Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Appeal No. 255 of 2013

Dated: 1st February, 2016

PRESENT: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

IN THE MATTER OF:

Delhi Transco Limited
Shakti Sadan, Kotla Road
New Delhi - 110002

...Appellant/Petitioner

Versus

1. Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik
Malviya Nagar, New Delhi – 110017

2. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi – 110019

3. BSES Yamuna Power Limited
Shakti Kiran Building
Karkardooma, Delhi-110092

4. Tata Power – Delhi Distribution Limited
Grid Sub Station Building
Hudson Lines, Kingsway Camp
Delhi – 110 009

5. New Delhi Municipal Council
Palika Kendra, Parliament Sreet
New Delhi – 110001

6. Military Engineers Services
Ministry of Defence
Government of India
New Delhi – 110011

... **Respondent(s)**

Counsel for the Appellant(s): Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Akshi Seem
Mr. Ishan Mukherji
Ms. Mandakini Ghosh

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. Manoj Kr. Sharma for R-1
Mr. Vaibhav Choudhary for R-4
Mr. Alok Shankar
Ms. Smriti Mishra
Mr. Gaurav Singh for R-4
Mr. Shashank Pandit
Mr. Daleep Kumar Dhayani
Mr. Stephanie
Mr. Suraj Singh
Mr. Kaushik
Mr. Parth Mullick

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal has been filed under Section 111 of the Electricity Act, 2003 against the Order dated 31.07.2013 passed by the Delhi Electricity Regulatory Commission (hereinafter referred to as the '**State Commission**') in Petition No. 4 of 2013 dealing with the truing up of the financials of the Appellant – Delhi Transco Limited for the

period 2007-08 to 2011-12 and Annual Revenue Requirement and Tariff for the year 2013-14.

2. Delhi Transco Limited, the Appellant herein is a company incorporated under the provisions of the Companies Act, 1956. The Appellant is wholly owned undertaking of the Government of National Capital Territory (NCT) of Delhi.

3. The Appellant since 01.04.2007 discharges only the functions of Transmission of Electricity in NCT of Delhi, the State Transmission Utility and State Load Dispatch Centre. Prior to 01.04.2007, the Appellant was also undertaking the functions of Bulk Purchase of electricity from generating stations and Bulk Sale of electricity to Respondents No.2 to 6.

4. The Respondent No. 1 is Delhi Electricity Regulatory Commission. The State Commission notified the Delhi Electricity Regulatory Commission (terms and conditions for determination of transmission tariff) Regulations 2011 providing for the norms and parameters for the tariff determination.

5. The Respondent No. 2-6 are Distribution Companies supplying electricity in their respective licensed areas of Delhi.

6. **FACTS OF THE CASE**

6.1 The Appellant filed a Petition No. 4 of 2013 before the Delhi Electricity Regulatory Commission for truing-up of the financials of the Appellant – Delhi Transco Limited for the

period 2007-08 to 2011-12 and Annual Revenue Requirement and Tariff for the year 2013-14.

6.2 The State Commission by the Impugned Order dated 31.07.2013 has effected recovery of Rs. 1035.42 cores (including carrying cost up to FY 2013-14) against the Appellant for the control period 2007-08 to 2011-12 as against the amount of Rs. 466.75 crores which is the correct amount as per the Appellant (including carrying cost up to FY 2011-12) for the said period as per the provisions of Tariff Regulations, 2007. In determining the aforesaid recovery of Rs. 1035.42 crores, the State Commission has arbitrarily disallowed the expenses claimed by the Appellant in its tariff petition towards employee cost, A&G cost, R&M cost and has erroneously made the deductions in the amount of capitalized value of assets added during the control period. Further, the State Commission has also not complied with the directions of the Hon'ble Appellate Tribunal in its various Judgments allowing the amount of DVB arrears earlier erroneously reduced by the State Commission from the amount of ARR of the Appellant. In the Impugned Order dated 31.07.2013 passed by the State Commission, only a sum of Rs. 541.50 crores has been allowed in the financial year 2013-14 against Rs. 1687.52 crores which had been determined by State Commission as due on this account to Appellant.

6.3 In the Impugned Order dated 31.07.2013, the State Commission has determined the value of capitalization of

assets on the basis of provisional true-up for the control period 2007-08 to 2011-12 whereas as per the Tariff Regulations, 2007, no provision exists for the provisional true-up and therefore any recovery on that account is in contravention of the provisions of the Tariff Regulations.

6.4 The State Commission in the Impugned Order has also directed the Appellant to refund the amount of income tax which had been claimed by Appellant from distribution utilities during the control period in excess of the amount of income tax calculated on the amount of return on equity only which works out to Rs. 195.84 crores over and above the aforesaid recovery from the Appellant for the control period 2007-08 to 2011-12. Since the said amount of income tax has already been paid by Appellant in the government revenue, the amount as per the directions of the State Commission will have to be refunded by Appellant out of its Return on Capital which as per the Tariff policy the electricity utilities (the Appellant) are at the least entitled to in order to induce investment in the electricity sector. On the issue of income tax, one of the Distribution Licensees – Tata Power – Delhi Distribution Limited has filed a petition before the State Commission claiming certain refunds. While the petition is pending and the Appellant is in the process of filing reply to the said petition, the State Commission without hearing the Appellant has directed the Appellant in the Impugned Order dated 31.07.2013 to refund amount of Rs. 3.53 crores, 4.56 crores, 10.12 crores

and 177.63 crores to the Distribution Companies for FY 2007-08, 2008-09, 2009-10 & FY 2011-12, respectively.

6.5 The amount of Rs. 593.22 crores determined as tariff for 2013-14 has been adjusted with the amount of recovery determined as provisional True-up for the period 2007-08 to 2011-12. Further, as a result of the arbitrary disallowances and by not allowing the full amount of DVB arrears in its Tariff Order for the financial year 2013-14, the Appellant is left with the tariff income of only Rs. 500 crores out of which the company shall be required to pay Rs. 400 crores to the Pension Trust and Rs. 0.70 crores to Public Grievance Cell of GNCTD as directed in the Impugned Order and thus leaving funds with the Appellant only to the extent of Rs. 99.30 crores for meeting its operational costs during the financial year 2013-14 thereby resulting in impractical situation to carry on the operations essential for the supply of electricity in the national capital. The State Commission while passing the Impugned Order has also failed to appreciate that the Appellant has been deprived of its dues from the Distribution Companies which are outstanding for the last more than two & half years, which works out currently to a staggering sum of Rs. 1200 crores and thus has not considered the adverse cumulative effect of the Impugned Order on the operations of the Appellant and thereby on the supply of electricity in Delhi, the national capital.

6.6 The Appellant is aggrieved by the unjustified recoveries made by the State Commission from the ARR of the Appellant causing thereby entire recoveries for the control period from the Appellant in the tariff for the financial year 2013-14 and at the same time not allowing the entire amount of DVB arrears approved by the State Commission in the financial year 2013-14 forcing the Appellant to borrow even for meeting its employee costs and essential day-to-day expenses on administration and operations which will in turn have cascading effect on the ARR of the Appellant for the future.

6.7 Aggrieved by the Impugned Order dated 31.07.2013 passed by the State Commission, the Appellant filed this Appeal No. 255 of 2013 and prays for the following reliefs:

a) Allow the appeal and set aside the Order dated 31.07.2013 passed by the State Commission to the extent challenged in the present appeal.

b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

7. Heard the arguments of Learned Counsel **Mr. Anand K. Ganesan** for Appellant and Learned Counsel **Mr. Pradeep Misra** for Respondent No. 1 and Learned Counsel Ms. Smriti Mishra for Respondent No. 4 and after going through the submissions made by the Counsel of the parties and Impugned Order 31.07.2013, the following issues arise:

a) Issue No. 1: Whether the State Commission is justified in disallowing the escalation in the employees expenses, the actuarial valuation and

contribution to the pension and terminal benefits, administrative and general expenses, repair and maintenance expenses etc as claimed by the Appellant?

b) **Issue No. 2: Whether the State Commission is right in directing the efficiency factor adjustment at the rate of 2%, 3%, 4% and 4% for the financial years 2008-09, 2009-10, 2010-11, 2011-12 and financial year for 2013-14 respectively for the operation of a transmission company as against 1% to be considered as claimed by the Appellant?**

c) **Issue No. 3: Whether the State Commission is justified in considering the asset capitalization based on a fictional, provisional, trued up amount without dealing with the asset capitalization as per actual details submitted for the financial years 2007-08 to 2011-12?**

d) **Issue No. 4: Whether the State Commission has rightly applied the provisions of MYT Regulations in determining the Return on Capital employed and depreciation without considering the actual capitalization undertaking by the Appellant?**

e) **Issue No. 5: Whether the State Commission was right in law not to allow the rebate allowed to the distribution licensees as per the applicable Tariff Regulations to be included as revenue requirements of the Appellant?**

f) **Issue No. 6: Whether the State Commission has rightly considered the changes in the working capital from those approved on normative basis in the earlier Order passed by the State Commission?**

g) **Issue No. 7: Whether the State Commission was justified in directing the Appellant to refund the Income Tax paid by the distribution companies even before deciding the issue on the petition filed by a distribution company pending before the State Commission?**

h) **Issue No. 8: Whether the State Commission is right in considering as non-tariff income by including the interest on UI charges etc. rebate received from the generating companies and LPSC on transmission licensees?**

i) **Issue No. 9: Whether the State Commission has committed any error in implementation of this Tribunal's Judgment in Appeal No. 133 of 2007 and 28 of 2008 on the issue of DVB Arrears**

j) **Issue No. 10: Whether, the State Commission has erred in considering the various claims of the Appellant while determining the ARR and Tariff for FY 2013-14?**

8. **Issue No. 1: Whether the State Commission is justified in disallowing the escalation in the employees expenses, the actuarial valuation and contribution to the pension and terminal benefits, administrative and general expenses, repair and maintenance expenses etc as claimed by the Appellant?**

The following are the grievances of the Appellant in this Appeal:

9. **Employees' Expenses**

9.1 that the State Commission has fixed the escalation factor for employee expenses at 1.0466 as against the actual escalation factor of 1.0559 for financial year 2007-08, 1.0866 for financial year 2008-09, 1.0881 for financial year 2009-10, 1.1010 for financial year 2010-11 and 1.0861 for financial year 2011-12.

9.2 that the State Commission while working out the employee cost has wrongly considered the escalation factor on the approved value of base year employee cost without up-dating the escalation factor during the control period. The

Appellant had calculated the escalation for each year based on the actual values of Consumer Price Index (CPI) and Wholesale Price Index (WPI) for financial year 2007-08 to financial year 2011-12.

10. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

10.1 that it is submitted that the employees' expenses are controllable and thus the same are not to be trued-up.

10.2 that the Commission in the impugned order in Para 3.7 has observed as under:

3.7 In this regard, Regulation 4.7 of Transmission Tariff Regulations, 2007 stipulates as follows:

"Truing Up
4.7 For controllable parameters.
a) Any surplus and deficit on account of Operation and Maintenance (O&M) expenses shall be to the account of the Transmission Licensee and shall not be trued up in ARR; and

As per the provisions of Regulation, any surplus and deficit on account of O&M expenses shall be to the account of the Transmission Licensee and shall not be adjusted in ARR. Accordingly, the indexation factor for the Control Period in the MYT Order for FY 2007-08 to FY 2010-11 was worked out on the basis of the actual CPI and WPI for immediately preceding five years. In this regard, the Commission is of the view that as per Transmission Tariff Regulation, 2007 no true-up of escalation factor is allowed and hence the Commission has not undertaken provisional true-up of escalation factor as submitted by the Petitioner"

10.3 that the Counsel of the Respondent No. 4, TPDDL submitted that the escalation factor for the entire control period was determined by the Commission vide order dated 27.08.2011 and no escalation factor was determined for the true-up and factor approved by the Commission in the Tariff Order was applied. The said finding has become final and binding.

10.4 that the employee's expenses are part of the O&M expense and is a controllable factor as per the applicable regulations. Escalation to the employee expense during the control period is based on CPI and WPI and previous five years. Since, any deficiency or surplus in O&M expense approved by the Commission is to the account of the licensee; there is no basis to allege that the actual escalation factor should be applied and not the factor which has been approved by the Commission. The amount claimed by the Appellant was not allowed in the absence of specific explanation for incurring the same.

11. **Our Consideration and Conclusion on this issue**

11.1 The contention of the Appellant is that the State Commission has fixed the escalation factor for employees' expenses at the rate 1.0466 as against the actual escalation factor of 1.0559 for FY 2007-08, 1.0866 for FY 2008-09, 1.0881 for FY 2009-10, 1.1010 for FY 2010-11 and 1.0861 for FY 2011-12.

11.2 Regulation 4.7 of Transmission Tariff Regulations 2007 stipulates as follows:

"Any surplus or deficit on account of Operational and Maintenance expenses shall be to the account of the Licensee and shall not be trued up in ARR".

Thus, accordingly the Commission is of the view as per Transmission Tariff Regulations, 2007 no true-up of escalation factor is allowed and hence the Commission has not undertaken provisional true-up of escalation factor as submitted by the Petitioner.

11.3 Further, this Tribunal in Appeal No. 184 of 2011 vide Judgment dated 27.02.2013 passed an order on the escalation factor and the relevant part is stated as under:

"This Tribunal in the other Appeals filed by one of the Distribution Licensees while interpreting the Regulations of the State Commission, held that every year adjustment of the indexation factor is not required and it is only for the five years immediately preceding the coming into force of the Regulation. Thus, the adjustment of the employees expenses with respect to indexation factor every year is not required and the indexation factor determined for the preceding period can be considered for the subsequent period of MYT control period 2007-12".

11.4. Thus, this Tribunal held in the above order that every year adjustment of the escalation factor as per indexation factor is not required and hence suggested to work out the indexation factor before the control period and considered the same factor thought the control period.

Accordingly, the State Commission arrived the indexation factor as 1.0466 and considered the same factor for arriving

employees' expenses and A&G expenses in the control period 2007-12.

11.5 Further, we have also observed that the State Commission vide order dated 27.08.2011, the escalation factor was determined for the control period by order dated 27.12.2007 was modified to 1.0466 from the earlier factor of 1.0415.

11.6 Accordingly, the revised base employee expenses have been escalated by the relevant escalation factor to arrive at the employee expenses for each year from FY 2007-08 to FY 2011-12. Further, the Commission implemented the directions of this Hon'ble Tribunal in the Tariff Order dated 26.07.2011 with respect to escalation factor.

11.7 Hence, we do not find any infirmity in considering the escalation factor 1.0466 for the FY 2007-08 to FY 2011-12 by the State Commission for determination of employees' expenses, etc. Thus, this item of the issue is decided against the Appellant.

12. **Actuarial valuation amounts at Rs 1.28 Crores, Rs 1.98 Crores and Rs 4.25 for FY 2009-10, FY 2010-11 and FY 2011-12**

The following are the submissions made by the Counsel of the Appellant:

12.1 that the State Commission has wrongly disallowed the additional amount incurred by the Appellant on account of provision for actuarial valuation on employee cost and on ex-gratia on the wrong and presumptive basis that the details have not been furnished by the Appellant. The State

Commission has failed to appreciate that the Actuarial Valuation was done by a reputed independent actuary and the report submitted is comprehensive justifying the conclusion reached. Accordingly, the rejection of the claim on the basis that computation has not been made available is wrong.

13. **Ex Gratia amount at Rs 3.25 Crores for FY 2011-12;**

13.1 that the State Commission has failed to appreciate that the ex-gratia is the amount of incentive which is paid by the management of the Appellant to its employees on year to year basis and the same cannot be taken as assumed in advance and included in the approved opening value. Similarly contribution as per actuarial valuation is also a part of employee cost to be borne by the Appellant and was not included in the opening approved value of employee cost of the base year i.e. the financial year 2006-07 as the Actuarial Valuation was undertaken for the first time by the Appellant during the financial year 2008-09 and thereafter annually. Accordingly, the same cannot be deemed to be included in the approved base year's expenses.

13.2 that the State Commission ought to have allowed the costs i.e. cost of ex-gratia and actuarial valuation in addition to the employee cost claimed by the Appellant in its tariff petition on the basis of normative formula specified in Tariff Regulations.

14. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

14.1 that as regards other expenses submitted by the Petitioner of Actuarial Valuation amount at Rs. 1.28 crores, Rs. 1.98 crores and Rs. 4.25 for FY 2009-10, FY 2010-11 and FY 2011-12 and Ex Gratia amount at Rs. 3.25 crores for FY 2011-12, the Commission asked Petitioner to submit the basis of computation for the same. In reply, the Petitioner vide its letter dated 08.02.2013 provided the Actuarial Valuation report, and the Commission after going through the report finds in its reply certain data gaps which did not specify the actual payment of arrears for FY 2007-08 to FY 2011-12.

14.2 that the Commission again provided opportunity to Appellant to submit the details of actual payment of arrears as claimed in the Petition. However, the Appellant did not submit the reply to the query raised by the Commission. Therefore, the Commission has not been able to undertake the prudence check of the partial information submitted by the Appellant.

14.3 In view of the above shortfalls, the Commission disallowed the same.

15. **The following are the submissions made by the counsel of the Respondent No. 4:**

15.1 that the amounts claimed by the Appellant was not allowed in the absence of specific explanation for incurring the

same. A review of the relevant portion of the impugned order would make it clear that the Appellant could not satisfy the Commission why these expenses were to be incurred and hence in this regard the Commission again asked the Petitioner to submit the computation as the year wise Actuarial Valuation amount submitted in the Petition has not been reflected in the report submitted by the Petitioner. As regards, Ex Gratia the Petitioner has not submitted reply to the query of the Commission. Accordingly, the Commission has not considered the Actuarial Valuation and Ex-Gratia as the Commission has not been able to undertake the prudence check of the partial information submitted by the Petitioner.

16. **Our Consideration and Conclusion on this**

16.1 Regulation 5.7 of Transmission Tariff Regulation, 2007 of DERC, indicates a formula for arriving at O&M expenses for the nth year of the control period shown below:

$$O\&M_n: (R\&M_n+EMP_n+A\&G_n)*(I-X_n)$$

Where EMP_n: Employees cost of the Transmission Licensee

Thus, while calculating the O&M expenses for a control period, the Commission has to consider all the employees expenses such as salaries, pension, gratuity, ex-gratia, etc.

It is true that the actuarial valuation of employees cost has to be included in the employees' cost. The Commission has to consider the actuarial valuation after prudence check but due to data gaps in the submission, the Commission

requested the Appellant to submit the basis for computation. In reply, the Petitioner/Appellant vide its letter dated 8.2.2013 provided the actual valuation report but failed to submit the computation of actuarial valuation and hence the Commission unable to undertake prudence check of partial information.

As per the submissions of the Appellant, the actuarial valuation has been done by a reputed independent actuary and the same has been submitted to the Commission but the Commission is not satisfied with the report as the report does not have complete information and data for finalization of actuarial valuation of employees' cost.

16.2 However, we direct the State Commission to consider these actuarial valuations of employees' expenditures along with ex-gratia duly provided the Appellant submits the relevant details for prudence check and consider the same as per Regulations because employees' expenditure has to be considered while working out O&M expenses.

17. **Rs. 28.84 Crores towards Pension Trust dues submitted by the Appellant (Rs. 23.84 crores for FY 2010-11 & Rs. 5 crores for FY 2011-12);**

The following are the submissions made by the Counsel of the Appellant:

17.1 that the State Commission has erred in disallowing the amount of Rs.28.84 crores paid/provided to Pension Trust by the Appellant in the years 2010-11 and 2011-12. The Appellant had specifically clarified to the State Commission

that the contributions actually paid by the Appellant or provided for in actual by the Appellant towards the Pension Trust corpus is broadly divided into two categories, namely, (a) contribution towards the corpus for the pension and gratuity which is based on actuarial valuation and (b) actual payment basis i.e. towards LTC, medical and arrears of revised pension.

18. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

18.1 that the Appellant has claimed an amount of Rs. 28.84 crores towards pension trust dues for FY 2010-11 to FY 2011-12. However, it is pertinent to state that commission has allowed employee expenses on normative basis for the control period FY 2007-08 to FY 2011-12. However, it is pertinent to state that Commission has allowed employee expenses on normative basis for the control period FY 2007-08 to FY 2011-12. The amount towards pension and gratuity has already covered under the audited financial statements submitted by the Appellant. The Commission has not deducted the provisions based on actuarial validation towards pension, gratuity and leave encashment etc. The commission has allowed the amount of pension trust for FY 2011-12, FY 2012-13, FY 2013-14 and FY 2014-15 of Rs. 1.50 Crores, Rs. 1.60 Crores, Rs. 400 Crores and Rs. 470 Crores in the ARR of DTL on provisional basis as per the directions of Hon'ble Tribunal. The same will be trued up after the actuarial valuation is completed as per

the directions of Hon'ble High Court of Delhi. Therefore, the Appellant's claim based on actuarial payment will tantamount the double allowance towards these expenses.

19. **The following are the submissions made by the Respondent No. 4:**

19.1 that the State Commission rejected the claim of the Appellant for Rs. 28.84 crores in light of the fact that vide order dated 13.07.2012 a one-time payment of Rs. 160 crores was made to DT and in the impugned order also a provision for Rs. 400 crores payment to pension trust was made and hence the Commission has not allowed the claim of Rs.28.84 crores separately to Delhi Transmission Ltd.

20. **Our consideration and conclusion on this Issue**

20.1 As seen from the submissions made by the Counsels and the impugned order, the Petitioner's claim of Rs. 28.84 is sub-judice in the Hon'ble High Court on account of the pension trust. Hence, the State Commission has not considered the Appellant's claim. However, the State Commission is directed to consider the claim of the Appellant as per the decision of the Hon'ble High Court.

21. **Administrative & General Expenses (A & G Expenses)**

The following are the submissions made by the Counsel of the Appellant:

21.1 that the State Commission while working out the A & G Expenses has incorrectly considered the escalation factor on the approved value of base year for A & G Expenses without

any updation of the said escalation factor during the control period particularly when the Appellant had claimed in its tariff petition the escalation factor based on the updated value considering the escalation during the preceding five years with proper details and justification.

21.2 that the State Commission erred in holding that the Administrative and General Expenses of Rs. 3.00 crores for FY 2008-09 , Rs. 8.65 Crores for FY 2009-10, Rs. 6.29 Crores for FY 2010-11 & Rs. 9.71 Crores for FY 2011-12 which includes Foreign Exchange Loss, Legal Award Expense and Ground Rent etc are deemed to have been included in the base year expenses and cannot be considered as extra ordinary expenditure. These should have been considered as per actual values.

22. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

22.1 that the State Commission is of the view that the above mentioned expenses submitted by the Petitioner would have been included in the base years expenses and cannot be considered as extraordinary expenditure and thus in accordance with the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations 2007, the Commission has not approved any additional expenditure of A&G expenses and considers the A&G expenses same as approved in the Tariff Order for FY 2011-12.

22.2 that in accordance with the DERC Tariff Regulations 2007, the Commission has specified that the O&M expenses are controllable factors and therefore any surplus or deficit on account of O&M expenses shall be to the account of the Appellant and shall not be adjusted in the ARR.

23. **The following are the submissions made by the Learned Counsel for Respondent No. 4:**

23.1 that the administrative and generation expenses are part of the Operation and Maintenance Expenditure which are controllable factors under the 2007 Regulations. Therefore, as pointed out, the escalation factor determined by the Commission vide order dated 27.08.2011 would be applied and actual factor cannot be considered at the time of true-up. The claim of the Appellant that certain expense where not part of the A&G expense for the base year is not supported by anything on record and accordingly the commission was correct in rejecting the claim for additional amount to be included as A&G expense.

24. **Our Consideration and Conclusion on this issue**

24.1 The State Commission considered the escalation factor towards A&G expenses as per this Tribunal's order in Appeal No. 184 of 2011. Accordingly, the escalation factor of 1.0466 has been considered for the A&G expenses for FY 2007-08 to 2011-12.

24.2 We have observed from the impugned order, the State Commission considered the additional A&G expenses of

2.45 crore towards GIS status Rs. 1.93 crore of tender cost and Rs. 1.18 crore of training cost less adjustment of Rs. 0.66 crore).

As regards, other expenses, the State Commission directed the Appellant/Petitioner to submit the details related to the A&G expenses for FY 2008-09 to 2011-12 claimed by the Petitioner. In reply the Petitioner submitted the other expenses such as Pension Trust, Foreign Exchange Loss, Legal Award Expenses, Ground Rent and Property Tax, etc.

The State Commission's view on this is as follows:

"3.31 The Commission is of the view that above mentioned expenses submitted by the Petitioner would have been included in the base years expenses and cannot be considered as extraordinary expenditure and thus in accordance with the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2007, the Commission has not approved any additional expenditure of A&G expenses and considers the A&G Expenses same as approved in the Tariff Order for FY 2011-12."

24.3 Let us examine the relevant clause of the Tariff Regulations, 2007, which is as under:

"Clause 4.3: The baseline values (operating and cost parameters) for the control period shall be determined by the Commission and would be based on the latest audited accounts, last approved values by the Commission, estimate of the actual for the relevant year, prudence check and other factors considered.

4.7 Truing up: For controllable parameters

a) ***Any surplus and deficit on account of O&M expenses shall be to the account of the Transmission Licensee and shall not be adjusted in the ARR, and***

b) ***Depreciation and ROCE shall be trued up at the end of the control period.***

Clause 5.6: The Transmission Licensee shall submit the O&M expenses for the control period as prescribed in Multi-year Tariff filing procedure. The O&M expenses for the control period for the base year will be approved by the Commission taking into account the latest available audited accounts, business plan filed by the Transmission Licensee, estimate of the actual for the base year, prudence check and any other factor considered appropriate by the Commission.

Base year means, the financial year immediately preceding first year of the control period".

24.4 Thus, we feel that the Commission considered the actual values towards the A&G expenses in the base year. Accordingly, it was reflected in the A&G expenses of the control period FY 2007-08 to 2011-12. In view of these reasons, the Commission has not considered the other expenses claimed by the Appellant in its Petition.

24.5 Thus, we feel that the action of the Commission in the impugned order is justifiable and thus the issue is decided against the Appellant.

25. **Repair and Maintenance Expenses (R & M Expenses)**

The following are the submissions made by the Counsel of the Appellant:

25.1 that the State Commission has deviated from the Tariff Regulations while truing up the Repair & Maintenance Expenses. The Tariff Regulations provide as under with respect to R & M Expenses-

R&Mn=K*GFAn-1

Thus, the Tariff Regulations provide for R &M Expenses based on the Gross Fixed Assets as per the actual capitalization for FY 2007-08 to FY 2011-12 which had been claimed by the Appellant. The State Commission has not allowed the capitalization as claimed by Appellant in the tariff petition to the extent of Rs.1492.91 crores and has approved the R&M expenses on the basis of provisional values of capitalization stating that review on loading of Expenses & IDC (Interest During Construction) is under progress. However, all these details have already been provided by the Appellant well in time to the State Commission before passing of the Impugned Order.

25.2 that the State Commission has not considered the Asset addition of Rs. 9.49 Crores from the taking over of the IP Station assets and has also not allowed the R&M of IP station for FY 2010-11 onwards.

26. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

26.1 that as regards to R&M expenses, the Commission has observed in the impugned order as follows:

"3.35. Considering the actual GFA and capitalization and 'K factor' as 2.19%, the Commission has provisionally trued up the R&M expenses for FY 2007-08 to FY 2011-12".

26.2 that the Commission has not deviated from the Tariff Regulations and the Commission has approved the R&M expenses based on the Gross Fixed Assets addition during the year provisionally approved by the Commission for FY 2007-08 to FY 2011-12 based on prudence check of the asset addition information provided by the Appellant to the Commission.

26.3 that the Commission is in the process of final true-up of capitalization for FY 2006-07 to FY 2010-11 based on the report submitted by the consultant after physical verification and details of capitalization. Based on the final capitalization the impact of R&M expenses will also be revised as per MYT Regulations 2007 for transmission tariff by apply 'K' factor on the revised GFA".

27. **Our Consideration and Conclusion on this Item**

27.1 According to Tariff Regulations 2007, R&M expenses will be determined as per formula given below:

R&Mn=K*GFAn-1

27.2 As seen from the impugned order, the State Commission considered the 'K' factor as 2.19% which is same as the 'K' factor submitted by the Appellant. It is submitted by the Commission that the Commission has appointed a

Consultant for the actual GFA and hence the Commission has provisionally trued up the R&M expenses for FY 2007-08 to FY 2011-12. The Counsel of the Respondent No. 1, submitted that the R&M expenses will be decided based on the report to be submitted by the Consultant after physical verification and details of capitalization.

27.3 In view of the above, we direct the State Commission to finalize the R&M expenses duly verifying the asset addition information provided by the Appellant to the Commission and also capitalization work as claimed by the Appellant in the tariff petition as per the consultant's report.

27.4 Thus, this issue No. 1 is partly allowed in favour of the Appellant.

28. **Issue No: 2: Whether in the facts and circumstances of the case, the State Commission is right in directing the efficiency factor adjustment at the rate of 2%, 3%, 4% and 4% for the financial years 2008-09, 2009-10, 2010-11, 2011-12 and financial year for 2013-14 respectively for the operation of a transmission company as against 1% to be considered as claimed by the Appellant?**

The following are the grievances of the Appellant in this Appeal:

28.1 that the State Commission has not considered the detailed justification given by the Appellant for the escalation factors and arbitrarily imposed higher efficiency factor of 2% to 4% as against 1% prayed for by the Appellant. The net effect of escalation allowed by the State Commission is considerably

lower than the escalation based on actual inflation during the period. This is reflected in the table below :-

	2007-08	**2008-09**	**2009-10**	**2010-11**	**2011-12**
Net effect of escalation allowed by the State Commission	4.66%	2.57%	1.52%	0.47%	0.47%
Escalation factor based on actual inflation during the year (DTL Petition)	5.59%	8.66%	8.81%	10.10%	8.61%

The Appellant has, therefore, been deprived of its legitimate O & M Expenses in the operation and maintenance of the transmission activities.

28.2 that the State Commission has failed to appreciate that the efficiency factor of 2%, 3%, 4% and 4% for the years 2008-09 to 2011-12 on O & M Expenses is excessive and unrealistic in as much as the Appellant was claiming O & M Expenses with actual inflation prevalent during the period. There was, therefore, no factor attributable to the Appellant in incurring the O & M Expenditure with actual escalation during the relevant period for the State Commission to consider imposition of O & M savings whatsoever.

28.3 that the State Commission has failed to appreciate that the operating norms and the expenditures to be incurred by the Appellant to operate in an efficient manner in the National

Capital Territory of Delhi cannot be compared to operation in other states. Delhi being the national capital, Appellant has to follow strict load shedding norms, has to cater load of various VVIP areas and is also maintaining the uninterrupted Power Supply round the clock. Further the no. of bays/sub-stations per circuit kilometer is more as compared to other state transmission utilities causing deployment of more man power to maintain the transmission network resulting in higher total expenditure.

28.4 that the benchmarking of the operation and maintenance cost, the areas where efficiency gain is achievable by prudent practices etc. need to be identified before any efficiency gains can be applied. The very nature of operation and maintenance expenditure require higher expenditure to be incurred year-on-year due to inflationary factors and the need to keep up with standards. The State Commission has already reduced the O&M expenditure against the claim of the Appellant on actual. In the circumstances, further reduction of the O&M expenditure by applying efficiency factor would result in double jeopardy to the Appellant and cause financial duress for no fault of the Appellant.

29. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

29.1 that the State Commission asked the Petition to submit the justification for proposing the efficiency factor as 1% as against 2%, 3%, 4% and 4% approved by the Commission

for FY 2008-09, FY 2009-10 and FY 2011-12, respectively in Tariff Order dated August 26, 2011. In reply, the Petitioner submitted that it has offered the efficiency recovery @ 1% on ad-hoc basis.

29.2 that the Commission is of the view that despite the opportunity provided to the Appellant/Petitioner to justify its claim of revised efficiency factor, Petitioner could not submit proper justification of seeking relaxation in the efficiency factor. Hence, the Commission has retained the efficiency factor as approved in the MYT Order for FY 2007-08 to FY 2011-12.

30. **Our Consideration and Conclusion on this issue**

30.1 This Tribunal in the Judgment dated 29.09.2010 in Appeal No. 28 of 2008 in the case of M/s. Delhi Transco Limited vs Delhi Electricity Regulatory Commission (DERC) & Ors. had held as under:

"28 (viii) The State Commission made an ad-hoc reduction of 2%, 3% and 4% for the FY 2008-09, FY 2009-2010 and FY 2010-11 respectively. The only reason given by the State Commission is that the Appellant will have to improve its performance. There cannot be any reason for the ad-hoc reduction in O&M expenditure applying any annual improvement efficiency factor. Even though the Regulations provide for application of efficiency factor, such factor has to be determined only on the basis of the materials placed before the State Commission and analysis by the Commission and not on ad-hoc basis. The State Commission is directed to consider this and pass order accordingly on this issue"

30.2 The State Commission directed the Appellant/Petitioner to submit the justification for proposing the efficiency factor as 1% as directed by this Tribunal but the Appellant/Petitioner has not put forth any justification in justifying efficiency factor of 1%. The Appellant has offered the efficiency recovery at 1% on ad-hoc basis.

30.3 We feel that the State Commission has given an opportunity to the Appellant as per the direction of this Tribunal's Judgment. The Appellant has not submitted proper justification as seen from the submissions.

30.4 This Tribunal in its Judgment has directed the State Commission to take a re-look at the efficiency factor. In our opinion, the State Commission has to arrive at a methodology to arrive at the efficiency factor scientifically and accordingly direct the Appellant/Petitioner to submit the data for arriving at the efficiency factor. Hence, we direct the Commission to have a re-look in fixing the efficiency factor for the FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12 and FY 2013-14, in case the Appellant/Petitioner submits proper justification for the same.

31. **Issue No. 3: Whether the State Commission is justified in considering the asset capitalization based on a fictional, provisional, trued up amount without dealing with the asset capitalization as per actual details submitted for the financial years 2007-08 to 2011-12?**

The following are the grievances of the Appellant in this Appeal:

Assets Capitalization

31.1 that the State Commission erred in not accepting the Assets capitalization as per actual capitalization details submitted for FY 2007-08 to FY 2011-12 and instead adopting provisional trued up amount. The State Commission has under-stated the Gross Fixed Assets to the extent of Rs. 208.28 crores which include Rs. 57 crores relating to other assets and Rs. 151.28 crores relating to the capitalized investment (Completion of Capital Works in Progress) during the control period 2007-08 to 2011-12.

32. **Per Contra,** the following are the submissions made by Counsel of the Respondent No. 1:

32.1 that the Commission has appointed consultants for physical verification of asset for true-up capitalization. The consultant has submitted their report and accordingly the Commission is in the process of finalization of true-up of capitalization for FY 2007-08 to 2007-08 to FY 2010-11 and the final impact will be given in Tariff Order.

33. **Our Consideration and Conclusion on this issue**

33.1 The Petitioner/Appellant submitted various assets capitalized from the FY 2007-08 to FY 2011-12, in the following Table:

Table 14: Assets classwise Capitalisation submitted by the Petitioner (Rs. Crore)

Parameters	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Land	1	16.15	8.98	3.06	0
Land under Lease	-	-	-	0	0
Building	1.03	4.76	0.53	2.67	0
Meters	1.53	0.01	0.12	0.04	0
Lines Network	3.38	1.54	8.85	191.71	306.67
Other Civil Works	21.81	3.7	32.24	14.82	2.79

Plant & Machinery	37.17	118.2	39.49	369.52	243.40
Office Equipment	0.2	0.35	0.7	0.32	0.04
Computer	0.45	0.51	1.08	40.22	5.69
Furniture	0.47	0.77	0.12	0.27	0.54
Misc. Assets	0.04	0.15	0.13	0.09	-
Vehicles	0.02	0.41	1.3	0.71	0.57
SCADA	0.14	(0.02)	1.18	1.29	0
Total	**67.24**	**146.53**	**94.72**	**624.72**	**559.70**

33.2 As seen from the Impugned Order, the Commission after going through the Petitioner/Appellant submissions, felt that the capitalization amount mentioned in the Petition and the audited accounts for FY 2007-08 to FY 2011-12 do not reconcile with the capitalization amount in the audited accounts for the period FY 2007-08 to FY 2011-12. Hence, the Commission directed the Appellant to clarify the difference between the capitalization amount submitted and audited accounts.

33.3 Normally, the capitalization works, before execution, the schemes will be submitted to the State Commission and Commission will approve the schemes. Accordingly, the Appellant will undertake the execution of works. Once the works are completed in full shape, the work has to be got approved by other Electrical Inspector during the concerned financial year. In practical situation, there may be some variation in approval of the capital works executed in a particular year and clearance from Electrical Inspector. Thus, there may be variation between the audited accounts in a particular year and assets capitalized in the same year.

However, the Commission can verify the physical completion of the works and the respective works can be capitalized and can be taken under asset capitalization.

33.4 The Commission's finding in the Impugned Order on this issue is quoted below:

Commission's Analysis

"3.48 The Commission has recently completed the prudence check of capital expenditure for the period FY 2007-08 to FY 2010-11. The prudence check involved the prudence check of procurement records and physical verification of the assets on ground. The prudence check of Capital expenditure for FY 2011-12 has been carried out by the staff of the Commission. While examining the details of capitalisation as furnished by Petitioner, the Commission has observed that the methodology regarding apportionment of employee expenses and A&G expenses requires review. Also the capitalisation of interest during construction requires detailed examination. The Commission is in the process of validating the capitalisation of IDC and apportionment of employee expenses and A&G expenses to capital cost. Therefore, the year wise capitalisation considered in this Tariff Order is provisional to this extent and would be revised on completion of the above review.

3.49 During analysis of the Capitalisation amount mentioned in the Petition and the Audited Accounts for FY 2007-08 to FY 2011-12, the Commission observed that the capitalisation amount mentioned in the Petition does not reconcile with the capitalisation amount mentioned in the Audited Accounts for the period FY 2007-08 to FY 2011-12. In order to reconcile the same, the Commission asked Petitioner to reconcile the capitalisation amount mentioned in the Audited.

For reconciliation of scheme wise details, the Commission directs the Petitioner to provide the Scheme wise opening CWIP and material cost for all the scheme capitalised during FY 2007-08 to FY 2011-12 with the reconciliation of closing CWIP of FY 2006-07 based on Audited Accounts of FY 2006-07 and as approved by the Commission after truing up in the MYT Order for FY 2007-08 to FY 2010-11 within one month of the issuance of this Order".

Thus, for reconciliation of scheme-wise details, the Commission directed the Petitioner to provide scheme-wise capital works in progress (CWIP) and cost of all the works capitalized during FY 2007-08 to FY 2011-12 with reconciliation of closing CWIP for FY 2007-08 based on audited accounts of FY 2006-07 as approved by the Commission after truing-up in the MYT order for FY 2007-08 to FY 2010-11 within one month of the issue of this order. As observed from the Impugned Order, the Commission arrived at the capitalization provisionally for the FY 2007-08 to FY 2011-12.

33.5 The Counsel of the Respondent 1, submitted that the Commission has appointed a Consultant for physical verification of the assets for Truing up capitalization. Hence, we direct the State Commission to examine the report submitted by the Consultant pertaining to capital works in progress and material schemes for all the works capitalized etc. and accordingly asset capitalization for FY 2007-08 to 2011-12 has to be arrived. The State Commission is directed

to finalize the asset capitalization immediately as this amount is related to arrive at the depreciation of assets, etc.

34. **Issue No. 4: Whether the State Commission has rightly applied the provisions of MYT Regulations in determining the Return on Capital employed and depreciation without considering the actual capitalization undertaking by the Appellant?**

Return on Capital Employed and Depreciation

The following are the grievances of the Appellant in this Appeal:

34.1 that the State Commission has deviated from the Tariff Regulations for the calculation of the Return on Capital employed. The State Commission failed to appreciate that the Return on Capital employed is provided for in the Tariff Regulations as ROCE=WACCi*RRBi, wherein the RBB needs to be calculated on the actual capitalization conducted by the Appellant.

34.2 that while calculating the Return on Capital employed, the State Commission has ignored the investment made by the Appellant in the form of other assets other than capitalization of investment in the project and works which works out to Rs. 57 crores during the control period 2007-08 to 2011-12. In addition to this, the State Commission has also not allowed the capitalization of investment made by the Appellant during the control period and as submitted in FORM-30 for each year of control period despite providing the entire details towards the basic cost/CWIP and loading thereon in respect of employee cost and IDC. The amount of

Return on Capital Employed to the extent of Rs. 58.16 crores during the control period has not been allowed.

34.3 that as a consequence of disallowance of Gross Fixed Assets to the extent of Rs. 208.28 crores, the amount of depreciation on the fixed assets has been under approved to the extent of Rs.20 crores for the control period.

34.4 that the basis of working out the amount of IDC on basic cost without giving any reasons also not clear and cannot be sustained.

35. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

35.1 that the Commission had appointed a Consultant to verify the details of capitalization and physical verification of the asset capitalized. Final report has already been submitted by the Consultant and impact due to finalization of true-up of capitalization based on the report submitted by the Consultant on RoCE and depreciation will be finalized in Tariff Order. True-up impact for final capitalization is allowed in Tariff Order dated 29.09.2015.

36. **Our Consideration and Conclusion on this Issue**

36.1 The contention of the Appellant is that the State Commission has disallowed Return on Capital employed to the extent of Rs. 58.16 crore and expenditure spent on capital expenditure to an extent of Rs.208.28 crore, correspondingly the State Commission has not allowed the depreciation on the actual assets capital in nature and

thereby the Appellant/Petitioner is deprived of depreciation on the fixed assets to an extent of Rs. 20 crore.

36.2 The Counsel of the Respondent No. 1, submitted that the State Commission appointed a Consultant for physical verification of the assets and submit a report. As seen from the submission of the Counsel, the Consultant has already submitted the Report.

36.3 Let us examine relevant part of the Tariff Regulations, 2007 dealing with Return on Capital employed and depreciation which is as under:

Return on Capital Employed

5.8 Return on Capital Employed (RoCE) shall be used to provide a return to the Transmission Licensee, and shall cover all financing costs, without providing separate allowances for interest on loans and interest on working capital.

5.9 The Regulated Rate Base (RRB) shall be used to calculate the total capital employed which shall include the original cost of assets and working capital, less the accumulated depreciation. Capital work in progress (CWIP) shall not form part of the RRB. Capital subsidies / grants shall be deducted in arriving at the RRB.

5.10The RRB shall be determined for each year of the Control Period at the beginning of the Control Period based on the approved capital investment plan with corresponding capitalisation schedule and normative working capital.

5.11 The Regulated Rate Base for the ith year of the Control Period shall be computed in the following manner:

$$RRBi = RRB_{i-1} + \Delta AB_i /2 + \Delta WC_i;$$

Where,
'i' is the ith year of the Control Period, i = 1,2,3,4 for the first Control Period;

RRB_i: Regulated Rate Base for the ith year of the Control Period;

ΔAB_i: Change in the Regulated Rate Base in the ith year of the Control Period. This component shall be the average of the value at the beginning and end of the year as the asset creation is spread across a year and is arrived at as follows:

$$\Delta AB_i = Inv_i - D_i$$

Where,
Invi: Investments projected to be capitalised during the ith year of the Control Period and approved;

D_i: Amount set aside or written off on account of Depreciation of fixed assets for the ith year of the Control Period

36.4 Thus, the Return on Capital employed can be assessed only after the final verification of the cost of existing assets and completed ongoing works of the Licensee. The Commission has to verify the total assets capitalized. The Regulated Rate Base (RRB) shall be used to calculate the total capital employed, which shall include the original cost of assets and working capital, less the accumulated depreciation, capital works in progress shall not form part of RRB.

Further, the capital subsidy, if any, has to be deducted from the RRB.

36.5 The State Commission has to determine for each of the control period at the beginning of the control period based on the approved capital investment plan with corresponding capitalization schedule and normative working capital. The Commission has to arrive at RRB as per the formula specified in the Regulations.

36.6 The State Commission appointed a Consultant for physical verification of the assets and the Consultant has submitted a report on capitalization of assets (as per the submission of the Counsel of the Respondent 1). The State Commission has to scrutinize the report and after prudence check, the cost of actual asset capitalization has to be arrived at.

36.7 The State Commission has to arrive at the existing ratio as per equity ratio of 70:30, where the equity employed is more the 30%, the amount of equity for the purpose of Tariff shall be limited to 30% and the balance amount in excess of 30% has to be considered as loan.

After arriving at the equity, the return on equity has to be worked out as per the Commission Rate of Return on equity.

36.8 We have gone through the Impugned order and find that the State Commission directed the Appellant/Petitioner to provide the Scheme wise opening CWIP and material cost for all the schemes capitalized during FY 2007-08 to FY 2011-12 with the reconciliation of closing CWIP of FY 2006-

07 based on Audited Accounts of FY 2006-07 and as approved by the Commission after truing up in the MYT Order for FY 2007-08 to FY 2010-11 within one month of the issuance of the Order.

36.9 In order to arrive at year wise asset capitalization for FY 2007-08 to 2011-12, the Commission has considered the opening capital works in progress of FY 2007-08 as per the audited accounts of 2007-08 and the year wise, scheme wise material cost, as submitted by the Appellant/Petitioner, is considered for all the transmission schemes capitalized during FY 2007-08 to FY 2011-12.

36.10 In our opinion, the Commission has followed the procedure laid down in the Regulation and we do not find any procedural lapses. Further, we direct the Commission to arrive at the actual capitalization of works as per the Consultant's Report and with other relevant data submitted by the Appellant and accordingly, Return on Capital employed has to be arrived at and the same has to be carried forward to the subsequent period of the control period.

36.11 Now, let us examine the depreciation issue: The relevant part of the Transmission Tariff Regulations, 2007, is as under:

"5.16 Depreciation shall be calculated for each year of the Control Period, on the amount of Original Cost of the Fixed Assets considered for calculation of the Regulated Rate Base of the corresponding year;

Provided that depreciation shall not be allowed on assets funded by any capital subsidy / grant".

36.12 The amount of depreciation depends upon the capitalization of assets or as per gross-fixed assets, as per audited figures and prudence check.

We find that the State Commission has followed the procedure as per Transmission Tariff Regulations, 2007, the relevant part is quoted below:

The Commission has computed the depreciation for FY 2007-08 to FY 2011-12 considering the opening balance of GFA for FY 2007-08 approved in the MYT Order for FY 2007-08 to FY 2010-11, capitalization approved after truing up for FY 2007-08 to FY 2011-12 and the depreciation rates specified in the Transmission Tariff Regulations, 2007. As the asset class wise GFA is not available with the Commission therefore for computing the asset class wise depreciation the Commission has considered the class wise asset addition on pro rata basis based on asset addition submitted by the Petitioner.

36.13 We direct the Commission to consider asset wise data as per the audited accounts and as per the Consultant's Report to arrive at actual GFA and accordingly amount of depreciation has to be worked out. Further, the Counsel of the Respondent submitted that the impact of financial capitalization will be allowed in Tariff Order dated 29.09.2015.

This issue is remanded back to the Commission to consider accordingly decided.

37. **Issue No. 5: Whether the State Commission was right in law not to allow the rebate allowed to the distribution licensees as per the applicable Tariff Regulations to be included as revenue requirements of the Appellant?**

The following are the grievances of the Appellant in this Appeal:

37.1 that the State Commission erred in disallowing the rebate claimed by the Appellant on the basis that the Appellant has been allowed interest on working capital. The interest on working capital is allowed on a normative basis in terms of Regulation 5.11 of the Tariff Regulations, 2007 notified by the State Commission. The rebate is to be allowed at the option of the person paying the amount, namely, the distribution licensee in terms of Regulation 5.33 of the Tariff Regulations, 2007. The Tariff Regulations have consciously provided for both without any reference to any adjustment on account of the interest allowed towards rebate. The action of the State Commission is, therefore, contrary to the Tariff Regulations, 2007.

37.2 that the State Commission has erred in not allowing the rebate given by the Appellant to the distribution licensees in the revenue requirements of the Appellant and has erroneously justified the same by adjusting in the working capital requirements of the Appellant.

37.3 that the interest on working capital being allowed on normative basis, it is not proper to determine the actual working capital requirement. The actual working capital requirement may be more or less than the normative

determination of the working capital. The rebate to be provided to the distribution licensees is mandated in terms of the Tariff Regulations framed by the State Commission and therefore it is not open to the Appellant to provide or not to provide such rebate. Further the working capital requirements of the Appellant covers only 2 months of the receivables of the Appellant, whereas the billing cycle and the 1% rebate to be allowed to the Appellant in terms of the Tariff Regulations itself enable the distribution companies to pay within 30 days of the raising of the Bill to be entitled to the 1% rebate and the same does not get covered in the working capital requirements allowed to the Appellant.

37.4 that the distribution licensees are entitled to pay within one month of the raising of the Bill to be entitled to the rebate of 1%. In the circumstances, after the billing month is over and the bill is raised by the Appellant, the distribution licensees have further one month to pay the bill to be entitled to the 1% rebate. Thus, till 60 days of the start of the month from which the transmission services are rendered, the distribution licensees are still entitled to 1% rebate. The Appellant is provided the working capital requirement only for 2 months. In the circumstances, on the basis of which the State Commission has held that the rebate is covered in the working capital requirements of the Appellant is erroneous.

37.5 that even considering the rebate as a part of the working capital requirements, the distribution licensees also deduct 10% of the total billed amount to be paid as Tax Deducted at Source (TDS). The adjustment/benefit of the TDS is available to the Appellant much after the financial year is over, when the tax filing and assessment of the Appellant is done. In the circumstances, the Appellant is further deprived of 10% of the amount receivable during the year, which does not get covered in the working capital requirements of the Appellant. This aspect has also not been considered by the State Commission while considering the sufficiency of the working capital requirements as against the rebate to be given by the Appellant.

38. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

38.1 that the Commission is of the view that in accordance with the DERC Tariff Regulations, 2007 receivables of two months are provided as part of working capital and in case of timely payment of bills, the period of receivables will get reduced and hence interest on working capital will also get reduced which set off the rebate provided by the Appellant to certain extent.

39. **Our Consideration and Conclusion on this issue**

39.1 The contention of the Appellant is that as per the Tariff Regulation, while calculating the working capital two months receivable of the Appellant is considered. Further, if

the Commission disallows the rebate amount while working out the working capital, it leads to reduction in ARR.

39.2 Though the contention of the Appellant is attracting, but at the same time due to timely payment of bills, the cash flow of the Appellant will be improved and thereby borrowing of loan to meet the expenditure will be reduced and accordingly interest on working capital will be reduced.

The Commission has introduced in the Regulation a rebate of 1% if the payment is made within one month of presentation of bills by the Transmission Licensee. Further, the State Commission gave an opportunity to Transmission Licensee to impose surcharge of 1.25% per month if the payment is delayed beyond a period of one month.

39.3 This Tribunal has already clarified in its Judgment under Appeal No. 184 of 2011 as follows:

"(e) Disallowance of rebate for timely payment allowed by the Appellant to Distribution licensees: We do not find any infirmity in the order of the State Commission in not permitting the amount of rebate for timely payment allowed by the Appellant to the Distribution Licensees in the tariff of the Appellant".

The issue has already been addressed in Judgment in Appeal No. 166 of 2012 as follows:

"46. Summary of our findings

(i) ....

(ii) ....

(iii) ***Rebate allowed to distribution licensees.***

The Appellant is not entitled to claim the amount of rebate given to the Distribution Licensees for prompt payment for inclusion in its ARR and transmission tariff.

In view of the above, the Respondent Commission does not find any merit in the contention of the Appellant and the same deserve to be rejected out rightly".

39.4 The views of the Commission regarding Rebate on Transmission/Wheeling of Power, the Commission in the Tariff Order for FY 2011-12 had clarified its approach adopted in the MYT Order for FY 2007-08 to FY 2011-12 as under:

"The Commission acknowledges the rebate given to the DISCOMS is a commercial arrangement, and cannot be passed through in tariffs. Hence, no rebate has been allowed for the Control Period".

39.5 Thus, in our opinion, the State Commission has correctly followed procedure and accordingly this issue is decided against the Appellant/Petitioner.

40. **Issue No. 6: Whether the State Commission has rightly considered the changes in the working capital from those approved on normative basis in the earlier Order passed by the State Commission?**

The following are the grievances of the Appellant in this Appeal:

40.1 that the State Commission has wrongly considered the Change in Working capital for FY 2007-08 instead of complete working capital for first year (FY 2007-08) of Control period i.e. FY 2007-08 to FY 2011-12, against what

was approved by State Commission itself in the Order dated 26.08.2011 (ARR and Tariff Order for 2011-12). The relevant extract of the Tariff Order dated 26.08.2011 is as under :-

> "***In the MYT Order, the Commission had considered change in Working Capital for calculation of RRB, the Petitioner has considered complete WC for the first year for calculation of RRB. Since FY 2007-08 was the first year for calculation of RoCE, the Commission's calculation was indeed erroneous and RRB should be calculated for the year considering the total working capital and not just change in working capital.***"

40.2 In the impugned order, the State Commission has changed this methodology without giving any reasons for the same.

41. **Per Contra,** the following are the submission of the Counsel on behalf of Respondent No. 1:

41.1 that the Commission has considered the submission of Appellant regarding working capital for the first year of the control period FY 2007-08 should be considered under computation of RRB. The impact of working capital for FY 2007-08 will be given in subsequent Tariff Orders.

42. **Our Consideration and Conclusion on this issue**

42.1 During the hearing, the Counsel of the Respondent Commission submitted that the Appellant's contention will be considered by the Commission and accordingly the issue is remanded back to the State Commission to consider the issue.

43. **Issue No. 7: Whether the State Commission was justified in directing the Appellant to refund the Income Tax paid**

by the distribution companies even before deciding the issue on the petition filed by a distribution company pending before the State Commission?

The following are the grievances of the Appellant in this Appeal:

43.1 that the State Commission erred in directing the refund of income tax by the Appellant to the Distribution Companies when a petition filed by one of the Distribution Licensees on the aspect of income tax is pending before the State Commission which is yet to be heard. The State Commission without hearing the petition and the submissions of the Appellant has directed the refund of the income tax to the Distribution Companies.

43.2 that the State Commission erred in holding that the amount of income tax paid by the Appellant during the concerned period 2007-08 to 2011-12 shall be restricted to the amount of income tax only equal to the return on equity. Therefore as shown in Table 30, a sum of Rs.195.84 crores is required to be returned to the distribution companies by the Appellant towards income tax.

43.3 that the State Commission has failed to appreciate that amount of income tax claimed by the Appellant from distribution companies during the control period was based on actual tax liability borne and paid by the Appellant strictly as per the provisions of Income Tax Act, 1961. As per the provision of Income Tax Act as applicable to the Appellant, the Appellant is required to deposit minimum

alternate tax (MAT). As per the provisions of section 115JB of the Income Tax Act, 1961, the credit of MAT so paid shall be available against the income tax liability as may be arising to the Appellant under the normal income tax provisions within the succeeding ten financial years which will also be passed on to Distribution Utilities.

43.4 that the said amount of income tax has been paid by the Appellant lawfully and strictly as per the provisions of the Income Tax Act. The tax paid needs to be allowed as a pass through in the tariff to enable the Appellant to discharge the burden as the Appellant has no other means to pay the tax.

44. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

44.1 that the decision of the Commission is based on the following principles:

In accordance with the Regulation 5.25 of Tariff Regulations, 2007 the Commission has asked the Appellant to refund the excess income tax claimed from the Distribution Companies for FY 2007-08 to FY 2011-12. The provisions of income tax of the tariff regulations is reproduced below:

"5.23 Income Tax, if any, on the Licensed Business of the Transmission Licensee shall be treated as expense and shall be recoverable from its beneficiaries. However, tax on any income other than that through its Licensed Business shall not be a pass through, and it shall be payable by the Transmission Licensee itself.

5.24 The income tax actually payable or paid shall be included in the Tariff computation. The actual assessment of income tax should take into account

benefits of tax holiday, and the credit for carry forward losses applicable as per the provisions of the Income Tax Act 1961 shall be passed on to the Beneficiaries.

5.25 Tax on income, if any, liable to be paid shall be limited to tax on return on the equity component of capital employed. However, any tax liability on incentives due to improved performance shall not be considered". (Emphasis added)

44.2 that as per the provisions of Tariff Regulations the tax is to be limited to tax to be allowed on return on equity. Accordingly, the Commission has approved the income tax in accordance with the tariff regulations.

44.3 that further, it is submitted that there is a significant difference in the amount claimed by the Appellant and the income tax worked out on the basis of ROE. Further, it may also be observed that that Appellant in FY 2011-12 has claimed Rs. 201.14 crores as against Rs. 23.51 crores computed by the Commission.

44.4 that it is further submitted that if the tax assessed/paid in any financial year is higher than the tax allowed due to the reason that the higher tax is on account of any arrears of income tax pertaining to the past years, the utility may claim this in the ARR for the relevant year subject to producing documentary evidence establishing the claim towards arrears.

45. **Our Consideration and Conclusion on this issue**

45.1 The contention of the Petitioner/Appellant is that the Appellant has claimed Rs. 201.14 crore as against Rs. 23.51 crore computed by the Commission as there is a significant difference in the amount claimed by the Appellant and the income tax worked out by Commission on the basis of ROE.

45.2. Let us examine the relevant regulation pertaining to corporate income tax as per the Transmission Tariff Regulations, 2007 which is as under:

"5.23 Income Tax, if any, on the Licensed Business of the Transmission Licensee shall be treated as expense and shall be recoverable from its beneficiaries. However, tax on any income other than that through its Licensed Business shall not be a pass through, and it shall be payable by the Transmission Licensee itself.

"5.24 The income tax actually payable or paid shall be included in the Tariff computation. The actual assessment of income tax should take into account benefits of tax holiday, and the credit for carry forward losses applicable as per the provisions of the Income Tax Act 1961 shall be passed on to the Beneficiaries.

"5.25 Tax on income, if any, liable to be paid shall be limited to tax on return on the equity component of capital employed. However, any tax liability on incentives due to improved performance shall not be considered".

45.3 The Counsel of the Appellant has submitted in their written submission that the aspect of income tax is pending before the State Commission which is yet to be heard.

45.4 In our opinion, the Commission has to consider the income tax actually paid by the Appellant with due verification and the same has to be included in the Tariff computation and shall be passed on to the beneficiaries. Further, tax on any income other than that through its licensed business shall not be passed through, and it shall be payable by the Transmission Licensee itself. Accordingly, the issue is decided in favour of the Appellant and the issue is remanded back to consider the Income Tax amount paid with due verification and prudence check.

46. **Issue No. 8: Whether the State Commission is right in considering as non-tariff income by including the interest on UI charges etc. rebate received from the generating companies and LPSC on transmission licensees?**

The following are the grievances of the Appellant in this issue:

46.1 that the State Commission has failed to appreciate that the non-tariff income, by including the Rebate received on Power purchase, LPSC on wheeling charges and income from interest on UI etc has been overstated and is not correct.

46.2 that the State Commission has made the recovery from the approved ARR on account of non tariff income which include interest on UI amounting to Rs.32.05 crores, rebate on power purchase amounting to approximately Rs. 4.5 crores and LPSC on wheeling charges amounting to Rs. 6.80

crores. The State Commission has not appreciated that the interest of UI and rebate on power purchase relate to the cost on power purchase made by the Appellant up to 31st March, 2007 and should not be considered in any way, by way of reduction in the Revenue Requirements of transmission business.

46.3 that the State Commission erred considering the interest on late payment of UI charges to the Appellant ignoring the simple fact that the Appellant had already been deprived of the amount payable in time and the interest paid is to compensate such loss. The inclusion of interest income as non tariff income would result in double jeopardy and penalty on the Appellant.

46.4 that the approach of the State Commission is totally inconsistent. On the one hand, the State Commission is treating the rebate given by the Appellant to the Distribution Companies as a commercial arrangement and not giving effect to the same in the tariff. However, on the other hand, the State Commission is taking into account the rebate on wheeling and transmission charges received by the Appellant as a non-tariff income and passing it on in the ARR.

47. **The following are the submissions made by the Counsel of the Respondent No. 1:**

47.1 that the Appellant has claimed interest on UI and rebate on power purchase cost related to cost of power purchase made

by the Appellant up to 31.03.2007 and should not be considered in non-tariff income in ARR of the transmission business. It is pertinent to state that the Appellant was managing the power procurement on behalf of the distribution licensees in Delhi up to 31.03.2007 under bulk supply tariff. The total power purchase cost incurred by the Appellant was recovered from the distribution licensee as per the rates of bulk supply tariff. Therefore, any interest/rebate received on account of power purchase during that period should also be transferred to the distribution licensee. Accordingly, the Commission has considered interest on UI and rebate on power purchase under the non-tariff income of the Appellant to pass on the benefit of reduced power purchase cost up to 31.03.2007 to Distribution Licensee.

48. **Our Consideration and Conclusion on this issue**

48.1 The relevant regulation dealing with Non-Tariff Income in the Transmission Tariff Regulations, 2007 is reproduced below:

"5.27 All incomes being incidental to electricity business and derived by the Licensee from sources, including but not limited to profit derived from disposal of assets, rents, delayed payment surcharge, miscellaneous receipts from the Beneficiaries and income to Licensed business from the Other Business of the Transmission Licensee shall constitute Non-Tariff Income of the Licensee.

5.28 The amount received by the Licensee on account of Non-Tariff Income shall be deducted from the aggregate revenue requirement in calculating the net revenue requirement of such Licensee".

48.2 The views of the Commission pertaining to Non-Tariff Income is reproduced below:

"Accordingly, the Commission has considered the Non-Tariff Income as per Audited Accounts for FY 2007-08 to FY 2011-12. The interest income from investments as mentioned in the Audited Accounts has not been considered as Commission has not allowed the additional loan while approving the capitalization and thus considering interest earned from the same will not be appropriate. The Commission has not considered the Incentive received from Discoms on transmission availability as part of Non-Tariff Income. As regard Miscellaneous receipts the Commission observed that there is a significant difference in the amounts submitted by the Petitioner in its additional submission and in the Audited Accounts. In this regard, the Commission asked Petitioner to submit the break-up of Miscellaneous receipts amount as mentioned in the Audited Accounts. However the Petitioner submitted the break-up of miscellaneous receipt. Of Rs. 0.45 crores, Rs. 4.85 crores and Rs. 1.24 crores as against the total amount mentioned as Rs. 8.21 crore, Rs. 10.55 crore and Rs. 5.09 crore in Audited Accounts for FY 2007-08, FY 2008-09 and FY 2009-10, respectively. Accordingly, the Commission has considered Miscellaneous receipts amounts as per the Audited Accounts".

48.3 In our opinion, the State Commission is right in ordering disallowance with respect to Interest on late payment UI charges of Rs. 32.05 crore, rebate of Rs. 4.5 crore on power purchase made by the Appellant up to 31st March 2007 and LPSC on wheeling charges amounting to Rs. 6.80 crores.

We feel that timely payment of UI charges is the responsibility of the Transmission Licensee, due to delay in payment of UI charges, the Transmission Licensee has to bear the cost of interest charges. The Transmission Licensee purchased bulk power up to March 2007 on behalf of the Distribution companies and Appellant is passing the cost of power purchase to the beneficiaries and accordingly, if any rebate is received by way of purchase of bulk power, the same has to be passed on to the beneficiaries, similarly the Commission has not considered LPSC on wheeling & transmission charges for the FY 2007-08 to 2011-12 which is to be in the account of Transmission Licensee only.

Thus, the action of the Commission in disallowing the above expenditure met by the Appellant is legally correct and the Commission has considered all other submissions pertaining to non-tariff income by the Appellant. We do not find any infirmity in the decision of the State Commission in determining the non-tariff income. Accordingly, this issue is decided against the Appellant.

49. **Issue No. 9: Whether the State Commission has committed any error in implementation of this Tribunal's Judgment in Appeal No. 133 of 2007 and 28 of 2008 on the issue of DVB Arrears**

The following are the grievances of the Appellant in this Appeal:

49.1 that the State Commission in the impugned order, has purported to allow the impact of DVB arrears, the State Commission has done several financial juggleries to understate the revenue requirements and tariff of the

Appellant. The State Commission has committed the following errors.

i) The Appellant had claimed an additional liability of Rs. 637.66 Cr towards DVB arrears along with carrying cost (Total Rs. 1040.85 crore) in True-up petition.

ii) Further, treatment of surplus of Rs. 196.17 Cr which the State Commission had wrongly found in the Order dated 20.12.2007 along with the negative carrying cost computed in the Tariff Order dated 26.8.2011 due to non-implementation of the past DVB arrears issue had to be reversed.

iii) Since the surplus was only appearing on account of the incorrect treatment of DVB Arrears, the same had to be revered with carrying cost i.e. total of Rs. 357.51 crore was to be re-adjusted.

iv) The State Commission has calculated the Readjustment of Surplus to be Rs. 349.28 crore instead of Rs. 357.51 Crore by taking carrying cost @ 9.92 % for FY 2009-10 & 10.50 % for FY 2010-11. As against this, the State Commission had deducted the surplus in the order dated 26.8.2011 by taking carrying cost @ 11.5%.

v) The State Commission has considered the carrying cost @ 9.92 % for FY 2009-10 & 10.50 % for FY 2010-11 for calculating impact of DVB arrears instead of 11.5% submitted by the Appellant.

50. **Per Contra,** the following are the submissions of the Counsel of the Respondent No. 1:

50.1 that the Commission in the impugned Order has clearly allowed the carrying cost on the readjustment of surplus approved for the amount pertaining to FY 2006-07 to FY 2011-12.

50.2 that the carrying cost allowed on surplus approved and the treatment of DVB arrears is same for FY 2009-10 & FY 2010-11. It has been erroneously mentioned in Para 3.106 as "The Commission allows the with the carrying cost of 11.50% from FY 2007-08 to FY 2011-12 as given in the table below" instead the Commission has actually allowed carrying cost at 9.92% and 10.50% respectively for FY 09-10 & FY 10-11.

50.3 that the Appellant in its Appeal has contended that the carrying cost should be allowed @ 11.50 % for FY 2006-07 to FY 2011-12.

50.4 that the Commission has computed the carrying cost on the basis of the actual cost of long term debt for FY 2007-08 to FY 2011-12 as submitted by the Appellant in Table No. 10 of the petition dated 28.12.2012 for True-up for First MYT Period (FY 07-08 to FY 11-12), accordingly, the Commission has considered the interest rate of long term debt as submitted by the Appellant for computation of carrying cost FY 2007-08 to FY 2011-12.

51. **Our Consideration and Conclusion on this issue**

51.1 We have gone through the impugned order dated 31.07.2013 and observed that the State Commission implemented the order of the Appellate Tribunal with respect to DVB arrears as per this Tribunal's order dated 27.02.2013 in Appeal No. 184 of 2011 duly adjusting the surplus of 196.17 crore for FY 2007-08 to 2010-11 and also

the State Commission allowed the impact of DVB arrears, the amount 673.43 crore from FY 2007-08 to FY 2011-12.

51.2 The Appellant contested that the State Commission for the FY 2009-10 and 2010-11 , the carrying cost considered by the State Commission as 9.92% and 10.50% as against 11.5% from FY 2007-08 to FY 2011-12.

51.3 The State Commission in the impugned order in the Para 3.106, stated that it has allowed a carrying cost of 11.5% from FY 2007-08 to FY 2011-12 whereas in the computation Table 41, the percentage of carrying cost is specified as 9.92% for FY 2009-10 and 10.50% for FY 2010-11, respectively. The State Commission in the impugned order stated as under:

The Commission has considered the carrying cost on account of the revision of the ARR from FY 2007-08 to FY 2011-12 and computed the carrying cost at the interest rate submitted by the Petitioner for computation of ROCE. The total amount on account of revision and provisional true-up of ARR from FY 2007-08 to FY 2011-12 including the carrying cost and impact of ATE Judgments is given in the table below:

Table 43: Impact of Revision and provisional True-up of ARR for FY 2007-08 to FY 2011-12 including carrying cost and Impact of ATE Judgments (Rs. Crore)

Particulars	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**
Additional Amount Allowed on account of Revision in ARR from FY 2007-08 to FY 2010-11 including carrying cost					
Opening Gap/(Surplus)	0.00	(21.12)	(63.66)	(202.92)	(466.10)
Additional during the Year (Refer Table 38)	(19.97)	(37.93)	(126.67)	(229.80)	(301.23)
Rate of Interest (%)	11.50%	11.50%	9.92%	10.50%	11.50%
Carrying Cost	(1.15)	(4.61)	(12.60)	(33.37)	(70.92)
Closing Gap/(Surplus) of provisional True of past years	**(21.12)**	**(63.66)**	**(202.92)**	**(466.10)**	**(838.25)**
Impact of ATE Judgment: Additional amount to be allowed considering surplus of FY 2006-07 (Refer Table 41)					349.28

Impact of ATE Judgment: DVB Arrears (Refer Table 42)	1016.90
Total Impact of ATE Judgments	**1366.18**

51.4 Further, we observe that the State Commission has allowed the carrying cost on the basis of the actual rate of long term debt for FY 2007-08 to FY 2011-12 as submitted by the Appellant in Table 10 of the Petition dated 28.12.2012. Further, the State Commission candidly stated in para 3.106 that by mistake it mentioned as 11.5% rate towards carrying cost. The Commission has rightly considered the carrying cost rate of long-term debt.

51.5 Accordingly, the Commission has considered 9.92% and 10.50% for the FY 2009-10 and FY 2010-11.

51.6 We do not find any infirmity in the decision of the State Commission in adjustment of DVB arrears and also consideration of carrying cost for the FY 2007-08 to FY 2011-12. Thus, this issue is decided against the Appellant.

52. **Issue No. 10: Whether, the State Commission has erred in considering the various claims of the Appellant while determining the ARR and Tariff for FY 2013-14?**

The following are the grievances of the Appellant in this Appeal, issue wise:

52.1 **<u>Base Year</u>**

i) The State Commission has not considered the base year as 2011-12 for calculation of Employee expenses & A&G expenses for 2012-13 & 2013-14. In the earlier Order dated 13.7.2012 the State Commission had itself considered the base year as 2010-11 as audited accounts of the Appellant for FY 2011-12 was not available till then.

ii) However, audited account for FY 2011-12 are now available, hence, 2011-12 should be considered as base year as prayed for by the Appellant before the State Commission. Due to the above, the employee's expenses have got reduced by Rs.26.08 crore and the A & G expenses by Rs 7.95 crore. There is no logic or rationale in not taking the base year as 2011-12 when the ARR is being determined for 2013-14.

52.2 **Additional Expenses**

i) The State Commission has not considered additional expenses of Rs.7.58 crore and Rs 1.44 Crore on account of employees' expenses and administrative and general expenses respectively claimed by the Appellant towards additional manpower due to addition of New Substations, lines in the Transmission network.

53. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

53.1 that the State Commission has considered the base year as 2010-11 due to unavailability of the audited financial statement for FY 2011-12. The base year has been decided in the MYT Order dated 13.07.2012. The Appellant has not challenged the base year in Appeal against the MYT order dated 13.07.2012 being Appeal No. 166 of 2012. Therefore, this issue has already attained finality and hence there is no merit in the Appellant's contentions in this regard and the same deserved to be rejected outright.

53.2 that the State Commission has not correctly considered Additional Expenses of Rs. 6.68 crore for FY 2012-13, Rs. 7.58 crore for FY 2013-14 towards Employee Cost and Rs. 1.27 crore for 2012-13 and Rs. 1.44 crore in FY 2013-14 towards A&G expenses claimed by the Appellant towards additional manpower due to addition of new substations and lines in the transmission network

53.3 that in accordance with the Terms and Conditions for Determination of Transmission Tariff Regulation, 2011, A&G and employee expenses for the control period have been determined after escalating the base year expenses determined after prudence check of the actual expenses. Accordingly, the Commission has approved the A&G expenses as per the tariff regulation in MYT order dated 13.07.2012.

53.4 that the Appellant has not challenged the same issue in Appeal No. 166 of 2012 against Tariff Order dated 13.07.2012 in which A&G expenses had been determined by the Commission for the control period FY 2012-13 to FY 2014-15. Therefore, this issue has already attained finality.

54. **Our Consideration and Conclusion on this Issue**

54.1 According to Transmission Tariff Regulations of DERC 2011, the definition of base year is quoted below:

<u>"Base Year"</u> means the financial year immediately preceding first year of the control period.

<u>"Control Period"</u> means a multi-year period fixed by the Commission from 1st April 2012 and up to 31st March 2015.

"Baseline Values" (Operating and Cost parameters) for the Control Period shall be determined by the Commission and based on the approved values by the Commission in the past, latest audited accounts, estimate of the actual for the relevant year, prudence check and other factors considered appropriate by the Commission.

The Commission shall normally not revisit the performance targets.

54.2 It is true that as per the Transmission Tariff Regulations, 2011, the base year for the control period FY 2012-13 to FY 2014-15 is 2011-12 instead as considered by the Commission as 2010-11. The State Commission due to non-availability of audited accounts, past data etc., for the FY 2011-12, is bound to consider the financial figures of 2010-11 in arriving employees' expenses, A&G expenses etc. as per the audited figures of the FY 2010-11 and hence considered 2010-11 as base line year in place of 2011-12.

54.3 We direct the State Commission to consider the baseline year 2011-12 as per the Regulations after receiving the audited accounts and after prudence check and compute the employees' expenses and A&G expenses, accordingly.

54.4 The Commission is directed to work out the employees' expenses and A&G expenses duly considering the base year as 2011-12 as per Tariff Regulations, 2011 after receipt of the Audited accounts and prudence check, though the issue was not challenged in Appeal No. 166 of 2012. The Commission has to follow its own Regulation and if any data is required from the Appellant, the Commission can direct the Appellant to furnish the audited accounts to decide the

issue instead of simply deciding that the issue has attained finality.

55. **Efficiency Factor of O & M Expenses**

The following are the submissions made by the Counsel of the Appellant:

55.1 that the State Commission has considered the efficiency factor @ 3% on O&M expenses for FY 2013-14 despite detailed justification given by the Appellant to restrict it to 1%. The Appellant reiterates the grounds contained hereinabove in regard to the tariff years 2007-08 to 2011-12.

55.2 that the State Commission ahs wrongly recorded that several opportunities were given to the Appellant to justify the 1 %. The State Commission has ignored the petition and the additional submissions filed by the Appellant before the State Commission on this issue.

56. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

56.1 that the Appellant has stated in the Appeal that the State Commission has considered the efficiency factor at 3% on O&M expenses for FY 2013-14 despite detailed justification given by the Appellant to restrict it to 1%.

56.2 that the Appellant has not challenged the said issue in Appeal No. 166 of 2012 against Tariff Order dated 13.07.2012 wherein the efficiency factor has not been approved. Therefore, this issue has already attained finality.

57. **Our Consideration and Conclusion on this issue**

57.1 After going through the submissions, we have noticed that the Appellant was given number of opportunities to justify for the claim of 1% efficiency factor of O&M expenses but the Appellant failed to submit the relevant information and justification for claiming 1% efficiency factor of O&M expenses.

57.2 In view of the above, we do not find any infirmity in the decision of the State Commission to consider efficiency factor as 3% in the impugned order. Accordingly, this is decided against the Appellant.

58. **Direction to pay Rs. 400 crores to the Pension Trust out of Rs. 500 crores - REF: Pages 707 to 709, Volume III**

The following are the submissions made by the Counsel of the Appellant:

58.1 that the approach of the State Commission in directing the Appellant to pay Rs 400 crores to the Pension Trust without considering the financial implications and that such directions will bring the operations of the Appellant to a complete halt.

58.2 that out of the total ARR of Rs.593.22 crores, the State Commission has decided arbitrarily that only Rs. 500 crores would be recovered in the year 2013 - 14 and directed that out of the same, Rs. 400 crores should be paid to the Pension Trust. The recovery of Rs. 400 crores should not be made from the impugned surplus of Rs. 1035.42 crores

determined by State Commission and should have been recovered from the distribution utilities directly.

58.3 that Rs 400 crores have been directed to be paid to the Pension trust which funds the retirement liabilities of all the employees retired from Delhi Vidyut Board and Successor Entities of DVB and not only the Appellant. Therefore, it is extremely unfair that the Appellant has been asked to pay the amount of Rs. 400 crores out of its ARR even though the pension is paid to all the employees retired from Delhi Vidyut Board and Successor Entities of DVB. It is reiterated that the recovery of Rs. 400 crores should not be made from the fictional surplus of Rs. 1035.42 crores determined by State Commission and should additionally be provided for by the State Commission in the respective Tariff Orders of the utilities.

58.4 that the Appellant cannot be expected to fund all its operations for the year 2013-14 with less than Rs. 100 crore. The Appellant is in a precarious financial situation as it cannot depend on additional loan for the revenue gap with the continuous outstanding dues of the Distribution Companies amounting to more than Rs. 1200 crores as on date approximately.

59. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 1:

59.1 that regarding this issue, the Commission has observed as follows in the impugned order.

"In view of the above, the Petitioner may raise the bills for Annual Transmission Charges for each year of the Control Period on the basis of the ARR approved by the Commission for the respective year, as provided in the table below:

Table: Approved ARR for FY 2013-14 (Rs. Crore)

Sl No.	Particulars	FY 2013-14
1.	Net ARR for Transmission Business	**593.22**
2.	Impact of provisional True-up including carrying cost	**(1035.42)**
3.	Payment to Pension Trust	**400.00**
4.	**Payment to Public Grievance Cell for meter testing and consumer advocacy**	**0.70**
5.	**Sub-Total (1+2+3+4)**	**(41.50)**
6.	**ARR allowed for FY 2013-14 including impact of partial past DVB Arrears**	**500.00**
7.	**Total impact of past Arrears**	**1687.52**
8.	**Balance past DVB Arrears (7-(6+7))**	**1146.02**

59.2 The Commission is of the view that passing through the impact of past DVB arrears in a single year will lead to significant increase in tariff. In this regard, the Commission has decided to approve the ARR for FY 2013-14 at Rs. 500 crore including Rs. 542.20 crore towards impact of DVB arrears and the balance remaining amount of Rs. 1146.02 crore will be recovered through amortization of revenue gap in subsequent years. Thus the Commission approves the ARR of Rs. 500 crore for FY 2013-14.

60. **Our Consideration and Conclusion on this issue**

60.1 As seen from the impugned order regarding payment to pension trust, the Commission's analysis is reproduced below:

Payment to Pension Trust

Commission's Analysis

3.147: The Govt. of NCT of Delhi (GoNCTD) vide its letter No.F.11(33)/2013-14/1750 dated July 18, 2013 has forwarded the request of the DVB Pension Trusts for providing funds in the Petitioner's ARR for FY 2013-14. Copy of the letter is attached as Annexure-VII. The above letter of the GoNCTD states as follows:-

"Power Dept. GNCTD is in receipt of a request from DVBETBF-2002 (Pension Trust), the contents of which are reproduced below:-

A representation was filed by DVB Pension Trust on 1st March, 2013before the Hon'ble Commission for adhoc funding required for the purpose of releasing the payments of retirement benefits to the DVB pensioners during the financial year 2013-14 based on the projected payments and considering the fact that the Trust was left with no funds.

2. ***The Trust sought provision of funds in the Tariff Order to the extent of Rs. 440 crores for the financial year 2013-14 on adhoc basis.***

3. ***It is submitted that similar representations were also filed by Pension Trust for the financial years 2011-12 & 2012-13 and sums of Rs. 150 crores & Rs. 160 crores respectively were provided on adhoc basis by Hon'ble Commission to be recovered from distribution utilities.***

4. ***These adhoc funds are to be adjusted with the total liabilities of the Pension Trust as may be determined on the basis of actuarial valuation.***

5. ***The aforesaid representation was submitted in response to the tariff petitions filed by the distribution Utilities, DTL and IPGCL for the True-up of 2007-12 and tariff for 2013-14 considering the statutory position contained in Transfer***

Scheme Rules read with Tripartite Agreements as per which the successor utilities are required to pay their contributions to Pension Trust. As per the provisions of Trust Deed, the said contributions are to be paid by way of monthly contributions and balance contributions on the basis of actuarial valuation for each year. However due to disputes raised by Discoms on the amount of initial funding provided by GNCTD as provided under rule 6(9) of Transfer Scheme Rules, 2011 the actuarial valuation after the date of unbundling (transfer) could not be done by Pension Trust and therefore the demands based on the said valuation could not be raised against the successor Utilities including Discoms.

6. *As a result of the continuing defaults by Discoms on account of the initial under-funding issue, Trust had to make payments of monthly pension and other regular claims of the pensioners out of the adhoc funds provided by the Commission in the Tariff Orders of 2011-12 and 2012-13 amounting to Rs. 150 and Rs. 160 crores respectively and the available funds at that time.*

7. *However for finding a permanent solution to the funding issue the Trust and DISCOMS are in discussion towards transferring the management of funds of Pension Trust to LIC of India. Both parties are in broad agreement on the modalities but certain technical, legal and financial issues have to be sorted out which will take some time.*

8. *Therefore pending the same, a representation has again been filed by Pension Trust before the Hon'ble Commission for the financial year 2013-14 for a sum of Rs. 440 crores based on the projected payments to be made towards regular pension and other retirement benefits of the DVB pensioners during the financial year 2013-14. It is submitted that the demand of funding for 2013-14 amounting to Rs. 440 crores can be met by*

monthly contributions from each of the above stated utilities in the proportion of the employees transferred to the successor utilities as on 1.7.2002 (date of unbundling of DVB) which works out as under or in any other manner as the Hon'ble Commission deems fit.

It is submitted that based on the above proportion, the monthly contributions at maximum works out to Rs. 12 crores from one utility.

It is noteworthy to mention that Pension Trust has completely run out of funds at this moment and not in a position to pay next month's pensions also. Urgent intervention of the Commission is accordingly requested for including the proposed monthly contributions in the Tariff Order for 2013-14 of the respective utilities till such time a permanent solution to the issue is reached by handing over the management of funds to LIC of India. It is also submitted that in a recent meeting held under the chairmanship of Principal Secretary (Power), GNCTD on the subject, all utilities had agreed to monthly payment mechanism provided the same is included in DERC's Tariff Order.

It is requested that the above request of the DVB ETBF-2002 may be acceded to."

60.2 In view of the request of GONCTD, the Commission has decided to allow a lump-sum provision of Rs. 400 crore as the Commission is of the view that pension trust should manage its funds in a more appropriate manner and also to ensure optimum utilization of funds.

60.3 In our opinion, after going through the submission of the Commission in the Impugned Order, the Commission's

decision to contribute pension fund a lump-sum amount of Rs. 400 crore in the ARR is justifiable.

Further, this Tribunal also feels that the parties to the discussion for transfer of management of funds of pension trust to LIC of India should work out the modalities and should sort out the technical, legal and financial issues involved in such a transfer at the earliest, to avoid adhoc provision of this nature.

Non-consideration of revenue requirement and tariff for the year 2012-13

The following are the grievances of the Appellant in this Appeal:

60.4 that the State Commission has erred in not dealing with the revenue requirements and tariff for the financial year 2012-13 despite the Appellant having filed the petition for determination of such revenue requirements for the financial year 2012-13 along with the revenue requirements for the financial year 2013-14 and the Appellant had claimed the revenue requirements of Rs 664.93 crore. The Appellant's claim for adjustment of the tariff to cover the above revenue requirements has to be admitted by the State Commission and was required to be considered and decided.

60.5 that the State Commission has failed to appreciate that the Appellant had filed a detailed calculation of various elements of revenue requirements admissible to the Appellant for the financial year 2012-13 and had specifically given in Table 63 of the petition filed before the State

Commission that the Appellant will have an impact of Rs 79.25 crore as the difference between the approved and the revised annual revenue requirements. The Appellant's claim has not been considered at all by the State Commission.

60.6 that the Appellant is in a precarious financial position due to the non-payment of the bills of the Appellant by the Distribution Companies - Respondents 2 & 3 from October 2010 onwards. The total amount due to the Appellant from the Respondents 2 & 3 is Rs. 1250 crores (approximately). The Appellant cannot be expected to function at all with such low and arbitrary tariff on one hand and the huge unpaid amounts from the Respondents 2 & 3 on the other hand.

61. **Per Contra,** the following are the submissions made by Counsel of the Respondent No. 1:

61.1 that as regards the ARR for FY 2012-13, the Commission has approved the ARR for FY 2012-13 to FY 2014-15 in the MYT order which was notified by the Commission in July 13, 2012. Thus, the Commission did not find any merit to revise the ARR for FY 2012-13 without taking into consideration the Audited Accounts.

62. **Our consideration and Conclusion on this issue**

62.1 In our opinion, the State Commission has approved the ARR for FY 2012-13 to 2014-15 in the MYT duly considering all the factors. Due to shortfall in submission of Appellant such as latest audited accounts, etc, the Commission has

considered the latest available past data and audited Accounts. Further, the Commission appointed a Consultant for verification of Assets Capitalized etc. Thus, we do not find any irregularity committed by the Commission. Accordingly, we affirm the order of the Commission.

ORDER

62.2 The instant Appeal No. 255 of 2013 captioned as Delhi Transco Limited vs. Delhi Electricity Regulatory Commission & Ors. is hereby partly allowed to the extent indicated above. The Commission is directed to decide the remanded issues expeditiously.

There shall be no order as to cost.

Pronounced in the open court on this **1st day of February, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated, 1st February, 2016.

REPORTABLE / ~~NON-REPORTABLE~~