IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL NO. 264 OF 2014

APPEAL NO. 173 OF 2015

&

APPEAL NO. 277 OF 2015

Dated: **29.04.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson**
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

APPEAL NO. 264 OF 2014

In the matter of:

Punjab State Power Corporation Limited
The Mall, Patiala - 147001
Punjab

….Appellant

VERSUS

Punjab State Electricity Regulatory Commission
SCO NO 220-221, Sector-34-A
Chandigarh ……Respondent

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent (s) : Mr. Sakesh Kumar
Ms. Gitanjali N. Sharma

APPEAL NO. 173 OF 2015

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Punjab ….Appellant

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Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent (s) : Mr. Sakesh Kumar
Ms. Gitanjali N. Sharma

APPEAL NO. 277 OF 2015

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Punjab State Power Corporation Limited
The Mall, Patiala - 147001
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J U D G M E N T

PER HON'BLE MR SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant batch of appeals has been filed by the Punjab State Power Corporation Limited ("Appellant" or "PSPCL"). The Appeal No. 264 of 2014 has been filed against the Order dated 22.08.2014 passed by Punjab State Electricity Regulatory Commission (in short "Respondent Commission" or "State Commission" or "PSERC") in Petition No. 63 of 2013 whereby the State Commission has approved the Annual Revenue Requirements of the Appellant for the year 2014-15. The State Commission has also reviewed the financials of the Appellant for the year 2013-14 as well as carried out the truing up for the years FY 2010-11 and FY 2011-12.

2. The Appeal No. 173 of 2015 has been filed against the Order dated 05.05.2015 passed by Punjab State Electricity Regulatory Commission in Petition No. 71 of 2014 whereby the State Commission has approved the Annual Revenue Requirements of the Appellant for the year 2015-16, True-Up for FY 2012-13 & FY 2013-14 and the Annual Performance Review of FY 2014-15.

3. The Appeal No. 277 of 2015 has been filed against the Order dated 22.07.2015 passed by Punjab State Electricity Regulatory Commission in Petition No. 31 of 2015 whereby the State Commission has implemented the decision of the Tribunal vide Judgment dated 22.04.2015 passed in Appeal No.174 of 2013.

DESCRIPTION OF PARTIES: -

4. The Appellant, Punjab State Power Corporation Limited is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at The Mall, Patiala in the State of Punjab. The Appellant is an unbundled entity of the erstwhile Punjab State Electricity Board and has been vested with the functions of generation and distribution of electricity in the State of Punjab.

5. The Respondent No. 1 is the State Electricity Regulatory Commission for the State of Punjab exercising jurisdiction and discharging functions under Section 61, 62, 86 and other applicable provisions of the Electricity Act, 2003.

FACTS OF THE CASE: -

6. The factual matrix of the cases is noted in brief as the Appellant is aggrieved by various claims not approved by the State Commission and need to be deliberated on its merit.

7. The Appellant, PSPCL, filed Appeal nos. 7, 46, and 122 of 2011 before this Tribunal challenging separate orders of the State Commission, detailed as under:

a) Appeal no. 7 of 2011 -- State Commission's order dated 16.04.2010 in Review Petition No. 23 of 2009 for review of Tariff Order dated 08.09.2009 in Petition No.31 of 2015 (Suo-Motu) passed by the Commission in Petition No.1 of 2009 for erstwhile PSEB for FY 2009-10.

b) Appeal no. 46 of 2011 -- State Commission's Order dated 06.01.2011 in Review Petition No. 23 of 2010 to review the Tariff Order dated 23.04.2010 passed by the Commission in Petition No. 25 of 2009 for erstwhile PSEB for FY 2010-11.

c) Appeal no. 122 of 2011 -- State Commission's Tariff Order dated 09.05.2011 passed by the Commission for PSPCL for FY 2011-12 in Petition No. 49 of 2010.

8. The Appellant submitted that the State Commission vide the said tariff orders did not provide the reasonable revenue requirements to the Appellant and had disallowed various claims of the Appellant. The review petitions filed by the Appellant against the above orders were also not adequately addressed by the State Commission.

9. In the circumstances and aggrieved by the orders passed by the State Commission, the Appellant filed appeals being Appeal No. 7 of 2011 relating to the year 2009-10, Appeal No. 46 of 2011 relating to the year 2010-11 and Appeal No. 122 of 2011 relating to the year 2011-12. This Tribunal, by common Judgment dated 18.10.2012, partly allowed the appeals filed by the Appellant and set aside the tariff orders passed by the State Commission. The matter was remanded to the State Commission to pass consequential orders in terms of the directions and observations of the Tribunal.

10. The Tribunal had, inter-alia, held that the State Commission was bound by the norms and parameters as laid down by the Central Electricity Regulatory Commission ("Central Commission" or "CERC") as

applicable from time to time, in view of the Tariff Regulations of the State Commission adopting the Tariff Regulations of the Central Commission. The Tribunal had also held that the norms regarding target availability and incentive for generation, return on equity etc. were required to be allowed in terms of the Regulations of the Central Commission.

11. In compliance to the remand, the State Commission vide order dated 7.1.2013 disposed of the remand proceedings as directed by the Tribunal. However, in the said order, the State Commission did not allow the claims of the Appellant on certain issues including the applicable target availability and incentive on generation, the auxiliary consumption for the GNDTP generation station of the Appellant, carrying cost, the interest on loan taken for the Special Purpose Vehicles by the Appellant etc.

12. Aggrieved by the order dated 7.1.2013, the Appellant filed a review petition, being Petition No. 10 of 2013 before the State Commission. By order dated 28.03.2013, the State Commission disposed of the review petition filed by the Appellant. While the State Commission has reviewed the order dated 7.1.2013 and modified the said order, the State Commission has not considered the claims of the Appellant as sought for.

13. PSPCL filed Appeal No.174 of 2013 against the Order dated 28.03.2013 of the Commission passed in Review Petition. According to PSPCL, the Commission has not correctly implemented the Judgment dated 18.10.2012 of this Tribunal in letter and spirit and on the other hand proceeded to give reasons and justification as to why the implementation should not be done.

14. The State Commission had also previously initiated suo-motu proceedings on the aspect of fuel audit of the thermal generating stations of the Appellant and based on the report of the consultant appointed by the State Commission, passed an order dated 8.10.2012, inter alia, directing the Appellant to bring down the fall in GCV from the receipted coal and bunkered coal to within 150 Kcal/kg. Aggrieved by the above aspect, the Appellant had filed petition for review of the order dated 8.10.2012 passed by the State Commission. By order dated 27.02.2013, the State Commission disposed of the review petition.

15. In the meanwhile, the State Commission undertook the exercise of approval of Annual Revenue Requirements and determination of retail supply tariff of the Appellant for the year 2013-14 and also reviewing the financials of the Appellant for the year 2012-13. This was pursuant to a petition being Petition No. 71 of 2012 filed by the Appellant on 30.11.2012. Vide Order dated 10.4.2013, the State Commission determined the ARR and tariff applicable to the Appellant for FY 2013-14. Once again, the State Commission disallowed several claims of the Appellant. Aggrieved by the Order dated 10.4.2013, the Appellant has filed Appeal No 106 of 2013 before this Tribunal.

16. On or about 29.11.2013, the Appellant filed the petition for ARR and tariff fixation of the Appellant for FY 2014-15, revised ARR estimate for FY 2013-14 and Audited Annual Accounts for FY 2011-12 and FY 2010-11 for final truing up. During the course of proceedings, the Appellant had filed additional submission and replies to the queries raised by the State Commission.

17. In the circumstances and aggrieved by the Tariff orders passed by the State Commission for the year 2012-13 dated 16.7.2012, the Appellant had filed appeal bearing Appeal No. 174 of 2012. By judgment dated 11.9.2014 passed by this Tribunal, the appeal was partly allowed and remanded the matter to the State Commission to pass consequential orders in terms of the directions and observations made in judgment.

18. By order dated 22.8.2014, the State Commission has disposed of the Petition filed by the Appellant and approved the Annual Revenue Requirements and determined the retail supply tariff of the Appellant for the year 2014-15. The State Commission has also reviewed the financials of the Appellant for the year 2013-14 and conducted the final truing up for the FY 2010-11 and FY 2011-12.

19. Again, the State Commission has not allowed various claims of the Appellant in the above order. There is also a substantial reduction due to truing up for figures of the earlier years. The State Commission has completely changed its methodology at the truing up stage which is against the principles laid down by this Tribunal.

20. In the circumstances and aggrieved by the order dated 22.08.2014 passed by the State Commission, the Appellant is filing the present appeal no. 264 of 2014.

21. Similarly other captioned Appeal no. 173 of 2015 is filed challenging Order dated 05.05.2015 passed by the State Commission in Petition No. 71 of 2014 and Appeal no. 277 of 2015 against the Order

dated 22.07.2015 passed by the State Commission in Petition No. 31 of 2015.

22. It is submitted that the State Commission has not allowed various claims of the Appellant in the above orders. There is also a substantial reduction due to truing up for figures of the earlier years. The State Commission has completely changed its methodology at the truing up stage which is against the principles laid down by this Tribunal. The Appellant has raised the following issues involved in the present Appeal requiring adjudication:

a) Appeal No. 264 of 2014-

(1) Reduction of sales to agricultural pump set consumers (AP Consumers)
(2) T&D Losses
(3) Norms for Operation-Plant Availability Factor (PLF)
(4) Station Heat Rate (SHR)
(5) Auxiliary Consumption
(6) Fuel Cost – Gross Calorific Value (GCV)
(7) Disallowance of Depreciation
(8) Disallowance of Power Purchase Cost
(9) Disallowance of Employee Cost
(10) Repair & Maintenance (R&M) Expenses and Administrative & General (A&G) Expenses.
(11) Disallowance of Interest and Finance Charges
(12) Overestimating revenues
(13) Late Payment Surcharge
(14) Carrying Cost on Cumulative Revenue Gap
(15) Other Allowances

(16) Non-allowance of Interest & Finance Charges pertaining to use of Working Capital Loans for the creation of Assets of the Appellant

(17) Non-allowance of Subsidy amounting to Rs. 178.82 crores in True up of FY 2011-12

b) Appeal No. 173 of 2015-

(1) Reduction of sales to Agricultural Pump Set Consumers (AP Consumers) – *(common issue in the Appeals)*

(2) T&D Losses – *(common issue in the Appeals)*

(3) Station Heat Rate (SHR) – *(common issue in the Appeals)*

(4) Fuel Cost – Gross Calorific Value (GCV) – *(common issue in the Appeals)*

(5) Target Availability

(6) Coal Transit Loss

(7) Disallowance of Depreciation – *(common issue in the Appeals)*

(8) Disallowance of Employee Cost– *(common issue in the Appeals)*

(9) Disallowance of Power Purchase Cost– *(common issue in the Appeals)*

(10) Repair & Maintenance (R&M) Expenses and Administrative & General (A&G) Expenses. – *(common issue in the Appeals)*

(11) Disallowance of Interest and Finance Charges– *(common issue in the Appeals)*

(12) Non-allowance of Interest & Finance Charges pertaining to use of Working Capital Loans for the creation of Assets of the Appellant

(13) Late Payment Surcharge– *(common issue in the Appeals)*

(14) Carrying Cost on Cumulative Revenue Gap– *(common issue in the Appeals)*

(15) Other Allowances – *(common issue in the Appeals)*

c) Appeal No. 173 of 2015-

(1) Carrying Cost on Cumulative Revenue Gap– *(common issue in the Appeals)*

23. In the circumstances and aggrieved by these impugned orders dated 22.08.2014 in Petition No. 63 of 2013, dated 05.05.2015 in Petition No. 71 of 2014 and dated 22.07.2015 in Petition No. 31 of 2015passed by the State Commission, the Appellant is filing the present captioned appeals.

24. Some of the issues were withdrawn by Appellant and as such these issues are dropped from the Appeals. The other issues will be deliberated issues-wise in the succeeding paragraphs.

OUR OBSERVATIONS AND ANALYSIS: -

25. Issue No. 1- Reduction of sales to agricultural pump set consumers (AP Consumers): The Appellant submitted that the sales to Agriculture Pump Set Consumers (AP Consumers) was determined by the State Commission for the years 2010-11 and 2011-12 based on the sample metering done by the Appellant as per the prevailing methodology in the State followed during the review of the financials of the Appellant for the said years. However, the State Commission, in the impugned order, changed the entire methodology to determine the AP

consumption for the years 2010-11 and 2011-12 on the basis of the pumped energy in the feeders as against determining the same on the basis of sample metering for the said years. The Appellant brought to our notice the judgments dated 23.05.2007, 04.12.2007 and 18.11.2011 of this Tribunal covering the said issue stating that change in methodology for estimation of AP consumption based on feeder readings instead of sample meters in true-up exercise amounts to violation of principles laid down in said judgments.

26. The Appellant also contested the estimation of AP consumption of Kandi areas (areas having both domestic and agricultural pump set consumption) for 2013-14 based on sanctioned load instead of billed energy.

27. In response to it the State Commission has submitted that the accurate assessment of AP consumption not only affects the T&D losses, but also the subsidy given by the State. Hence, it is very important to accurately assess the electricity sold to the AP consumers. Since the metering was never so accurate, the State Commission found the Appellant showing higher agriculture consumption to project lower T&D losses. The State Commission therefore insisted on the accurate metering of AP consumption. Further, an independent agency engaged by PSPCL also shows that they were reported excess consumption to the tune of 11.25% in 2007-08 and 10.20% during 2008-09. The State Commission also found that during certain months in 2012, 40% divisions claimed more AP consumption than input energy. And, therefore, the State Commission decided the Review on the basis of pumped energy data.

28. We agree with the Respondent that accurate assessment of consumption helps in achieving the objective of laid down by the Electricity Act, 2003 making the tariff reasonable for the consumers as well as for the supplier, the distribution company. However, the methodology of determination of AP Consumption on the basis of sanctioned load is incorrect and has to be determined only on the basis of billed energy i.e. through 100% correct metering. The sanctioned load may be more than the billed energy and in certain cases it may be less. It cannot be accepted and agreed to be a correct methodology for ascertaining the pattern and actual consumption.

29. It is further submitted that the State Commission has cross verified the AP consumption from AMR data and found the methodology of the pumped energy was better than the data supplied by the Appellant which is found to be 96% better than the 9% of sample metering.

30. The Commission while analyzing the assessment of the kandi area found that there were discrepancies in the data supplied by the utility. The sample metering was found to be over estimated to show lower T&D losses and therefore the Commission had to take the pumped energy into consideration. In the opinion of the Commission, there is no other verifiable method for the relevant period to drive home a conclusion that the methodology adopted by the Appellant was more accurate than the pumped energy method adopted by the Commission.

31. There cannot be any dispute that electricity supplied to any consumer should be through good meters as mandated under section 55 of the Electricity Act, 2003, further, accurate metering results into accurate assessment of T&D losses and correct and justified release of

subsidy by the government. To this extent, we are of the opinion that the State Commission should determine the sales to AP Consumers accurately through 100% metering, but, at the same time the legal provisions have to be followed in true spirit.

32. We also note here that there is a utter failure on the part of the Appellant and the State Commission for ensuring the supply through 100% metering. We direct the State Commission to ensure 100% metering in a time bound manner.

33. But the issue remains here, whether the State Commission is right in adopting a different methodology during truing up. We have gone through the submissions of Appellant and State Commission on this in details. The issue of calculation of AP consumption has been earlier addressed in our common judgment dated 17.12.2014 in Appeal no. 242 of 2013 and Appeal no. 168 of 2013, and Appeal no. 71 of 2012, the relevant para of the judgment is as under:

> *" 18. Issue No.(ii)*
> *Now, we deal with the issue relating to unmetered consumption and Transmission & Distribution Loss (T & D Loss).*
> *19. The following contentions have been made on behalf of the appellants on this issue:-*
> *19.1. that under Section 55 of the Electricity Act, 2003, a mandatory obligation has been cast for ensuring 100% metering within 2 years from the date of notification of the Electricity Act, 2003. However, this has not been achieved in the State where till date over 30% of the total energy sale is still unmetered. The entire burden of such unmetered consumption*

is loaded upon the shoulders of the consumers, particularly those consumers who are paying much above the cost of supply. By the impugned order, a true up for FY 2010-11 and FY 2011-12, a review for FY 2012-13 has been conducted while annual revenue requirement of respondent No. 2 has been determined for FY 2013-14.

…………………………………

21. We find that PSPCL estimated the AP consumption of 11456 MU for FY 2012-13. ***The State Commission after scrutinizing the detailed data obtained from PSPCL regarding month-wise and division wise details of feeders ,energy pumped and load, etc., revised the approved energy consumption to 10687 MU as against 10479 MU approved in the tariff order, subject to validation****.* ***For FY 2013-14, the State Commission has decided to estimate the AP consumption by applying 5% increase (ad hoc) over the AP consumption approved for FY 2012-13. Thus, the State Commission approved energy consumption of 11221 MU as against 12029 MU projected by PSPCL. This is subjected to review on the basis of revised estimates in the next tariff order.***

22. We find that the State Commission has estimated the AP consumption after detailed scrutiny of the data. Therefore, we find no reason to interfere in the matter*.”*

34. However, the appellant has quoted the judgment of this Tribunal in Appeal No. 100 of 2007 dated 4.12.2007 in respect of Karnataka Power Transmission Corporation Limited v. Karnataka Electricity Regulatory Commission provides as under:

"Analysis and decision:

28. We have heard contentions of the rival parties. Basic issue that has to be decided is: whether or not the Commission was correct in carrying out the truing up of revenue requirements and revenues of KPTCL for the tariff period 2000-01 to 2005-06. Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary. Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09. It is not desirable to delay the truing up exercise for several years and then spring a surprise for the licensee and the consumers by giving effect to the truing up for the past several years. Having said that, truing up, per se, cannot be faulted, and, therefore, we do not want to interfere with the decision of the Commission in this regard to cleans up accounts, though belatedly, of the past. ***It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and***

issues involved in the initial projections of revenue requirements of the licensee……………..”

35. We agree that in the truing up stage, the State Commission ought not to change the basic principles or the principles adopted during the issuance of tariff orders, however, in the present scenario, the State Commission has only tried to achieve the objective of true-up by adopting a methodology after observing that the methodology adopted for issuing the tariff order is lacking accuracy and at the same time is misused by the Appellant for inflating the AP Consumption for its benefit as claimed by the State Commission. The State Commission has duly recorded this in its findings and also demonstrated with certain measured data and short study carried out.

36. However, we note and direct the State Commission that, in case there is no proper metering of AP Consumers, the State Commission should notify the methodology under the prevailing laws before relying upon it.

37. We, for the sake of brevity and emphasis, record that the supply of electricity to any category of consumers should be made only through correct metering, and in case of failure of the licensee, the State Commission should device a methodology for ensuring 100% metering in coming years in an expedient and phased manner.

38. However, the Appellant submitted that as the period for which the AP consumption was determined is over and the truing up exercise has been undertaken based on the audited accounts as against estimates, the issue of estimates may not arise at this stage. The Appellant has

filed appeals on the issue of agricultural consumption in the truing up exercise. The Appellant crave to press the said issue of agricultural consumption in the appeals against the truing up order.

39. Therefore, we grant opportunity to the Appellant to raise the issue at an appropriate stage during the prosecution of appeal(s) filed before this Tribunal against the truing up order, the present appeal to this aspect stands disposed of.

40. Issue No. 2- T&D Losses :The appellant has contested that the State Commission has revised the actual T&D losses achieved for 2010-11 and 2011-12 based on revised estimates of AP consumption by changing methodology, which has resulted in penalty in 2010-11 and reduction in incentive in 2011-12. The State Commission has not revised the T&D loss targets of 2013-14 and 2014-15 in view of revision of T&D losses of 2010-11 and 2011-12 based on the changed methodology of AP consumption level.

41. However, the State Commission in its submission has stated that the inability on part of the licensee to reduce the T&D losses cannot be ground for fixing higher T&D losses as it directly affects and is prejudicial to the consumers. The AP consumption projected by the Appellant was inflated which resulted in determination of higher T&D losses for FY 2010-11 and 2011-12. Hence retaining the T&D losses to a particular level has been approved by this Tribunal in various previous judgments.

42. The State Commission in its impugned order dated 22.08.2014 has stated that T&D loss targets have been provided based on Abraham Committee findings which envisaged a normative loss reduction of 1%

annually where the losses in a particular entity are below 20%. Based on which commission decided to retain T&D losses for 2013-14 at 17% against proposed level of 16.44% by appellant, and 16% for 2014-15.

43. We have gone through the submissions of both appellant and State Commission on this issue. Regulation 16 of State Commission (Terms and Conditions of Tariff) Regulations, 2005 regarding T&D loss provides as under:

> *"16.0 T&D LOSSES*
> *1.The licensee shall give information of total T&D losses in Previous Year and Current Year and the basis on which such losses have been worked out.*
>
> *2.The licensee shall also propose a loss reduction programme for the Ensuing Year as well as for the next three years giving details of the measures proposed to be taken for achieving the same.*
>
> ***3.0 Based on the information furnished and field studies carried out and the loss reduction programme proposed by the licensee, the Commission shall fix a target for reduction of T&D losses for the period specified by the Commission.***
>
> *Provided that where T&D loss targets have already been fixed by the Commission prior to the notification of these Regulations, the target so approved shall continue to remain in force for the period already specified by the Commission.*

Provided further that in the event of unbundling of the integrated utility, the Commission may fix separate transmission and distribution loss targets, as the case may be, for each successor licensee taking into account its area of operation, its consumer mix, state of the network, level of metering, metering initiatives planned, etc.

<u>4.0The licensee shall conduct regular energy audit to substantiate its estimation of T&D losses. The licensee shall also furnish six monthly energy audit reports to the Commission.</u>

The energy audit report for the first six months of the year shall be provided by November end of the same year. Similarly energy audit report for the last six months of the year shall be provided by May end of the next year.

<u>5.0 In the absence of energy audit, the Commission may not accept the claim of the licensee and may proceed to fix the loss levels on the basis of any other information available and its own judgement.”</u>

44. It is obvious that since there is change in estimated supply to AP Consumers due to change in methodology of AP Consumption calculation by the State Commission, the consequent T&D loss also get revised. It is also observed that the Appellant has not mentioned any energy audit report in its appeal to substantiate its contentions regarding revision of T&D loss values as required as per the specified Regulations.

45. This Tribunal in Appeal No 7,46,122 of 2011 dated 18.10.2012 has held that:

> “**20.Issue No.10**
>
> *On transmission and distribution loss and agricultural pump-set consumption, the Commission fixed the T&D loss level target for the 2009-10 at 22% based on the actual loss level achieved in the year 2008-09 and the expected deduction in the T&D losses over the previous years’ actual loss levels. The Commission however retained the normative loss level at 22% and 19.5% for the tariff year 2007-08 and 2008-09 respectively. The appellant contends that the Commission ought to have considered relaxation in the loss level for the Financial Year 2007-08 and 2008-09 based on the actual performance of the appellant. The Commission’s approach does not appear to be wrong because inability on the part of the Board to reduce T&D loss cannot be the ground for fixing higher T&D loss for the appellant as this would be prejudicial to the consumers. The Commission reasoned that AP consumption as projected by the Board was inflated and keeping in view the actual performance of the Board the Commission retained T&D loss target at 19.5% for the year 2008-09. It is the argument of the appellant that when the State Commission decided to revise the T&D loss reduction trajectory for the year 2009-2010 on the basis of actual the Commission ought to have considered relaxation in the loss level for the year 2007-2008 and 2008-2009 based on the actual performance of the appellant. It is further submitted that the State Commission ought not to have estimated the*

agriculture pump-set consumption solely based on the report of the Agency appointed by the State Commission. The State Commission has not considered any of the justifications and materials produced by the Appellant to point out the flaws in the methodology of the Agency appointed to point out the methodology consumption or the justifications provided by the appellant for the methodology adopted by the Appellant. The state Commission needs to consider the same and revise the agricultural pump-set consumption estimated for the year 2009-2010 and 2010-2011. We are unable to agree with the submission of the learned advocate for the appellant on this issue. The Commission fixed 22% as T&D loss for the Financial Year 2009-2010 but this is concession to the appellant. According to the Commission, having found the T&D loss at 27.52% in 2001-2002 the Commission projected a phased reduction in the next six years which if achieved would have brought down the loss level at 19.5%. The Commission was constrained to retain the T&D loss in 2008-2009 at 19.5% finding that the performance of the Board was not above the board. ***No doubt, the Commission reduced AP consumption in 2007-2008 and 2008-2009 but that is not a ground for reduction of T&D loss which was already decided for the year 2007-2008 and 2008-2009 and the Commission found that the AP consumption as projected by the Board was inflated. We decide the issue against the appellant."***

46. PSPCL, in its ARR & Tariff Petition for FY 2012-13, had submitted that the losses for FY 2011-12 had been projected after due

consideration of the recommendations of the Abraham Committee on restructuring of the APDRP and review of capital works considered for Distribution Loss Reduction Programs. The same Abraham Committee recommendation provides for 1% T&D loss reduction per year wherever loss is below 20%, based on which the T&D loss target of 17% for 2013-14 and 16% for 2014-15 was fixed by State Commission. We do not find any reason for changing the above methodology in view of revised calculation of actual T&D losses.

47. We again record here that the State Commission within its statutory powers should ensure accurate and time bound trajectory for loss reduction which can be achieved so that the genuine consumers are rightfully benefitted from it.

48. However, the Appellant, as part of his pleadings, in issue no. 1 i.e. “Reduction in Sales to Agriculture Pump Set Consumers” has prayed for allowing him to take up the issue of AP Consumption as part of his appeal filed against the truing up of accounts. In the instant issue, the bone of contention is the difference of AP consumption placed by the Appellant before the State Commission as against the AP Consumption determined by the State Commission. Considering that the issue of T&D losses is effected by the incorrectness in sales to AP Consumers which is to be taken up by the Appellant during the prosecution of appeal against the truing up, the instant issue may also be taken up along with issue no . 1 by the Appellant during the said appeal(s) before this Tribunal.

49. Issue No. 3 - Norms for Operation-Plant Availability Factor (PLF): The Appellant submitted that the State Commission, in the Impugned

Order has determined the tariff including the fixed charges based on the actual plant load factor and not on the basis of the Plant Availability Factor for the generating stations of the Appellant. This is contrary to the Regulations of the State Commission and consequently the Appellant was being deprived of the incentive for higher plant availability against the norms in terms of the Regulations. The State Commission for FY 2013-14 has held as under:

> "…………….
> *The plant availability of GHTP and GGSSTP for second half of FY 2013-14 are based on the actual plant availability figures attained till H1 of FY 2013-14 and the planned maintenance schedule. Plant availability of GGSSTP and GHTP for H1 of FY 3 - 14 is above 85%.*
>
> *Plant availability for H2 of FY 2013-14 has been estimated to be above 85% for all the plants except GNDTP."*

50. Further the State Commission for FY 2014-15 has held as under:

> *"6.4 PSPCL's own Generation*
> *6.4.1 Thermal Generation*
> PSPCL has projected gross thermal generation for FY 2014-15 at 3172 MU for GNDTP, 9500 MU for GGSSTP and 6855 MU for GHTP.
>
> ***Plant Availability***
>
> - *The plant availability of GNDTP for FY 2014-15 has been projected at 90.89%, based on maintenance schedules. The*

maintenance is planned for unit-II for 30 days and unit-III for 30 days.

- *PSPCL has submitted that Unit 4 of GNDTP is expected to remain under R&M upto 31.03.2014 (its COD after R&M is 014) and it will be available for full year during FY 2014-15.*
- *The plant availability of GGSSTP for FY 2014-15 has been projected at 91.21%, based on maintenance schedules. The maintenance is planned for unit-II for 45 days, unit-III for 35 days and unit-V for 25 days.*
- *The plant availability for GHTP for FY 2014-15 has been projected at 90.42% based on maintenance schedules. The maintenance is planned for unit-1 for 40 days, unit-II for 20 days and unit-III for 45 days.*

The availability of GNDTP, GGSSTP and GHTP based on maintenance schedules (excluding forced outages) for FY 2014-15, has been determined by the Commission as 95.89%, 95.21% and 92.81% respectively.

The Commission has assessed availability and generation for GNDTP, GGSSTP and GHTP for FY 2014-15 based on average of actual availability and average of actual generation during FY 2010-11, FY 2011-12 and FY 2012-13. The availability based upon actual number of maintenance days (including periods of forced outages, if any) and actual generation of GNDTP, GGSSTP and GHTP as discussed above, along with average generation and availability have been worked out in Table 6.6.

Table 6.6: Availability and Generation for GNDTP, GGSSTP and GHTP

Sr. No.	Station	FY 2010-11	FY 2011-12	FY 2012-13	Average
I	II	III	IV	V	VI
1.	GNDTP				
	Generation (MU)	1775	1883	1632	1763
	Availability	58.58%	59.93%	54.65%	57.72%
2.	GGSSTP				
	Generation (MU)	9718	9564	9167	9483
	Availability	92.69%	91.36%	92..11%	92.05%
3.	GHTP				
	Generation (MU)	6833	7621	7215	7223
	Availability	88.10%	96.55%	93.84%	92.83%

Considering the projected availability in FY 2014-15 as worked out by the Commission above and the average availability and generation as worked out in Table 6.6, gross generation for FY 2014-15 for GNDTP, GGSSTP and GHTP has been computed in Table 6.7:

Table 6.7: Availability, Gross Generation and PLF of GNDTP, GGSSTP and GHTP for FY 2014-15

Sr. No.	*Station*	*Three years average availability*	*Three years generation (MU)*	*Computed by the Commission for FY 2014-15*		
				Availability as per maintenance schedule for FY 2014-15	*Generation (MU) ((IV*V)/III)*	*PLF (calculated)*
I	*II*	*III*	*IV*	*V*	*VI*	*VII*
1.	*GNDTP*	*57.72%*	*1763*	*95.89%*	*3062**	*75.99%*
2.	*GGSSTP*	*92.05%*	*9483*	*95.21%*	*9808*	*88.86%*
3.	*GHTP*	*92.83%*	*7223*	*92.81%*	*7221*	*89.60%*

** Generation for GNDTP worked out as 2929 (763 * 95.8 / 57.72). However, in view of the submission by PSPCL that installed capacity of GNDTP Units III and IV is expected to increase from 110 MW to 120 MW each, as projected by PSPCL in the ARR for FY 2014-15, on the R&M works, the estimated generation for GNDTP worked out as 3062 MU (2929 * 460/440).”*

………………

51. However, our attention was also invited to various judgment passed by this Tribunal wherein the norms for Plant Availability Factor have been decided in favor of Appellant. In the judgment dated

18/10/2012 in Appeal Nos. 7, 46 and 122 of 2011, this Tribunal has held as under:

> *"It appears that in terms of the Regulations of the State Commission the principles and methodologies of the Central Electricity Regulatory Commission as was prevalent at the time when the State Commission enacted their own Regulations and as would be amended from time to time would be followed by the State Commission as far as possible. The words 'as feasible' as referred to in the State Commission Regulations' admits of deviation when it would become impossible for the State Commission on objectivity of facts and also on principles to follow the Central Electricity Regulatory Commission norms but when there would arise no difficulty in following the Central Electricity Regulatory Commission principles and methodologies, the State Commission in deviation of its own Regulations cannot adopt a procedure which has not been sanctioned in its own Regulations. The Commission, it appears, disallowed an amount of Rs.96.29 crores on account of under achievement of target generation approved for the year 2008-09 and this disallowance partook of the character of disincentive.* ***No matter whether whatever has been the practice of the Commission in the previous years, the Tribunal would insist that when there is a Regulation of the State Commission and when that Regulation provides for following the Central Electricity Regulatory Commission's principles and methodologies, there is no question of providing incentive or disincentive and the***

Commission was therefore required to provide for target availability at 80% for the generating stations of the appellant for the Financial Year 2008-09 in terms of Central Electricity Regulatory Commission Regulations, 2004. The matter of the fact is that in the said year 2008-09, the target availability achieved was 80% or more but was less than the target fixed in the tariff order which appears to be not in conformity with the Regulations concerned. It appears that the State Commission has taken the target availability based on the average availability / generation achieved by the appellant in the past three years and not in terms of the norms as provided for in the Tariff Regulations. For projecting the energy availability from own thermal power stations during the tariff year the State Commission can make the assessment based on average Plant Load Factor / availability for the past three years and the planned maintenance schedule during the tariff year for which Aggregate Revenue Requirement is being decided. However, for the purpose of tariff, the target plant availability as per the Central Commission's Regulations has to be considered. It may be mentioned in this connection that in the case Punjab State Transmission Corporation vs. PSERC, it has been held that when the provisions of the Tariff Regulations of the Central Commission have been incorporated by reference in the Tariff Regulations of the State Commission, the same is required to be followed and cannot be ignored by the State Commission. Accordingly, there is merit in the

> ***contention of the appellant and the Commission is required to revisit this issue."***
>
> *(Emphasis supplied)*

52. Further, this Tribunal reaffirmed its findings in the decision dated 11/09/2014 in Appeal No. 172 of 2012 as under:

> *"40.4. The State Commission is not justified in applying the provisions of Tariff Regulations for generation target availability for recovery of fixed charges and incentive.* ***The said approach of the State Commission while deciding issue no. (vi) is illegal and ill-founded. We have decided issue no. (vi) in favour of the appellant as the same issue is covered by the earlier judgment of this Appellate Tribunal dated 18.10.2012 passed in Appeal No. 7 of 2011 & batch wherein it was held that when the provisions of the Tariff Regulations of the Central Commission have been incorporated by reference in the Tariff Regulations of the State Commission, the same is required to be followed and cannot be ignored by the State Commission. The State Commission has indicated that in the absence of segregated accounts for generation, the incentive cannot be worked out as per the Regulations for which we have given certain directions under paragraph 38. Accordingly, the State Commission shall examine the same issue afresh as per the directions given by this Appellate Tribunal in the aforesaid judgment dated 18.10.2012."***

53. In view thereof, the issue stands covered by the previous decisions of this Tribunal.

54. On the contrary the Respondent submitted that the Appellant PSPCL submitted the segregated cost data for FY 2010-11 and FY 2011-12 during the processing of the ARR for MYT Control Period from FY 2017-18 to FY 2019-20. The Commission took the cognizance of the same and in para 2.10.6 of the Tariff Order for FY 2017-18 issued on 23.10.2017, allowed incentive for FY 2010-11 and FY 2011-12 on the basis of Plant Availability of the Thermal Generating Stations submitted by PSPCL in the ARR for FY 2014-15. The matter for allowing incentive on the basis of PAF instead of target generation, for FY 2010-11 and FY 2011-12 is now settled.

55. Further, submitted that with regards to Generation incentive for FY 2013-14, the Commission in the tariff Order of FY 2016-17 issued on 27.07.2016 while doing the Truing up of FY 2013-14 has observed as under;

> *"PSPCL while filing its ARR and Determination of Tariff Petition for FY 2016-17, submitted that the information of segregation of costs amongst various functions as per audited accounts of FY 2013-14 will be supplied after the approval/adoption in AGM. On the basis of project wise/plant wise fixed costs submitted by PSPCL vide letter no. 543 dated 16.04.2016, the Commission after prudent check, has determined the incentive, based upon actual plant availability, as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, as under. The actual plant availability of all Thermal Generating Stations as*

> *intimated by PSPCL in the ARR for FY 2016-17 has been certified by Chief Engineer/SLDC, PSTCL, Patiala, as intimated by Financial Advisor PSTCL vide letter no. 1461 dated 06.05.2016 and letter no. 273 dated 24.05.2016...*
> ***The Commission approves generation incentive of Rs. 105.91 crore for FY 2013- 14, as determined above.***"

56. At this stage, we are not perusing the orders passed by the Commission for the FY 2016-17 and onwards. The issue has to be settled down for the period under dispute vide the impugned orders, passed in 2014 and 2015, covering the period from 2010-2011 to 2014-15, beyond that period, if any order is passed, it cannot be argued or taken up for consideration.

57. We are not inclined to accept the contention of the Respondent that the Commission in its Tariff Order of FY 2017-18 issued on 23.10.2017, while doing Truing up of FY 2014-15 has observed as under:

> *"2.10.4 The Commission notes that CERC has revised its Tariff Regulations and Regulation 30 (4) of CERC Tariff Regulations, 2014 specifies as under:*
>
> *(4) Incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paise/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) as specified in regulation 36 (B).*

2.10.5 It is evident from above that the incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paise/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF), which is 85%. In the ARR petition, PSPCL has submitted PLF for GNDTP, GGSSTP and GHTP as 35.94%, 52.11% and 55.93% respectively. ***As such, no incentive is payable for the PSPCL's Thermal Generating Stations as per the regulations****."*

58. The order under challenge has been passed in the year 2014, therefore, any change in Regulations, made after that date, cannot be applied retrospectively.

59. It is well settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner, as decided by Hon'ble Supreme Court of India in various judgments, e.g., ***"Chandra Kishore Jha vs. Mahavir Prasad, AIR 1999 SC 3558 (para 12), Dhananjaya Reddy vs. State of Karnataka, AIR 2001 SC 1512 (para 22)",*** etc. Section 86(1)(f) provides a special manner of making references to an arbitrator in disputes between a licensee and a generating company.

60. Therefore, once the principle of law has already been settled through various judgments, the appeal has merit to this effect and decided in favour of the Appellant. We direct the State Commission to revisit its order accordingly.

61. Issue No. 4- Station Heat Rate (SHR): The Appellant is aggrieved by the decision of the State Commission whereby the State Commission, at the time of truing up, has revised the Station Heat Rate of Unit 3 and 4 of GHTP (a thermal based generating station owned and operated by PSPCL) as 2428 kcal per kWh as against 2500 kcal per kWh which had been allowed in the previous tariff orders inter-alia the State Commission for the first time has taken the position that the Station Heat Rate would be as per the Central Commission' Tariff Regulations, 2009 whereas, these units started operation much prior to 01/04/2009. The State Commission has held that:

> *"2.7.5 Regarding Station Heat Rate (SHR), PSPCL has intimated the SHR for GNDTP as 2963.62 kCal/kWh , for GGSSTP as 2566.36 kCAl/kWh and for GHTP as 2417.00 kCal/kWh as per audited data. PSPCL in its ARR has submitted excerpts from orders of Hon'ble APTEL and other Electricity Regulatory Commissions and has prayed that the technical performance of its stations at relaxed levels be allowed.*
>
> *The Commission notes that the Regulation 37 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 states that the components of generation tariff shall be as laid down in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 as amended by the CERC from time to time. Regulation 26(ii)(B) of CERC (Terms and Conditions of Tariff) Regulations, 2009 states that the SHR of the New Thermal Generating Station achieving COD on or after 01.04.2009 shall be as per the formula (given in the clause). Further, as per fourth proviso to*

Regulation 26(ii)(B) of CERC (Terms and Conditions of Tariff Regulations), 2009, states that if one or more units were declared under commercial operation prior to 01.04.2009, the heat rate norms for those units as well as units declared under commercial operation on or after 01.04.2009 shall be lower of the heat rate norms arrived at by above methodology and the norms as per Regulation 26(ii)A(a). As such, same SHR, as worked out on the basis of formula given in Regulation 26 (ii) B of CERC Regulations, will be applicable for Unit III & Unit IV of GHTP, since units III and IV of GHTP were declared under commercial operation on 16.10.2008 and 25.01.2010 respectively. The Commission while processing the ARR of PSPCL has been allowing the Gross Station Heat Rate for all units of GHTP at 2500 kCal /kWh.

The information/data regarding Unit III and Unit IV of GHTP was obtained from PSPCL vide Commission's letter no. 3382/3383 dated 16.07.2013 and PSPCL vide its letter no. 2665 dated 30.07.2013 submitted the data/information. As per information supplied by PSPCL, the maximum design Unit Heat Rate of Units III and IV of GHTP is 2279.85 kCal/kWh with 0% make and 33o C Cooling Water (CW) temperature subject to 0.1% increase per month due to ageing.

As per Regulation 26(ii)(B) of CERC (Terms and Conditions of Tariff Regulations). 2009, the Station Heat Rate for new thermal generating stations achieving COD on or after 01.04.2009 i.e. Unit IV of GHTP, has been determined by the Commission as 2428.04 kCal/kWh (say 2428 kCal/kWh) (1.065

x 2279.85 kCal kWh). Further, as per fourth proviso to Regulation 26 (ii)(B) of CERC (Terms and Conditions of Tariff Regulations, 2009, SHR for Unit III, GHTP shall also be 2428 kCal/kWh, as explained above.

For Units I & II of GHTP as well as for GGSSTP and GNDTP, the Commission decides to allow the SHR as allowed earlier in the Tariff Order for FY 2010-11."

62. Similar orders were passed in reference to the period 2011-12, as may be seen from the relevant extract reproduced below:

"3.7.5 Regarding Station Rate (SHR), PSPCL intimated the SHR for GNDTP as 2914 kcal/kWh, for GGSSTP as 2564 kCal/kWh and for GHTP as 2402 kCal/kWh. PSPCL in its ARR has submitted that the technical parameters including specific oil consumption and coal transit loss for FY 2011-12 were within the limits set by the Commission.

The Commission while processing the ARR of PSPCL has been allowing the Gross Station Heat Rate for all units of GHTP at 2500 kCal/kWh. Unit-III and Unit IV of GHTP have been put on commercial operation on 16.10.2008 and 25.01.2010 respectively. The matter has been discussed in detail in para 2.7.5 of this Tariff Order. As such, the Commission decides to allow SHR for GHTP Units III & IV as 2428 kCal/kWh. For Unit I & Unit II of GHTP as well as for GGSSTP and GNDTP, the Commission decides to allow the SHR as allowed earlier."

63. The appellant submitted that the State Commission, for the first time has taken the station heat rate as per Central Commission's Tariff Regulations, 2009, by determining the station heat rate of GHTP, units-3 and 4 as 2428 kcal/kWh against the 2500 kcal/Kwhr for which has been allowed in earlier tariff orders as well in the review order. Further, submitted that this is inconsistent with regard to the decision taken in respect of other stations (GNDTP & GGSSTP) of the Appellant where the actuals are more than the normative due to aging of units and the normative had been adopted wrongly. However, in the case of GHTP heat rate of 2428 kCal/KWh has been taken against the normative of 2500 kCal/Kwhr allowed earlier tariff orders.

64. However, the State Commission in its submissions has stated that they have followed the CERC Tariff Regulations, 2009 while determining the norms of operations in the impugned orders as per the Regulation 20 of PSERC Tariff Regulations.

65. We have gone through the submissions of Appellant and State Commission on this issue. It is observed that initially State Commission approved the Heat rate for Unit-III &IV of GHTP 2500 Kcal/Kwhr for 2010-11 and 2011-12 on normative basis, however, during the true-up exercise the same has been revised to 2428 Kcal/kwhr based on CERC Tariff Regulations, 2009 by adopting different methodology.

66. It may be seen that the State Commission has adopted differently on the issue of Target Heat Rate adopting the provisions of the CERC Tariff regulations, 2009, whereas, in case of Target availability, Target PLF for incentive, the State Commission has not adopted the CERC Tariff Regulations. In our view as stated in our earlier Judgment dtd

18.10.2012 in Appeal Nos. 7, 46 and 122 of 2011 the State Commission has no reason for not adopting the Central Commission norms uniformly instead of selective adopting. At the same time, as settled principles of law, the methodology cannot be revised for truing up of accounts. Truing up exercise is not meant for reviewing or amending the methodologies or the principles laid down. As such, adoption of Central Commission's norms at the stage of truing up, if different from the norms taken during the tariff order are in violation of principles laid down by this Tribunal. For the emphasis, the relevant part of the judgment dated 04.12.2007 rendered by this Tribunal in Appeal no. 100 of 2007 is reproduced again:

> ***"……………It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee……………..."***

67. We accept the contentions of the Appellant that all the decisions taken by him were influenced by the norms specified in the tariff order of the State Commission, wherein the SHR was allowed at 2500 kcal/kwh. Further, the Appellant have to act the decision taken inter-alia the principle that truing up cannot be a stage to rework the basis and principles of tariff determination.

68. We do agree with the submissions of appellant that Heat rate norms should not have been revised during true-up based on newly notified Central Commission norms as true-up is not a exercise for revisiting the norms once set as target. Therefore, this issue of Station Heat Rate is decided in favor of appellant.

69. Issue No. 5- Auxiliary Consumption: The Appellant being aggrieved by the decision of the Respondent Commission rejecting the claim of the Appellant for the GNDTP station, the Appellant raised the issue of the Auxiliary Consumption for the GNDTP station at 12% in terms of the norms of the Central Commission as allowed in the case of Tanda generating station of NTPC relying upon the previous decision of this Hon'ble Tribunal in Appeal No. 07, 46 and 122 of 2011 dated 18/10/2012.

70. On being remand by this Tribunal vide order dated 18/10/2012, the State Commission vide Order dated 28/03/2013 rejected the claim of the Appellant for the Auxiliary consumption to be fixed at 12% for the GNDTP station, further, the appeal against the said remand order dated 28/03/2013 of the State Commission has been dismissed by this Hon'ble Tribunal by judgment and order dated 22/04/2015 in Appeal No. 174 of 2013.

71. The Respondent Commission has submitted that it has complied with all the directions of this Tribunal and the this Tribunal has dealt with the issue of auxiliary consumption in its order dated 22.04.2015 in Appeal No.174/2013 PSPCL Vs. PSERC whereby approving the auxiliary consumption as determined by the State Commission.

72. Accordingly, the Appellant preferred not to challenge the decision of the State Commission vide the impugned order, and, therefore, intend not to press this issue. As such, the impugned order has not been prosecuted further for the subject issue i.e. Auxiliary Consumption.

73. Issue No. 6- Fuel Cost – Gross Calorific Value (GCV)& Transit Loss: The Appellant submitted that the State Commission, for the year 2013-14, has restricted the drop in GCV of coal from receipted coal to fired coal to 150 kcal/kg as per the previous decision of the State Commission dated 27/02/2013, wherein it was decided to limit the drop in GCV to 150 kcal/kg. Relevant extract of the Impugned Order concerning FY 2013-14 in this regard is as under:

> *"…………..The Commission had decided in the Tariff Order for FY 2013-14 to adopt the GCV of receipted coal minus maximum permissible drop of 150 kCal/kg in GCV as per the order of the Commission dated 08.10.2012, for working out the fuel cost from November, 2012 to March, 2013, FY 2013-14 and onwards. …….."*

74. However, Appellant had challenged the decision of the State Commission dated 27/02/2013 before this Hon'ble Tribunal in Appeal No. 98 of 2013, which was dismissed by this Hon'ble Tribunal *vide* judgment dated 02/12/2014. Therefore, to the said extent the issue is covered against the Appellant for the year FY 2013-14.

75. Further, the Appellant submitted that for the year 2014-15, the State Commission has removed even the allowance of 150 kcal/kg, relying upon the Tariff Regulations, 2014 of the Central Commission, wherein this allowance was not present. Relevant extract of the Impugned Order covering FY 2014-15 in this regard is as under:

> *"In working out the fuel cost for FY 2014-15, the Commission has considered the calorific value of oil & coal as validated for*

first six months of FY 2013-14, as given in Table 6.16. The price of coal and oil has been considered by increasing the above validated values by 5%, to account for change in price during FY 2014 15. In Tariff Order for FY 2013-14, the Commission had decided to consider the calorific value of coal as per Orders of the Commission dated 08.10.2012 & 27.02.2013, for working out the fuel cost from November, 2012 to March, 2013, FY 2013-14 and onwards, i.e. calorific value (GCV) of receipted coal minus maximum permissible drop of 150 kCal/kg in calorific value (GCV). In para 5.8.1 of this Tariff Order, the Commission, while carrying out the Review of FY 2013-14, has considered the calorific value of coal as per Orders of the Commission dated 08.10.2012 & 27.02.2013, for working out the fuel cost for FY 2013-14. CERC in its Tariff Regulations, 2014 has considered the gross calorific value of coal as received, for working out the energy charges (fuel cost) in respect of coal based thermal stations. The Commission accordingly decides to consider the gross calorific value of received coal for working out the fuel cost for FY 2014-15. The figures of gross calorific value of coal as given in column III of Table 6.16 are gross calorific values of coal as received, as validated by the Commission for the period from April, 2013 to September, 2013. The price and calorific value of coal indicated above are the weighted average values of coal, including PANEM coal."

76. The Respondent State Commission submitted that it has followed the recommendation of CPRI report which was appointed to go into the fuel cost and invited our attention towards the judgment passed by this

Tribunal in Appeal no. 98 of 2013 agreeing to the recommendations of CPRI. In regard to, the year 2014-15, the State Commission has considered GCV for coal on as received basis for working out the energy charges in respect of thermal generating stations of the appellant in view of the provisions of Regulation 30(6) of CERC Tariff Regulations, 2014.

77. This issue was earlier dealt by this Tribunal in judgment dated 02.12.2014 in Appeal No. 98 of 2013 wherein it has been observed that:

> *"16. The State Commission in the impugned review order dated 27.02.2013 has clearly observed that it is conclusively proved that through prudence checks and balances, PSPCL (appellant herein) has been able to reduce the drop in GCV and could bring this reduction level even below 150 kilocal/kg and thus the norm of GCV difference of 150 kilocal/kg fixed by the State Commission between coal 'as received' and 'as fired' (bunkered coal) is achievable* ***. The State Commission, while passing the impugned review order, has directed the appellant to implement the measures recommended in the CPRI's report submitted in August, 2012 to the State Commission in the consumers interest and now there is no reason for the appellant/PSPCL to drag its feet in implementing the consumer friendly measures****.*
>
> *17. SUMMARY OF FINDINGS*
>
> *17.1. The State Commission is fully and legally justified in determining the norms and* ***giving directions to the appellant on the issue of drop in GCV between the receiptedcoal and fired/bunkered coal to 150 kilocal/kg as the impugned***

order has been passed after considering the relevant facts and the recommendations of CPRI. The State Commission is justified in accepting the recommendations of CPRI and the impugned order has been passed on due consideration of the recommendations and other factors available on record. *We do not find any contradiction or discrepancy between the two reports submitted by CPRI, namely, report submitted to the appellant in February, 2012 and the report submitted by the CPRI to the State Commission in August, 2012. The State Commission is justified in giving various directions with regard to the fuel audit after due consideration considering that such directions are practically implementable.* ***There is nothing on record to suggest or indicate that the directions given by the State Commission with regard to the fuel audit are practically not implementable****."*

78. We agree that the State Commission should uniformly consider CERC Regulation on a particular norm year on year as it must be guided by CERC Regulations as per State Regulations. However, it can be seen that CERC itself adopted the GCV "as received basis" from 2014 onwards which is a progressive norm against "as fired GCV" in view of consumer interest. The State Commission adopted the CERC norms for GCV based on "as received basis" from 2014-15 as against with 150 Kcal adjustment for 2013-14 in view of consumer interest. The Respondent Commission, in compliance to its Regulations can adopt methodology in the interest of consumers and also protecting the interest of the generators.

79. It is observed that GCV of coal allowed by State Commission in 2013-14 and 2014-15 as received basis with 150 Kcal drop in 2013-14, however, for the year 2014-15, in line with CERC Regulations, as received basis without any drop in.

80. We are not inclined to accept the contention of the Appellant that the State Commission should have continued to adopt the methodology for 2014-15 as adopted in 2013-14 even, if, CERC Regulations are complied with as per provision of State Commission's Regulations.

81. This Tribunal vide judgment dated 18.10.2012 in Appeal no.7, 46, 122 of 2011 has held that:

> ***"………..It may be mentioned in this connection that in the case Punjab State Transmission Corporation vs. PSERC, it has been held that when the provisions of the Tariff Regulations of the Central Commission have been incorporated by reference in the Tariff Regulations of the State Commission, the same is required to be followed and cannot be ignored by the State Commission. Accordingly, there is merit in the contention of the appellant and the Commission is required to revisit this issue."***

82. It is clear, that the State Commission is bound by its own Regulations and therefore, shall act in accordance with the principle laid down there. Any methodologies, may be different, followed earlier, have to be corrected and modified accordingly. We, therefore, reject the Appeal on this issue and the Impugned Order on this count is upheld.

83. The second related issue is the transit loss of coal. The Appellant has submitted that for the year 2013-2014 and 2014-15, the State Commission has determined the transit loss of coal at actuals subject to the maximum of 1%, added that the State Commission has erred in reducing the transit loss from 2% determined in the previous years. Further, submitted that the transit loss is not within the control of the Appellant as the means of transportation of coal is by the Railway and the loss in transit is fully within the domain of the Railways without any role of PSPCL, there is no rationale given by the State Commission for such reduction in the transit loss of coal, as determined for the past years.

84. We agree to an extent that transit loss cannot be controlled by the Appellant as he neither has any control or monitoring mechanism for its transportation from the source to its place of use.

85. This issue has already been settled by the judgment dated 16.12.2015 of this Tribunal in Appeal No. 106/2013. The relevant extract is quoted as under;

> *"22. Our consideration and conclusion on issue No.(vi):*
> *22.1 We have pondered over the rival contentions of the parties and the relevant part of the Impugned Order, including the reasons recorded in the Impugned Order, for restricting transit loss and we find no merit in the contentions of the appellant on this issue. It is true that the law laid down by this Appellate Tribunal is that the tariff order for each year has to decide the principles applicable for the said year and cannot decide the*

same in advance in the previous year. But the previous tariff order has not been challenged by the appellant before a higher forum. Hence, it is binding upon all the concerned parties so far as the issue of coal transit issue is concerned. The State Commission in its tariff order has given the following reasons for restricting the transit loss:

i). The actual transit loss of coal in respect of all the three thermal generations of the appellant has considerably come down.

ii) CERC has fixed a norm of 0.8% for transit loss of coal in case of non pit head thermal generating stations in its Tariff Regulations for the period 2009-14.

iii) PSPCL has engaged an outside agency for the coal linkage materialization and shortage minimization in respect of the coal for its thermal plants, the expenditure on which is being charged to the fuel cost of the respective generating stations.

22.2 The State Commission has allowed the transit loss of 2% for the Indian coal in respect of all the three thermal generating stations of the appellant during the year 2006-07 and continued to approve the same transit loss of 2% in its subsequent tariff orders. It was at the stage of tariff order for 2012-13 when the State Commission thought it necessary to reconsider the whole issue of transit loss of coal and then fixed the norm of transit loss of coal of all the generating stations of the appellant at actuals subject to a maximum of 1.5% for 2012-13 and 1% for 2013-14 and onwards. Thus, we agree to the findings of the State Commission on this issue as we do not find any sufficient reasons to deviate there from. This issue No. (vii) is decided against the appellant."

86. There cannot be any dispute that the generating stations in the State of Punjab are located at long distances from the sources/ coal mines and as such coal is transported through long distances and may result in higher transit loss, however, even some of the generating stations, which are governed by CERC Regulations are located at large distances, therefore, the figure of 1% of transit loss for the Appellant's generating Stations is justified as compare to 0.8% as decided by CERC.

87. Accordingly, we reiterate our earlier decision and decide against interfering with the decision of the State Commission on the issue of transit loss of coal. However, the State Commission is directed to take necessary steps for carrying out a study for determining the maximum transit loss as relevant CERC Regulations provide of 0.8%.

88. Issue No. 7- Disallowance of Depreciation: The Appellant submitted that the State Commission, for the year 2010-11, has disallowed depreciation for Rs. 35.12 crores on account of alleged excess claim of depreciation for the reason that this depreciation is more than 90% of the original cost of the asset as on 16/04/2010 when the erstwhile Punjab State Electricity Board was unbundled. Relevant extract of the Impugned Order affecting the 2010-11 period is as under:

> *2.14.6 The Commission as per past practice allows 45.31 crore (after capitalization of 20.04 crore) as depreciation provided by PSEB for the period 1/4 / 201 to 16.04.2010 based on the Audited Annual Accounts.*

However, for the period 16.04.2010 to 31.03.2011, from the information provided by PSPCL, the Commission determines excess claim of depreciation of 35.12 crore i.e. more than 90% of the original cost of assets as on 16.04.2010. The Commission accordingly disallows 35.12 crore from the claim of depreciation. On further analysis, the Commission observes that the depreciation on the assets which have already been over charged has also been claimed by the petitioner. It has also been observed that in some asset sub-heads PSPCL's claim of depreciation is not in line with the rates specified by CERC. The Commission has reworked the depreciation for the period 16.04.2010 to 31.03.2011 on the basis of sub head wise details of assets provided by PSPCL, which works out to ₹651.09 crore.

Accordingly, the Commission approves 661.28 (651.09+45.31-35.12) crore as depreciation charges for PSPCL for FY 2010-11.

89. The Respondent Commission submitted that the Appellant, despite time and again reminder, did not maintained asset register, the depreciation is allowed as per Regulation 27 of PSERC (Terms and Conditions of Determination of Tariff), Regulation, 2005. It is further submitted that rates of depreciation are prescribed by Govt. of India from time to time and also by CERC Regulations, 2009. As per the CERC Regulation 17(2) of 2009, the depreciation could only be allowed up to a maximum of 90% of the capital cost of the asset and the same should also be calculated annually, based on straight-line method and rate

prescribed in Appendix 3 of CERC Regulation. The PSERC Regulation of 2005 has adopted the same method in Regulation 27.

90. The Appellant, however, submitted that the State Commission has double counted the depreciation, which has resulted in an error. Accordingly, the Appellant submitted that the issue is not pressed at this stage and sought liberty of pleading the issue before the State Commission as it is simply an arithmetic error.

91. We do not want to go into the merit of the issue and agree to the request of the Appellant. Therefore, the Appellant is allowed to take up the issue before the State Commission for rectification of the error.

92. Issue No. 8- Disallowance of Power Purchase Cost: The Appellant is aggrieved by the decision of the State Commission in disallowing the short term power purchase cost of Rs 439.04 crores for 2010-11, on the basis that the Appellant has purchased this power at higher average cost of Rs 5.55 per unit against the approved cost of rupees 4.07 per unit, ignoring the fact that the short term power purchase by the Appellant was through open tendering process and regulated on day to day basis.

93. In addition to above, the Appellant also challenged the decision of the State Commission in disallowing UI charges of Rs. 23.56 crores, for the year 2011-12, for drawl by PSPCL when the frequency was below 49.5 Hz. It is stated that such drawl was resorted to only when there was a sudden tripping or outage of its generating station and it was not that PSPCL was drawing through UI as a source of power purchase, it is due to margin difference in the grid operations as the grid operations is on

the basis of SCADA data, whereas the actual drawl and billing is on the basis of SEM data.

94. The Appellant has contested that as long as there is an issue on the requirement of electricity and the transparency of the process followed by the Appellant, the State Commission ought not to have disallowed the actual power purchase cost to the Appellant.

95. The State Commission has also disallowed the power purchase cost in 2013-14 and 2014-15, as the State Commission has reduced the quantum of power purchase based on revised T&D losses, requirement of power in view of revised AP consumption, and increased estimated thermal generation.

96. The State Commission in the impugned order on this issue has stated that additional power purchased through traders or UI at high cost and supplied increasing quantities to any category of consumers is not commercially viable. The appellant should have undertaken Demand Side Management practices and effect power purchases in a judicious manner. Appellant has not managed its power purchase prudently which the Commission found to be against the consumer's interest in general.

97. We decline to accept the contention of the State Commission that the Appellant has supplied increasing quantities to a set of consumers, even if, it is supplied at subsidised rate under the subsidy by the State Government. However, in case the said power is accounted to manage lower T&D rates through incorrect and unlawful manner, we accept the

contention and direct the State Commission to carry out a detailed and prudent study to justify the submissions.

98. We note here the relevant Regulation 19 of the PSERC Tariff Regulations, 2005 as follows :-

> *"VARIATION IN POWER PURCHASE COST*
>
> *1. Any power purchased by the licensee over and above the requirement of power approved by the Commission shall be considered by the Commission and if the variations are for reasons beyond the reasonable control of the licensee, the resultant additional cost due to purchase of such power shall be adjusted in next years' ARR.*
>
> ***2. UI charges may be allowed by the Commission if the licensee has purchased power through UI and the power is purchased in a judicious and economic manner.***"

99. Further, the National Tariff policy on power purchase cost provides as under:

> *" 8.2.1.1 All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates.* ***The reduction of Aggregate Technical & Commercial (AT&C) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system upgradation."***

100. The Electricity Act, 2003, section 24 and section 57, mandates for uninterrupted and quality supply of electricity to the consumers by the distribution licensee. Accordingly, construing the provisions of National Tariff Policy and the Regulations notified by the State Commission, and read with the provisions of the Electricity Act, 2003, the distribution company is bound to supply uninterrupted and quality electricity to its consumers, even if require to purchase electricity on short term basis subject to due compliance of prudency, transparency and economics. It, thus, can be inferred that power purchase is an uncontrollable cost and needs to be allowed on an actual basis except when there is no prudency, transparency and also justifiable cost incurred by the Appellant.

101. In reply to the arguments, the State Commission placed before us this Tribunal judgment dated 18.10.2012 in Appeal No 7 of 2011 and judgment dated 16.12.2015 in Appeal No 106 of 2013. The relevant parts of the judgment are reproduced here under:

> **Judgment dtd 18.10.2012**
>
> *"In respect of Financial Year 2009-10, the Commission disallowed to Rs.27.66 crore, while for the first half of the year 2010-11, Commission disallowed a sum of Rs.369.78 crore on the ground that there was a cap in the Tariff Order for the year 2009-10 and 2010-11 on the quantum and price for procurement of electricity from traders and that the appellant procured more quantum of electricity at higher prices from such sources. It is the case of the appellant that since it has universal service obligation and it faced acute shortage of*

power it had to procure from traders and through UI Mechanism. Now, the National Tariff Policy provides that power purchase is an uncontrollable cost and needs to be allowed on an actual basis except when there is no prudency. Commission's disallowance order does not, of course, expressly contain the ground that power purchase from traders and UI Mechanism was thoroughly avoidable. Only when it is found that such purchases are without any objective ground then and then only, the Commission would be upon such prudence check be justified in refusing the amount of such purchase. Carrying cost for the delay in passing of the fuel cost adjustment is, of course, admissible. Now, the Commission decided to disallow UI surcharge for over-drawl of power when frequency was less than 49.2 Hz. At this frequency the Board is not expected to overdraw. Regulation 19(2) allows UI charges if power is purchased through UI mechanism in a judicious and economic manner. Such disallowance was on the basis of the decision of the Forum of Regulators dated 1.8.2009 and according to the appellant, it should be only from that date and not for the entire tariff year 2009-10. It appears that the Commission in this tariff order for the year 2011-12 while truing up the figures for Financial Year 2009-10 had observed that the Tariff Order for 2009-10 was issued in the month of September, 2009 as such the Commission did not penalise the appellant for UI drawl below frequency of 49.2 Hz during the first six months of Financial Year 2009-10. The Commission has disallowed the UI charges at frequency below 49.2 Hz. At this frequency, the Board is not expected to overdraw. Regulation 19 (2) allows UI charges if power through UI is purchased in a judicious and

economic manner. Accordingly, the Commission disallowed an amount of Rs.8.53 crore which the Board paid as additional UI surcharge during the period from October, 2009. The Commission while truing up the figures for the Financial Year 2007-08 and 2008-09 in its Tariff Orders for the year 2009-10 and 2010-11 has approved the full power purchase cost on the basis of the audited account with no disallowance. The issue does not have any merit."

Judgment dtd 16.12.2015

"25.2) The main contention of the appellant is that the State Commission has wrongly restricted the short term power purchases by the appellant for 2013-14 to the extent of only 280.22 MUs at the cost of Rs.111.16 crores while the State Commission has adopted the rate of short term power purchases as proposed by the appellant because the appellant had tied up the short term power purchases in terms of the previous order of the State Commission. According to the appellant itself there is no dispute on the tariff but the dispute is only on the quantum of short term power purchases required. The State Commission in the afore quoted Impugned Order has stated that the appellant had projected the power purchases of 221.80 MUs (gross) from the Central generating stations and other resources including 2123 MU short term power purchase through traders. The State Commission has estimated the power availability from all central generating stations and other sources including banking (net) as 20056.78 MUs. The gross power purchase requirement worked out is 20337 MUs and as such only 280.22 MUs needs to be purchased through traders

against 2123 MU proposed by the appellant at 396.68 paise per unit. The learned State Commission working on that analogy and figures provisionally approves purchase of 280.22 MU of power from traders at an average rate of 396.68 paise per unit proposed by the appellant for short term power purchase in the ARR. The Commission further justifies its findings stating that the appellant needs to buy power in economical and judicious manner and also resort to take Demand Side Management Practices (DSMP) to maintain its commercial viability. Considering all these things, the State Commission keeping in view the long term interest of the State, advised the appellant to review its PPAs for the generators/traders for purchase of power from outside State of Punjab. Certain directions and suggestions have been given by the State Commission on this issue while recording the reasons thereof. In view of the above discussions we do not find any merit in the contentions of the appellant on the issue of short term power purchases and we agree to the findings of the State Commission recorded in the Impugned Order. Consequently, this issue No. (vii) is decided against the appellant."

102. The above two judgment deal with the disallowance of UI power below 49.5 frequency and disallowance of overestimation of quantum of short-term power purchase estimated by the appellant owing to shortcoming in demand side management. Therefore, the present issue is partially covered by the above quoted judgments.

103. The issue at hand in impugned order relates to is regarding disallowance on high short term power purchase cost, disallowance on

account of drawl of UI power below 49.5 frequency, disallowance of additional UI charges for drawl below 49.5 frequency, payment of interest for delay in UI payment to pool and revision of estimated quantum of power to be purchased through short term and UI pool.

104. In our view as per the Tariff Regulations, 2005 notified by the State Commission and the National Tariff Policy, the actual power purchase cost has to be allowed for both short term power and UI power except when there is no prudency, transparency and the cost of such power is unjustifiable. If it is found that such purchases are without any objective, the Commission would, upon such prudence check, be justified in refusing the amount of such purchase.

105. It also, to be appreciated here that the short-term power cost and UI power cost is beyond reasonable control of Appellant as it is determined by the market only, in case transparency and prudence checks are strictly complied with.

106. The drawl of UI power at frequency below 49.5 should be discouraged and only allowed under UI mechanism in case of emergencies and require to be penalized with additional charges for forcing Grid discipline due to unforeseen events occuring, it is desirable that such drawl should be discouraged to the extent possible. Similarly delay in payment to pool is regarded as default which is penalized with interest and should not be allowed.

107. We agree that the Appellant should follow the advice of State Commission in implementing the demand side management so that short term and UI power at high cost is limited, in consumer interest.

However, the cost and quantity justified should be allowed by the State Commission.

108. At the same time, the surcharge due to drawl at low frequencies and the interest on delayed payments should be disallowed to bring in efficiency, reasonableness, economics and in the interest of consumers.

109. In view of above the appeal has merit to the extent that the State Commission ought to allow the cost for short term power purchase, to the limit as decided/ notified in advance whereas the UI drawl below the frequency of 49.5 Hz shall be allowed to the extent that it is classified as the urgent need for maintaining the State Grid and requirement of the consumers.

110. We again reiterate that disallowance of surcharge on UI and the interest on delayed payment are the penalties which cannot be allowed to be pass through and the State Commission is justified in rejecting such claims.

111. Issue No. 9- Disallowance of Employee Cost: The Appellant submitted that the State Commission has, in the Impugned Order, reduced the employee cost of the Appellant, based on certain assumptions. The said issue was raised by the Appellant for the previous years, wherein this Tribunal vide Judgement dated 18/10/2012 in Appeal Nos. 7, 46, and 122 of 2011had set aside the decision of the State Commission of not considering the actual employee cost of the Appellant. The relevant extract of the Judgement is reproduced below:

"For the year 2009-2010 the Commission considered an increase of 5% on the base of the employee's expenses for the year 2008-2009 but allegedly did not consider the actual employees cost. For Financial Year 2010-2011 and for Financial Year 2011-2012 the normative basis by applying Wholesale Price Index of 7.55% and 8.9% respectively was adopted. A sum of Rs.93.31 Crore as was claimed by the appellant was disallowed by the Commission. Non-allowance of whatever was actually spent without prudence check by the Commission is certainly not desirable. The Commission took the stand that it fails to draw up a road maps for rationalisation of man power. It is alleged by the appellant that the Commission considered the old pay scales and did not consider the additional impact on pay revision. In Appeal No. 76 of 2011 we did not approve of blanket reduction 28.48% in all the successive of the years without any reason. In the case of the employees of the PSPCL, they are regular staff of the Corporation and it being a Govt. company, they are to be governed by the rules and regulations of the Govt. We find merit in the submission of Mr. Ganeshan as he read out the West Bengal decision. Reduction of Rs. 100 crores does not appear to be based on specific premises. Again, reduction as usual on regular basis in terms of the practice of the past by 28.48 % does not appear to be justified. Our finding on this issue is the same plus the observation that in course of true up in respect of the tariff order for 2011-2012 the Commission will review the matter. The issue is answered in favour of the appellant."

112. The Respondent State Commission in its submission stated that so far as employee cost is concerned, this Tribunal has already decided that reduction in employee cost on the part of the Commission was wrong. It was, further, submitted that the employee cost has been determined by the Commission for the relevant period on the basis of the actuals and not on the normative basis. The grievance of the appellant in this appeal pertains to true up of the year 2010-11, whereas the direction by this Tribunal as understood by the Commission was regarding the year 2011-12 in Appeals No.7, 46 and 122 of 2011, which was followed by this Tribunal for later years in Appeal No.106 of 2013.

113. It was noted that this Tribunal vide Judgment passed in Appeal No. 106 of 2013, where the previous tariff year was in issue held that:

> *"17) Issue No.(v) relating to employee cost: Following contentions are made by the appellant on this issue:*
>
> *17.1) That the State Commission, by the Impugned Order, has artificially reduced the employees cost without following the decisions and directions of this Appellate Tribunal. This is both for the FY 2012-13 and 2013-14.*
>
> *17.2) That this Appellate Tribunal had vide judgment dated 18.10.2012 in Appeal No. 7, 46 and 122 of 2011 directed the State Commission to allow the actual employee cost subject to prudence check and not limit the same by applying whole sale price index or by making ad-hoc reductions.*

17.3) That this Appellate Tribunal vide judgment dated 11.09.2014 in Appeal No.174 of 2012 in Punjab State Power Corporation Ltd. vs. Punjab State Electricity Regulatory Commission once again reiterated its previous decision including holding that limitation of employee cost by applying WPI is not correct and that the State Commission was required to allow the actual subject to prudence check. The State Commission filed Review Petition, being Review Petition No.6 of 2015, against the above judgment dated 11.09.2014 in Appeal No. 174 of 2012 which Review Petition was also dismissed by this Appellate Tribunal vide judgment dated 30.03.2015.

17.4) That the State Commission also filed an Appeal, being Civil Appeal No.5427 of 2015 challenging the decision of this Appellate Tribunal before the Hon'ble Supreme Court and the said Civil Appeal has also been dismissed by the Hon'ble Supreme Court vide order dated 13.07.2015.

17.5) In the circumstances the employees cost is to be allowed to the appellant in terms of directions of this Appellate Tribunal in Appeal No.7, 46 and 122 of 2011 and Appeal No. 174 of 2012 because the said issue is covered fully in favour of the appellant.

18) Per contra, the State Commission has submitted as under:

18.1) That the issue of employee cost, which the State Commission has been allowing on the basis of WPI is covered by the judgment dated 11.09.2014 in Appeal No. 174 of 2012, passed by this Appellate Tribunal and the said judgment of this Appellate Tribunal has been complied with and new norms are set in the amended regulations.

19) Our consideration and conclusion:

***We have given our thoughtful consideration to the rival contentions made by the parties. The learned counsel for the State Commission has candidly admitted that the State Commission has been allowing employee cost on the basis of WPI and now the said issue is fully covered vide judgment dated 11.09.2014 in Appeal No. 174 of 2012 of this Appellate Tribunal which judgment has already been complied with and new norms are set in the amended regulations. We observe and hold that since this issue is fully covered by our earlier judgment dated 18.10.2012 in Appeal No. 7, 46 and 122 of 2011 and 11.09.2014 in Appeal No. 174 of 2012, this issue No. (v) is accordingly decided in favour of the appellant**."*

114. The contention of the Respondent cannot be accepted in the facts and circumstances, and in the light of various Judgment passed by this Tribunal and the Judgment of Hon'ble Supreme Court of India in the case of **West Bengal Electricity Regulatory Commission v. CESC Limited**, *[(2002) 8 SCC 715*, *Para 88]*, wherein it was held that since the existing employees are governed by the existing terms and conditions

which cannot be wriggled out of by the licensee, the same ought to be allowed. Relevant extract of the decision is as under:

> ***“Employees' costs***
>
> *……………………….*
>
> *88. We are in agreement with this finding of the High Court. Since it is not disputed that the payments made to the employees are governed by the terms of the settlement from which it will not be possible for the Company to wriggle out during the currency of the settlement, therefore, for the year 2000-01 the actual amounts spent by the Company as employees' costs will have to be allowed. However, we agree with the findings of the consultants as also the Commission that the amounts spent towards wages are highly disproportionate to the energy generated as also the amounts paid as overtime to the workmen is wholly unrealistic. We also notice that the two plants of the respondent Company namely those at Mulajore and New Cossipore are stated to be economically not viable. Therefore, the Company should take steps either to make the said plants economically viable or to close down if necessary. In this regard, we note that the Commission has for the relevant year not granted the request of the Company for introducing VRS by allocating required sums of money on this account, which under the circumstances seems to be a good one-time investment for reducing the cost under the head "Employees' cost". While considering the tariff revision for the year 2002-03 we direct the Commission to bear this fact in mind. However, we further direct the Company that*

should there be any need for entering into a fresh settlement with the workmen, then any agreement which entitles the workmen to get overtime payment even when overtime work is unnecessary should be done away with. With the above observations as a future guidance, we accept the finding of the High Court on this count."

115. It was also placed before us by the Appellant that the judgment dated 11/09/2014 in Appeal No. 174 of 2012 of this Tribunal was sought for review by the State Commission in Review Petition No. 6 of 2015, which was dismissed by this Tribunal *vide* judgment dated 30/03/2015. Further, the Civil Appeal being C.A. No. 5427 of 2015 filed by the State Commission before the Hon'ble Supreme Court against the above decision in Appeal No. 174 of 2012, was dismissed by the Hon'ble Supreme Court on 13/07/2015. Therefore, the decision has attained finality.

116. We intend to accept the submission of the Appellant that the State Commission has failed to appreciate that the employee cost has been allowed for the year 2011-12 based on the decisions of this Tribunal and the Hon'ble Supreme Court and the same principle has not been adopted by the State Commission for the years 2010-11 allowing the employees cost, which is incorrect and ought to be set aside.

117. We reaffirm our decision taken in earlier appeals where in it was made clear that the Appellant is entitled to receive the actual cost incurred in respect of its employees. The State Commission needs to give a re-look and since this issue is fully covered by our earlier judgment dated 18.10.2012 in Appeal No. 7, 46 and 122 of 2011 and

11.09.2014 in Appeal No. 174 of 2012, it is decided in favour of the appellant.

118. The Appellant is also directed to judiciously formulate a policy for the reduction in the employee cost to the extent possible.

119. Issue No. 10- Repair & Maintenance (R&M) Expenses and Administrative & General (A&G) Expenses: The Appellant is aggrieved by the arbitrariness in determining and allowing the R&M and A&G expenses for the years 2010-11, 2011-12, 2013-14, and 2014-15, instead of adopting the normative figures as have been provide in Regulation 28 (4).

120. Regulation 28(1) and (4) of the Tariff Regulations, 2005, *inter-alia*, reads as under:

> ***"28. Operation and Maintenance Expenses***
>
> *(1) 'Operation & Maintenance expenses' or 'O&M expenses' shall mean repair and maintenance (R&M) expenses, employees expenses and administrative & general expenses including insurance.*
>
> ***…………..***
>
> *(4) O&M expenses for distribution functions shall be determined by the Commission as follows:*
>
> *a. O&M expenses as approved by the Commission for the year 2005-06 shall be considered as base O&M expenses for determination of O&M expenses for subsequent years;*

b. *Base O&M expenses as above shall be adjusted according to variation in the rate of WPI per annum to determine the O&M expenses for subsequent year, where WPI is the Wholesale Price Index on April 1 of the relevant year;*

c. *In case of unbundling of the Board and formation of separate distribution companies, the Commission will make suitable assessment of base O&M expenses of individual distribution companies separately and allow O&M expenses for subsequent years for individual companies on the basis of such estimation and above principle."*

121. The issue in hand is duly covered by judgment dated 18.10.2012 rendered by this Tribunal in Appeal No. 7, 46 and 122 of 2011, the relevant extract is quoted as under:

"Issue No.7

On this issue, Commission followed the Regulation 28 of the State Regulations 2005, and it provides for adjusting A&G expenses for the previous years according to average variation in Wholesale Price Index over the year to determine the O&M expenses for the subsequent year. The Commission adheres to the principle of consideration of actual cost while the appellant claims normative consideration. Both the parties relied on Regulation 28 (4) and based on that the Commission for the Financial Year 2008-09 had allowed A&G expenses at Rs.78.44 crores. This appears to be on normative basis but

subsequently the Commission proceeded to adjust the same against the actual at Rs.70.96 crore. Consequently, the State Commission has reworked the A&G expenses for the year 2009-10 and 2010-11 at Rs.75.95 crore and Rs.79.95 crore respectively as against the normative expenses of Rs.82.06 crores and Rs.82.78 crore respectively. For R&M expenses, for the year 2009-10, the Commission reduced the expenses to Rs.385.93 crores from Rs.394.03 crores which was earlier allowed for the year 2009-10 on normative basis. In true up for the year 2009-10 the Commission fixed the R&M expenses at Rs.378.16 crore as against the normative allowable expenses at Rs.391.26crore, argues the appellant. The State Commission also reworked the R&M expenses for the year 2010-11 at Rs.400.73 crores as against the normative expenses of Rs.408.83 crores respectively. According to the appellant, once the normative approach has been adopted by the Commission, there cannot be any further adjustment on the basis of the actual expenses on account of it being less. When the State Regulations make a provision on this issue no different norm does call for any consideration. The Tariff Regulations, 2005 provided for determination of O&M expenses on normative basis considering the expenses for the year 2005-2006 as the base year with application of escalation factor and this was applied for in the year 2008-2009 but in the impugned orders actuals have been provided for and on the basis of the actuals A&G expenses and R&M expenses were reworked out. In this connection, reference has been made to the decision in Haryana Power Generation Corporation Ltd. Vs. Haryana Electricity Regulatory Commission & Another (Appeals No.42

&43 of 2008 dated 31.07.2009) and NTPC Ltd. Vs. Central Electricity Regulatory Commission &Ors., 2007 ELR APTEL 828. When once norms as per the Regulations were followed it should be followed so far as the Regulations remain unaltered. Regulation 10 of the Tariff Regulations, 2005 specifically provides for the manner in which the under achievement and over achievement of the normative parameters are to be adjusted. In respect of the tariff order for Financial Year 2011-12 the Commission in respect of the R&M expenses allegedly did not allow Rs.38.52crores. Since the true-up for this period is yet to come the Commission will have re-look into the matter according to the Regulations in vogue. We, therefore, direct the Commission to re-examine the point and pass appropriate order according to the law."

122. In response to the submissions of the Appellant, the Respondent Commission has submitted that it has allowed the expenses as per the audited actual expenses and invited our attention to paras 10, 11, 12 of a later judgment dated 14.01.2016 in Appeal No.262 of 2014 PSTCL versus PSERC of this Hon'ble Tribunal. The relevant part is extracted hereunder:

"10) Now we deal with the point-wise grievances/issues raised by the appellant:

Reduction of O&M expenses on the basis of actual expenditure:

(a) The first grievance of the appellant is that the State Commission had deviated from the normative O&M expenses allowed in the main tariff order as per

theTariff Regulations and restricted such O&M expenses to actual in the Impugned Order dated 22.08.2014 while truing up financials of FY 2010-11 and 2011-12. According to the appellant, the State Commission cannot act contrary to the statutory regulations which provide for normative O&M expenses and not normative or actual O&M expenses whichever is lower. Further the State Commission has failed to consider the O&M expenses relating to Employee Cost, Repair and Maintenance and Administrative and General Expenses correctly while truing up financials of FY 2010-11 and 2011-12. The O&M expenses have wrongly been reduced by the Commission on the basis of actual expenditure incurred by the appellant because once O&M expense is fixed on normative basis and allowed in the main tariff order, the State Commission cannot change the methodology at the truing up stage to reduce O&M expenses relating to employee cost, R&M cost and A&G cost for the FY 2010-11 and 2011-12.

(b) The main thrust of the arguments by the appellant on this issue is that the State Commission had committed an error in adopting the principle of normative O&M expenses or actual expenditure, whichever is lower, at the time of truing up.

(11) Against the above contention of the appellant on this issue, the learned State Commission has urged as under:

(a) That the Regulation 28 of Punjab State Electricity Regulatory Commission (Terms and Conditions of Tariff Determination) Regulations 2005 deals with the operation and maintenance expenses. The word 'normative' as claimed by the appellant/petitioner has neither been prescribed in original Regulation 28 of Tariff Regulations 2005 nor in its first amendment dated 27th July 2009 or second amendment dated 17.09.2012. It is clear from the perusal of Regulation 28, clause 3(a)(ii), as amended by first and second amendment, that "the other employee expenses" under sub-head shall be limited to the increase in Whole Sale Price Index (all commodities). Thus, the cost component of terminal benefits and BBMB expenses shall be allowed on actual basis and increase in all other expenses under different sub-heads shall be limited to increase in Whole Sale Price Index (all commodities) as per clause 2(b) of Regulation 28. Thus the meaning of 'limited to the increase in WPI (all commodities)' can easily be interpreted as incurred should either be for WPI or the actual, 'Other employee cost' whichever is lower. Similarly, the O&M expenses (except Employee cost) for transmission licensee is to be allowed as the provisions of clause 2(b) of Regulation 28 which states that based on O&M expenses (except Employee cost) shall be adjusted according to variation in the average rate (on monthly basis) of WPI (all commodities) over the year to determine the O&M expenses for subsequent years.

(b) The word 'adjusted' in Regulation 28 clearly shows that the O&M expense (other than Employee Cost) is to be restricted/limited to increase in the Whole Sale Price Index and have the same implication and interpretation which is considered for 'other employee cost'. Further, as per Section 61(a) to (i) of the Electricity Act, 2003, the appropriate Commission has to specify the terms and conditions for the determination of tariff and in doing so it has to be guided by the provisions of Section 61(a) to (i). Section 61(c) and (d) of the Electricity Act, 2003 states as under:

> *"(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
>
> *(d) 'safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner."*

(c) Thus the State Commission has to be guided by safeguarding of consumers' interest and at the same time, recovery of cost of electricity in a reasonable manner. Also it has to be guided by the fact that it has to encourage efficiency and economic use of resources and to ensure this the Commission has to restrict these expenses in the interest of the consumers.

12) ***Our consideration and conclusion on this issue:*** *Regulation 10 of the Tariff Regulations 2005 provides*

as under:

*“**10. EXCESS OR UNDER RECOVERY WITH RESPECT TO NORMS AND TARGETS***

i) The generating company or the licensee, as the case may be, shall retain the entire gain arising from over achievement of the norms laid down by the Commission in these Regulations or targets set by the Commission from time to time.

ii) The generating company or the licensee, as the case may be, shall bear the entire losses on account of its failure to achieve the norms laid down by the Commission or targets set by the Commission from time to time.”

(a) The perusal of this Regulation 10 makes it abundantly clear that this Regulation 10 only deals with excess or under-recovery with respect to norms and targets and it does not specifically provide for the manner in which underachievement and over-achievement of the normative parameters are to be adjusted. It merely provides that the generating company or the licensee shall retain the entire gain arising from over-achievement of the norms laid down by the Commission in these Regulations or the targets set by the Commission from time to time. The generating company of the licensee shall bear the entire

losses on account of its failure to achieve such norms

laid down by the Commission or targets set by the Commission from time to time.

(b) The Commission followed Regulation 28 of the State Regulations 2005 and it provides for A&G expenses for the previous years according to average variation in WPI over the year to determine the O&M expenses for the subsequent year. The Commission adhered to the principle of consideration of actual cost while the appellant claimed normative consideration. The plea of the appellant PSTCL, a transmission licensee in the State of Punjab was that once normative approach has been adopted by the Commission there cannot be any further adjustments on the basis of actual expenses on account of it being less because when the State Tariff Regulations 2005 make the provision on this issue, no different norm does call for any consideration. In those circumstances this Appellate Tribunal held that since the true up for the relevant period is yet to come the Commission will have a relook into the matter according to the Regulation in vogue, thus proposition of law laid down by this Appellate Tribunal in judgment dated 18.10.2012 does not squarely apply to the matter in hand on the issue before us. In the matter of Haryana Power Generation Corporation Ltd. Vs. Haryana Electricity Regulatory Commission this Appellate Tribunal in judgment dated 31.07.2009 had observed that it is true that the consumer should not be

burdened with unnecessary costs, but the same is equally applicable to the appellant, a power generating company when it is denied recovery of costs incurred by it if the same is not in line with the norms. This Appellate Tribunal while passing judgment dated 14.11.2006 in the matter of NTPC Vs. CERC was dealing with the normative debt equity ratio of 50:50 hence the proposition of law laid down therein is not applicable to the issue before us.

c) It appears from paragraph 2.4.3 of the Impugned Order that the appellant/petitioner in its ARR Petition for FY 2014-15 had claimed Rs.232.32 Crores on account of Employee Cost based on audited accounts for FY 2010- 11. This includes Rs.129.96 crores on account of terminal benefits. The learned State Commission in paragraph 2.4.4 of the Impugned order had
stated as under:

"2.4.4. The provisions of the PSERC Tariff Regulations provide for determination of employee cost in two parts, as under:

* *Terminal benefits on actual basis*

* *Increase in other expense limited to average increase in WPI*

PSTCL has claimed terminal benefits of Rs.129.96 crore based on the Audited Accounts and in line with amended Transfer Scheme notified by Govt. Of Punjab vide Notification dated 24.12.2012.

Since terminal benefits are to be allowed on actual basis as per PSERC Tariff Regulation 28(8), the Commission allows terminal benefits of Rs.129.96 crore for FY 2010-11 to PSTCL for its Transmission and SLDC business."

(d) The learned State Commission in paragraph 2.4.12 of the Impugned Order has approved the Employee Cost of Rs.232.32 crores (129.96 + 102.36) to the appellant for FY 2010-11 for transmission and SLDC business as per the actual expenses incurred and claimed by PSTCL (appellant herein). Thus the amount claimed in the ARR Petition for 2014-15 by the appellant on account of Employee Cost including the amount of Rs.129.96 crores on account of terminal benefits has been allowed. Thus the learned State Commission in the Tariff order for 2014-15 has allowed the O&M expenses for FY 2010-11 and 2011-12 as per the requirements of the appellant/petitioner after recording cogent and sufficient reasons. The State Commission in its tariff order had recorded the reasons for allowing O&M expenses as given below:

"Actual employee cost, Repair & Maintenance expenses and Administrative & General expenses for FY 2010-11 was Rs.232.32 crore, Rs.16.33 crore and Rs.10.70 crore against increased amount by WPI Rs.248.92 crore, Rs.51.89 crore and Rs.11.94 crore respectively. The Commission had redetermined the base of O&M expenses in FY 2011-12 as per amended regulations. Accordingly, the Commission had redetermined the base of employee expenses as Rs.263.75 crore, R&M expenses as Rs.27.85 crore and A&G expenses as Rs.12.15 crore for FY 2011-12 and subsequent years. The O&M expenses as claimed by the petitioner in FY 2010-11 being more than base expenses of FY 2011-12 in the same Tariff Order neither seems to be logical nor in the interest of consumers."

(e) The claim of the appellant was Rs.232.32 crores and the same was granted. The appellant PSTCL never intended to invoke CERC Regulations but actual. In fact, the appellant contradicts its own stand by asking for normative.

(f) This Appellate Tribunal in judgment dated 04.12.2007 in Appeal No. 100 of 2007 in the matter of Karnataka Power Transmission Company Limited Vs. Karnataka Electricity Regulatory Commission &Ors. in

paragraph 29 thereof clearly noted that the Commission has been carrying out the truing up exercise

on year to year basis but had not given effect to the results of such exercise during all these years and once the true up exercise has been carried out, the Commission is not permitted again to take up the true up exercise based on new assumptions. This Appellate Tribunal, in the matter of North Delhi Power Limited Vs. Delhi Electricity Regulatory Commission &Ors. reported at 2007 ELR (APTEL) 193 observed that while considering the tariff petition of the utility the Commission has to reasonably anticipate the revenue required by a particular utility and such assessment should be based on practical considerations. It cannot take arbitrary figures of increase over the previous period's expenditure by an arbitrarily chosen percentage and leave the actual adjustment to be done in the truing up exercise. The truing up exercise is mentioned to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and

records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the

claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence. In the said ruling this Appellate Tribunal has tried to make the Commission understand the real concept of truing up.

(g) We are unable to accept this contention of the appellant that the State Commission in the truing up of O&M expenses for the FY 2010-11 and 2011-12 has given retrospective effect to the second amendment Regulation dated 17.09.2012 and more specifically Regulation 28 thereto.

(h) In the light of the above discussions, the contentions of the appellant on this issue do not have any merit, so this issue is decided against the appellant."

Further, submitted that The State Commission, in the circumstances, while truing-up allowed the R & M and A & G expenses on the basis of actual audited accounts of the Appellant."

123. The State Commission while finalizing the ARR for the year 2014-15, worked out the R&M cost as Rs. 412.46 crores for 2011-12 which has to be enhanced based on WPI as per Regulation 28(4) as claimed by the Appellant. However, the State Commission has taken the actuals of 2011-12 and escalated the same to fix the R&M cost at Rs. 412.17

crores for the year 2014-15. The same approach has also been followed in the case of A&G expenses. The relevant part of the decision of the State Commission is reproduced below:

"6.10 ***Repair and Maintenance (R&M) Expenses***

6.10.1 In the ARR Petition for FY 2014-15, PSPCL has projected the R&M expenses at ₹ 442.65 crore, which includes R&M of ₹ 18.43 crore for asset addition during FY 2014-15. PSPCL has submitted that R&M expenses have been projected by further escalating the re-estimated expenses for FY 2013-14 by 9% as actual increase in WPI and CPI for FY 2013-14 is not yet available.

6.10.2 The Commission has been approving the R&M expenses in accordance with the provisions of Regulation 28 (2)(b) of PSERC Tariff Regulations by adjusting the base R&M expenses in proportion to the increase in WPI. The base R&M expenses of ₹ 391.46 crore (₹373.72 crore as the R&M expenses approved for FY 2013-14 and 17.74 crore as additional R&M expenses for assets added during the year) have been considered for FY 2014-15. After applying WPI increase of 5.29% as discussed in para 6.9.4 of this Tariff Order, allowable R&M expenses for FY 2014-15 work out to ₹. 412.17 crore.

6.10.3 PSPCL has claimed R&M expenses of ₹18.43 crore for likely asset addition of ₹2200.00 crore during FY 2014-15 in terms of Regulation 28(6) of PSERC Tariff Regulations. As

> *regards this claim of ₹18.43 crore on proposed addition of assets in terms of the PSERC Tariff Regulations, the Commission is of the view that the increase in R&M expenses demanded on this account cannot be allowed at this stage and will be considered at the time of Review.*
>
> ***The Commission, accordingly, approves the R&M expenses of ₹412.17 crore for FY 2014-15."***

124. The Appellant submitted that the State Commission has failed to appreciate that the costs were to be allowed by allowing the escalation on the figures approved for the previous years and worked out on normative basis and not on the actual basis, benefit of which should remain with PSPCL.

125. This Tribunal vide judgment dated 31.07.2009 *(Haryana Power Generation Corporation Limited vs. Haryana Electricity Regulatory Commission and Ors.)***has settled the principle that the better of normative or actual cannot be adopted, and when the Regulations provide for normative determination, the same has to be adopted**. In this regard, the following authorities are relevant:

> *"34. In submissions before this Tribunal, the State Commission submitted that 10% was the rate at which HPGCL had been borrowing on short-term basis. As regards interest on working capital, the State Commission has adopted the normative approach adopted by the CERC. In our opinion, once the State Commission adopts normative approach, it is neither in the interest of the long term*

development of the electricity industry in the State nor is a fair play to the appellant to deny the benefits of the normative approach to the appellant. The very purpose of normative approach is that the parties are informed of the benchmarks beforehand and that if they are in a position to better the benchmarks, they are entitled to the benefits unless there is some unhealthy practice adopted by them. In the case before us, if the appellant is able to raise resources below the benchmark rates, it indicates efficiency on the part of the appellant for which it should be allowed benefit in terms of the norms. Otherwise, the purpose of normative approach would get defeated and the appellant may not remain adequately motivated to work with the desired efficiency. It is true that the consumers should not be burdened with unnecessary costs, but the same is equally applicable to the appellant when it is denied recovery of costs incurred by it if the same is not in line with the norms.

35. In view of the above, we decide the issue in favor of the appellant. The appellant may approach the State Commission for re-determination of its tariff after allowing for interest rate on working capital requirements as per the applicable norms."

126. Further, this Tribunal in Appeal Nos. 94 and 96 of 2005 (*NTPC Limited vs. Central Electricity Regulatory Commission and Ors.* dated 14.11.2006*)* has held that:

"10. The aforesaid results into two methods of determining the quantum of debt repayment i.e. the quantum of repayment based on actual debt and quantum of repayment based on allocation of normative debt at normative debt-equity ratio of 50:50. The controversy that has arisen is that the Central Commission prescribing a formula in the tariff order which while computing the repayment of debt and outstanding amount of debt at the beginning of the tariff period, used for determining the interest, has adopted the higher of the actual or normative debt.

…………………………..

16. After normalizing the repayment of debt on the basis of debt equity ratio of 50:50, it appears unfair to compare it with the actual repayment and taking either normative debt repayment or actual debt repayment 'whichever is higher' for computing the interest. This will render a part of debt un-serviced to the disadvantage of the appellant as demonstrated in the succeeding paragraphs."

127. Further, the National Tariff Policy, 2005 notified by the Central Government under Section 3 of the Electricity Act also mandates that the State Commission ought to adopt a normative approach and not adopt the principle of actual or normative which-ever is lower. In this regard, the National Tariff Policy, *inter-alia*, provides as under:

"f) Operating Norms

Suitable performance norms of operations together with incentives and dis-incentives would need be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. ***Except for the cases referred to in para 5.3 (h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance****. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized."*

(Emphasis supplied)

128. It may be seen that Regulation 10 as quoted above provides the process of dealing with the excess or under recovery by a generator or licensee, as the case may be, and in no way is relevant here, as the subject in hand is whether the Commission is ought to follow the mandate of the Regulation specified, Regulation 28 in this case i.e. normative figures, or the audited or the actual figures.

129. The present issue is not covered by the judgment relied upon by the Respondent Commission, where the claim of the Appellant is on the basis of expenditure incurred by the Appellant where it is above the base figure arrived at by the Commission.

130. It is settled principal of law that the State Commission are bound to comply and act within the four corners of the Regulations specified by it and any interpretation by it contrary to the provisions contained therein is bad in law.

131. In our opinion, the State Commission ought to allow the R&M expenses and A&G expenses on normative basis and not on the principle of normative or actual, whichever is lower.

132. Issue No. 11- Disallowance of Interest and Finance Charges: The Appellant submitted that the State Commission has not fully allowed the interest and finance charges as claimed by the Appellant. The major disallowance is on account of interest on term loans (other than working capital loan), interest on working capital loans, interest on accounts of diversion of capital funds and guarantee fee, interest on the short-term loans taken in order to meet its expenditure, but has only restricted the interest on working capital to the normative levels and further, reduced the interest charges of PSPCL primarily on account of reducing the interest on working capital. The State Commission ought to have considered that PSPCL has an actual cash outflow on the loans taken.

133. The appellant has further submitted that assets and liabilities have been vested in PSPCL by virtue of the statutory notification of the Government of Punjab under Section 131 of the Electricity Act, 2003 with effect from 16/04/2010. Under the transfer scheme, the cumulative deficit of Rs. 2162.89 crores pertaining to the period of erstwhile Punjab State Electricity Board has not been allowed. At the same time, in terms of the notification, the short-term and medium-term loans and capital

liabilities have been vested with PSPCL and that PSPCL is required to service such loans.

134. It is noted here that the Appellant has used the Working Capital loans for asset creation also, which is not a correct methodology, the Working Capital is meant for managing the day to day operations of the company. Therefore, asset creation, a long term investment should not be carried out through Working Capital. The established practice is creating the assets through long term loans which are cheaper as compare to short term loans.

135. The Respondent Commission submitted that the State Commission has to examine actual expenditure incurred and loan taken by the utility before allowing such expenditure considering that the capital expenditure would need to be as per the debt and equity in accordance with the Regulations. It was pointed out that the claims of the Appellant in this regard have been coming gradually without any substantiated and therefore the State Commission could not have waited for all the relevant accounts even after true-up, since no second or review true-up is allowed. The Commission therefore allowed the financing of capital expenditure specific to the facts and circumstances of the year in review basis. It is submitted that the subsequent facts brought by the Appellant could not be considered in view of the judgments of this Hon'ble Tribunal and Hon'ble Supreme Court that no second true-up is allowed.

136. It is, thus, clear that the State Commission has determined and allowed the Interest & Finance charges on the basis of information which is incomplete or inadequate as furnished by the Appellant. The actual

gaps in the information have not been mentioned herein. Therefore, even agreeing to the fact that it is a settled principle of law that no second true up is allowed, however, certain deficiencies if are observed before or during the first truing up, then the Appellant has its right to claim the same.

137. The Appellant contested that various step have and are being taken, including replacing the loans for longer duration at lower interest cost and has also avoided the recalling of the loans, at this stage the continuing disallowance of the working capital loans would severely and in perpetuity prejudice the Appellant and pleaded for the State Commission to consider the actual loans on its books as a part of the working capital requirements of the Appellant.

138. The Appellant, further submitted that, without prejudice to the above claim, even if the working capital interest is to be allowed only on normative basis, the Appellant is entitled to servicing of the loan which has been used for creation of assets by the Appellant.

139. In addition to above, the Appellant submitted that it has been vested, in the opening balance sheet as on 16.04.2010 pursuant to the unbundling under section 131 of Electricity Act, the same ought to be allowed by the State Commission as liability for Reserve Bank of India bonds, from the State Government which is required to be repaid the amount on yearly basis from 16th April 2010 at the interest rate as decided by Government of Punjab from time to time. The Appellant is paying the interest on this amount as liability recast on it on behalf of Government of Punjab. However, the State Commission has disallowed

such interest payments during true-up of 2010-11 & 2011-12, review for 2013-14 and ARR 2014-15.

140. The State Commission has, for the purposes of generation norms and parameters including the debt equity ratio of 70:30, adopted the norms and parameters as specified by the Central Commission in its tariff regulations, further, the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2014, also provide for the debt equity ratio of 70:30, with the equity to be on actual basis subject to a maximum of 30%. The balance is considered as normative loan. However, in the State of Punjab, there has not been any equity contribution by the Government of Punjab and the entire capital investments going forward has been funded by way of loan, a substantial part of the capital assets has been funded by the Appellant by means of short-term loans, which are also termed as working capital loans, which the State Commission has not considered for allowing Interest and Finance Cost for the capital assets, the full value of the capital assets for the purposes of servicing the funding, but has only considered the long-term loans taken by the Appellant for funding of the capital assets.

141. As a consequence of the above, a portion of the asset value, though funded by the Appellant by way of loan has been left un-serviced completely. This is contrary to the Tariff Regulations wherein the asset value is to be serviced by way of return on equity and interest on loan.

142. The Appellant has submitted that the claim has always been for the interest on the entire working capital loans to be allowed as a pass

through in the tariff. In case the same was allowed, the entire loans taken by the Appellant would be allowed as a pass through in the tariff, without any distinction between loans for working capital purposes or long-term loans for capital asset creation, the question of diversion of working capital loans for asset creation does not arise. When the assets have been created and put to use and the entire cost of the asset has also been recognized for the purposes of tariff determination in the form of depreciation, the State Commission ought to recognize the full value of the asset for the purposes of servicing the funding of the asset by way of equity on loan.

143. The Appellant has used an aggregate of Rs. 2846.33 crores as loans for the capital expenditure from FY 2010-11 to FY 2016-17 which have not been considered while allowing the interest on long term loan for addition of fixed assets. This is on account of the fact that State Commission has been considering only the long-term loans taken, without considering the short-term loans which have been used for capital asset creation.

144. The Appellant has challenged the Impugned order on the issue of disallowance of the actual working capital loans and non-recognition of the working capital loans taken by the Appellant for allowing the interest cost, if it is allowed, the issue of considering the working capital loans used for creation of assets would not survive as the entire relief would be available to the Appellant, however, in case in its entire claim towards the working capital loans, to the extent such loans are used for creation of capital assets which are put to use and recognized by the State Commission is disallowed, the Appellant ought to be allowed servicing of the capital cost of the assets to the full value by way of return on equity

and interest on loan. This is a lower relief claimed by the Appellant in the alternative and without prejudice to the full relief claimed on account of working capital loans.

145. The State Commission, while truing up the financials of the Appellant including the capital expenditure incurred, ought to ensure servicing of the capital cost by way of return on equity and/or interest or loan. The capital assets admitted by the State Commission ought to be serviced in the capital cost of the Appellant.

146. The Appellant also raised the issue of interest accrued on loan transferred to PSTCL by PSPCL to an amount of Rs. 77 crores whereby this resulted in a situation wherein the Appellant would pay for the interest in the transmission tariff to PSTCL, and also to the banks for the loan raised, while recovering the interest only once from PSTCL, and thus double counting of the interest payable by the Appellant. Additionally raised the issue of incorrect consideration of opening loan, incorrect computation of share payable by Government of Punjab.

147. The Respondent Commission has only argued that the Commission has to examine actual expenditure incurred and loan taken by the utility before allowing such expenditure considering that the capital expenditure would need to be as per the debt and equity in accordance with the Regulations, however, due to the fact that the claims made by the Appellant are submitted gradually without any substantiated and therefore the State Commission could not have waited for all the relevant accounts even after true-up, since no second or review true-up is allowed. No proper justification has been given by the

State Commission for disallowing the claims of the Appellant except that the information furnished was incomplete.

148. Based on above, the State Commission is directed to have a prudence check once again to consider the short-term loans which have not been covered under long term loans, but have been utilized by the Appellant for building assets for customers to be considered in ARR. The Appellant is advised to convert all these short-term loans to long term loans in time bound manner as may be decided by Commission or otherwise the State Commission should pass the interest separately as would have been allowed if the Appellant had drawn this loan for asset building and not for Working Capital.

149. We are not going into the claims and their merit at this stage as we could not find any reasonable reply from the Respondent Commission and direct the Respondent Commission to look into the submissions made by the Appellant and revisit its order bringing out all the gaps in furnishing of information by the Appellant and the reasonability of various loans taken including short term loans, the accrued or past liabilities forced upon the Appellant, and prudent checks on the interest payments made.

150. The Appellant is also directed to submit all information in time before the State Commission to avoid these errors. Notwithstanding above the State commission is advised to revise the interest and financing charges *inter-alia* computational errors as pointed out by the Appellant in its submissions.

151. Issue No. 12- Overestimating revenues:

152. The Appellant submitted that the State Commission has artificially increased the revenue of the Appellant, by Rs. 313 crores for the year 2010-11 and Rs. 178.56 crores for the year 2011-12, through reworking the sales and revenue figures of PSPCL, from its audited accounts, which has actually not been received by the Appellant, and is not in accordance with the regulatory tariff determination process, the revenues of the Appellant are audited and it cannot be that any revenue received by the Appellant is not captured in its audited accounts. There can be no question of any artificial increase in the revenues to PSPCL, without any actual receipt, the extract of the impugned order as under:

"2.24 Revenue from sale of power

2.24.1 The Commission approved the Revenue from tariff at 12740.82 crore in the Tariff Order 2010-11. In the review, the revenue from sale of power was revised to Rs. 13992.74 crore inclusive of GoP Subsidy.

2.24.2 As per ARR Petition for FY 2014-15, net revenue from sale of power is 9760.90 crore. Besides this, the PSPCL had received subsidy of Rs. 3341.34 crore. As such, total amount works out to Rs. 13102.24 (9760.90 +3341.34) crore.

2.24.3 However, Commission observed that there was a mis-match of revenue between the revenue figures approved by the Commission in the

review and the actual revenue realised during FY 2010-11 as per the Audited Annual Accounts. The PSPCL was asked to explain the reasons for the mis-match in revenue. PSPCL vide letter no. 8/DTR/Dy.CAO/241/Vol-ll dated 25.02.2014 has explained the mis-match in revenue as under:

1. *"It has come to the notice that the AP subsidy in the accounts has been under-stated by 105.41 crore. While projecting the receivable from AP consumers, the amount has been considered as 520.60 crore based on the provisional accounts, whereas the actual figure received was 415.19 crore. Accordingly the subsidy from GoP for FY 2010-11 works out to (3446.75 crore instead of 23341.34 crore. The revised format no. 35 has already beer. submitted vide this office memo no. 350/DTR/DY.CAO /241/Vol-il dated 24.02.2014.*

2. *Power factor incentives are being given to consumers. Similarly, power factor surcharge is being charged from the consumers. Further, demand surcharge voltage surcharge etc. are also being charged from the consumers. The net payment on these accounts comes to 22.90 crore. This is also one of the reasons for mismatch in the revenue.*

3. *Against theft units of 508 MU revenue of Rs. 61.16 crore only is accounted for, whereas the actual revenue at an average rate of Rs. 4.00 works out to approximately 200.00 crore. Difference of 139.00 (200.00-61.00] crore is due to the reason that amounts are challenged by various categories of consumers and some consumers may have deposited only 1/3rd of the assessed amount. It is further submitted that Hon'ble PSERC considers the units on account of theft of energy for calculating the T&D losses. It is further submitted that this principle is consistently being adopted/ followed by the Hon'ble PSERC from year to year in the past.*

4. *As revenue from MMC has been shown under approved revenue which includes some amount of MMC with units, therefore, the net units consumed against MMC are required to be deducted category wise to compare the approved sale & actual sales. Therefore an adjustment is required with regard to incremental MMC units of 286.38 MU to compare the mis-match.*

5. *There is a security deposit from consumers outstanding as on 31.03.2011 amounting to Rs. 1581.45 crore as per Audited Accounts of*

FY 2010-11. The interest payable to the consumers comes to Rs. 183.79 crore. It is submitted that interest on security deposit is given to the consumers at the first instance by giving credit in the energy bills and thereafter making adjustment by debit to interest on security and credit to Revenue Account. However, interest on security is given to the consumers through energy bills and in some of the cases the possibility of non-debit of interest on security account per contra credit to revenue cannot be ruled out as there are about 600 No. DS sub divisions in PSPCL and 100% accuracy cannot be assured. This fact can be verified to some extent where interest payable to consumers comes to the tune of Rs.183.79 crore and the interest paid on security comes to Rs.88.31 crore as per audited P&L a/c of PSPCL for FY 2010-11."

The Commission has considered the submission of the utility and the observations of the Commission on the issues raised are detailed below:

1. *The Commission is of the view that the PSPCL has taken Rs. 419.52 crore in the revenue from SOP in the actual revenue received from AP consumers during the year 2010-11. As such, the plea of the utility that an*

amount of Rs. 520.60 crore has been considered as revenue from AP consumers instead of Rs. 419.52 crore, is not acceptable.

2. *The Commission accepts the plea of PSPCL that a mis-match of Rs. 22.90 crore is on account of deduction of said amount from revenue from SOP in the actual revenue received on account of power factor incentives, power factor surcharge and demand surcharge/ voltage surcharge.*

3. *The Commission finds no logic in the plea of PSPCL that amounts are challenged by the various categories of consumers and some consumers may have deposited only 1/3rd of the assessed amount as PSPCL may be recovering the remaining 2/3rd amount in subsequent years. Moreover assessment & recovery is a continuous process. So, the plea of the utility is not acceptable.*

4. *The Commission accepts the plea of PSPCL and decides that the incremental MMC amount of Rs. 123.28 crore is deductable from assessed revenue from sale of power.*

5. *The Commission accepts the plea of PSPCL that interest on security is to be given to the*

consumers through energy bills. But in some of cases the possibility of non debit of interest on security account per contra credit to revenue cannot be ruled out. However, it does not effect the revenue from sale of Power assessed by the Commission

Thus, PSPCL has been able to explain the mis-match of revenue to the extent of 146.18 (22.90+123.28) crore.

The Commission, approves the revenue from sale of power as Rs. 13415.32 crore for energy sales of 32911 MU for FY 2010-11 as detailed in Table 2.15.

153. Relevant extract of the impugned Order with respect to FY 2011-12 is as under:

"3.23 Revenue from Sale of Power

3.23.1 The Commission approved the Revenue from tariff at 214682.03 crore in the Tariff Order 2011-12. In the review, the revenue from sale of power was revised to 15394.50 crore inclusive of GoP Subsidy.

3.23.2 As per ARR Petition for FY 2014-15, net revenue from sale of power for FY 2011 12 is 11255.23 crore. Besides this, the PSPCL had added subsidy of 24103.99 crore. As such, total amount works out to 15359.22 crore.

3.23.3 However, Commission observed that there was a mis-match of revenue between the revenue figures approved by the Commission in the review and the

actual revenue realised during FY 2011 - 12 as per the Audited Annual Accounts. The PSPCL was asked to explain the reasons for the mis-match in revenue. PSPCL vide letter no. 387/DTR/Dy.CAO/ 241/Vol-II dated 28.02.2014 has explained the mis-match in revenue as under:

1. *"Power factor incentives are being given to consumers. Similarly, power factor surcharge is being charged from the consumers. Further, demand surcharge/voltage surcharge etc. are also being charged from the consumers. The net payment on these accounts comes to 25.06 crore. This is one of the reasons for mismatch in the revenue.*

2. *Against theft units of 494 MU, revenue of 38.40 crore only is accounted for, whereas the actual revenue at an average approved rate of 4.53 works out to approx. 224.00 crore. Difference of 185.00 (224.00-38.40) crore is due to the reason that amounts are challenged by various categories of consumers and some consumers may have deposited only 1/3rd of the assessed amount. It is further submitted that Hon'ble PSERC considers the units on account of theft of energy for calculating the T&D losses. It is further submitted that this principle is*

consistently being adopted/followed by the Hon'ble PSERC from year to year in the past.

3. *As revenue from MMC has been shown under approved revenue, which includes some amount of MMC with units, therefore, the net units consumed against MMC are required to be deducted category wise to compare the approved sale & actual sales. Therefore, an adjustment is required with regard to incremental MMC units of 173.20 MU to compare the mismatch.*

4. *There is a security deposit from consumers outstanding as on 31.03.2012 amounting to Rs. 1915.53 crore as per Audited Accounts of FY 2011-12. The interest payable to the consumers comes out to be 179.53 crore. It is submitted that interest on security deposit is given to the consumers at the first instance by giving credit in the energy bills and thereafter making adjustment by debit to interest on security and credit to Revenue Account. However, interest on security is given to the consumers through energy bills and in some of the cases the possibility of non-debit of interest on security account per contra credit to revenue cannot be ruled out as there are about 500 No. DS sub- divisions in PSPCL and 100%*

accuracy cannot be assured. This fact can be verified to some extent where interest payable to consumers comes to the tune of 179.53 crore and the interest paid on security comes out to 90.57 crore as per audited P&L A/C of PSPCL for FY 2011-12."

The Commission has considered the submission of the utility and the observations of the Commission on the issues raised are detailed below:

1. *The Commission accepts the plea of PSPCL that a mismatch of 25.06 crore is on account of deduction of said amount from revenue from SOP in the actual revenue received on account of power factor incentives, power factor surcharge and demand surcharge/ voltage surcharge.*

2. *The Commission finds no logic in the plea of PSPCL that amounts are challenged by the various categories of consumers and some consumers may have deposited only 1/3rd of the assessed amount as PSPCL may be recovering the remaining 2/3rd amount in subsequent years. Moreover assessment & recovery is a continuous process. So, the plea of the utility is not acceptable.*

3. The Commission accepts the plea of PSPCL and decides that the Incremental MMC amount of 79.39 crore is deductable from assessed revenue from sale of power.

4. The Commission accepts the plea of PSPCL that interest on security is to be given to the consumers through energy bills. But in some cases the possibility of non debit of interest on security account per contra credit to revenue cannot be ruled out. However, it does not effect the revenue from sale of power assessed by the Commission.

Thus, PSPCL has been able to explain the mismatch of revenue to the extent of 104.45 (25.06+79.39) crore.

The Commission approves the revenue from sale of power as Rs. 15537.78 crore for energy sales of 34157 MU for FY 2011-12 as detailed in Table 3.15.

154. There cannot be any dispute that the State Commission is required to consider the expenditure of the Appellant and allow the expenditure, subject to prudence check, to be recovered in the tariff from the consumers. The tariff is based on the expenses permitted to be incurred. The State Commission however cannot have notional income to be accounted for the Appellant, on the basis of assumptions, when the revenue has not been received by the Appellant, for example, the State

Commission has assumed 100% revenue from the assessment on account of theft, notwithstanding that there may be judicial proceedings pending under which only part payments are made, similarly, the different between the interest on security deposit payable and the contra credit in the revenue has not been accepted by the State Commission.

155. The Appellant submitted that, for the year 2013-14, the State Commission has erroneously calculated the subsidy for the SC/BPL consumers, which has been allowed considering average consumption of 82 units against estimated consumption of 132 units per month and thus the State Commission has allowed less subsidy by about Rs. 180 crores. The figure of 82 units is based on average actual consumption of 74 units in the year 2011-12 when consumption up to 100 units was free, the free units were subsequently increased to 200 but the same have not been considered by the State Commission.

156. The Appellant, further, added that the State Commission has not considered all the rebates announced while calculating the revenue realized on existing tariff for the year 2014-15. There were various rebates that were provided to the consumers under the tariff order passed by the State Commission. However, the same has not been accounted for by the State Commission in estimating the revenues from the consumers for the year 2014-15.

157. The Respondent Commission submitted that it has taken into consideration the effect of rebate to consumers catered at higher voltage, impact of extension in the period of Time of the Day (ToD) tariff and impact of rebate of 7.5% in view of this Tribunal judgment on revenue realized during FY 2014-15. Further, at the time of approval of

rebate of Rs.1/kWh (or kVAh) for exceeding the threshold limit of the consumption of energy for all the metered category of consumers (except street lighting and AP categories), it was observed by the Commission that this extra sale of power will result in reducing fixed cost of the surrendered power to some extent, the actual quantum of which and savings will only be known at the end of FY 2014-15 and shall be considered by PSERC at the time of true up. The relevant paras of the Tariff Order for FY 2014-15 in the matter are reproduced below.

"7.6. Sale of Surplus Power

7.6.1 PSPCL has projected in the ARR for FY 2014-15 that it shall be having 12904 MU (gross) and 12807 MU (net) surplus power during FY 2014-15, available from tied up sources i.e. central generating stations and the upcoming IPPs in Punjab. In order to manage and to maintain energy balance, the surplus power during FY 2014-15 has been projected to be surrendered by PSPCL, on merit order of power purchase from these stations. After surrender of surplus power, only variable charges have been reduced and fixed/other charges have been considered in the power purchase cost. The impact of fixed charges to be borne due to surrender of surplus power has been projected as Rs.1706 crore. It has further been submitted that the projections for power availability as submitted for long term plan of PSPCL differ from the projections submitted in ARR due to difference in demand forecasts based on restricted and unrestricted demand. The projections during FY 2014-15 for generation from Talwandi Sabo

TPS, Rajpura TPS and Goindwal Sahib TPS are based on availability of 65% considering the stabilization period after commissioning of plants and PLF of 80%. PSPCL has not submitted any proposal to utilize/sell this power within the State or outside the State. PSPCL has not considered its own thermal generating stations in the merit order dispatch. However, PSPCL has stated that due to capacity overhang across the country, it may be difficult to sell surplus power outside Punjab.

7.6.2 The variable cost of surplus power has been projected in the ARR for FY 2014-15 as Rs.3376 crore, which gives average per unit variable cost as Rs.2.64. After adding T&D losses @16% as projected by PSPCL in the ARR, the average variable per unit cost works out to Rs.3.06 (approximately). Further, average per unit fixed cost of the surrendered power works out to Rs.1.31. The total average per unit cost of the surplus power, as such, works out to Rs.4.37."

158. Further, submitted that, in view of the above submissions, it is clear that the Commission has kept the impact on revenue in view as a result of extension of various rebates as brought out by the appellant in the petition.

159. In response to the submissions made by the Appellant, the Respondent Commission argued only on the rebate announced for the

year 2014-15. No reply was submitted against the submissions made by the Appellant on other counts.

160. We are not satisfied with the submissions of the State Commission, which are incomplete and are deprived of any merit. There response cannot be appreciated.

161. We direct the State Commission to look into the afresh based on the submissions of the Appellants and decide on the issue afresh.

162. Issue No. 13- Late Payment Surcharge: The Appellant submitted that the State Commission has included the late payment surcharge collected by the Appellant in non-tariff income, considering that the interest on working capital is allowed to the Appellant on normative basis which is lower and therefore, does not include the actual interest which the Appellant has to fund through late payment. Thus, when the payment was received late by the Appellant, the loan taken to fund the gap and the delay in receipt in payment is to be on the account of the Appellant and the same is not allowed in the revenue requirement of Appellant. However, when the consumer pays the late payment surcharge for the delay in the payment, instead of the same to the income of the Appellant to set off the cost incurred by the Appellant, the late payment surcharge is included in the non-tariff income to reduce the revenue requirement of the Appellant. This has resulted in less cash flow of the Appellant.

163. The Appellant, further, submitted that the State Commission has erroneously included the Late Payment Surcharge collected by PSPCL from the consumers in the non-tariff income of PSPCL for all the years,

namely, in the truing up for the years 2010-11 and 2011-12, the review for the year 2013-14 and the tariff fixation for the year 2014-15. Relevant extract of the impugned Order for FY 2010-11 is as under:

> *"2.23 Non-Tariff Income*
>
> *2.23.1 In the Tariff Order for FY 2010-11, the Commission approved Non-Tariff income of 448,66 crore. This was increased to 2565.95 crore in the review for FY 2010 11 by the Commission based on the revised estimates of the PSPCL.*
>
> *2.23.2 In ARR & Tariff Petition for FY 2014-15, PSPCL has shown Non-Tariff Income of Rs. 562.95 crore for FY 2010-11 as per the Audited Annual Accounts. This includes an amount of Rs. 142.74 crore on account of late payment surcharge. In the petition, PSPCL has prayed that the late payment surcharge be not treated as part of the Non-Tariff Income as PSPCL's working capital requirements are being determined as per norms and there is no compensation to the PSPCL on account of interest accrued on delayed payments against bills issued and including the Late Payment Surcharge in Non-Tariff/ Other Income adversely impacts the cash flow position of the PSPCL. The Commission observes that receipts on account of Late Payment Surcharge are to be treated as Non-Tariff Income as per Regulation 34 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005. Moreover, interest on working capital is allowed to the utility on normative basis notwithstanding that the licensee has not taken working capital loan from any outside agency or has exceeded the*

working capital loan amount worked out on normative basis. So the plea of the utility not to treat the late payment surcharge as part of the Non-Tariff Income finds no merit.

164. Further submitted that identical reasoning has been given for other years while categorizing late payment surcharge as non-tariff income, such decision of the State Commission is self-contradictory. The State Commission permits the interest on working capital, which includes the receivables on normative basis and not on actual basis. Therefore, the funding of the working capital for any delay in the payment by the consumers is arranged for by PSPCL, without any corresponding recovery in the working capital interest.

165. It was stated that the approach of the State Commission cannot be different and should follow one of the two principles, either the cost of funding the delay in payment should be allowed to the Appellant while treating the Late Payment Surcharge as non-tariff income, or if the Appellant is required to fund the additional expenses on its own, the Late Payment Surcharge should be set off against the additional expenses and not as Late Payment Surcharge.

166. This Tribunal in the case of North Delhi Power Limited v. Delhi Electricity Regulatory Commission, Appeal No. 153 of 2009 dated 30/07/2010, has held as under:

"19. According to the MYT Regulations, the non-tariff income is deducted from Aggregate Revenue Requirements to work out the Net Revenue Requirement. Working capital cost for financing the Receivables of revenue within the due date is

allowed in tariff determination. As such, no late payment surcharge is leviable or earned for Receivable Liquidated up to due date. The late payment surcharge is levied on consumers who do not make payment within the stipulated period allowed for payment. This compensates the licensee for the interest cost that would be incurred on the additional working capital requirements due to consumers not paying their dues in time. Therefore, the entire late payment surcharges should accrue to the licensee to off-set additional financing costs of incremental working capital requirement beyond the normative two months receivables allowed in working capital. However, as per the Tariff Regulations, the amount received by the Licensee on account of Non-Tariff Income is deducted from the Aggregate Revenue Requirement in calculating the Net Revenue Requirement of the Licensee.

20. The State Commission having treated the late payment surcharge as a part of the non-tariff income for tariff determination, it would be proper on its part to allow the entire associated financing cost of the outstanding principal amount on which late payment surcharge was charged for the delay beyond the due dates. The Commission, instead of allowing interest/financing cost on the entire outstanding principal amount, has treated the late payment surcharge amount alone, which is nothing but interest cost for the delayed payment, as outstanding principal amount itself and allowed interest/financing cost on the said amount. This is a wrong approach. Having considered the entire late payment surcharge as principal outstanding amount beyond due date as a non-

tariff income, the State Commission should have allowed the entire cost computed by applying an appropriate financing rate to the said principal amount on which late payment surcharge has been levied. According to the Appellant, the financing cost should have been allowed on Rs. 84.89 crores of principal amount which was outstanding beyond the due date rather than on Rs. 15.28 crores which is late payment surcharge, as erroneously calculated by the State Commission."

167. The Respondent Commission submitted that, in the tariff order for FY 2014-15, it was observed that receipts on account of Late Payment Surcharge are to be treated as Non-Tariff Income as per Regulation 34 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, whereas, interest on working capital is allowed to the utility on normative basis notwithstanding that the licensee has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on normative basis. Hence, the plea of the utility not to treat the late payment surcharge as part of the Non-Tariff Income does not bear any merit. The utility did not take into account the receipt on account of Late Payment Surcharge in the Non-Tariff Income for FY 2014-15. Keeping in view the rationale given in above para, the Commission decided that the receipt on account of Late Payment Surcharge be taken as Non-Tariff Income.

168. We decline to accept the submission of the State Commission, the appeal has merit, and issue is decided in favour of Appellant. The State Commission shall consider the impact of late payment surcharge appropriately without limiting under the condition of normative norms as

disallowance of it may badly impact the financial condition of the Appellant, if it keep on growing having cumulative impact also.

169. Issue No. 14- Carrying Cost on Cumulative Revenue Gap:The Appellant submitted that the State Commission, for the year 2010-11 and 2011-12, has not allowed the carrying cost on the revenue gap which has been recognized in the books of PSPCL even after truing up, if a revenue gap is being left behind in the books of PSPCL, then there has to be some avenue of funding the same.

170. Further, added that when the expenses are recognized and the gap is created, the carrying cost ought to be allowed from the time the expenses are incurred till the time the same is actually recovered in the tariff. The State Commission in the impugned Order for FY 2010-11 has held as under:

> *"2.25 Carrying over of Cumulative deficit*
>
> *As per Tariff Order for FY 2011-12, there is a consolidated gap of Rs. 2162.89 crore upto FY 2009-10. As per Audited Annual Accounts of Erstwhile Board for the period upto 31.03.2010, there was a revenue deficit of Rs. 9712.75 crore, which was increased to Rs. 10180.35 crore upto 16.04.2010 i.e. the date of unbundling of the Board. However in the Punjab Power Sector Reforms Transfer Scheme, 2010 notified by GoP on 16.04.2010, which was further amended vide notification dated 24.12.2012, the cumulative revenue deficit of 10180.35 crore of Erstwhile Board, at the time of re-vesting of assets and liabilities of the Board by GoP, has been shown as nil as per the Opening Balance Sheets of the successor companies i.e.*

PSPCL and PSTCL. It indicates that the revenue deficit of 10180.35 crore has been written off as per notification of Punjab Power Sector Reforms Transfer Scheme, 2010. As the entire deficit of the Erstwhile Board upto the date of unbundling i.e. 16.04.2010 has been written off, so the Commission finds no justification in carrying forward the cumulative deficit of 32162.89 crore determined upto FY 2009-10 in the Tariff Order for FY 2011-12 which is a part of the revenue deficit of 10180.35 crore. So, the Commission is not carrying forward the cumulative deficit of ₹2162.89 crore to the subsequent years."

171. In support of his appeal, the judgment rendered by this Tribunal in the case of "Reliance Infrastructure Limited v. Maharashtra Electricity Regulatory Commission", Appeal No. 202 and 203 of 2010 dated 13/09/2012 is placed before us, wherein this Tribunal has held that:

"11.5 On the basis of the above findings of the Tribunal we decide as under:

i) When the utility gives its projected expenditure under a head in the ARR, the Commission either accepts it or decides a lower expenditure. However, if in the true up of the ARR subsequently the Commission finds that the expenditure which was denied/reduced earlier under that head needs to be approved then carrying cost may be allowed for such additional expenditure under that particular head which was denied earlier.

ii) The utility is entitled to carrying cost on his claim of legitimate expenditure if the expenditure is:

a) accepted but recovery is deferred e.g. interest on regulatory assets,

b) claim not approved within a reasonable time, and

c) disallowed by the State Commission but subsequently allowed by the Superior authority.

11.6 If the revenue gap is as a result of routine true up carried out in the time frame specified in the Regulations and not on account of genuine expenditure denied on a claim by the appellant earlier or on account of deferred recoveries then no carrying cost may be admissible as the claim was made for the first time at the time of true up. The State Commission shall decide the claim of the appellant on the above principles. Decided accordingly."

172. The above decision has also been relied upon by this Hon'ble Tribunal in the judgment dated 18/10/2012 in Appeal No. 7, 46 and 122 of 2011 in the case of the Appellant to allow carrying cost.

173. In the Impugned order, the State Commission has decided that the true up for the year 2012-13 shall be undertaken along with ARR petition of the Appellant for 2015-16 when the audited annual accounts for 2012-13 are made available. Relevant extract of the Order in this regard is as under:

"4.2 True up for FY 2012-13

PSPCL in its ARR for FY 2014-15, has prayed that the truing up of costs and revenue for FY 2012-13 may be undertaken by

the Commission after the finalization of the Audited Annual Accounts for the year.

PSPCL has further submitted that the audit of accounts for FY 2012-13 is under process and is likely to be completed before filing of next ARR & Tariff Petition, and as such has requested that the True up of costs and revenue for FY 2012-13 be undertaken alongwith ARR petition of PSPCL for FY 2015-16, when the Audited Annual Accounts for FY 2012-13 are likely to be made available.

As per provision under Tariff Regulations, True up can be undertaken only after the Audited Annual Accounts are made available. Hence, the Commission decides to undertake the True up for FY 2012-13 alongwith ARR petition of PSPCL for FY 2015-16, when the Audited Annual Accounts for FY 2012-13 are made available by PSPCL to the Commission."

174. It may, therefore, be seen that the State Commission has not done the true-up for the year 2012-13. However, the State Commission has recovered carrying cost of Rs. 145.15 crore on the surplus as determined by the State Commission in tariff order for the year 2013-14 for the review of the year 2012-13. When the State Commission has not done anything regarding the year 2012-13 in the Impugned Order for 2014-15, the recovery of Rs. 145.15 crore on account of carrying cost by the State Commission on the surplus as determined by the State Commission in tariff order for 2013-14 in the review for the year 2012-13 is not justified. Relevant extract of the impugned Order in this regard is as under:

"6.23.3 The Commission has allowed carrying cost on revenue gap in T.O. for FY 2012-13 amounting to Rs. 279.99 crore. The Commission had ascertained a surplus of Rs. 645.67 crore in the review for FY 2012-13 in the Tariff Order for FY 2013-14. Similarly, Commission has ascertained a surplus of Rs. 971.16 crore during review of FY 2013-14. The Commission, accordingly, considers it appropriate to recover Rs. 279.99 crore carrying cost allowed in Tariff Order for FY 2012-13, Rs. 145.15 crore as carrying cost on the surplus for FY 2012-13 and Rs. 109.16 crore on the surplus for FY 2013-14.

Thus, the total carrying cost of PSPCL works out to 316.57 crore out of which 63.38 (351.23+119.69-279.99-145.15-109.16) crore (recovery) is attributable to PSPCL and 379.95 (322.35+57.60) crore is payable by Government of Punjab to PSPCL."

175. The State Commission has also recovered carrying cost allowed in tariff order for 2012-13 amounting to Rs. 279.99 crore as allowed by the State Commission on the revenue gap determined by the State Commission in excess of Regulatory Assets for 2011-12 (review) and on the amount of Regulatory Assets. It is pertinent to mention that carrying cost of Rs. 279.99 crore allowed by the State Commission in tariff order for 2012-13 has not been carried forward by the State Commission while doing the review of 2012-13 in the tariff order for 2013-14. Though this issue pertains to the previous tariff order, the carrying cost and regulatory asset being a continuous cause of action, the State Commission ought to have rectified the error in the impugned order.

176. Further, the State Commission in the Impugned Order for the year 2014-15 has allowed of Rs. 351.23 crore and Rs. 119.69 crore as carrying cost on the gap determined by the State Commission in the true-up for the year 2010-11 and 2011-12 respectively but the same has been allowed to be recovered in the year 2014-15. However, this does not account for the delay in the recovery of the carrying cost. The State Commission ought to have added the carrying cost of Rs. 351.23 crore and Rs. 119.69 crore as an expense in the respective tariff years of 2010-11 and 2011-12 to be recovered in future, as the entire gap would then be recovered with carrying cost.

177. On the contrary, the Respondent Commission relied upon the judgment of this Tribunal in Appeal no. 174/2013 wherein this Tribunal has held that it is at the time of true-up the carrying cost be allowed to the extent of the expenditure which has been allowed in the true-up and not otherwise. However, the Appellant, in this appeal, seeks to allow the carrying cost on the basis of reduced expenditure which has not been allowed by the Commission earlier in the tariff order. Hence, the additional expenses could only be the difference between the revenue allowed in the tariff order and the expenses ultimately allowed in the true-up exercise and added that none of the expenses which are admissible is not denied in the carrying cost.

178. The Respondent Commission cited the judgment of this Tribunal in Appeal No.262/2014 and Appeal No.174/2013. Further, argued that the method for calculation adopted by the Commission was based on principle laid down by this Tribunal in its order dated 18th Oct, 2012 in Appeal No.7 of 2011 and batch wherein it was held:

> *"However, if in the true up of the ARR subsequently the Commission finds that the expenditure which was denied/reduced earlier under that head needs to be approved then carrying cost may be allowed for such additional expenditure under that particular head which was denied earlier"*

179. The State Commission, in its order dated 28.3.2013, explained the meaning of "additional expenditure" as follows:

> *"The word "additional expenditure" clarifies that expenditure which has already been allowed cannot be treated as an expenditure for the subsequent period. On similar lines, expenditure on account of carrying cost on revenue gap which was allowed at the time of review exercise cannot be considered as expenditure at the time of True-up exercise or for subsequent periods. The Carrying cost can be ascertained only on additional expenditure/revised revenue gap determined at the time of true up or review."*

180. Based on such explanation, justified carrying cost on the revenue gap determined by the Commission after prudence check of all the cost heads has been allowed by the Commission in all the Tariff Orders.

181. The State Commission also stated that PSPCL was unable to furnish Audited Annual Accounts for FY 2010-11 for true-up in time i.e. during FY 2012-13 due to late finalization of the Opening Balance Sheet of PSPCL by GoP. The Commission, further, decided that the carrying

cost due to delay in the finalization of the Opening Balance Sheet of PSPCL, which has been notified by GoP on 24.12.2012, is attributable to Government of Punjab. Accordingly, the carrying cost of revenue gap of 1433.91 crore for FY 2010-11 amounting to 322.35 crore (80.59 crore for 6 months of FY 2012-13 + 161.17 crore for 12 months of FY 2013-14 and 80.59 crore for 6 months of FY 2014-15) is passed on to GoP.

182. Without going into the arithmetic of carrying cost, we again reiterate our earlier decisions and decides the methodology for determining carrying cost. There cannot be any dispute that carrying cost cannot be denied to the extent that certain amount which the Appellant incurred within the four corners of law and has not been granted / allowed earlier.

183. We have carefully noted the contentions of the Appellant and the Respondent Commission on the issue of carrying cost. The carrying cost within the legal provisions has to be allowed on truing up the revenue gap, it is a settled financial principle. Our reference attention has already been invited on judgment in Appeal No. 202 & 203 of 2010, need not to add that this Tribunal has allowed Review Petition filed by Reliance Infrastructure Ltd vide its order dated 02/01/2013 in Review Petition no. 13 of 2012 in Appeal No. 203 of 2010. Accordingly, the factual matrix is as under:

184. 15. Accordingly, paragraphs 11.5 & 11.6 of the judgment dated 13.9.2012 may be amended to read as under:

> *“11.5. The utility is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is:*

i) accepted but recovery is deferred e.g. interest on regulatory assets,

ii) claim not approved within a reasonable time, and

iii) disallowed by the State Commission but subsequently allowed by the Superior authority.

iv) Revenue gap as a result of allowance of legitimate expenditure in the true up.

11.6. The State Commission shall decide the claim of the appellant on the above principles"

185. From perusal of rival contentions, we note that the Respondent Commission has allowed carrying cost for FY 2010-11 (351.23 Cr) and FY 2011-12 (119.69 Cr) during true up exercise and approved the same based on Audited accounts. However, the recovery of same is allowed in FY 2014-15. Thus, we observe the issue in its implementation is delayed by years. Therefore, it is important to deal the subject keeping in view such circumstances also where there is a delay in allowing the carrying cost resulting into under recovery, in the following paragraphs the methodology and principles for factoring the trued up Gap/(Surplus) and corresponding Carrying Cost are once again decided and laid down.

186. Regarding the treatment to be meted out to allow recovery of trued up gap of any year and corresponding carrying cost, the State Commission should add the trued up gap of FY 10-11 (for present Appeal) and carrying cost on the trued up gap for recovery of same in next tariff determination exercise. For example, if the true up of 2010-11 is carried out along with ARR of 2012-13, the trued up revenue gap of 2010-11 with carrying cost of 2 years (as recovery is deferred for 2

years) has to be added in the ARR of FY 2012-13. Thus, carrying cost along with Trued up gap of FY 2010-11 should get recovered during FY 2012-13. Accordingly, during truing up exercise of FY 2012-13, the trued up gap of FY 2010-11 and carrying cost allowed thereon should be added to ARR of FY 2012-13 to arrive at the correct Trued up gap/(surplus) of FY 2012-13. This addition of trued up gap of FY 2010-11 and carrying cost allowed thereon is necessary as recovery of same happens through Revenue stream of tariff in FY 2012-13. Based on this methodology, trued up gap/ (surplus) arrived at is Trued up Gap/(Surplus) of FY 2013-14 and same is to be considered along with corresponding Carrying Cost for Tariff determination of FY 2015-16. Thus, over/ under recovery by way of tariff will get adjusted in subsequent period. The State Commission will have to consider this methodology and pass necessary consequential order according to above principles.

187. Regarding, the period for which carrying cost is to be allowed, we would also like to clarify that Carrying Cost is to be allowed for the period of delay i.e. from the date Revenue Gap has become due till the recovery of same is allowed by the Commission. As per well settled financial principle in catena of judgments, carrying cost is to be allowed to compensate the utility for such delayed recovery.

188. We decide the issue of carrying cost as detailed hereinabove, the Appeal is allowed, the State Commission is directed to revisit its order and issue reasonable order on the above principles.

189. Issue No. 16- Non-allowance of Interest & Finance Charges pertaining to use of Working Capital Loans for the creation of Assets of

the Appellant: The issue has already been deliberated and decided under issue No. 11 (Disallowance of Interest and Finance Charges).

190. Issue No. 17- Non-allowance of Subsidy amounting to Rs. 178.82 crores in True up of FY 2011-12:The Appellant's claim for Rs. 178.82 crores on account of Govt subsidy has been disallowed by the Respondent Commission citing that the Appellant has raised the issue very late, even after the truing up. It is submitted that Government of Punjab vide its Memo No. 11/68/2010-EB2/4175 dated 16/12/2011, had decided to waive off the outstanding electricity bills against the tube well consumers and grant subsidy of Rs. 357.64 crores to be paid to the Appellant in six equated monthly instalments, however, only three instalments i.e., Rs. 178.82 Crore (@Rs. 59.61 crore per month) were considered to be payable during FY 2011-12 by the Government of Punjab to the Appellant and balance amount of subsidy of Rs. 178.82 crores were required to be paid by Government of Punjab to the Appellant during the year 2012-13.

191. In the Tariff Order for FY 2012-13, the State Commission has allowed the above-mentioned subsidy amounting to Rs. 178.82 Crores (i.e., first 3 instalments) while reviewing the year 2011-12 of the said Tariff Order. Further, the State Commission had allowed the balance amount of Rs. 178.82 Crores on account of waiver of outstanding amount against the AP consumers, in the Impugned Order, the State Commission has carried out the true-up of the year for the year 2011-12 and the amount of Rs. 178.82 Crores (as already allowed in review of 2011-12) was required to be included in the truing up of 2011-12. However, this has inadvertently not been allowed by the State Commission.

192. The Appellant had consequently prayed to allow the full amount of Rs. 357.64 Crores in its ARR for the year 2016-17 (Rs. 178.82 Crore pertaining to the year 2011-12 and Rs. 178.82 Crore pertaining to FY 2012-13).

193. The State Commission argued that while being aware of the subsidy amount the Appellant failed to dispose of the same during the true-up of 2011-12. Having failed to do so at the time of true-up, the Appellant filed a Review Petition no. 5 of 2016 and raised the same issue. The Commission could not have gone in to such a far fetched claim at such a late stage, after the true-up process was over. As aforesaid, the Commission is not empowered to re-open the true-up, as per the judgments of this Hon'ble Tribunal and Hon'ble Supreme Court.

194. We are not convinced by the response received from the State Commission.

195. The Appellant submitted that the State Commission only allowed the amount of Rs. 178.82 Crores pertaining to FY 2012-13 and not the amount pertaining to the year 2011-12. The Appellant had filed Review Petition No. 5 of 2016 against the Tariff Order for the year 2016-17 wherein the issue of non-allowance of subsidy for the year 2011-12 was raised by the Appellant again before the State Commission. The State Commission disposed of the Review Petition No. 5 of 2016 vide Order dated 14/07/2016 holding that the year 2011-12 was not part of the tariff order and only 2012-13 was considered.

196. Even if, there is no dispute on the principle by the State Commission followed but, in the circumstances, since the truing up for the year 2011-12 is under challenged before the Tribunal, the said amount, for which the Appellant deserves to be allowed, shall be granted. It is relevant to mention that the said amount is towards the subsidy payable by the Government of Punjab and is not to be recoverable from the consumers. The Appellant is duly entitled for the same and the appeal is allowed accordingly.

197. Issue No. 15- Other Allowances/ issues: There are certain other allowances/ disallowances raised by the Appellant, these are:

1. Rs. 25 crores incurred for the buiding of cancer hospital.
2. Disallowance/penalty of Rs 72.27 Cr for non-implementation of Energy saving measures.
3. Disallowance /Penalty of Rs 5 Cr for 100% metering and Rs 10 Cr towards shifting of meters.
4. Disallowance /Penalty of Rs 14 Cr for non-implementation of micro hydro projects.
5. Disallowance of Rs 20 Cr for non-rationalisation of employee cost.
6. Disallowance of contribution of Rs 914 Cr in FY 2014-15 to Terminal benefit Trust.

198. The Appellant has contested certain disallowances as detailed above treating these as penalty. As per Appellant, penalty provision is covered under section 142 of Electricity Act, 2003 where there is a default or non-compliance and to the extent provided in section 142 of

the Act. Even in such cases, the State Commission needs to come to the finding that the default is wilful or non-compliance.

199. We have gone through the Appellant contentions and the findings of State Commission on these issues in detail. In our view the State Commission has not imposed any penalty on Appellant, only certain disallowance of some amount has been made for revenue lost/extra amount spent by Appellant, due to failure in achieving certain milestone as prescribed by the State Commission in its various orders. There is no mention of section 142 in the Impugned Order for such disallowances. The State Commission has used the word “disallowance”. Therefore, the issue of comparing these disallowances with penalty under Section 142 is not correct.

200. We are not inclined to accept the contention of the Appellant. All such measures are for the benefit of the Appellant and consumers. The State Commission has made adverse comments regarding the reluctance, delay tactics of the Appellant in achieving milestones set by the State Commission for the improvement of the electricity system in the State which certainly result in large cost savings.

201. These are dealt herewith based on the merit only.

202. Rs. 25 crores incurred for the building of cancer hospital:-The appellant has contested the disallowance of Rs 25.00 crore claimed by PSPCL as donation made to Cancer & Drug Addiction Treatment Infrastructure Fund during FY 2013-14.

203. As per State Commission, it is allowing A&G expenses as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, so amount of ₹25.00 crore claimed by PSPCL as donation made to Cancer & Drug Addiction Treatment Infrastructure Fund should be meted out of profit earned by PSPCL during FY 2013-14 and not passed on to the consumers. Accordingly, this donation is not being allowed over & above the A&G expenses allowed on a normative basis in line with the regulations.

204. The Appellant submitted that the State Commission has disallowed a sum of Rs. 25 crores paid by PSPCL to the cancer hospital, which was in the larger public interest and even the Companies Act has now mandated Corporate Social Responsibility to be discharged by companies.. There is no basis for such a disallowance. Relevant extract of the impugned Order in this regard is as under:

> *"6.11.6 As Commission is allowing A&G expenses as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, so amount of Rs. 25.00 crore claimed by PSPCL as donation made to Cancer & Drug Addiction Treatment Infrastructure Fund should be meted out of profit earned by PSPCL during FY 2014-15 and not passed on to the consumers. Accordingly, this donation is not being allowed over & above the A&G expenses allowed on a normative basis in line with the regulations."*

205. We decline to accept the contention of the Appellant. Such donations are covered under the A&G expenses as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 which has

already been provided to the Appellant, therefore, the amount of ₹25.00 crore claimed by PSPCL as donation made to Cancer & Drug Addiction Treatment Infrastructure Fund should be meted out of profit earned by PSPCL during FY 2013-14 and not passed on to the consumers. Accordingly, this donation is not being allowed over & above the A&G expenses allowed on a normative basis in line with the regulations. We agree with the findings of State Commission as there is no provision in PSERC Tariff Regulations under A&G expenses for expenses. The appeal is disallowed to this extent.

206. Disallowance/penalty of Rs 72.27 Cr for non-implementation of Energy saving measures:-The Appellant has submitted that the State Commission has erred in imposing a penalty/disallowance of Rs 72.27 Cr towards non implementation of Demand side Management (DSM) regulations and measures by the Appellant. As per Appellant the State Commission has not even specified as to what measures were to be taken which have not been taken and for that reason the penalty is imposed. It is not clear as to what are the DSM measures the Appellant is expected to implement and has not implemented.

207. As per State Commission the National Electricity Policy (NEP) recognizes electricity as the basic human need and a critical infrastructure for economic development of the country. Availability of adequate, reliable electricity at affordable rates to give impetus to overall development has been the ultimate goal of power sector in the state. Commission has been issuing various directives to PSPCL as part of its various Tariff Orders to enable the utility to achieve various performance parameters in a time bound manner to attain the aforesaid goal.

However, PSPCL failed to implement various directives which directly impacted consumer service and performance of the utility.

208. The State Commission has stated in Impugned Order passed in Appeal 264 that Commission in the Tariff Order for FY 2013-14 issued directive to PSPCL to submit “Technical Potential Report‟ as per DSM Regulations notified by the Commission latest by 30.06.2013 failing which the Technical Potential Estimate as per the data and information available with the Commission shall be declared after 30.06.2013. PSPCL was required to achieve at least 10% of energy saving in potential declared by the Commission during the year 2013-14.

209. In view of the failure of PSPCL to carry out any technical potential study, the Commission fixed a modest energy saving target of 250 MU for 2013-14 and 500 MU for 2014-15. PSPCL was asked to submit the quantum of energy saving achieved during 2013-14 through implementation of DSM measures in accordance with DSM Regulations. PSPCL has claimed an energy saving of about 90 MU through implementation of Bachat Lamp Yojna, installation of four star AP motors by new consumers, discontinuation of incandescent lamps in Govt. buildings and replacement of AC’s at GGSSTP, Ropar. Assuming 90 MU energy saving during 2013-14 as correct (subject to verification by third party), the shortfall in energy saving target by PSPCL comes out to be 160 MU during 2013-14. Taking into account the Intra-state and Inter-state losses into account, a disallowance of 201 MU on power purchase is made at the average power purchase cost of ₹3.59 per Unit resulting in a total disallowance of ₹72.27 crore (approx.) on this account.

210. In our view the State Commission clearly provided the targets and roadmap for achieving the energy saving as envisaged in Demand Side

Management Regulations, 2012. The Appellant has not provided technical report for achieving 10% of energy saving targets as per State Commission directives and also Appellant failed to achieve targets for 2013-14 as set out. However, the Appellant has taken various efforts for achieving energy saving as seen from the details mentioned in impugned order.

211. The Appellant has certainly failed to implement energy saving technologies and taking other measures, at the same time the basis of fixing the target at the energy saving to the tune of 250 MU and 500 MU is not clear. The State Commission should have carried out some assessment on its own in case of failure by the Appellant, and then notify the trajectory for the same. We allow the appeal and the order passed by the State Commission is set aside to this extent.

212. Disallowance /Penalty of Rs 5 Cr for 100% metering and Rs 10 Cr towards shifting of meters:-The Appellant has contested the disallowance of Rs 5 Cr for not achieving 100% metering. As per Appellant it is economically impossible to achieve 100% metering in the state. The appellant has detailed the difficulties faced in achieving 100% metering.

213. We do not find merit in the contentions of the Appellant, he is bound by the law, the Electricity Act, 2003 mandates for supply of electricity only through correct meter. As such the decision of the State Commission is upheld.

214. The Appellant has submitted that the State Commission has erred in imposing a disallowance of Rs 10 Cr on Appellant for delay in shifting

on meters, when substantial work has already been done and the process will be completed in a phased manner.

215. As per State Commission during FY 2010-11, PSPCL started its flagship programme to shift consumer meters in Non-APDRP areas numbering 32.14 lac and fed from non-AP feeders supplying power to rural areas of Punjab. A loan of ₹627.614 crore was sanctioned by REC to PSPCL for implementing this programme under 19 no. schemes. During processing of ARR for FY 2012-13, PSPCL informed that out of 32.14 lac meters, only 20.69 lac meters could be covered for shifting outside in the pillar boxes under the budget for non APDRP scheme. Out of these 20.69 lac meters, 16.76 lac meters were shifted upto 31.03.2012 and it was assured that balance shall be shifted by 31.12.2012. It was also informed that DPRs for balance 11.45 lac meters covered in Phase II of non-APDRP schemes were under preparation. However, as per the latest status report, PSPCL is yet to shift meters of 17.14 lac consumers out of 38.01 lac consumers in non APDRP areas. The progress of execution of Non-APDRP Phase-I program during 2012-13 and 2013-14 was very slow. Besides, the execution of Non-APDRP program Phase II was inordinately delayed. It is clear from the tardy execution of the Non-APDRP Program that PSPCL is responsible for an avoidable delay in controlling AT&C losses. On account of this failure of PSPCL, one time disallowance of ₹10 crore is made on account of not achieving the committed milestones regarding shifting of meters outside premises in non-APDRP (rural areas).

216. In our view the Appellant himself have been suffering on various accounts by not achieving the 100% metering targets and shifting of meters

outside consumer premises. The disallowance on account of these two non-compliance will enforce a sense of discipline in Appellant for its own good.

217. However, it is seen from the details mentioned in Impugned Order that the Appellant has been trying to achieve the milestones set by the State Commission to improve efficiency and performance although he has not been able to fulfil the expectations of State commission which has led to these disallowances. In our view the State Commission should also set a clear trajectory for these milestones linked with certain disallowance for slippages for future also.

218. We agree with the decision of the State Commission, as it will bring efficiency, fixation of responsibility on persons responsible for delay, and bringing in cost economic benefits.

219. Disallowance /Penalty of Rs 14 Cr for non-implementation of micro hydro projects:-The appellant has contested in its appeal that State Commission has grossly erred in disallowing cost of Rs14 Cr on the ground that four micro hydro generating stations of the Appellant are not functioning. The State Commission has failed to appreciate that these generating stations were established on canals to use small heads available but had not proved to be successful and are not generating power.

220. Appellant has further submitted that the State Commission has failed to appreciate that the issue of shutdown of these generating stations was never an issue and were not raised even in the previous years. The generating plants cannot be expected to function unless substantial capital expenditure is incurred to make generating stations in a position to generate electricity.

221. As per State Commission the Appellant has proposed Rs 98 Cr towards RPO compliance in 2014-15 which was approved and now again proposed in 2015-16 ARR. The Commission expressed concern that four Micro-Hydel Plants of PSPCL at Daudhar, Nidampur, Rohti and Thuhi (total capacity 3.9 MW) are non-functional since long and another 18 (2 x 9) MW MHP Stage-II project in district Hoshiarpur has been delayed considerably. These projects, otherwise, were likely to have contributed renewable energy to the tune of 90 MU annually. In view of this, the Commission disallowed Rs 14.00 Cr (appr) required for purchasing Non-Solar RECs at the Floor Price of ₹1500 per REC in lieu of non-availability of the said energy.

222. We have gone through the State Commission reasoning in disallowing Rs 14 Cr 2014-15 from power purchase cost for failure of PSPCL to revive the small Hydro projects which could have contributed in supplying renewable power to the State of Punjab and thereby helped in reducing the RPO compliance expenses. It is observed from the Investment plan of Appellant for 2014-15 (RE) in impugned order that Rs 131 Cr has been allocated towards R&M of HEP's of PSPCL and Rs 33.49 Cr towards other hydel projects, still the revival of these projects has not taken place. In our view the State Commission should provide some time line for revival of these micro hydro projects before disallowing the above amount from power purchase. The State Commission can pass a consequential order accordingly on this issue.

223. Accordingly, we set aside the disallowance of Rs. 14 crores on account of non-operationalisation of these projects before a techno-economic study is carried out for justifying the need for these projects.

224. Disallowance of Rs 20 Cr for non-rationalisation of employee cost:- The Appellant has stated that the State Commission has imposed a penalty of Rs 20 Cr for alleged non-implementation of initiative for rationalization of employee cost. According to Appellant State Commission has not specified any specific measure for rationalization, whereas the Appellant has taken substantive measures for improving the employee productivity. As a part of the measures taken, the Appellant has mentioned about a failed PwC model for rationalization of manpower.

225. The State Commission in the impugned order has stated that PSPCL did rationalization of distribution set up through functional restructuring of Patiala town & Nabha division during 2010-11. The Commission in the Tariff Order for FY 2011-12 directed PSPCL to replicate the model across the whole State. PSPCL in its meeting with Commission on 30.04.2012, committed to roll out this model all over the State of Punjab by June 2013. During processing of Tariff Order for FY 2012-13, the Commission directed PSPCL that re-organization of distribution set up be expedited in order to complete all R-APDRP towns by December 2013 & remaining towns by March, 2014. But till now, only city areas of Patiala, Jalandhar and Amritsar circles and five divisions of Nabha, Bathinda, Budhlada, Samana and Rajpura have been restructured on functional lines.

226. Similarly, the various directives given to automate its functioning to reduce manpower cost by implementing IT plan, unmanned substations, Automatic Meter Reading (AMR) etc. have not been implemented by the utility. PSPCL has thus failed to meet the target for implementing initiatives for rationalization of employee cost and to increase employee’s productivity by implementation of PwC report, restructuring of distribution set up on functional lines and introduce automation for optimizing manpower output &

efficiency. Thus, a disallowance of ₹20.00 crore is made on this account during FY 2013-14 which shall continue annually on renewal basis till PSPCL implements all these steps to modernize its functioning.

227. We agree with the findings of State Commission on the issue disallowance of Rs 20 Cr for not taking adequate steps for rationalization of employee cost as the rational given by the State Commission in impugned order as in the benefit of the State and the Appellant already agreed to the same but failed to implement. Also, it is to be mentioned here that the State Commission has nowhere mentioned in impugned order regarding imposition of Section 142 for penalty. The Appellant is advised to implement all the measures for optimization of manpower at the earliest to reduce the cost of power for consumers at large.

228. Disallowance of contribution of Rs 914 Cr in FY 2014-15 to Terminal benefit Trust:- The Appellant in its appeal has contested the disallowance of the contribution to the Terminal benefit trust to the extent of Rs 914 Cr for the year 2014-15. As per Appellant it has contributed as per Transfer scheme notification dated 24.12.2012 wherein under the terminal benefits to the employees is to be funded by the trust which is required to be contributed to. As per appellant this is a more efficient manner of funding terminal benefit to employees as against the pay as you go method.

229. The State Commission in this regard in the impugned order has stated that they have not charged the Terminal benefit liability as on 16.04.2010 of Rs 914 Cr as the Tariff Regulations do not provide the same. Accordingly, an amount of Rs 914 Cr towards progressive funding of unfunded past liabilities of pension and gratuity to PSPCL for FY 2014-15 has been deducted.

230. As per State Commission, the Transfer Scheme cannot override the subordinate legislation i.e. Regulation of the Commission (in the instant case Regulation 33 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005) which mandates as under:

> *"33. Unfunded liability of pension and gratuity;*
>
> ***"With regard to unfunded past liabilities of pension and gratuity, the Commission will follow the principle of "pay as you go". The Commission shall not allow any other amount towards creating fund for meeting unfunded past liability of pension and gratuity."***

231. The Transfer Scheme is a statutory scheme notified by the State Government under section 131 of the Electricity Act, 2003. The relevant part of section 131 is reproduced below:

> "131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), **any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.**

(2) **Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be** :

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

232. Section 131 of the Act mandates that the reorganisation of the State Electricity Board has to be as per the Transfer Scheme notified by the State Government under the provisions of the Electricity Act, 2003 and therefore, any sub-ordinate legislation can not override the provisions of the principal legislation that is the Electricity Act, 2003.

233. We have gone through the statement of State Commission on the issue of disallowance of progressive funding of Terminal benefit Trust in 2014-15, the State Commission has miserably failed in understanding

the principal legislation, any regulation notified under the principal legislation cannot override the principal legislation which provides re-organisation of the Electricity Boards in a defined manner.

234. The Regulations notified by the State Commission shall have to be notified consistent with the Transfer Scheme as any power vested therein to the State Government cannot be restricted by the Regulations notified by the State Commission.

235. We allow the appeal to the extent of this issue.

SUMMARY OF OUR FINDINGS: -

236. Issue No. 1- Reduction of sales to agricultural pump set consumers (AP Consumers):The Appellant is granted liberty to raise the issue at an appropriate stage during the prosecution of appeal(s) filed before this Tribunal against the truing up order, the present appeal to this aspect stands disposed of.

237. Issue No. 2- T&D Losses: As discussed in the foregoing paras, the issue of T&D losses may also be taken up along with issue no. 1 by the Appellant during the said appeal(s) against the truing up orders before this Tribunal.

238. Issue No. 3- Norms for Operation-Plant Availability Factor (PLF):The appeal has merit to this effect (PLF) and decided in favour of the Appellant. We direct the State Commission to revisit its order accordingly.

239. Issue No. 4- Station Heat Rate:The issue of Station Heat Rate is decided in favor of appellant.

240. Issue No. 5- Auxiliary Consumption: The appeal stands withdrawn by the Appellant, the impugned order is upheld in respect of Auxiliary Consumption.

241. Issue No. 6- Fuel Cost (Gross Calorific Value (GCV) & Transit Loss):We upheld the decision of the State Commission, however, direct the State Commission for carrying out a study for determining the maximum transit loss as relevant CERC Regulations provide for 0.8%.

242. Issue No. 7- Disallowance of Depreciation:On the requestof the Appellant, the Appellant is allowed to take up the issue before the State Commission for rectification of the mathematical errors, if any.

243. Issue No. 8- Disallowance of Power Purchase Cost: In view of the foregoing discussions, the appeal is allowed partly, the State Commission shall re-visit the Impugned Order and after prudent check, shall allow the cost for short term power purchase, to the limit as decided/ notified in advance and such procurement is made through a process following transparency and prudent checks by the Appellant, whereas the UI drawl below the frequency of 49.5 Hz shall be allowed to the extent that it is classified as the urgent need for maintaining the State Grid and requirement of the consumers. The cost on account of surcharge on UI and the interest on delayed payment will not be allowed, the State Commission is justified in rejecting such claims.

244. Issue No. 9- Disallowance of Employee Cost:The Appeal is allowed,it is decided in favour of the appellant. However, the Appellant is

directed to judiciously formulate a policy for the reduction in the employee cost to the extent possible.

245. Issue No. 10- Repair & Maintenance (R&M) Expenses and Administrative & General (A&G) Expenses:The R&M expenses and A&G expenses shall be allowed on normative basis, the State Commission shall issue fresh orders in this respect.

246. Issue No. 11- Disallowance of Interest and Finance Charges: The State Commission shall revisit its order and issue fresh orders as per directions contained in the foregoing paras.

247. Issue No. 12- Overestimating revenues: We direct the State Commission to look into the afresh based on the submissions of the Appellants and decide on the issue afresh.

248. Issue No. 13- Late Payment Surcharge:The State Commission shall relook the matter, the appeal has merit, and issue is decided in favour of Appellant.

249. Issue No. 14- Carrying Cost on Cumulative Revenue Gap:The Appeal is allowed, the State Commission is directed to revisit its order and issue reasonable order on the principles laid down in the preceding paras.

250. Issue No. 16- Non-allowance of Interest & Finance Charges pertaining to use of Working Capital Loans for the creation of Assets of

the Appellant: The issue has already been deliberated and decided under issue No. 11 (Disallowance of Interest and Finance Charges).

251. Issue No. 17- Non-allowance of Subsidy amounting to Rs. 178.82 crores in True up of FY 2011-12: The Appellant is duly entitled for the same and the appeal is allowed accordingly.

252. Issue No. 15- Other Allowances/ issues: There are certain other allowances/ disallowances raised by the Appellant, these are:

i. Rs. 25 crores incurred for the buiding of cancer hospital: - The appeal is disallowed to this extent.

ii. Disallowance/penalty of Rs 72.27 Cr for non-implementation of Energy saving measures: -The appeal is allowed, the order passed by the State Commission is set aside to this extent.

iii. Disallowance /Penalty of Rs 5 Cr for 100% metering and Rs 10 Cr towards shifting of meters: -The decision of the State Commission is upheld.

iv. Disallowance /Penalty of Rs 14 Cr for non-implementation of micro hydro projects:-The Impugned Order is set aside on the disallowance of Rs. 14 crores on account of non-operationalisation of the said projects.

v. Disallowance of Rs 20 Cr for non-rationalisation of employee cost: - We agree with the findings of State Commission on the issue, the Impugned Order is upheld.

vi. Disallowance of contribution of Rs 914 Cr in FY 2014-15 to Terminal benefit Trust. - We allow the appeal to the extent of this issue.

ORDER

For the foregoing reasons as stated above, the captioned Appeals, Appeal no. 264 of 2014, Appeal no. 173 of 2015 and Appeal no. 277 of 2015 are partly allowed.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING ON THIS 29TH DAY OF APRIL, 2022.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Pr/mkj