

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

**Appeal Nos.124, 125, 177 of 2005 & 18 of 2006**

Dated the 2<sup>nd</sup> June, 2006.

Present: - Hon'ble Mr. Justice Anil Dev Singh – Chairperson  
Hon'ble Mr. H.L. Bajaj – Technical Member

M/s. Kashi Vishwanath Steel Ltd. ... Appellant  
Versus  
Uttaranchal Electricity Regulatory  
Commission & Others ... Respondents

**Appeal No.125 of 2005**

M/s. Poddar Alloys (Pvt.) Ltd. & Anr. ... Appellants  
Versus  
Uttaranchal Electricity Regulatory  
Commission & Anr. ... Respondents

**Appeal No.177 of 2005**

M/s. Poddar Alloys (Pvt.) Ltd. & Ors. ... Appellants  
Versus  
Uttaranchal Electricity Regulatory  
Commission & Anr. ... Respondents

**&**

**Appeal No.18 of 2006**

M/s. Kashi Vishwanath Steels Ltd. ... Appellant  
Versus  
Uttaranchal Electricity Regulatory  
Commission & Others ... Respondents

For the appellants in  
Appeal Nos. 125 & 177/05:

Mr. M.L. Lahoty, Sr. Counsel  
with Mr. Paban K. Sharma &  
Ms. Poonam Lahoty, Advocates

For the appellants in :  
Appeal Nos. 124/05 &  
18/2006

Mr. S. Ganesh, Sr. Counsel  
(in Appeal No. 18/06)  
Mr. M. L. Lahoty, Mr. Pawan K.  
Sharma & Ms. Poonam Lahoty  
(in Appeal No. 124/05)

For the respondents in :  
Appeal Nos. 124/05  
& 18/2006,125 & 177/05

Mr. M.G. Ramachandran,  
Advocate with Ms. Saumya  
Sharma & Ms. Taruna S.  
Baghel, Advocates.

### **JUDGMENT**

#### **Per Hon'ble Mr. H.L. Bajaj, Technical Member.**

1. The appeals are directed against the orders of the Uttaranchal Electricity Regulatory Commission (UERC) dated April 25, 2005 and October 4, 2005. The Facts lie in a narrow compass.

2. The Parliament enacted U.P. Re-organisation Act, 2000. It came in force w.e.f. February 1, 2000. As a result of the reorganization Act, the State of Uttaranchal was born. The territory of the State comprises of mostly hill areas which the State of U.P. had to shed by virtue of the Reorganisation Act. After coming into force of the U.P. Reorganisation Act, 2000, Uttaranchal Power Corporation Ltd. (UPCL) was incorporated on February 12, 2001.

3. The UPCL filed its first ARR on May 14, 2003 before the UERC., who by its first order dated September 8, 2003, considering the revenue requirement of the UPCL and various other factors, fixed the tariff for the consumption of electricity by various categories of consumers. The tariff order dated September 8, 2003 substantially reduced the tariff for the industrial HT consumers including Power Intensive Industrial Units (PIUs) as under:-

- a) Demand charges Rs. 125/kVA/Month
- b) Energy charges Rs. 1.90/kVAh
  
- c) Minimum charges Rs. 350 per kVA of the contracted demand per month.

The above mentioned tariff was effective from September 20, 2003.

4. Prior to the above tariff order, the industrial tariff in the State applicable to all HT industries including PIUs was as applicable in the State of the erstwhile Uttar Pradesh and was as under:

- a) Demand charges Rs. 162/kVA/Month
- b) Energy charges Rs. 3.42/kVAh
- c) Minimum charges Rs. 425 per kVA of the contracted demand per month.

5. On May 31, 2004, UPCL filed Petition (Petition No. 2 of 2004) under Section 62(4) of the Electricity Act, 2003 for amendment of the prevailing tariff

approved by the Commission by its order dated September 8, 2003. In the application it was, inter alia, stated that a large number of PIUs about 58 in numbers had applied to establish their industries in the State of Uttaranchal. According to the application, UPCL will have to purchase additional power to tide over the situation. It was claimed that against contracted demand of 59.7 MVA at the end of the financial year 2003-04, the demand was likely to go up by 240 MVA.

6. The Commission invited objections to the application. In the objections, it was alleged that the position depicted by the UPCL was not correct and that there will be no abnormal increase in demand of electricity for PIUs. It was also canvassed that T & D losses on account of supply of power to the Steel Units were the least as the power was supplied at high voltage. It was further pointed out that high load factor was being maintained by PIUs. It was urged that theirs' was a fit case for reduction of tariff and the demand of the UPCL for fixing high tariff for PIUs was absolutely misconceived.

7. The Commission by its order dated August 24, 2004 came to the conclusion that because of the likely abnormal and extraordinarily high demand, UPCL will have to procure about 300 MVA additional power to cope up with the emerging situation. According to it, the Corporation will have to pay higher cost for procurement of the electricity. In nutshell, the Commission was of the view that UPCL would have to procure more power beyond the State allocation to meet the extra requirement at additional cost. In the circumstances, the Commission allowed the amendment of the tariff by raising the same it. The tariff for the PIUs, specified therein, was fixed as under effective September 1, 2004:

a) Demand charges	Rs. 350 per kVA
b) Energy charges	Rs. 1.90/kVAh for load factor upto 33%
	Rs. 2.20 per kVAh for load factor more than 33% and upto 50%
	Rs. 2.50 per kVAh for load factor above 50%
c) Minimum charges	Rs. 650 per kVA of the contracted Demand per Month.

8. While fixing the aforesaid tariff the Commission clarified to the effect that the tariff was provisional in nature and that it will be firmed up on the basis of actual power purchase cost incurred by the licensee during each half of any financial year and will make the necessary amendment. On May 26, 2005, the appellant in Appeal Nos. 125/2005 and 177/2005 filed applications before the Commission for finalization of the provisional tariff fixed by the Commission by its Order dated August 24, 2004. In these appeals before the Commission, it was prayed that since there was no extra cost incurred on account of purchase of electricity and no loss was suffered by the UPCL, the rate schedule as originally determined vide tariff Order dated September 8, 2003 be restored back.

9. By Order dated October 4, 2005, the State Commission firmed up the tariff for PIUs for the period from September 1, 2004 to March 31, 2005. The tariff made applicable was lower than the tariff fixed on provisional basis on August 24, 2004 and is as under:

- |                    |  |
|--------------------|--|
| a) Demand charges  | Rs. 350 per kVA  |
| b) Energy charges  | Rs. 1.75/kVAh for load factor upto 33%                       |
|                    | Rs. 2.05 per kVAh for load factor more than 33% and upto 50% |
|                    | Rs. 2.35 per kVAh for load factor above 50%                  |
| c) Minimum charges | Rs. 650 per kVA of the contracted demand per month           |

10. In the meanwhile, by Order dated April 25, 2005, the State Commission had fixed the tariff for PIUs of the specified categories mentioned above on the same basis as in the Order dated August 24, 2004 and the same was subject to review based on the actual data available.

11. Aggrieved by the Order dated April 25, 2005 and the Order dated October 04, 2005, the appellants have filed the instant appeals before us.

12. The appellants have challenged the impugned orders on the ground that these suffer from a clear error in that the pool purchase price has not been made the basis for formulating the tariff and that a totally arbitrary and discriminatory mode of formulation has been adopted, whereby higher rates of power were assigned for PIUs and lower rates for other consumers. This is a major issue regarding determination of tariff. In this regard we need to examine the relevant provisions of law.

13. Section 61 of the Electricity Act, 2003 requires appropriate Commission, subject to the provisions of this Act, to specify the terms and conditions for the determination of tariff, and in doing so the commission shall be guided by sub clauses (a) to (i) thereof. Clauses (g) and (i) of Section 61 need to be reproduced as they have a bearing on point in question :

**Section 61 : Tariff Regulations:** *The appropriate commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, nearly :-*

(a) .....

*“ (g) That the tariff progressively, reflects the cost of supply of electricity, and also, reduces and eliminates cross- subsidies within the period to be specified by the appropriate Commission”*

.....

14. In consonance with the requirement to frame regulations, Uttaranchal Electricity Regulatory Commission notified Uttaranchal Electricity Regulatory Commission (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2004 vide Government of Uttaranchal Notification dated June 15, 2004. Regulation 10 of chapter 4 of the UERC Regulations, which deals with power purchase cost, may be reproduced to the extent relevant:-

**Power Purchase Cost:**

(1) The existing and proposed power purchase/banking/trading agreements approved by the Commission shall be considered for the power purchase cost.

(2) For the tariff year, the distribution licensee's requirement of power purchase for sale to its consumers shall be estimated based on the sales forecast, the transmission loss and target distribution loss level for the tariff year.

(3) For the tariff year, the cost of energy available from State Generating Stations shall be taken as that approved by the Commission for purchase from the Station and that of energy from Central Sector Station shall be taken as per the Central Electricity Regulatory Commission Orders. The cost of energy from other sources shall be as per the power purchase/banking/trading agreements as may be approved by the Commission.

(4) For the tariff year, the power purchase cost for distribution licensee's requirement for sale to its consumers shall be estimated on the basis of merit order principle.

(5) The inter-state transmission charges shall be estimated as per orders of the Central Electricity Regulatory Commission, while the inter-state transmission and wheeling charge shall be estimated as per orders of the Commission.

15. Chapter 6 of the UERC Regulations 2004 deals with the Tariff design. It categorically provides that average cost of supply shall be used as the benchmark for determining tariff. The following three relevant clauses of this chapter read thus:

**20. Cost Standard:**

*The tariff for various categories/voltages shall be benchmarked with and shall progressively reflect the cost of supply based on costs that are prudently incurred by the distribution licensee in its operations. Pending the availability of information that reasonably establishes the category-wise/voltage-wise cost to supply, average*

*cost of supply shall be used as the benchmark for determining tariffs. The category-wise/voltage-wise cost to supply may factor in such characteristics as the load factor, voltage, extent of technical and commercial losses etc.*

*(Emphasis supplied)*

**21. Rationalization of the tariff structure:**

*Suitable mergers of categories and of sub-categories may be done to evolve as simple, easy to comprehend and logical tariff structure.*

**22. Peak and Off-peak Tariffs:**

*A differential tariff for peak and off-peak may be designed to promote demand side management.*

16. It will also be useful to refer to Para 8.3.2 of the Tariff Policy and Para 5.5.2 of the National Electricity Policy, as both refer to the concept of average cost of supply. These paras to extent relevant are set out below:-

*(Emphasis supplied).*

**Para 8.3.2 of the Tariff Policy:**

*“8.3.2. “ For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within plus minus 20% of the average cost of supply. The roadmap would also have intermediate milestones, based on the approach of the gradual reduction in cross subsidy.*

*For example, if any average cost of service is Rs. 3 per unit, at the end of year 2010-2011 the tariff for the cross subsidized categories excluding those referred to in para 1 above should not be lower than Rs. 2.40 per unit and that for any of the cross-subsidizing categories should not go beyond Rs. 3.60 per unit”.*

**Para 5.5 of the National Electricity Policy:**

**“5.5 RECOVERY OF COST OF SERVICES & TARGETTED SUBSIDIES**

5.5.1 .....

5.5.2 *A minimum level of support may be required to make the electricity affordable for consumers of very poor category. Consumers below poverty line who consume below a specified level, say 30 units per month, may receive special support in terms of tariff which are cross subsidized. Tariffs for such designated group of consumers will be at least 50% of the average(overall) cost of supply. This provision will be further re-examined after five years.*

.....

17. From a conjoint reading of the aforesaid provisions of the Act, the UERC Regulations and the Tariff Policy, it is evident that tariff is to be worked out on the basis of the 'average cost of supply'. Therefore, we do not find any justification for the Commission for using the highest cost of purchase for a particular category of consumers, namely : PIUs. Therefore, the tariff needs to be re-determined for the period covered by orders dated April 25, 2005 and October 4, 2005.

18. Learned counsel for the appellant has drawn our attention to the para 4.2.2 titled 'Cost of Additional Power", of the order dated August 24, 2004 reproduced below:

*"Para 4.2.2 Cost of Additional Power*

*(1) In absence of any firm commitment or agreement regarding purchase of additional quantities of power required for PIUs, it is not possible for work out the precise cost of procurement of such power. However, it can be safely assumed that the price of such additional quantities is not likely to be lower than the price at which power is currently available to the licensee, which goes up to Rs. 2.60 per kWh. Therefore, for working out the estimated cost of power purchase, its minimum price is provisionally being assumed at this level. If the actual price that the licensee has to pay for purchasing this power is different from this assumed price, the same can be periodically taken into account and necessary changes in the tariff made. The licensee should work out these details and submit the same to the Commission in the ARR and if necessary during middle of the year on 1st of October so that changes in the tariff, if warranted on this account, are allowed by the Commission.*

*(2) Accordingly, even at this conservative estimate of rate of power purchase, the cost of additional power purchased for meeting each unit of additional demand from PIUs works out to Rs. 3.25 (i.e. 2.60/0.8 @ 20% loss level). Thus, if only the additional cost of power purchase is to be recovered from PIUs, their charges will have to be at least Rs. 3.25/Unit or Rs. 3.09/kVAh.*

*(3) Licensee's other cost have already been distributed on the sales projected for existing consumers and are, therefore, not being charged to PIUs. There is no reason why proportionate share of the same should not be borne by them. Necessary corrections in this regard will be made when licensee's RR is available and is examined."*

19. The aforesaid view of the Commission is in contrast to the approach adopted by it in its order dated September 08,2003. In the order dated September 8, 2003, the Commission had adopted the average cost of supply based on historic or embedded cost that was prudently incurred by the licensee in its operations. The Commission also tried to provisionally rationalize the cost subsidies on this basis.

20 We note that the cost of additional power at Rs. 2.60 per kWh assumed for determining the PIU tariff, is the highest marginal cost of power.

21 The Commission by its order dated October 4,2005 have finalized the provisional Tariff Order dated August, 24, 2004. The appellant even at this stage pleaded that since their requirements of the PIUs has been met from within the States allocation, their power purchase cost should be determined on the basis of pooled purchase price and not as done in the Commission's order dated August 24, 2004.

22. Appellants have challenged the entire basis of the impugned order, of determining the cost of power supplied to the steel units, separately and at the highest cost which, according to them, is fundamentally erroneous and fallacious.

23. It seems to us that in case the tariff in the state of Uttranchal for PIUs was not provisionally enhanced and brought closer to tariff prevailing in the neighbouring State, it might have resulted in influx of PIUs consumers from within and outside the State as evidenced by the number of new applicants immediately after the drastic reduction in tariff which was effected vide Tariff Order dated September 08,2003. The view of the Commission that the apprehended influx would have resulted in all-round tariff increase for consumers (including domestic, commercial and rural areas) to the tune of Rs. 1.27 per unit and this would have caused a tariff shock to them was not without foundation.

24. In view of the extraordinary circumstances Uttranchal Electricity Regulatory Commission by its provisional tariff order dated August 24,2004 tried to diffuse the situation by revising the PIU tariff. However, we are constrained to observe, that this is not in line with the spirit of the Act wherein it is postulated that the cross subsidies have to be transparent and gradually brought down. Using the marginal cost of purchase of power for a particular category of consumers will perennially result in higher tariff for the category and, therefore, cannot be justified. At the same time it is also not the intent of the Act to inflict tariff shock to the consumers.

25. In view of the above twin conflicting requirements, better approach would be to determine tariff for PIU category using average pooled cost of purchase and so devise the tariff as to ensure that it does not steeply increase and cause tariff shock to the other categories and transparently brings out the level of subsidy provided. As per the Act cross subsidy has to be progressively reduced and the Commissions are expected to notify a roadmap in accordance with para 8.3 of the Tariff Policy.



26. It seems to us that the Commission decided to use the marginal cost of Rs. 2.60 per unit for tariff determination in view of the prevailing extra-ordinary circumstances in which, if tariff for PIUs was reduced considerably as compared to the neighbouring states, there might have been influx of PIU consumers on the one hand and on the other hand, tariff shock to the extent of Rs. 1.27 per unit would have been caused to the remaining consumers including domestic rural consumers. But neither the Electricity Act, 2003 nor the Commission's own Regulations notified on June 15, 2004 support such an action of the respondent Commission. We therefore, direct the Commission to review and revise its tariff orders dated October 04,2005 and April 25,2005 adopting the approach of using pooled average cost of power purchased from all sources for all categories of consumers. Simultaneously, it should also ensure that no tariff shock is caused to any consumer in line with the spirit of the Electricity Act, 2003. Subsidy element needs to be succinctly brought out in a transparent manner. This exercise may be carried out along with truing up during the next tariff revision.

27. Having dealt with the main issue of determination of tariff, we now turn to the following points raised by the appellants:

- (i) Was the Commission justified in revising the earlier Tariff Order dated September 8,2003 which was valid only up to March 31,2004 and no longer in existence and hence expired, by order dated August 24,2004?
- (ii) Whether the Tariff Order dated the September 8,2003 cannot be amended second time by the Commission as done vide order dated August 24, 2004 for seeking an amendment in tariff for PIUs only?
- (iii) Was it necessary for UPCL to file the entire ARR for the year 2004-05?
- (iv) Can the PIUs be categorized as a separate class from other H.T. Industries?
- (v) Is the transmission and distribution loss level of 20% for PIUs consumers far too high and should it be in the range of 1%?
- (vi) The UPCL has not furnished details of utilization of surplus amount of Rs. 800 crores.

28. We now deal with the various contentions of the appellants listed in para 27 above.

**(i) Was the Commission justified in revising the earlier Tariff Order dated September 8,2003 which was valid only up to March 31,2004 and no longer in existence and hence expired, by order dated August 24,2004?**

(a) Appellants have contended that the tariff order dated September 08,2003 was valid only upto March 31, 2004. Therefore, there was no justification for the state Commission to revise an expired order by its Order dated August 24,2004.

(b) We observe that though ARR determination was for the period ending March 31,2004, it does not necessarily mean that the tariff notified will expire on March 31,2004. No outer limit for the tariff has been indicated in the tariff order though it takes effect from September 20,2003. AS per Section 64(6) of the Electricity Act, 2003:

*“A tariff order shall unless amended or revoked, continue to be in force for such period as may be specified in the tariff orders.”*

(c) Moreover, it cannot be the case that after a certain date there will be no tariff applicable leading to an absurd situation of free or no supply of power or supply at an arbitrary tariff rate, a licensee may choose to charge.

(d) In view of the foregoing we conclude the tariff order remained in force beyond March 31,2004 until amended by order dated August 24,2004.

**(ii) Whether the Tariff Order dated the September 8,2003 cannot be amended second time by the Commission as done vide order dated August 24, 2004?**

(a) Appellant pointed out that the tariff determined on September 08,2003 was amended by an order dated December 08,2003 and therefore, cannot be amended again second time as has been done by order dated August 24,2004. In this regard appellants argued that in view of the Section 62(4) the tariff may not ordinarily be amended more frequently than once in any financial year.

(b) UPCL responded by stating that in the first place, the order dated December 08,2003 was a supplementary order and it was not an amendment of the order dated September 08,2003. Secondly, the amendment dated August 24,2004 took place in the financial year 2004-05 and not in 2003-04 in which the original tariff order dated September 08,2003 was issued. They further argued that Section 62(4) uses the words “may ordinarily be amended” thus suggesting that under extraordinary circumstances, the Commission could amend tariff more than once in any financial year.

(c) We agree with the explanation of the respondent and find that there is nothing irregular in Commission’s amendment order dated August 08,2004 as far as Section 62(4) is concerned.

**(iii) Was it necessary for UPCL to file the entire ARR for the year 2004-05 for seeking an amendment in tariff for PIUs only.**

(a) We note from the order of the UERC dated August 24,2004 that the UPCL, second respondent, had stated that ARR for the year 2004-05 was likely to be delayed because of the following:

(A)The Transfer Scheme dividing the assets and liabilities between UPPCL and UPCL was yet to be notified by the appropriate Government

(B) UPCL’s accounts for the year 2002-03 were still not final and were under audit.

(C) UPCL’s provisional accounts for the year 2003-04 were still under preparation.

(D) UPCL’s assets and liabilities have again been divided between it and the new Transmission Company formed by the state Government. Effect of this on UPCL’s revenue and expenditure needs to be worked out and reflected in the ARR.

(b) In the circumstances UERC was of the view that UPCL is unable to file its tariff proposal for the year 2004-05. In view of the increasing power demand from Power Intensive Unit, which, in turn, will increase UPCL costs manifold, UERC gave to give relief to UPCL by

amending the prevailing tariff approved by it vide order dated September 08,2003 so far as it applied to PIUs in the state.

(c) We also note from the Annexures 1&2 to the UERC order dated August 24,2004 that PIUs, including the appellants, were duly heard by UERC before issuing the amendment to the tariff. UERC finalized the amendment order dated August 24,2004 after a petition filed by one of the appellant and 11 others. In view of this we are of the opinion that the appellants should have no grievance on account of non-submission of the entire ARR by UPCL.

**(iv) Can the PIUs be categorized as a separate class from other H.T. Industries?**

(a) Appellants have contended that the PIUs cannot be categorized as a separate class from other H.T. Industries.

(b) Appellants have submitted that the impugned ordertreats steel units as a separate class even though the only reason given for doing so was the increase in demand from the steel units. Since such huge increase has been demonstrated to be non-existing, appellants have pleaded that steel units cannot be treated as a distinct class as compared to other high tension industries, for determination of power tariff. They further argued that, for the year 2006-07, UPCL itself has abandoned the classification of steel units as a separate class of H.T.Units and fixing a separate tariff for them.

(c) In reply the respondents have relied upon clause 62(3) of the Electricity Act, 2003 which provides for differentiation on account of load factor, power factor, voltage, total consumption of electricity during any specified period, nature of supply and purpose for which it is supplied. Thus the Commission has the power to classify the PIUs for separate treatment.

(d) The Commission has also justified separate categorization of steel units on the plea that in induction/arc furnace, the magnitude of current changes abruptly and sometimes periodically causing large swings in reactive power and consequent voltage fluctuations. In order to insulate other consumers from the problems caused by steel units, Commission has even suggested to UPCL to supply these units through independent feeders not below 33 kV.

- (e) Learned counsel for UPCL has also relied on the judgment of Hon'ble Supreme Court in case of Association of Industrial Users V/s State of Andhra Pradesh (2003) 3 SCC 711 wherein the issue of classification has been considered.
- (f) After careful consideration of the views and arguments of both sides we agree with the Commission that the steel units can be placed as a separate category.

**(v) Is the transmission and distribution loss level of 20% for PIUs consumers far too high and should it be in the range of 1%?**

- (a) Appellant have submitted that the T&D loss for PIUs is less than 1% in comparison to the total system loss level of 45.17% in the state. In this regard they have also submitted an affidavit in respect of a particular 33 kV feeder loss level. UPCL have also submitted an affidavit dated January 31,2006 showing the technical loss level in the transmission system of the state of Uttranchal in the region of 4.5% upto 132 kV transmission line. This figure of 4.5% does not include the loss level in 33 kV line. UPCL asserted that the total losses in the entire distribution system, as per the affidavit, will be 35.93% including the intra-state transmission loss.
- (b) We also observe from the Commission's order dated August 24,2004 at para 4.2.1 that it recognized the fact that loss is not the same for all categories of consumers and the current energy loss is due to pilferage euphemistically called commercial loss. Ideally, the cost of such commercial loss should be recoverable from the consumers or group of consumers causing it.
- (c) The Commission, in its order has stated that unfortunately the loss data is neither precise nor consumer or category-wise to enable category-wise allocation of loss. Commission in its tariff order dated September 08,2003 had directed the licensee to develop and furnish detailed information on losses which was still awaited at the time of issuance of order dated August 24,2004. We note that under these compelling circumstances, the Commission had assumed loss level of 20% for PIUs consumers, which in Commission's view, was generous. Even at the stage of issuance of impugned order dated October

04,2005, the loss level of 20% for PIU consumers has been maintained.

- (d) In our view, appellant's contention that loss level is just 1% is not sustainable at all. The loss level in the system from the point of purchase to the consumer premises, is what is relevant and not only loss in the 33 kV feeder. UPCL has to pay for the energy purchases at the point of purchase and all system, including 400 kV, 220 kV, 132 kV, 33 kV lines, transformation losses have to be taken into account and paid for by UPCL. To enable the Commission to use category-wise loss data for determining cost of supply for the concerned category, UPCL must furnish the data to the Commission in its future filings of ARR.
- (e) The Commission, in the absence of precise category-wise data has, according to its estimation, assumed a loss level figure of 20%. We do not intend to interfere in this decision of the Commission as, in the absence of required category-wise loss data it has kept the interests of both the appellants and the UPCL in mind.

**(vi) The UPCL has not furnished details of utilization of surplus amount of Rs. 800 crores.**

- (a) Appellants have contended that as per Commission's Tariff Order dated April 25,2005, UPCL has not furnished details of utilization of surplus amount of Rs. 800 crores.
- (b) UPCL have clarified that there was no surplus cash of Rs. 800 crores. The alleged surplus partly relates to the period prior to Tariff Determination by the Commission. This position will be further clarified when the UPCL accounts are duly audited. UPCL submitted that the state Government has also appointed Committee to go into these details.
- (c) In view of the explanation given by UPCL we suggest the appellants to wait for the audited accounts which would anyway have to be reflected in the future ARRs and eventually impact their future tariffs accordingly.

29. In the result, we partly allow the appeals to the extent indicated above and direct as follows:

- (a) the commission while carrying out the truing up exercise during

the next tariff revision shall re-determine the tariff for PIUs on the basis of pooled average cost of power purchased from all sources for all categories of consumers for the period covered by the orders dated April 25,2005 and October 4, 2005;

- (b) The effect/benefit of the truing up exercise shall be given to the appellants in the next tariff revision.
- (c) While re-determining the tariff the commission shall ensure that no tariff shock is caused to any other category of consumers in consonance with the spirit of the Electricity Act, 2003 and the Tariff Policy.

Before parting with the order, we would direct UPCL to furnish the requisite data in time to enable UERC to take decisions based on actual data.

We dispose of the appeals.

**(Mr. Justice Anil Dev Singh)**  
**Chairperson**

**(Mr. H.L. Bajaj)**  
**Technical Member**