# Before the Appellate Tribunal for Electricity
## (Appellate Jurisdiction)

## Appeal No. 115 of 2012

**Dated: 8th May, 2013**

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

**In the matter of:**

**Bihar State Electricity Board** ....Appellant(s)
**Vidyut Bhawan, Bailey Road**
**Patna – 800 001**
**Bihar**

**Vs**

1. **Bihar Electricity Regulatory Commission** ...Respondent(s)
   **Ground Floor, Vidyut Bhawan,**
   **Jawahar Lal Nehru Marg,**
   **Patna – 800 001, Bihar**

2. **Bihar Industries Association**
   **Industry House, Sinha Library Road**
   **Patna – 800 001, Bihar**

3. **Bihar Steel Manufacturers Association**
   **307, Ashina Tower, Exhibition Road**
   **Patna – 800 001, Bihar**

**4. Dina Iron & Steel Ltd.**
**Abdul Rahmanpur Road**
**Didarganj, Patna – 800 001**
**Bihar**

**Counsel for the Appellant (s):** **Mr. Mohit Kumar Shah**
**Ms. Shilpi Shah**

**Counsel for the Respondents (s):** **Mr. Suraj Sandarshi**
**Mr. Anand K. Ganesan and**
**Ms. Swapna Seshadri for**
**R-2 to R-4**
**Mr. Nand Sharma (Rep. for R-1)**

## JUDGMENT

## HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by the Bihar State Electricity Board against the order dated 27.01.2012 passed by the State Commission regarding True Up for the FY 2009-10.

2. Bihar Electricity Regulatory Commission ("State Commission") is the Respondent no.1. The Respondent

nos. 2 to 4 are the Industries' Associations and consumers.

3. The Bihar State Electricity Board ("Electricity Board") filed True Up petition for FY 2009-10 in terms of the Tariff Regulations on 13.10.2011 before the State Commission. The State Commission after holding public hearing passed the impugned True Up order dated 27.1.2012 allowing revenue gap of Rs. 232.28 crores for the FY 2009-10 and Rs. 42.39 crores as carrying cost. Aggrieved by the disallowance of certain expenditures, the Electricity Board has filed the present Appeal.

4. The Electricity Board is aggrieved by the following:

4.1. **Interest on General Provident Fund and Group Saving Scheme:**

The State Commission has erroneously approved only a sum of Rs. 560.26 crores for the FY 2009-10 towards Employees Expenses as against the actual expenditure of Rs.729.95 crores incurred by the Board as per the audited accounts. The State Commission has disapproved the payment made for unfunded liabilities to the extent of Rs. 126.96 crores towards staff related liabilities and provisions as indicated in schedule 28 of the Annual Accounts and Rs. 42.72 crores for interest on GSS, GPF and staff deposits as indicated in schedule 12 of the Annual Accounts. The Electricity Board prepares its annual accounts on mercantile basis, as such the revenue accounts showing employees cost only consist of the expenditure due during the current year and therefore the amount of terminal benefits/retiral dues payable to the retired employees is not treated as expenditure of the current year rather the system is to make payment of the same out of the provision already made in books of accounts for pension, gratuity and leave encashment. However, in view of the sever financial crunch, the Electricity Board has not been maintaining separate funds for retiral dues against provisions made in the annual accounts hence, it has been a practice in the Electricity Board to meet such unfunded liability out of revenue realization from sale of energy during the period in which the incidence of payment of such liabilities lies. In fact the State Commission had allowed such unfunded liability in its tariff orders dated 29.11.2006 and 26.08.2008.

4.2. **Own Generation:**

The State Commission for FY 2009-10 has approved and total fuel cost of Rs. 62.76 crores as compared to Rs. 66.66 crores filed by the Electricity Board in the True Up petition. During FY 2009-10 only unit VI of

BTPS was under operation even though its Renovation and Modernisation was due since the year 2007. As Unit VII at BTPS was under Renovation and Modernisation during FY 2009-10, the Electricity Board was compelled to operate unit VI even though its Renovation and Modernisation was due, in view of power shortage in the State. The State Commission has disallowed actual Station Heat Rate and Specific Oil Consumption without considering that it was difficult to maintain and control the operational parameters for an old unit which had outlived its economic life, and maintaining the parameters was beyond the control of the Electricity Board.

4.3. **Interest and Finances charges:**

The State Commission has approved a sum of Rs. 54.26 crores as against the actual interest and finance charges of Rs. 201.2 crores incurred by the Electricity

Board as per its Audited Annual Accounts. The State Commission has discarded the entire data which is based on Audited Annual Accounts and has involved its own methodology without specifying the deficiency in the data. The method used by the State Commission is not a method recognized by the Tariff Regulations and hence the same could not be used for the purpose of calculation of interest and financial charges. The State Commission has relied on the Regulation of the Central Commission which is impermissible in as much as the Commission cannot deviate from its own Regulations. The State Commission has wrongly considered that the repayment of loan for the year under consideration equal to the depreciation allowed for that particular year. The State Commission has failed to consider that from 1993 to 2006, there was no tariff revision and therefore, there was no cash surplus available to the Electricity Board for repayment of loan.

4.4. **Carrying Cost:**

The State Commission has considered carrying cost for 1.5 years for the revenue gap for FY 2009-10 with the rationale that True Up petition for FY 2009-10 should have been filed along with tariff petition for FY 2011-12 in which case carrying cost for one and half years would have been allowed. The True Up petition can be filed only after audited accounts are available. The annual accounts of the Board were certified by the CAG only on 26.09.2011. Although the Board had approved the accounts on 19.11.2010 well within the time prescribed for filing the True Up petition but on account of considerable delay on the part of the CAG, some delay had taken place in filing the True Up petition. Hence the delay in filing the True Up petition could not be attributed to the Electricity Board.

4.5. The Appellant had also raised the issue of adjustment for resource gap funding from the State Government but during the hearing it decided not to press the same and sought for liberty to reserve its right to press the said issue in future in case the same acts to its prejudice.

5. The State Commission filed reply affidavit in support of its finding in the impugned order. The Respondent nos. 2 to 4 also filed replies and written submissions supporting the impugned order.

6. We have heard the Ld. Counsel for the Appellant and the Respondents. In view of the rival contentions made by the parties, the following questions would arise for our consideration:-

i) Whether the State Commission has erred in disapproving the payment made for unfunded liabilities towards staff related liabilities and provisions and for interest on GPF and GSS?

ii) Whether the State Commission has erred in not allowing the actual fuel cost for BTPS without considering the age and condition of the unit?

iii) Whether the State Commission has erred in determining the interest and financing charges?

iv) Whether the State Commission was correct in allowing the carrying cost for only 1.5 years without considering that the delay caused in audit of the accounts by CAG was beyond the control of the Electricity Board?

6.1 Let us now examine the first issue regarding interest on General Provident Fund ("GPF") and Group Saving Scheme ("GSS").

6.2 According to Ld. Counsel for the Appellant, in view of financial crunch, the Electricity Board had not been able to maintain a separate account for retiral dues and was meeting such unfunded liability out of revenue realization from sale of energy during the period in which the incidence of payment of such liabilities lies. He also referred to judgment dated 10.05.2012 of this Tribunal in Appeal nos. 14, 26 and 27 of 2011 where the Tribunal has allowed True Up of the employees expenses as per the audited accounts.

6.3 According to the Ld. Counsel for the Respondent nos. 2 to 4, the State Commission has correctly decided to penalize the Appellant for diversion of the funds from

GPF and GSS accounts. It is further contended that the Tribunal in judgment dated 10.05.2012 in Appeal nos. 14, 26 and 27 of 2011 had in fact upheld the findings of the State Commission regarding interest on GPF and GSS.

6.4 Let us first examine the findings of the State Commission in the impugned order.

*3.11.4 The Commission in the tariff order for FY 2011-12 had stated that:*

*"4.7.12. So far the contribution of the employees towards GPF and GSS is concerned; this is not a part of employee cost. This amount is deducted from the salary of the employees and should be deposited in a separate fund to be governed by a Trust in which both BSEB and its employees are represented. Any investment out of this fund has to be with the approval of the Trust."*

3.11.5 *Accordingly, it is apparent that BSEB has utilised the amounts available in the fund created towards GPF and GSS contribution towards meeting its day to day expenses i.e. for the purpose of funding its working capital requirements. Accordingly, permitting these expenses to be passed on to the consumers shall mean that the consumers have to bear the burden for the past financial mismanagement by the Board. The Commission is of the view that such liabilities on account of past issues should be funded by BSEB through its own means and should not be passed on to the consumers at this point of time. The regulations anyways provide for normative working capital interest to be passed on to the consumers thus meeting the working capital requirements of the licensee for the year.*

3.11.6 *In view of the above, the Commission approves the net employee cost for FY 2009-10, as depicted in the table given below:*

| ***Sl.*** | ***Particulars*** | ***As per Annual Accounts*** | ***Now approved in True-up for FY 2009-10*** |
|---|---|---|---|
| *1.* | *Employee cost* | *577.06* | *577.06* |
| *2.* | *Add: Payment made for unfunded liabilities* | *169.68* | *-* |
| *3.* | *Less: Employee cost Capitalized* | *16.80* | *16.80* |
| *4.* | *Net Employee cost* | *729.94* | *560.26* |

Thus, the State Commission has disallowed the payment made for unfunded liability.

6.5 We are in agreement with the findings of the State Commission. The Electricity Board has utilized the amount of GPF/GSS contribution of the employees towards meeting its day to day expenses and therefore these expenses could not be passed on in the Annual Revenue Requirement of the distribution licensees thereby burdening the consumers for the past financial mismanagement of the Electricity Board.

6.6 This issue had already been dealt with by the Tribunal in judgment dated 10.05.2012 in Appeal nos. 14, 26 and 27 of 2011. The relevant paragraphs of the judgment are as under:-

*"15.8 Let us examine the points raised by the Respondent consumers regarding security deposit and GPF recovered. The explanation given by the State Commission in the impugned order is as under:-*

*"The rebate for prompt payment of current consumption bills is as per Tariff conditions. Interest on security deposits is covered under Tariff Regulations. Interest on GPF and GSS is on the subscriptions recovered from the employee salaries. These funds are not separately maintained by creating Trust etc,. and utilized by the Board and they are considered"*

*We find that the interest on consumer security deposit is provided for in the Tariff Regulations. As far as GPF and GSS on the subscription recovered from the employees salaries are concerned, we notice that these funds are not separately maintained by creating a Trust, etc. and are utilized by the Electricity Board. The interest earned on all the bank deposits, etc., is included in non-tariff income and deducted from total revenue requirement to work out the net revenue requirement.*

*15.9 Thus, we do not find any illegality in the order of the State Commission. However, the State Commission may look into improving the accounting practices adopted by the Electricity Board regarding creating separate fund for GPF and other deductions from the employees, salaries* *and terminal benefits for future and give necessary directions to the Electricity Board."*

6.7 Thus, the Tribunal in the above judgment upheld the findings of the State Commission regarding GPP and GSS. The findings of the Tribunal in the above judgment will be applicable to this case as well.

6.8 In view of above, this issue is decided as against the Appellant.

7. The second issue is regarding the fuel cost for unit VI of BTPS.

7.1 According to the Ld. Counsel for the Appellant, unit VI at BTPS was kept under operation even though its capital maintenance was due from the year 2007, due to severe power shortage; therefore, maintaining the operational parameters was beyond its control.

7.2 According to Ld. Counsel for the Respondent nos. 2 to 4, the adoption of operating parameters of BTPS unit VI at actuals as the unit had to be operated due to power shortage could not be a valid ground for the deteriorating performance of the generating unit. In any event, while fixing the norms for the year 2008-09 by order dated 26.08.2008, the State Commission had duly considered the vintage of the station and fixed the norms as per the submissions of the Appellant.

7.3 Let us examine the findings of the State Commission. The relevant finding is as under:-

*"3.8.6 The Commission noted that Unit - VII of BTPS is under shut down during the entire period of FY 2009-10. Moreover, the Commission has examined the performance of the Unit VI of BTPS on key performance parameters like Station Heat Rate, Specific coal consumption and specific oil consumption which have impact*

*on the cost of generation vis-à-vis the performance of the unit VI in FY 2006-07, FY 2007-08 and FY 2008-09.*

*3.8.7 The Commission found that the performance of unit VI in FY 2009-10 on the key performance parameters such as Station Heat rate, Specific Oil consumption has been poor even though the generation has been higher in the FY 2009-10 as compared to past three Financial years. As can be seen, the actual performance of BTPS Unit VI has not improved as expected by the Commission and has in fact deteriorated further. Considering these facts, the Commission is not agreeable to Approving the performance Parameters of BTPS Unit VI at actuals.*

*3.8.8 Accordingly, the Commission approves the generation cost of BTPS based on the approved value of Station Heat rate and Specific Oil Consumption for FY 2008-09 while giving due weightage to the vintage of the plant. The Commission also directs BSEB to take serious cognisance of the same and initiate steps towards improvement in the operational parameter of the generating station.*

*3.8.9 The Commission approves the fuel cost of Rs62.76 Cr. for FY 2009-10 based on the cost determined by the Commission and the actual generation submitted by the Petitioner. The Operational parameters and details of cost* *component allowed by the Commission are stated below:*

*3.8.10 The Commission now approves total fuel cost of Rs. 62.76 Cr. for FY 2009-10 as part of the truing up process. This cost is excluding the cost of water and other miscellaneous expenses which are factored under the Repairs and Maintenance expenses.”*

7.4 Thus, from the perusal of the above finding, we find that the State Commission while fixing up the Station Heat Rate, oil consumption, etc., for the FY 2008-09 had kept the vintage of the unit in view and agreed to the norms proposed by the Electricity Board. The same norms have been adopted by the State Commission for FY 2009-10. We do not agree with the contention of the Appellant that maintaining of operational parameters and proper upkeep of unit can be treated as beyond the control of the Appellant.

7.5 In view of above, we do not find any merit in the submissions of the Appellant for further relaxation of the operational parameters of BTPS in the True Up for the FY 2009-10. Accordingly, this issue is decided as against the Appellant.

8. The third issue is regarding Interest and Finance Charges.

8.1 According to the Ld. Counsel for the Appellant, the State Commission has adopted the method for determining the interest and finance charges which is not in conformity with the Tariff Regulations.

8.2 Let us examine the findings of the State Commission regarding interest and finances charges. The relevant findings are reproduced as under:

*"3.15.6 On scrutiny of the petition and the additional information furnished by the Board, the Commission observed that the loan amounts*

*also included the payments due on capital liabilities which are created on account of defaults in the repayments done by BSEB in the past. As mentioned previously, the Commission does not agree to this treatment as the burden on account of defaults in making repayments should not be passed on to the consumers.*

*3.15.7 Further, the Commission has also taken into cognizance the fact that the interest booked by the Board under the head "Interest and Finance Charges" may also include the penal or additional interest incurred by the Board for defaulting on making timely repayments. Accordingly, the Commission will keep the above fact in mind while approving the Interest and finance charges. The Commission notes with concern that the Petitioner is diverting its long-term fund for the purpose of meeting its deficit caused due to its own inefficiencies. The Commission directs the Petitioner to abstain from diversion of funds meant for creating long-term assets.*

*3.15.8 In absence of the adequate data/ information with BSEB regarding the details of the capital expenditure incurred during the year, its funding, capitalisation of assets, etc., the Commission has adopted the same methodology as applied while truing up of costs for FY 2006-07 to FY 2008-09. The Commission has used the normative closing balance of loan (Rs. 512.32 Cr.) as arrived in* *true up of FY 2008-09 as the opening outstanding loans as on 1st April 2009 for computation of Interest and finance charges for FY 2009-10.*

*3.15.9 The Commission has also outlined the methodology adopted for estimating the additional borrowings during the FY 2009-10 for funding the assets getting capitalised during the year after considering the amount available in the form of consumer contributions and grant / subsidy towards cost of capital assets during the year as well as balance amount (Rs. 184.05 Cr.) of contribution, Grants and subsidies towards cost of capital assets to be capitalised in subsequent years. The amount of Rs. 184.05 Cr. was arrived at while truing up of FY 2008-09 wherein the Commission had stated that*

*"5.17.15 As can be seen from the above, the consumer contribution, grants/subsidies towards cost of capital assets received during the year is much more than the assets capitalised during the year. Based on the same, the assets capitalised during the year are assumed to be entirely being funded through the consumer contribution, grants / subsidies towards cost of capital assets received during the year and hence, there is no requirement of loan funding against assets capitalized during the year. After accounting for the same, the remaining quantum of Rs. 184.05 Cr. against consumer contribution, grants / subsidies towards cost of capital*

*assets received during the year is assumed to be used for funding assets being capitalized in the subsequent years."*

*3.15.10 In the absence of the adequate data with BSEB the Commission has considered the repayment during the year as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 reproduced as below:*

*"The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year"*

*3.15.11 Based on the above methodology, the opening loan as on 1st April 2009 considered for computing interest cost for FY 2009-10 has been taken equal to closing normative loan for FY 2008-09 as Rs. 512.32 Cr. as per the true-up order issued by the Commission on 4th January 2012 for FY 2006-07, FY 2007-08 and FY 2008-09.*

*3.15.12 The BERC Tariff Regulations provide for recovery of interest and finance charges on loans which have been utilised to create assets and are eligible for recovery only after the assets have been put to use. The normative outstanding loan as on 1st April 2009 is considered to be used for creation of assets which have been put to use and hence the interest against this loan is considered for recovery from consumers. In addition to this, there will be certain additional* *loans which will be eligible for recovery of interest on account of capitalisation of assets achieved during the FY 2009-10.*

*3.15.13 The assets capitalised during the year comprises of a combination of assets created out of the CWIP at the beginning of the year and part of the assets capitalized during the year are created out of investments done during the year itself. This break-up is not available in the audited annual accounts. While, it is desirable to understand the bifurcation of these assets capitalised i.e. assets created out of capitalisation of CWIP at the beginning of the year and those created through capitalisation of investments done during the year, the same may not be possible looking at the availability of information with the Commission and from the data made available by BSEB.*

*3.15.14 Accordingly, the Commission has considered the assets capitalised during the year as being first funded through the consumer contributions and grants/subsidy towards capital assets received during FY 2009-10 and the remaining portion of the assets getting capitalised during FY 2009-10 is assumed to be funded through additional loans received during FY 2009-10. At the same time, any amount of contribution and grants / subsidy towards capital assets avail able after this adjustment will be considered as having funded assets which would be capitalised in the subsequent years. While,* *the Commission understands that this method has its own limitations, however, the Commission has no other option but to adopt this method till the time BSEB is able to improve the availability of qualitative information to enable the Commission to approve the interest expenses based on actual information."*

*"3.15.20 Accordingly, the Commission approves the interest and finance charges of Rs.54.26 Cr. for the FY 2009-10."*

8.3 The findings of the State Commission are summarized as under:

i) On scrutiny of the information furnished by the Board, the State Commission found that the loan amounts also included the payments due to capital liabilities created on account of defaults in repayment of loans done in the past, the burden of which should not be passed on to the consumers.

ii) The interest and finance charges may also include the penal or additional interest incurred due to default in making timely repayments.

iii) In the absence of the adequate information furnished by the Appellant regarding capital expenditure incurred during the year, its funding, capitalization of assets, etc., the State Commission has adopted the same methodology as applied while truing up of costs for FY 2006-07 to FY 2008-09.

iv) The Commission has arrived at the opening outstanding loans as on 1.4.2009 same as the closing balance of loan as arrived in the True Up for FY 2008-09.

v) In the absence of adequate data furnished by the Electricity Board, the State Commission has considered the repayment during the year as per Central Commission's Regulations, 2009 as deemed to be equal to the depreciation allowed for the year.

vi) The Commission has considered the assets capitalized during the year as being first funded through the consumer contributions and grants/subsidy towards capital assets received during FY 2009-10 and the remaining portion of asset capitalized during the year is assumed to be funded through additional loans during the year.

vii) The above method has its limitations but the State Commission has no option except to adopt this method till the time the Electricity Board is able to improve its data.

8.4 The State Commission has given a reasoned order for determination of interest and finance charges and adopted the same methodology for determination of interest and finance charges as used in the previous True Up orders for FY 2007-08 and 2008-09. The State Commission has correctly decided not to pass on the interest on liabilities created due to non-repayment of loans in the past and additional interest incurred due to default in timely payment in the past. Further, in the absence of adequate data provided by the Electricity Board regarding details of the capital expenditure incurred during the year, its funding, capitalization of assets etc., the State Commission has to adopt the same methodology as applied while truing up of costs for FY 2006-07 to FY 2008-09. The State Commission had no other option except to adopt the method as used in the previous True Up orders as the Electricity Board was not able to improve the availability of qualitative information to enable the Commission to approve the interest expenses based on actual information. Thus, we find that the State Commission has thoroughly analyzed the claim of the Appellant and thereafter decided the interest and finance charges by its own method in the absence of availability of data from the Electricity Board. Hence, we do not find any infirmity in the order in the circumstances of the case.

8.5 The Ld. Counsel for the Appellant has referred to judgment of the Tribunal in Appeal nos. 14, 26 and 27 of 2011. We find that the Tribunal in this judgment had upheld that the State Commission's order regarding interest and financing charges.

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

9. The fourth issue is regarding carrying cost.

9.1 According to the Appellant, the State Commission has incorrectly allowed the carrying cost for only 1.5 years as delay in filing the True Up petition was beyond the control of the Electricity Board.

9.2 According to Ld. Counsel for the Respondent nos. 2 to 4 even though the Appellant had filed True Up petition rather belatedly, the State Commission has allowed the carrying cost till the recovery of tariff, which ought to have been allowed by the State Commission. The Regulatory time table for filing the petition for Annual Review and True Up has not been adhered to by the Electricity Board. Accordingly, the State Commission has rightly allowed the carrying cost on the approved True Up revenue gap for FY 2009-10 for 1.5 years i.e. for whole of FY 2010-11 and 6 months during FY 2011-12. We do not find any infirmity in the method adopted by the State Commission in determining the carrying cost.

9.3 Let us examine the findings of the State Commission regarding carrying cost.

*"3.24.5 However, as regards permitting the carrying costs on the revenue gap arising out of the truing up exercise, the Commission is of the view that the additional cost on account of delayed filing should not be passed on to the consumers. Accordingly, the truing up for FY 2009-10 should have been filed along with the Tariff petition for FY 2011-12 assuming that the review would have been ideally carried out along with the ARR & Tariff filing for FY 2010-11. Accordingly, the Commission approves carrying cost for one and half year (FY 2010-11 entire year and FY 2011-12 half year assuming that the recovery would have been done over the year) amounting to Rs. 42.39*

> *Cr. On the revenue gap for FY 2009-10 arising on account of the truing up exercise."*

9.4 Thus, the Appellant should have filed the Truing Up for FY 2009-10 along with the tariff petition for FY 2011-12. However, the Appellant filed the True Up petition belatedly. It is correctly held by the State Commission that the additional cost on account of delay in filing the petition for True Up should not be passed on to the consumers.

9.5 The responsibility for submitting the audited accounts and True Up application is that of the Electricity Board and it cannot claim carrying cost for the delay on its own part to file the audited accounts with application for True Up to be passed on to the consumers. Accordingly, the issue is also decided against the Appellant.

## 10. Summary of our findings

**10.1 Interest on GPF and GSS: The Amount of GPF and GSS contribution of the employees was used by the Electricity Board in the past for meeting its day to day expenses and, therefore, payment made for the unfunded liabilities could not be allowed in the ARR. This issue had already been decided by the Tribunal in Appeal nos. 14, 26 and 27 of 2011 as against the Appellant.**

**10.2 Fuel Cost for BTPS: The State Commission decided the operational norms for FY 2008-09 as per the submissions of the Appellant keeping in view the vintage of the generating unit. The same norms have been adopted for FY 2009-10. Maintaining of operational parameters and proper upkeep of the plant cannot be treated as beyond**

the control of the Appellant. Thus, we do not find any merit in the submissions of the Appellant for further relaxation of operational parameters.

**10.3 Interest and Finance charges: The consumers could not be burdened with the interest on the past liabilities created by the Board due to default in repayment of loan and penal or additional charges due to default in making timely repayments. In the absence of the adequate information and data furnished by the Appellant, the State Commission has adopted a methodology based on the True Up of the previous years i.e. FYs 2007-08 and 2008-09. We do not find any infirmity in the finding of the State Commission in the circumstances of the case.**

**10.4 Carrying Cost: The State Commission has correctly disallowed the additional carrying cost for the delay in filing of the audited accounts and application for the True Up for FY 2009-10.**

**11. In view of our above finding there is no merit in the case of the Appellant. Hence, the Appeal is dismissed. No order as to costs.**

**12. Pronounced in the open court on this 8th day of May, *2013*.**

**(Rakesh Nath)**
**Technical Member**

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

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

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