatory surcharge while arriving at the Average Billing Rate for the purpose of computation of CSS. It is well settled that a surcharge cannot be considered to be part of the main levy. Regulatory surcharge, not being a component of the determination of tariff, is separate and distinct from tariff. It is submitted that only the cost components directly related to the supply of electricity should be considered when determining the ABR for CSS calculations, excluding any additional surcharges or levies.

79. Further submitted that the regulatory surcharge is meant to cover specific regulatory costs, such as regulatory assets or specific adjustments, and is not directly related to the cost of supply to the consumer. Including such surcharges in the ABR would artificially inflate the CSS, which could discourage open access consumers and go against the principle of promoting competition in the electricity sector. (**Sai Bhaskar Iron Ltd vs APERC (2016) 9 SCC 134 para 21**).

80. The Commission itself admits that Regulatory Surcharge is not a part of the formula for the determination of CSS at the relevant time. It is submitted that neither the applicable Tariff Policy 2006 nor the Distribution Tariff Regulations, 2006, provide for the inclusion of Regulatory Surcharge in the ABR while determining CSS. In fact, the Discom itself in its Review Petition dated 21.10.2016 [Cl 7.4.8. of the Tariff Order dated 30.11.2017 challenged the calculation of CSS in the Tariff Order dated 01.08.2016 for 2016-2017 on the ground that the CSS ought to have been determined as per the formula given in the new Tariff Policy dated 28.01.2016 and not on the basis of the formula given in the 2006 Tariff Policy. The Commission, while rejecting the said submission categorically, held as follows:

> *" 7.4.12. As can be seen from the above the revised Tariff Policy 2016 in its modified formula for calculating the CSS takes into account the Regulatory Surcharge " R" which was not a part of the formula earlier in the Tariff Policy 2006…."*

81. It is submitted that in view of the unequivocal admission on the part of the Commission that Regulatory Surcharge was not part of the formula for the determination of CSS, the determination of CSS for the relevant years where Regulatory Surcharge was included in the ABR was erroneous, null, and void. It is submitted that it is very strange that the Commission rejects review of Discom on the ground that the regulatory surcharge was not part of the formula for determination of CSS but arbitrarily and knowingly continue to wrongly determine CSS year after year under the same formula by including regulatory surcharge in ABR resulting in collection of huge amount of money from the Appellant in this arbitrary manner. It is submitted that the Commission cannot arbitrarily determine CSS dehors the applicable formulae and foist huge liability on the Appellant. This conduct of the Commission violates the rule of law. The Appellant had to deposit the money under the threat of coercive steps. It is submitted that the money illegally collected under the threat of coercive steps be refunded with interest to the Appellant.

82. It is well settled that if a statute provides a thing to be done in a particular way, then it has to be done in that manner and in no other manner, and following any other course is not permissible. (***Bhavnagar University vs Palitana Sugar Mills, (2003) 2 SCC 11 pr 40***).

83. The Commission contends that the inclusion of Regulatory Surcharge within the Average Billing Rate (T) for CSS computation is legally sustainable and consistent with the Electricity Act, 2003, and the Tariff Policy.

84. At the outset, it is submitted that the term tariff has not been defined in the Electricity Act, 2003. Tariff means a schedule of standard/ prices or charges provided to a category or categories for procurement by the licensee from the generating company, wholesale or bulk or retail/ various categories of consumer (Para 68) ***Gujrat Urja Vikas Nigam Ltd. Vs. Solar Semiconducter Power Co. (India)(P) Ltd. (2017) 16 SCC 498***. Therefore, the schedule of prices would include everything, inclusive of the regulatory surcharge that the consumer has to pay. Para 21 of the Sai Bhaskar Judgment itself says that:

> *"---x---Nature of surcharge has to considered as per intendment in which it has been used in the enactment. "Surcharge is basically over and above main levy and is in the form of additional charge. It may carry different contours as provisions of an enactment and different methodology for its determination".*

85. It is submitted that the intendment in the formula is not to exclude the Regulatory surcharge from 'T', had that been the case the Policy ought to have stated that explicitly or implicitly the exclusion of the same and therefore it is left to the State Commission to interpret it accordingly to meet the requirement of the CSS which is essentially compensatory in nature. In this context, it is relevant to reproduce the observation of this Tribunal passed in Appeal no. 283 of 2014 & Batch ***M/s Sesa Sterlite Ltd. Vs. Odisha Electricity Reg. Commission*** judgment dated 29.05.2018 wherein this Tribunal held at para 12 xiv that:

" ----xx---We also observe that as per formula for CSS in NTP there is no such specific requirement of load factor for calculation of component 'T' and hence it is left to the State Commission to interpret and deal accordingly the same to meet the requirement of provisions envisaged in the Act and NTP. Accordingly, we do not see any legal infirmity in the decision of the State Commission on this count also."

86. Further, the issue of inclusion/merging of Regulatory surcharge in Tariff and that Open Access Consumers are required to pay Regulatory Asset Charge is no more res integra in view of the judgment of this Tribunal in the case of ***Indian Hotel and Restaurant Association & Anr. vs. Maharashtra State Electricity Regulatory Commission & Anr.***, Appeal No. 294 of 2013 & Batch decided on 26.11.2014 wherein at Para 94-95, while dealing with the identical issue, this Tribunal observed that:

"94. ----xx--- Had the state Commission included the regulatory asset recovery in the retail supply tariff, 'T' in the cross subsidy surcharge formula would have changed and accordingly, the CSS would have increased to the extent of recovery of regulatory assets from that category of consumers. Instead of that, the state Commission has created a separate Regulatory Asset Charge. Just because the state Commission had used a different method for recovery of the regulatory assets, that distribution licensee viz, Reliance would not be denied of legal recovery of the regulatory assets from the changeover consumers on the plea that the Open Access Consumers are liable to pay only CSS and additional surcharge, if any.

95. In the case of Tata Power, the regulatory assets have been merged with energy charges of Tata Power and such energy charges have been used to determine the cross subsidy surcharge for Tata power. ***Thus, any Open Access consumer opting out of Tata Power supply and choosing to take supply from any other supplier on Tata Power network would pay the cross subsidy surcharge of Tata Power. This would include regulatory assets recovery components of Tata Power.*** *This would establish that separate display of regulatory asset charge in tariff is only the matter of how the state Commission has chosen to display those tariffs to the consumers."*

87. **Hence, it is submitted that the issue raised by the Appellant has no merit and is liable to be rejected.**

88. Accordingly, the objection raised by the Respondents that the issue is not argued by the Appellant during its Oral submission; has become infructuous.

89. In light of the settled position in law, it is evident that the inclusion of Regulatory Surcharge within the Average Billing Rate ("T") for Cross Subsidy Surcharge computation cannot be assailed. Although the Appellant contends that the Regulatory Surcharge is a distinct levy, jurisprudence establishes that tariff being a schedule of charges recoverable from consumers comprehensively includes such surcharges, irrespective of whether they are shown separately or subsumed in energy charges.

90. The consistent view of this Tribunal in ***Indian Hotel and Restaurant Association & Anr. vs. MERC & Anr.*** (Appeal No. 294 of 2013 & Batch, decided on 26.11.2014), as well as in ***Sesa Sterlite Ltd. vs. OERC (Appeal No. 283 of 2014 & Batch***, decided on 29.05.2018), categorically affirms that the manner of displaying or recovering regulatory asset charges does not alter their character as an integral part of tariff for the purpose of CSS determination.

91. Therefore, the Commission's approach in including the Regulatory Surcharge in 'T' is legally sustainable, consistent with the Electricity Act, 2003, and the Tariff Policy, and cannot be interfered with.

92. Accordingly, the issue is concluded against the Appellant.

Issue No. 4:

93. The Appellant asserts that since the Uttar Pradesh Electricity Regulatory Commission has computed the CSS without any proper voltage-wise technical data, following an arbitrary and unsupported methodology, the amounts collected as CSS from the Appellant are liable to be refunded forthwith. The Appellant emphasizes that CSS, being a charge determined based on the cost of supply and system losses, requires a bona fide, data-driven foundation for legitimacy. The absence of voltage-segregated loss data, ARR, and cost of supply components renders the CSS determination arbitrary, illegal, and unjust.

94. The Appellant further contends that until such voltage-wise data, segregated accounts, and supporting technical studies are produced and approved, the Commission should be restrained from determining or levying any further CSS. Otherwise, consumers like the Appellant will be subjected to erroneous charges without due cause or basis.

95. The Appellant highlights the coercive nature of the collection of CSS and submits that it had no option but to pay the amounts to avoid penal consequences or disconnection. The Appellant prays for a direction to refund all amounts collected towards CSS under the impugned orders.

96. The Commission submits that its CSS determination followed the formula prescribed in the UPERC Distribution Tariff Regulations, 2006, and is consistent with the regulatory framework. While admitting that full voltage-wise technical loss data may not be presently available, UPERC relies on normative, reasonable estimates and submissions from the distribution licensee, asserting that the methodology is transparent and made after due public consultation.

97. UPERC contends that the imposition and collection of CSS cannot be invalidated merely on the ground of incomplete data or the Appellant's dissatisfaction with the methodology. The Commission emphasizes that it has continuously sought to improve data availability as recorded in the impugned orders.

98. The Electricity Act, 2003, and the Tariff Policy mandate that tariff components and surcharges such as CSS be calculated reasonably, transparently, and on a proper cost basis. The absence of proper voltage-wise data and failure to publish segregated ARR, cost of supply, and loss studies

make the CSS determination on these bases legally vulnerable, as discussed under Issues 1 and 2.

99. However, the Tribunal must balance the principles of regulatory certainty and the practical consequences of retrospective refund directions. The mere fact that the Commission used normative or incomplete data does not ipso facto entail that all CSS collections made pursuant to approved tariffs are unlawful or refundable, absent evidence of over-recovery or manifest injustice.

100. The Appellant's argument on coercion and forced payment resonates with the fundamental fairness principle. Consumers cannot be left in legal limbo or subject to unfounded charges indefinitely. The Tribunal recognizes the necessity of protecting consumer interests, ensuring that tariff orders are data-driven, and providing remedies where arbitrary charges are levied.

101. At the same time, when tariff orders are passed in exercise of statutory authority and become effective after due process, retrospective refunds must be ordered cautiously. They must be supported by quantifiable proof of excess recovery or violation of legal norms causing direct loss to the consumer.

102. In this case, while the Tribunal has found deficiencies in data and methodology (Issues 1 and 2), it notes that the Appellant has not provided evidence that the CSS collected was conclusively in excess of the lawful entitlement of the licensee beyond the challenge to the data basis itself.

103. Therefore, the Tribunal directs the Commission to (i) urgently undertake voltage-wise technical studies, (ii) publish detailed data and segregated accounts, (iii) revise CSS methodology based on robust evidence, and (iv)

recompute CSS for affected years accordingly. Pending such revision, the Commission shall refrain from imposing or demanding CSS on the Appellant and similar consumers calculated on non-transparent or arbitrary bases. Any amounts already paid toward CSS shall be subject to adjustment after recomputation.

104. Granting an outright refund at this stage without recomputation or audit would be premature and disrupt the sector's financial equilibrium. Similarly, the Tribunal enjoins the Commission to state firm timelines for compliance reporting progress to this Tribunal.

105. **In view of the above, the CSS collected under the impugned orders, determined without proper voltage-wise technical data or full compliance with regulatory and judicial standards, is open to challenge. However, an unconditional direction for refund of all amounts collected is premature in the absence of demonstrated overreach or excess recovery beyond flawed methodology.**

106. The Commission is directed to promptly conduct comprehensive voltage-wise technical studies and segregated ARR/account disclosures and recompute CSS accordingly.

107. **The Commission shall furnish a detailed compliance roadmap with timelines within three months from the date of this judgment and report progress accordingly. Appropriate adjustments or refunds, if any, shall be considered after such recomputation and audit.**

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal Nos. 311 of 2016, 325 of 2018 & 60 of 2021 have merit and are partly allowed.

The Commission is directed to carry out comprehensive voltage-wise loss and cost studies and publish detailed voltage-wise data to enable proper CSS computation. The CSS amounts collected under the impugned orders were computed on a flawed methodological basis; an outright refund at this stage is premature in the absence of conclusive proof of excess recovery.

The Commission must perform voltage-wise technical studies, publish segregated ARR data, and recompute CSS. Adjustments or refunds, if justified, shall follow recomputation and audit.

The Commission is also directed to carry out and complete the studies within one year from the date of this judgment.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 09th DAY OF SEPTEMBER, 2025.

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks