

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
APPELLATE JURISDICTION, NEW DELHI**

Appeal No. 77, 78 & 79 of 2006

Dated this 13th of December 2006

**Present : Hon'ble Mr. Justice E. Padmanabhan, Judicial Member
Hon'ble Mr. H. L. Bajaj, Technical Member**

North Eastern Electricity Supply Co. of Orissa Ltd.
123-A, Mancheshwar Industrial Estate,
Bhubaneswar

...Appellant
in Appeal No.77 of 2006

Western Electricity Company of Orissa Ltd.
123-A, Mancheshwar Industrial Estate,
Bhubneswar

...Appellant
in Appeal No. 78 of 2006

Southern Electricity Company of Orissa Ltd.
123-A, Mancheshwar Industrial Estate,
Bhubaneswar

...Appellant
in Appeal No. 79 of 2006

Versus

1. Orissa Electricity Regulatory Commission,
Niyamak Bhawan, Unit VII, Bhubaneswar,
Distt: Khurda, Orissa.
2. Department of Energy, Govt. of Orissa.
3. Orissa Consumer's Association & FOCO,

Biswanath Lane, Cuttak.

4. Balasore Alloys Limited,
Balgopalpur-756020, Balasore, Orissa.
5. S.E. Railway,
Garden Reach, Kolkata- 700 043.
6. IDCOL Ferro Chrome & Alloys Ltd.,
Jaipur Road, Jaipur.
7. Rural Development Department,
Govt. of Orissa, Orissa Sectt.
Bhubaneswar.
8. Orissa Lift Irrigation Corporation Ltd.,
(OLIC), Nayapalli, Bhubaneshwar.
9. The Tata Iron & Steel Co. Ltd.,
273, Bhouma Nagar, Unit IV,
Bhubaneswar- 751 001.
10. Mr. R.P. Mohapatra,
775, Jaidev Vihar, Bhubaneswar
11. Ferro Alloys Corpn. Ltd.,
GD 2/10, Chandershekharpur,
Bhubaneswar
12. Pankaj Industries Pvt. Ltd.,
Plot No. 17, Village Matkemabeda,
Industrial Area, Barbil, Orissa.
13. M/s. Jindal Stainless Ltd.,
50,HIG,Jaidev Vihar, Bhubneswar
14. MSP Steel Pvt. Ltd.,
Haladiguna, PO Gobardhan,
Distt: Keonjhar, Orissa.

15. State Public Interest Protection Council,
Talengabazar, Cuttack.
16. East Coast Railway, Railw Vihar,
Chandershekharpur, Bhubaneswar.
17. National Institute of Indian Labour,
Beherasahi, Nayapalli, Bhubaneswar.
18. Government of Orissa. ... Respondents 1 to 18
In all the three appeals

Counsel for the appellants : Mr. S. Ganesh, Sr. Adv.
Mr. Sayed Naqvi,
Advocate

Counsel for the respondents : Mr. M.G. Ramachandran
& Mr. Anand K.
Ganeshan, Advocate for
OERL
Mr. R.K. Mehta, Sr. Adv.
& Ms. Suman Kukrety,
advocate for Grid
Corporation of Orissa.
Mr. S.S. Misra &
Mr. N.K. Niraj,
Advocate for Respondent
No. 1
Mr. R.M. Patnaik,
Advocate for
Respondent Nos. 12,14 &
15
Mr. Sanjay Sen for Govt.
of Orissa.

J U D G M E N T

1. Appeal No. 77 of 2006 has been preferred by North Eastern Electricity Supply of Orissa Ltd. (NESCO for brevity) challenging the Tariff Order dated 23.3.2006 passed in case No. 45 of 2005 by the Orissa Electricity Regulatory Commission, Bhubaneswar. The appellant has prayed for (a) setting aside the tariff order dated 23.3.2006 passed by OERC and has prayed for the following among other reliefs (b) to determine the Retail Supply Tariff considering inter-alia:

- (i) the enhanced bulk supply and transmission tariff determined by the OERC in Case Nos. 42 & 43 respectively on the ARRs filed by GRIDCO and OPTCL before the OERC for the year 2006-07, casting an additional burden together of approximately 15% over the Bulk Supply Charges for the year 2005-06;
- (ii) the need to bridge the gap between the expected Revenue from the Tariff and the Approved Revenue Requirement;
- (iii) considering appropriate category-wise sale and compute the revenue by applying the tariff Rates;
- (iv) appropriate maximum demand;

- (v) provision for repayment of installment of principal amount of NTPC Bonds due in October, 2005 and the installment due on 1st October, 2006.
 - (vi) allowance of actual interest cost of NTPC Bonds as a pass through;
2. Appeal No. 78 of 2006 has been preferred by Western Electricity Supply Company of Orissa Ltd. (WESCO for brevity) challenging the order of the OERC dated 23.3.2006 in case No. 44 of 2005 and for identical reliefs as prayed for in appeal No. 77 of 2005.
 3. Appeal No. 79 of 2005 has been preferred by Southern Electricity Supply Company of Orissa Ltd. (SESCO for brevity) challenging the order of the OERC dated 23.3.2006 in case No. 46 of 2005 and has prayed for identical reliefs as has been prayed in appeal No. 77 of 2006.
 4. Heard Mr. S. Ganesh, Sr. advocate appearing alongwith Mr. S. Naqvi advocate for the appellant in the three appeals, Mr. R.K. Mehta, advocate for the first respondent, Orissa Power Transmission Corporation Ltd., Mr. M.G. Ramachandran, advocate for the second respondent, OERC, Mr. Sanjay Sen, advocate for

Government of Orissa, Mr. S.S. Misra, advocate for 11th respondent, Mr. Sandeep Mahapatra, advocate for Dutt & Mennon Advocates, Mr. A.K. Gupta, advocate for respondent No. 12 and Mr. R. Patnaik and K.N. Tripathi advocates appearing for other respondents.

5. As against the three common orders made in Petition Nos. 44, 45 & 46 of 2005, these appeals have been preferred by the respective distribution licensees, who are licensed to distribute power within their respective areas in terms of the licenses granted by OERC. As these appeals arise out of the common order, these appeals are consolidated and taken up together for hearing. The learned counsel appearing on either side made respective submissions. The fourth Discom namely Central Electricity Supply Company of Orissa (CESCO for brevity) has not preferred an appeal and has allowed the tariff order to reach finality. However, right through uniform tariff has been determined for all the distribution companies in the state of Orissa, any order/judgment/direction in these three appeals may also have an effect on CESCO as consistently uniform retail tariff has been fixed for all the four Discoms, distributing power throughout the length and breadth of the State of Orissa. It has been the consistent stand that the tariff for all the four Discoms has to be maintained

uniformly and that has been the consistent view of the Regulatory Commission as well as the Discoms. Hence, even if an appeal has not been preferred by CESCO, the benefit if any, that may be conferred on the three appellants may also accrue in favour of the fourth Discom CESCO. At the instance of the appellant-Discoms the first respondent, OERC by the impugned order approved their respective ARR for the year 2006-07 by order dated 23.3.2006 and determined the Distribution tariff for the Discoms, which is being challenged by the three aggrieved Discoms.

6. Though number of contentions have been raised in the appeal grounds, the learned counsel appearing for the appellants, while advancing common contentions restricted himself to the following grounds seeking reliefs as seen from the written submissions. The grievances of the appellants are as enumerated hereunder:-

i) Non pass through of actual interest cost and provision for principal repayment of NTPC bonds.

- ii) Regular passing of gaps between the ARR and expected revenue.
- iii) Computation of miscellaneous income.
- iv) Under estimation of simultaneous maximum demand (SMD).
- v) Distribution loss targets.
- vi) Computation of expected revenue.
- vii) Truing up exercise for the past years.

7. While elaborating the above grievances, the learned counsel appearing for appellant made his submissions, which were contested by Mr. M.G. Ramachandaran learned counsel appearing for OERC, Mr. R.K. Mehta for GRIDCO. Advocates appearing for the other respondents, adopted the arguments advanced on behalf of the respondents 1 & 2. It may not be necessary to set out factual matrix. It would be sufficient to refer to the material facts, while considering each one of the grievances and the points framed herein.

8. The following points arise for consideration in these three appeals.

- (A) Whether disallowing the entire interest paid to service NTPC Bonds to pass through the tariff, is sustainable ?
- (B) Whether the Annual Revenue Requirement of the three Discoms as computed by OERC is liable to be interfered?
- (C) Whether the ARR approved should include GAPS allowed in the previous tariff year, in line with National Tariff Policy?
- (D) Whether the computation of miscellaneous income of RST order suffers with error, apparent on the face of the record and liable to be interfered?
- (E) Whether the determination of Simultaneous Maximum Demand (SMD) and consequent determination of demand and energy charge by the Regulatory Commission has been correctly estimated? If so, whether the Discoms are paying

average bulk supply tariff in excess of what has been approved by OERC?

(F) Whether the distribution losses fixed by the OERC is liable to interfered?

(G) Whether the computation of expected revenue without reference to slab and category on the basis of approved tariff formats has not been followed?

(H) Whether the failure to undertake truing up exercise for the earlier tariffs has period in any manner prejudiced the Discoms? Whether the Regulatory Commission ignored the legitimate cost and over estimated the revenue while approving the ARR?

(I) To what relief, if any in each of the appeal?

9. Before taking up the points for consideration it is essential to refer the statutory provisions of The Electricity Act 2003. Section 60(1) provides that the appropriate Commission shall be guided by the principles and methodology specified by the Central Commission for determination of tariff for generation, transmission and

distribution of electricity and they are conducted on commercial principles. The Commission is obligated to safeguard the consumers' interest and at the same time to see the recovery of the cost of electricity in a reasonable manner. Section 61 further provides that the tariff progressively reflects the cost of supply of electricity and while fixing the tariff, the National Electricity Policy and tariff policy shall be taken into consideration.

10. Section 62 provides for determination of tariff with respect to supply of electricity by the distribution licensee. Section 64 provides elaborate procedure for approval of annual revenue requirement and determination of tariff. Such fixation shall be done within one hundred twenty days from the receipt of application. Sub Section (6) of Section 64 provides that a tariff order shall unless amended or revoked; continue to be in force for such period as may be specified in the tariff order. Section 86 prescribes the functions of the Commission. Section 86(1) (a) provides that the

Commission shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail. Sub section (4) of 86 provides that in the discharge of functions under section 86 the Regulatory Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3 of the Act.

11. We will first take up the contention advanced by the appellant, viz. non pass through of actual interest cost in the tariff and provision for principal repayment of NTPC bonds. The OERC passed order dated 23.3.2006 in case No. 44,45,46 and 47 of 2005 under section 62 and 64 read with the OERC (Terms and conditions for determination of tariff) Regulations 2004, and OERC (Conduct of Business) Regulations 2004 and the tariff related matters for the year 2006-07. The ARR and RST application were admitted and duly published by the OERC in various news papers inviting objections/suggestions from the consumer public.

Innumerable objections have been filed by various Consumer Associations. The OERC conducted public hearings and heard objectors and the authorized representatives on various dates. OERC also heard the other connected applications/ review petition etc. After deciding certain preliminary objections, the commission proceeded further with respect to tariff fixation.

12. The ARR of three Discoms for the F.Y. 2006-07 find a place in Table 8 of the tariff order. The estimated revenue requirement at the existing tariff, the revenue gap for the year 2006-07 for NESCO, SESCO and WESCO respectively worked out to Rs.390.27 Crores, Rs.342.21 Crores and Rs.138.27 Crores. The proposed tariff is set out in Table-9 of the tariff order. The Regulatory Commission assessed the quantum of power requirement to be purchased by the three Discoms in Para 6.25 of the tariff order. The Regulatory Commission in Table 14, 15 and 16, respectively set out the parameters for 2007-08 in respect of T&D losses,

collection efficiency and AT&C losses as approved by it in respect of the three Discoms. The overall distribution loss percentage approved for the year 2006-07 is set out in table 18 of the Tariff order.

13. On a consideration of various aspects, the Regulatory Commission determined the tariff after assessing the revenue requirements of the three Discoms for the year 2006-07. The retail supply tariff, as per the tariff order is to be effective from 1st April, 2006. It may not be necessary to set out the details of tariff determined by the Regulatory Commission in this appeal as the appellant has confined their grievances to the eight aspects enumerated above. One of the aspects being non pass through of actual interest cost and the failure to provide for repayment of installments accrued due in respect of NTPC Bonds. This aspect of the matter is discussed in Para 6.52.9 of the tariff order, immediately below Table 36. The Regulatory Commission took note of the Bonds issued by the three Discoms aggregating to Rs.400

Crores in favour of GRIDCO to be assigned to NTPC w.e.f. 1st April, 2000 at 12.5% P.A. interest rate. In the last tariff order, the Commission allowed interest at 8.5% (Tax Free) on those bonds and accordingly the Government was advised to pass on the incentives to the end user of electricity on account of reliefs that would be available, if the securitization would be effected in line with one time settlement scheme approved by Government of India to be made effective on 1.10.2001. The Government of Orissa has not responded till date.

14. In the circumstances, the Discoms in their revenue requirement calculated the interest impact at 12.5% per annum w.e.f. 1st October, 2000 onwards. The interest liability for the FY 2006-07 along with differential interest payable for the past years as projected by the three Discoms on this account comes to Rs.39.91 Crores, Rs.64.71 Crores and Rs.50.35 Crores for WESCO, NESCO, and SESCO respectively. While observing the view that it is the business of the three Discoms to take

appropriate action to settle with the Government and avail the benefit of reduced rate of 8.5%, the commission merely approved the interest payable by the three Discoms at 8.5% on the said loan, as against the 12.5% interest rate stipulated in the bond.

15. It is the contention of the appellants that interest should have been computed on NTPC bonds at 12.5%. Though the recommendations of Ahluwalia Committee were brought to the notice of GRIDCO and Government of Orissa, they had not chosen to adhere to the directions. As a result, the Discoms are liable to pay interest at 12.5% with a repayment schedule of seven years. The first installment accrued due in F.Y. 2005-06 and second installment fell due in FY 2006-07. The NTPC had initiated action and taken steps as seen from its letter dated 24.6.2004, whereby NTPC pointed out that the Bonds have not been serviced by GRIDCO or Discoms and interest as accrued. NTPC also drew the attention of Government of Orissa about the discussions, it had for

conversion of the Bonds under the scheme due to low coupon rate of 8.5%, long tenure of 15 years and the cash incentives available under this scheme. Yet the Government of Orissa and other concerned kept silent. Till such reschedule and revision of rate is agreed by all, it is the liability of Discoms only to serve the Bonds.

16. By the order in Para 6.52.9, the Regulatory Commission, again disallowed the Discoms' claim for allowing pass through interest at 12.5% P.A. and provision for repayment of installment. There is every reason and justification to pass through differential interest (12.5% minus 8.5%) not only during the current tariff period, but also previous years in all aggregating to Rs.121.00 Crores. The approach of the Regulator to the contra is unjustified and without any rationale and it is the liability of the Discoms to pay 12.5% on the very terms of the bonds till it is rescheduled by agreement between the concerned parties. The Regulatory Commission has not assigned valid reasons but has chosen to ignore the

liability of the Discoms already incurred to service bonds and to pay installment which has already accrued due. If the bonds are not serviced and installments are not paid, the Discoms have to face the consequences. The Discoms will be in a position to pay interest only if they are allowed to pass through in the tariff. The installments for the bonds have already become payable during the year 2005-06 and 2006-07 as well. These amounts are the liability of the Discoms and there is no valid reason at all for the Regulatory Commission not to pass through such liabilities. The appellants are well founded in this respect.

17. The learned counsel appearing for the Regulatory Commission merely pointed out that there was need to settle the matter with NTPC under one time settlement and the matter is still pending with the State Government. It is further pointed that the three appellants are required to take appropriate action in regard to reduction in interest rate. The reduction of

interest rate is not at the sweet will of the Discoms and it is at the discretion of NTPC and till rescheduling is accepted and takes place in the payment schedule, there could be no reduction in the rate of interest and till then the interest has to be serviced at 12.5% by the Discoms. There is no escape for the Discoms at this stage. The view taken by the Regulatory Commission with respect to this, namely disallowance of 4% interest for the tariff period as well as the past period and not making provisions to pay the installments already accrued due, cannot be sustained as there is no escape for the Discoms except to honour their commitments and pay interest at the rate agreed and as per schedule. Hence this point is answered in favour of the appellants. There will be a direction, directing the Regulatory Commission to allow difference of 4% interest payable for the NTPC bonds till the tariff period as well as the installments which have already accrued due during the year 2005-06, 2006-07 and 2007-08 and allow the same to pass through the tariff.

18. Nextly, it is contended that the Regulatory Commission has, for no valid reason approved ARR consecutively for 7th year with GAPS between income and expenditure for NESCO and SESCO. In other words, the tariff determined had not covered the cost, which if allowed to continue, will be detrimental to the Discoms. This is clear from table 47 and 52 of the OERC Retail Tariff order for the F.Y. 2006-07. The gap upto F.Y. 2005-06 is in the order of Rs.260.18 Crores and 253.70 Crores respectively for NESCO and SESCO. That apart, gaps have been perpetuated for the year 2006-07 by the Regulator at 7.78 Crores and 51.34 Crores respectively for NESCO and SESCO.

19. The learned counsel for the Regulatory Commission merely mentioned that the Discoms have not been subjected to Regulatory gap during the year 2006-07 as against the surplus revenue of Rs.66.89 Crores for WESCO and the revenue gap for NESCO and SESCO

being 59.12 Crores. It is contended that the Regulator has allowed the revenue surplus for adjustment. This contention advanced on behalf of OERC though attractive, is not acceptable nor it could be sustained.

20. In terms of Section 61 and the National Tariff Policy, the creation of regulatory assets is only an exception and it shall not be resorted to repetitively. The approval of gap is being done repetitively which runs counter to the National Tariff Policy. The appellants are well founded in contending that the revenue requirement of the Discoms should also include gap in the previous order, which alone will be in accordance with the National Tariff Policy. In other words, the view taken by the Commission deserves to be interfered as the commission has not chosen to act in terms of the National Tariff Policy. Hence, this point is also answered in favour of the appellant. Points B & C are answered in favour of appellants.

21. Taking up Point D, it is contended that as seen from para 6.52.17 of the RST order for FY 2006-07, the miscellaneous income had been assessed on the basis of account of FY 2003-04. In other words F.Y. 2003-04 has been taken as the base year to decide miscellaneous income for FY 2007. While taking up the same, the commission has chosen to ignore its direction issued in RST order for the FY 2005-06, where the provision relating to levy of delayed payment of surcharge at 2% per month in respect of various categories of consumers has been done away and there could be no imposition of delayed payment surcharge during the subsequent years. According to the appellants, the Regulatory Commission should have taken or adopted audited accounts of the year 2004-05 as the base and computed the miscellaneous income of the Discoms. Such an over-assessment of miscellaneous income affects the appellants. The appellants also placed the figures relating to first four months and the expected income for the remaining part of the year. It is pointed out that

there are obvious errors and this has been erroneously factored into the tariff. Instead of ourselves deciding, we direct Regulatory Commission to take this at the time of truing up exercise and assess the miscellaneous income of the three Discoms and give consequential relief to them. Point D is answered as above.

22. Taking up Point 'E', namely determination of simultaneous maximum demand (SMD) and quantum of determination of demand and energy charge, it is contended as being underestimated by the regulator. The OERC in its order dated 23.03.2006, as seen from Para 6, has estimated the quantum of power purchase and has approved the purchase of power by GRIDCO for State use for the period 2006-2007. The Regulator, as seen from Table13, had approved purchase of 13188.14 MUs for the period 2005-2006. While GRIDCO proposed for the same period in respect of these Discoms at 14977.25 MUs. For the period 2006-2007, the Regulator has granted approval for 14683 MUs, an increase by 11% as

compared to 13188.14 MUs for the period 2005-2006 in respect of all the Discoms. OERC's approval for demand in terms of MVA is 2226.26, while in its reasoning which it had given the said increase in Para 6.2 of its order. There is no denial that there has been an upward trend in the energy demand and it is also the view of the Commission that the same trend will continue during the ensuing years to come.

23. The increase of 11%, as rightly pointed out has not been taken into account for the determination of SMD in terms of MVA and that too without assigning reasons. The benefit of SMD has not been allowed in the determination of demand and energy charges as seen from Para 6.33 of the tariff order. It is contended that if an increase in SMD of 11% had been taken note of, the rate of energy charge per unit for the Discoms would have been reduced and the said reduction is considerable.

24. The learned counsel for the appellant pointed out that had the OERC taken the above into account, which comes to Rs.42 Crore, per unit cost would stand reduced at least by 3 paise. As a result of the above, it is pointed out that Discoms are paying in excess of the quantum approved by the OERC and the financial impact is considerable according to the appellant.
25. There is force in this contention advanced and it is clear from the following three tables placed before this Appellate authority and in the absence of denial those details deserve acceptance. However, it would be fit and proper for the Regulatory Commission to work out this in the trueing up exercise instead of ourselves carrying out such an exercise. In this respect the table set out here under speaks for themselves and the Commission is expected to examine the claims of the appellants while trueing up exercise.

	Demand	WESCO	NESCO	SOUTHCO	Total
Proposed Demand	MVA	740	650	295	1685
Approved Demand	MVA	664	555	289	1508
Difference	MVA	76	95	6	177
Additional Cost	Rs. Cr.	18	22	1	42

The Point 'E' is answered as above.

26. Next, we will take up the contention, whether the distribution losses fixed by OERC is liable to be interfered? It is contended that distribution loss in respect of NESCO and SOUTHCO as fixed by Regulator is not realistic and it should have taken into account actual T&D losses and results there of as reflected during FY 2006. It is further pointed out that the ground realities reflected in actual sales of FY 2006 and they should have been taken into consideration. It is pointed out that financial impact would be around Rs.35.42 Crores. In

respect of NESCO and SOUTHCO the details are as set out in Table below :

	Input	EHT	HT	Loss	LT
NESCO					
	4169	1320	568	1314	967
As estimated by Appellant in MU	4169	1320	568	1417	864
Difference					104
Loss of LT revenue at Rs.2.162 per unit (Rs. in Crore)					22.44
SOUTHCO					
Approved by OERC in MU	1750	193	247	578	733
As estimated by Appellant in MU	1750	193	247	628	682
Difference					51
Loss of LT revenue at Rs.2.546 per unit (Rs. in Crore)					12.92
Total Impact of NESCO & SOUTHCO					35.36

			Based on 5 months
WESCO	Proposed	MU	1,917*
	Approved	MU	1,917*
	Actual	MU	1,886
NESCO	Proposed	MU	1,750*
	Approved	MU	1,737*

	Actual	MU	1,620
SOUTHCO	Proposed	MU	729*
	Approved	MU	729*
	Actual	MU	751
3 DISCOMs	Proposed	MU	4,396*
	Approved	MU	4,383*
	Actual	MU	4,256
WESCO	Proposed	MVA	740
	Approved	MVA	664
	Actual	MVA	677
NESCO	Proposed	MVA	650
	Approved	MVA	555
	Actual	MVA	543
SOUTHCO	Proposed	MVA	295
	Approved	MVA	289
	Actual	MVA	297

Note * Proposed and approved targets in MU are prorated to 5 months.

The financial impact for the 1st five months are as below :-

	Average BSP approved by OERC (Paise/Unit)	Average BSP paid by Appellant in 1st 5 months (Paise/Unit)	Difference (Paise/Unit)	Energy drawn by Appellants in 1st 5 months in MU	Additional amount paid in Rs.Crore
WESCO	132.65	133.95	1.30	1,886	2.45
NESCO	112.94	115.44	2.50	1,577	3.95

SOUTH CO	109.63	109.47	(0.16)	751	(0.12)
Total				4,213	6.28

27. Much reliance is placed on the status report submitted during the pendency of the appeal by the Special Officers appointed by this Appellate Tribunal. Here again in our view, it is for the Regulatory Commission to take a re-look of the entire matter, while undertaking truing up exercise. We hasten to add that the Commission need not stick to its earlier view, but it shall have a re-look in this respect by taking a practical view of the ground realities instead of proceeding on assumption and surmises. We are sure that Commission will take a re-look of the matter and grant the benefits to the Discoms.

28. Taking up Point 'G', it is contended by the learned counsel for the appellants that the Regulator has not computed the revenue, slab wise and category wise as prescribed in the OERC approved tariff formats, instead it has undertaken an ad-hoc calculation which will not

reflect the correct figures. It is contended that OERC has assumed higher realization rates at LT, HT & EHT voltage levels as seen from Table 20, while approving the revenue by sale of power. It is contended that this is nothing but an inflated income of the Discoms without reference to realities. The learned counsel rightly pointed out that the Regulator has failed to estimate and assess the expected revenue by considering average realization in LT, HT and EHT on the basis of previous year's actual figures and at the slab rates. The approach of the Regulator in this respect definitely requires interference. The learned counsel appearing for the Regulatory Commission in this respect merely stated that when taking up the actuals, the same will be subjected to truing up. By such an approach, the projection will be rendered futile but reflects on the finance of the Discoms and its retail tariff. The truing up at the end or after the year is of no value or effect. If it is allowed to await the truing up such an approach will seriously affect the estimates. This requires a re-look and we are confident that the

Commission in the future years to come to assess the estimated sales at the slab or at least take the actuals of the previous tariff year as the base and proceed to assess. We direct the Regulatory Commission to take up truing up exercise at the earliest and complete the same atleast, if necessary on half yearly basis and such truing up is possible in these days when the entire accounting is computerized. This point is answered accordingly.

29. We shall take up Point 'H'. The grievance of the appellant Discoms is the failure on the part of the Commission to take up truing up exercise for the earlier tariff periods and this failure has prejudicially affected the appellant. It is fundamental that an annual revenue requirement is approved on estimates, projections and best judgments. However, truing up is an essential exercise required to be undertaken by Regulator on a regular basis, where in actuals are compared with those approved and necessary results flow from it. All Regulatory Commissions

undertake truing up exercise on a regular basis. The OERC has not chosen to undertake truing up exercise. The counsel for the respondents contended that the truing up exercise is of two types and each exercise has different dimensions. Be that so, truing up exercise is a must and no dates have been furnished as to when truing up was undertaken and the period for which the truing up exercise has been undertaken or the type of exercise undertaken.

30. In the circumstances, we are constrained to direct the Regulatory Commission to undertake truing up exercise for the past three years, if not already undertaken, and for the tariff period also undertake the tariff exercise at the appropriate time and give relief to the appellants. Truing up should be undertaken on a regular basis by the Regulator.

31. It is further contended that the Regulatory Commission had ignored legitimate cost and over estimated the

revenue while approving the ARR. This requires consideration in the hands of the Regulatory Commission, as such a contention deserves to be decided on factual details. Hence, we direct the Regulatory Commission to look into this aspect.

32. In the light of the above discussions and our answer to the above points framed, we direct the Regulatory Commission to re-determine the tariff after due and prudent exercise as expeditiously as possible and at any rate within six weeks from the date of communication of this judgment after affording opportunity to all concerned. It may not be necessary to hold a public sitting in this respect.

33. The three appeals are allowed in the above terms but without cost and we direct that depending on the ultimate order the OERC may re-fix the ARR and re-determine the tariff. However, we make it clear that the

present tariff shall continue till OERC re-determines the tariff.

Pronounced in the open court on this 13th day of December, 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member