Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 250 of 2006

Dated: February 07, 2008.

Present: - Hon'ble Shri H.L. Bajaj, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member

1. Bangalore Electricity Supply Co. Ltd.
K.R. Circle
Bangalore-560001

2. Hubli Electricity Supply Company Ltd.
P.B.Road, Nava Nagar, Hubli
Karnataka

3. Mangalore Electricity Supply Company Ltd.
Paradigm Plaza, Mangalore
Karnataka

4. Gulbarg Electricity Supply Company Ltd.
Station Road, Gulbarga
Karnataka

5. Chamundeshwari Electricity Supply
Company Ltd. 927, L.J.Avenue,
Saraswatipuram, Mysore
Karnataka .....Appellants

Versus

1. Karnataka Electricity Regulatory Commission
6th & 7th floors, Mahalakshmi Chambers
9/2, M.G. Road, Bangalore

2. Karnataka Power Transmission Corporation Ltd.
Kavery Bhawan, K.G.Road
Bangalore-560009 .....Respondents

Counsel for appellants: Mr. M.G.Ramachandran,Advocate
Mr. Anand K. Ganesan and
Ms Swapna Seshadri, Advocates
Mr. V.Hiremath, Director (Law)

Counsel for respondents: Mr. Apoorva Misra, Advocate,
For Resp.No.1 KERC
Mr. Rohit Rao N. Advocate for
Resp.No. 10, FKCCI.
Mr. Amit Kapur, Advocate
Mr. Alok Shankar, Advocate for
Resp.I
Mr. Avijeet Lala, Advocate
Mr. Sunil Kumar for KERC
Mr. S.S.Patil, President and
Mr.M.G.Prabhakar, Member,
Energy Committee, FKCCI
Mr. Mansoor Ali Shoket, Advocate
Mr. Kunal Rajpal for KERC
Mr. Somiran Sharma for FKCCI
Mr. Rajnish Ranjan for KERC
Ms Poonam Verma, Advocate
Ms Minu Rani Advocate for Resp.I

Judgment

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

This is a common appeal filed on common grounds by the five distribution licensees in the state of Karnataka, against the orders dated October 16, 2006 passed by the Karnataka Electricity Regulatory Commission (KERC or the Commission in short) whereby it has determined the revenue requirements and tariff applicable to the appellants for the FY 2006-07.

2. In these appeals the appellants have sought the following relief:

(a) allow the appeal and modify the orders dated October 16, 2006 passed by the Commission to hold that the appellants shall be entitled to the additional revenue requirements for the FY 2006-07 as claimed by the appellants;

(b) direct that the appellant shall be entitled to recover the additional revenue requirements as decided by

the Tribunal; from the consumers in the state by a proportionate percentage increase in the existing tariff and thereby equitably from all the consumers in the area of supply of the appellant;

(c) direct that the existing tariff as prevalent before the impugned order shall continue to apply with an additional increase in tariff as provided in prayer (b) above.

3. The appellants are all electricity distribution licensees in the Karnataka under The Electricity Act, 2003 (the Act in short) for the respective areas of supply. These are wholly owned Government of Karnataka Enterprises who succeeded to the functions of the Electricity Distribution and Retail Supply from Karnataka Power Transmission Cooperation Ltd. (KPTCL in short), the second respondent under a statutory Transfer Scheme notified by the Government of Karnataka in exercise of the powers under the Karnataka Electricity Reforms Act, 1999 (the Reforms Act).

4. KPTCL at present undertakes the transmission of electricity and also discharges the statutory functions of the State Load Despatch Centre and the State Transmission Utility as provided in Sections 31` and 39 of the Act. KPTCL had earlier succeeded to the functions of transmission, distribution and retail supply of electricity from the erstwhile Karnataka Electricity Board again under a statutory transfer scheme notified by the Government of Karnataka under the Reforms Act.

5. In May, 2006 the appellants filed petitions before the Commission for determination of their respective revenue requirements and tariff for the year 2006-07. The revenue requirements of the appellant include the costs and expenses payable for purchase of power from different sources and the transmission charges payable to KPTCL, besides other costs and expenses related to the business activities of electricity distribution and retail supply.

6. Earlier in November, 2005 KPTCL had filed a petition before the Commission for determination of its revenue

requirements and tariff for the above period 2006-07. By order dated April 7, 2006 the Commission decided on the revenue requirements and tariff of KPTCL for the year 2006-07.

7. Aggrieved by the order dated April 7, 2006 KPTCL filed an appeal being No. 84 of 2006 before this Tribunal which vide order dated August 29, 2006 was allowed in part on the following aspects:

(i) Return on equity should be allowed to KPTCL by the Commission taking into account the reserves and surplus as a part of the capital base. Accordingly, as against Return on Equity allowed by the Commission on the capital base of Rs. 682.55 crores, KPTCL is entitled to the Return on Equity on capital base of Rs. 897 crores also;

(ii) KPTCL should be allowed depreciation at the rate of 6% for the year 2006-07 as against depreciation at the rate of 3% allowed by the Commission.

8. In addition to the above, this Tribunal also directed that the Commission should, in future years, consider the investment approval prima facie as proposed by the utility and in the manner as per guidelines contained in its order dated April 7, 2006.

9. It is the contention of the appellants that KPTCL had claimed the transmission charges from the distribution licensees as per the decision of the Tribunal in appeal No. 84 of 2006 and such charges were included by the appellants as an expense in their respective Revenue Requirements and Tariff proposals.

10. The appellants have submitted that KPTCL and some of them had filed another appeal being No. 107 of 2006 against the Order dated April 24, 2006 passed by the Commission in regard to the revision in tariff on account of additional power purchase cost payable to Messrs Tanir Bhavi Power Corporation Limited(Tanir Bhavi in short), a generating company supplying electricity to the licensees in the State. The purchase of electricity from the said generating company

in the past was being undertaken by KPTCL and in turn KPTCL supplied the electricity purchased to the appellants. The Commission had disallowed part of the power purchase cost payable by KPTCL to Tanir Bhavi.

11. By Order dated July 7, 2006, this Tribunal admitted the appeal No. 107 of 2006 filed by KPTCL and pending hearing and decision in this appeal, this Tribunal had stayed the order dated April 24, 2006 passed by the Commission.

12. In the circumstances mentioned above, the appellants claimed the entire amount of power purchase cost payable to Tanir Bhavi for the year 2006-07 and also for the additional power purchase cost paid by KPTCL to Tanir Bhavi in the earlier years which the Commission had not then allowed as a pass through in the Tariff. The appellants had urged the Commission to allow the said power purchase cost as a pass through in its tariff in view of the stay granted by the Tribunal in appeal No. 107 of 2006.

13. By order dated October 19, 2006, this tribunal had allowed the appeal No. 107 of 2006 and directed the Commission to allow the entire power purchase cost payable to Tanir Bhavi as a pass through in the Tariff. With regard to the amount paid by KPTCL to Tanir Bhavi in the previous years which were not then allowed by the Commission as a pass through, the Tribunal had directed the amortization of the amount over a period of 5 years and recovery of the same in Tariff to avoid adverse tariff impact on the consumers if the entire amount was recovered in the Tariff immediately.

14. By the impugned order dated October 16, 2006 (separate orders passed for each of the five appellants) the Commission has decided on the revenue requirements and tariff applicable to the appellants for the year 2006-07.

15. The appellants have submitted that by the impugned orders the Commission has *inter alia* decided on the following:

(i) The quantum of power purchases proposed (energy required) by the appellants to meet the electricity

requirements of consumers and others in their respective areas of supply has been significantly reduced. The appellants had discussed in detail with the officers of the Commission on the initial estimates of power requirements during the validation meetings and revised the estimates. Despite these discussions, the Commission has reduced the quantum of power requirements as given below arbitrarily without appropriate reasons:

In million units

Name of The Discom	**MUs of Power Purchase proposed by the appellants as revised during validation meetings**	**MUs allowed by the Commission**	**Difference (disallowed quantum)**
BESCOM	19197.45	16908.76	2288.69
HESCOM	7188.18	6873.32	314.86
MESCOM	2838.96	2715.84	123.12
GESCOM	4776.87	4415.94	360.93
CESCOM	4153.03	3624.19	528.84
TOTAL	38154.49	34538.05	3087.60

16. As against the above, the consumption by all the appellants up to August, 2006 is 20422 MU and this leaves only 14116 MU for the remaining seven months which is also the period having high demand for electricity. Thereafter, the consumption per day as of now is around 120 MU. The quantum of power requirements determined by the Commission is grossly inadequate.

(ii) The Power Purchase costs payable to KPTCL by the appellants for the power purchases from Tanir Bhavi has not been fully allowed despite the stay granted by the Tribunal in appeal No. 107 of 2006 on the order passed by the Commission rejecting the claim of KPTCL. The cost of such power purchase disallowed by the Commission related to the Financial Year 2006-07 (inclusive of energy charges for power purchase quantum disallowed) is as under:

Rs. In crores.

Name of the Discom	**Cost claimed by Discoms for 2006-07**	**Cost allowed by the Commission**	**Difference**
BESCOM	595.71	241.51	354.20
MESCOM	134.54	54.93	79.61
TOTAL	730.25	306.44	433.81

(iii) In addition to the cost of power purchase from Tanir Bhavi for the year 2006-07, the appellants had also claimed pass through of amounts aggregating to Rs. 720 crores which pertain to the previous periods namely from 2002-03 to 2005-06.

(iv) The distribution loss as claimed by the appellants has not been allowed and in particular the losses suffered by the appellants in the supply of electricity to agricultural consumers have been disallowed to the extent they are categorized as supply to unauthorized pump sets.

(v) The Transmission charges claimed by KPTCL as per order dated August 29, 2006 of this Tribunal in appeal No 84 of 2006 amounting in aggregate to Rs 275.68 crores has not been allowed as a part of the revenue requirements of the appellants.

(vi) The Employees Cost claimed by the appellants has not been allowed in full. The details are as under**:**

Rs. In crores.

Name of the Discome	**Cost claimed by Discoms for 2006-07**	**Cost allowed by the Commission**	**Difference**
BESCOM	390.63	293.03	97.6
HESCOM			76.88
MESCOM	131.76	98.80	32.96
GESCOM	131.35	102.04	29.31
CESCOM	167.22	106.92	60.30
TOTAL			297.05

(vii) The interest and finance charges claimed by the appellants on Capital Works Programme have not been allowed. The details are as under:

Rs. in crores

Name of the Discom	Amount not allowed
BESCOM	71.86
HESCOM	64.52
MESCOM	8.67
GESCOM	12.80
CESCOM	24.05
TOTAL	181.90

(viii) The Repair and Maintenance Cost claimed by appellants 1 and 5 have not been fully allowed. The details are as under:

Rs. In crores

Name of the Discom	Cost claimed by Discoms for 2006-07	Cost allowed by the Commission	Difference
BESCOM	59.76	47.65	12.11
CESCOM	13.98	9.16	4.82
TOTAL			16.93

(ix) In the case of appellants 1 and 5 the Commission has not allowed the Administrative and General Expenses to the required extent.

(x) The Commission has also not allowed, to the required extent, the provision made by the appellants for bad and doubtful debts.

(xi) In addition to reducing the revenue requirements of the appellants on the aspects mentioned above the Commission has further reduced the overall tariff for various categories of consumers causing additional uncovered gap of Rs 192 crores in aggregate in the revenue requirements of the appellants without any reasons and merely stating that such reduction in per unit tariff applicable to the different classes of consumers will only have a marginal effect.

(xii) In the circumstances mentioned above, as against the revenue gaps claimed by each of the appellants in the expected revenue requirement, the Commission, in the impugned order, has determined revenue surplus from the existing tariff for each of the appellant and has,

therefore, reduced tariff applicable to various classes of consumers to adjust the above revenue surplus.

(xiii) As a consequence of the above the revenue requirements of the appellants for the year 2006-07 determined by the Commission have been significantly reduced as per the following details:

Rs. In crores

Name of the Discom	**Revenue Requirements proposed**	**Revenue Requirement allowed by the Commission**	**Difference**
BESCOM	5341.55	4245.63	1095.92
HESCOM	1722.93	1525.31	197.62
MESCOM	897.50	777.29	120.21
GESCOM	1124.10	902.09	222.01
CESCOM	1088.47	824.36	264.11
TOTAL			1899.87

17. The appellants state that they had submitted their revenue requirements under various heads and that they had discussed and deliberated on the various aspects of the

revenue requirements with the officers of the Commission in the validation meetings. The Commission was required to decide the revenue requirements and the Tariff based on the submissions made by the appellants, the points raised during the validation meetings and the specific objections and suggestions raised by the interested persons and stakeholders. The Commission was required to give an appropriate opportunity to the appellants in the event the Commission proposed to decide any of the aspects of the case on the basis different from those urged before it in the proceedings.

18. The Commission, however, did not give any opportunity to the appellants and proceeded to decide on various aspects of the matter on totally different basis and considering matters which were not raised during the proceedings. Thus the appellants did not have opportunity to deal with some of the specific matters raised in the impugned orders. These include decisions on energy requirements, the fact that giving effect to the order dated August 29, 2006 passed by this Tribunal in appeal No. 84 of 2006 concerning the transmission charges

does not depend on the truing up exercise, the interpretation of the said order of this Tribunal in regard to investment and financing charges does not imply that no such interest or finance charges can be considered in the tariff for the ensuing period till the investment is actually made, the implication of the order passed by this Tribunal dated July 7, 2006 staying the operation of the order relating to power purchase costs payable to Tanir Bhavi, non consideration of power supply to and distribution losses in regard to the IP sets on grounds that the connection to IP sets have not been regularized when under the decision taken by the Government of Karnataka such regularization has to be achieved by March 31, 2007 and also on matters relating to Employees Cost, R&M Expenses, Bad Debts etc. as detailed above. The appellants submitted that if the Commission had given such an opportunity the appellants would have been able to persuade the Commission that the decision proposed is not just or proper and not in accordance with law.

19. The Commission had engaged consultants such as TERI to advise the Commission on specific aspects. The report submitted by the consultants was not made available and, therefore, the appellants did not have the opportunity to deal with the matters contained in the said reports which had influenced the decision of the Commission.

20. Aggrieved by the impugned orders of the Commission the appellants have filed present appeals for setting aside the orders of the Commission.

21. On consideration of the submissions made on behalf of appellants as well as respondents and the contentions advanced on either side and written submissions submitted by the parties, keeping in view that though number of contentions have been raised in the appeal and the replies, filed the learned counsel appearing for rival parties, while advancing any contentions restricted themselves to some main issues, the following issues and points emerge for our consideration in these appeals.

(A) Re. Reduction of quantum of power purchase required.

(B) Re. Disallowance of power purchase cost to Tanir Bhavi.

(C) Re. Distribution loss calculation

(D) Re. Interest and finance charges on investment.

(E) Re. Employees cost

(F) Re. Charges payable to KPTCL

(G) Re. Repair and Maintenance Expenses

(H) Re. Additional reduction and tariff

(I) Re. Differential industrial tariff.

(J) Re. Bad Debt Provisions

We now proceed to deal with each issue/point.

(A) Re. Reduction of quantum of power purchase required.

22. Mr. M.G. Ramachandran, learned counsel for the appellant stated that the Commission approved 34538.05 MU of power purchase against proposal of 38154.49 MU for the five distribution companies thereby leaving a gap on the

pretext that energy sale projected for some categories of consumers was higher. He pleaded that the Commission should have allowed the energy sales and power purchase as projected by distribution companies and in the event such projections are higher as per actuals during the tariff period, the excess allowed could have been appropriately adjusted with interest at the time of truing up. He submitted that the Commission should have at least considered the energy sales and power projections based on half yearly actual quantum which was available at the time of issuance of the impugned Tariff Orders.

23. Learned counsel contended that the Commission has not followed the principles laid down by this Tribunal in appeal No. 84 of 2006 dated August 29, 2006 while dealing with investments proposed and as per which judgment the Commission should not ordinarily interfere with the projections by the utility and if the projections go amiss the same could always be adjusted based on actuals instead of disallowing the cost upfront and thereby causing financial strain to the utility.

24. Learned counsel contended that the Commission had disallowed the power purchase projected to meet supply to unauthorized IP sets on the ground that despite earlier order of the Commission the appellants have not made any attempt to regularize all IP sets. He submitted that the Commission has failed to consider that under the scheme formulated by the Government, the distribution companies were to regularize unauthorized IP sets by March 31, 2007 and that the appellants have undertaken the same in accordance with the said scheme. He asserted that disallowing the power purchases to meet the supply to unauthorized IP sets during 2006-07 is harsh and unjust. In this regard the Government Order dated October 3, 2006 has been placed on record by the appellant. He urged that the Commission should be directed to allow the cost as per actuals with carrying cost in the truing up at the time of determination of MYT for 2007-10 which is pending before the Commission.

25. Per contra learned counsel for the respondent stated that during the validation meetings KERC pointed out that due to

good monsoon, availability of power from hydro sources was substantially high and therefore, requested revision of source-wise power purchase quantity and cost and that the appellant failed to provide the said revised data and the same was subsequently furnished by State Power Procurement Coordination Centre (SPPCC) who was acting on behalf of the appellants. He stated that in the said revised data, the quantum of power to be purchased has been increased by 2022 MU which was not substantiated by the appellant as to whom the extra power would be sold. He further stated that metered sales of all distribution companies have been allowed almost in full. There has been reduction in the unmetered sales namely Bhagya Jyothi/Kutir Jyothi (BJ/KJ), IP sets and street lights. For BJ/KJ installations and street lights the Commission has calculated the consumption based on the data provided for the metered installations by the appellants themselves. The consumption of unauthorized Irrigation Pump(IP) sets had to be disallowed by the Commission as sale to unauthorized installations amounts to theft in terms of Section 135 of The Electricity Act, 2003 (The Act). As per

direction of the Commission the appellants were to regularize all the IP sets connections and that they have failed to comply with this direction. He further submitted that neither the distribution companies nor the state Government should encourage such practices of supplying power to unauthorized users.

26. Learned counsel further stated that the responsibility of metering all the installations lies with the appellants in terms of Section 55 of the Act. In the absence of 100% metering of IP sets the Commission is constrained to estimate the specific consumption for IP sets based on sample DTC meter readings for the previous year. He stated that with respect to sales to water supply, BESCOM had projected 300.50 MU as against the last year's figure of 238.29 MU. Compounded Annual Growth Rate (CAGR) of 9% against the proposed growth rate of 26% was considered adequate and therefore, sales of 260 MU was approved. He stated that with respect to street lights KERC considered 254 units/kW/month as the specific consumption based on information furnished by BESCOM. He submitted that sales of 300 MU, which was a specific

requirement of BESCOM, as additional sales due to efficiency improvements has not been recognized as sale to any specific category of consumers and that such efficiency improvement has to be achieved by cutting down on the technical and commercial losses and not by procuring extra power.

27. Learned counsel stated that extrapolating grid consumption from the first half of the year to estimate power requirement during the whole year would not be logical as the consumption increase would not be uniform throughout the year. The drawal of power by Irrigation Pump sets, which is about 40% of the total sales in the beginning of the year, cannot be the basis for fixing the total consumption in the entire year.

Analysis and decision:

28. The basic issue before us is as to who should estimate the power requirement. It is the responsibility of the appellant to ensure power supply and also give new connections required during the year. The DISCOM have their own planning departments where experts assess the power

requirements. This Tribunal in its judgment in Appeal No. 84 of 2006, dated August 29, 2006, in case of KPTCL vs KERC has decided that it is for the utility to estimate the future demands. Relevant para from our judgment is extracted below:

> *"The Commission overlooked the fact that the appellant being transmission utility transmitting power through out the State for the bulk supply as well as distribution as an obligation to maintain the supply as well as quality supply and when the demand increase, either at the level of distribution or at the level of bulk supply it is the transmission licensee who should provide for the supply. This obviously means that the transmission utility has to plan in advance and should be in a position to supply power as demanded from time to time. Section 42, 43 of The Electricity Act 2003 also should not be lost sight of. To meet the ever increasing demand consequent to development and improvement in the status of the consumer public, industrialization, computerization, heavy industries and requirement increases by geometric proportion, it is for the transmission utility or such other*

utility to estimate the future demands as well, besides improving the quality and standard of maintenance. This is possible only if the utilities have the freedom to plan with respect to their investment, standardization, upgrading of the system. For such a course it is within the domain of those utilities to undertake to plan, invest and execute the projects or schemes of transmission etc. If the view of the Commission is to be sustained, as already pointed out, the same would mean for each and every investment an approval has to be sought by the utility in advance which is not the objective of the Act."

29. It is not for the Commission to assume day to day duties and responsibilities of the appellant as it is the appellant alone who has to ensure power supply and who should estimate the requirement of power. Any way, at the end of the year the truing up has to be done. The appellants have fairly submitted that in case of any over recoveries they will refund the excess amounts collected by them with interest to the consumers.

30. With regard to 100% metering, it is important and essential that the appellants abide by the provisions of the Act and ensure 100% metering as envisaged in Section 55 of the Act.

31. As far as the IP sets are concerned, the Karnataka Government has taken the decision to postpone the regularization as per their letter dated October 3, 2006, reproduced below:

Government are pleased to accord approval for the following:

" 1) to extend the time limit for regularization of unauthorized IP sets from August 01, 2006 to March 31, 2007;

2) to collect the regularization charges of Rs. 10,000/- per IP set payable by farmers in five monthly equal installments.

3) Regularization charges payable in installments as above by farmers shall be shown distinctly under separate head as "receivable from farmers" in the

Revenue Ledger, without merging this with the periodical electricity charges (revenue);

4) *To initiate action as per rules apart from disconnecting the unauthorized IP set installations, if any, existing after March 31, 2007."*

32. Once a decision has been taken by the Government it may not be proper to designate the existing connections as unauthorized.

33. In view of the aforesaid discussions and since interest of the consumers is being protected by the appellants, we hold that the Commission should allow the power requirement as estimated by the appellants.

(B) Re. Disallowance of power purchase cost to Tanir Bhavi.

34. Learned counsel for the appellants contended that the power purchase cost payable to KPTCL for the purchases from Tanir Bhavi has not been fully allowed despite the stay granted by this Tribunal in appeal No. 107 of 2006 and that the cost of such power purchase disallowed by the

Commission related to the Financial Year 2006-07. The Purchase Agreements with the generating companies including Tanir Bhavi were assigned by KPTCL to distribution companies and for the tariff period 2006-07 the cost payable to Tanir Bhavi at US 4 cents was to be allowed to the distribution companies. The Commission had not allowed the full US 4 cent payable to Tanir Bhavi despite the fact that on the petition filed by KPTCL for the previous period by order dated July 07, 2006, this Tribunal had stayed the Commission's decision to disallow such cost.

Analysis and decision:

35. It has been fairly stated by the learned counsel for the Commission that the additional power purchase cost payable to Tanir Bhavi as allowed by this Tribunal in appeal No. 107 of 2006 could not be taken into account as the judgment in appeal No. 107 of 2006 was delivered on October 19, 2006 whereas the Commission had already vide its order dated October 16, 2006 had stated that the order was subject to the judgment of this Tribunal in appeal No. 107 of 2006. We need

not say more and expect the Commission brings out this element of additional cost succinctly brought while implementing this order.

(C) Re. Distribution Loss calculation:

36. Learned counsel for the appellant contended that the Commission has disallowed the losses for the supply of power to so called unauthorized connections on the ground that despite earlier order of the Commission, the appellants have not made any attempt to regularize all IP sets. He contended that the Commission has failed to consider that under the scheme formulated by the Government the distribution companies were to regularize all unauthorized IP sets by March 31,2007 and that the distribution companies have undertaken the same in accordance with the said scheme of the Government. He asserted that in view of this it is harsh and unjust for the Commission to disallow losses pertaining to supply to IP sets during 2006-07.

Analysis and decision:

37. We have already held above that the power purchase in respect of IP sets is to be allowed and, therefore, the losses associated with such supply also have to be allowed.

(D) Re. Interest and finance charges on investment.

38. This issue has already been decided by this Tribunal in appeal No. 100 of 2007 wherein we have ordered as under:

> *"In view of the above judgment of this Tribunal the payments of interest and finance charges, pending final approval of the Commission, are merely provisional payments and, therefore, the Commission need not discontinue its decades old practice of allowing the interest and finance charges to the licensee till capitalization of the assets. If there is any variation in the expenditure made by the appellant and the approval accorded by the Commission, adjustments can always be made. Moreover, if the interest payments are not allowed till capitalization then the Interest During Construction will*

also form a part of asset base and for the useful life of the asset the return on the equity portion will be allowed to the licensee and this will not be in the interest of the consumer. It will therefore, be just, fair and equitable to continue to allow the interest and finance charges to the appellant as per Commission's well established practice and make required adjustments at the time of capitalization of assets as approved by the Commission.

39. We direct that the Commission implements our order in Appeal No. 100 of 2007, mutatis mutandis, in this appeal also.

(E) Re. Employees cost:

40. Learned counsel for the appellant contended that the Commission has not allowed the arrears paid by the distribution companies to their employees from 2003-04 on account of pay revision on the ground that the distribution companies and their predecessors KPTCL ought to have implemented the pay revision in time and that the

Commission has totally ignored that such pay revision implementation takes time because firstly negotiations with the employees and thereafter approval of the Government takes lot of time. He further stated that the delay in pay revision was not on account of any deliberate Act or failure or default on part of KPTCL or the appellants and that such disallowance of legitimate cost incurred by the appellant is harsh, unjust and contrary to the principles laid down by the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission case 2002 (8)SCC 715. Relevant paras on Employees' Cost are extracted below from this judgment.

> *" 87. ASCI in its report in regard to the above item held that the number of employees in New Cossipore and Mulajore is very high by any standard. It observed that the running of these institutions has become uneconomical and, hence the Company has been advised to take action to reduce the number of employees by proper deployment or Voluntary Retirement Schemes (VRS) particularly, in the context of the proposal for closing down the Mulajore plant. It also observed that the overtime payment made to the employees was a worrying feature. It also noticed that because of the settlement with the workmen, the Company*

was paying the workmen overtime irrespective of the need for the same and such payment had no justification especially when the same has to be passed on to the consumers. Therefore, it recommended a drastic cut or alternatively phasing out of this system of overtime payment. The Commission in its report agreed with the views expressed by the consultant. It however, did not agree with the consultant as to the closure of Malajore and New Cossipore plants, unless it was established that the cost of generation of electricity in those plants was higher than the cost of purchase of electricity by the Company from other sources. For the said reason it deferred the finding in regard to closure of the abovementioned two plants. It however, agreed with the consultants that the overtime payment that was being made by the Company was extremely high and hence for the year 2000-01 it imposed an ad hoc cut from the actual expenditure under this head, to the extent of Rs. 447 lakhs towards overtime. Rs. 600 lakhs towards pension contribution and Rs. 208 lakhs towards provision for leave encashment. The High Court reversed this finding on the ground that the payment of wages including overtime and other welfare benefits was made by the Company under lawful agreements entered with the workmen. Therefore, during the pendency of these agreements, it was legally not possible for the Company to stop these payments. Therefore, the

amounts spent towards this purpose, namely, towards the employees' cost should not be treated as amounts not properly incurred. The High Court on this basis allowed the entire expenditure incurred by the Company under this head.

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

reducing the cost under the head Émployees Cost". While considering the tariff revision for the year 2002-03 we direct the Commission to bear this fact in mind. However, we further direct the Company that should there be any need for entering into a fresh settlement with the workmen, then any agreement which entitles the workmen to get overtime payment even when overtime work is unnecessary should be done away with. With the above observations as a future guidance, we accept the finding of the High Court on this account."

41. Learned counsel prayed that the Commission be directed to allow these employee related expenses as per actuals with carrying cost during the truing up of revenues for 2006-07 at the time of approval of the distribution tariff for 2007-08 to 2009-10.

42. Per contra learned counsel for the respondent Commission stated that the appellants had claimed arrears of past three years payable towards pay revision to its employees and the same was included in the Annual Revenue Requirements (ARR) of the distribution companies after delay of more than three years and that the Commission had held

that the appellants should have initiated action for revision of pay earlier and should have finalized the same in time and that in view of this delay liability of Rs. 122.10 crores has accumulated which would burden the consumers and they cannot be penalized on account of delay by the appellants. He further submitted that the Commission in its tariff order dated March 10, 2003 has held that any pay revision has to be linked to employee productivity and should be paid by the licensee through efficiency gains and that in view of this the Commission has disallowed arrears of pay revision for FY 2004-06 and that the pay revision for the current fiscal year has been allowed subject to the appellant's furnishing details of increased employee productivity.

Analysis and Decision.

43. We appreciate concern of the Commission regarding employees productivity and its endeavor to increase the same. Increasing the employees productivity will enhance efficient working of the organization, cut costs and improve reliability and quality of supply. We hope that the appellants take up

the task of improving the productivity levels in their respective organizations and ensure continued improvements in the productivity levels as expected by the Commission. Having said that, we do not agree with the decision of the Commission not to allow the employees cost as pay revisions take into account factors such as: cost of living, salary levels in similar sectors etc. and are not necessarily linked to employee productivity alone. The Commission has sufficient powers under Section 142 of the Act to enforce its directions regarding improvement of employee productivity. Wage revisions invariably require very long and protracted negotiations and, therefore, we do not find any justification in disallowing arrears of pay revisions to the appellants. In today's industrial environment the appellants cannot postpone the payment of arrears and, therefore, will be exposed to crippling cash flow constraints if the wage related payments are not allowed.

44. In view of the aforesaid discussion we hold that all payment of arrears arising as a result of the pay revision

should be allowed with carrying cost in the next truing up exercise.

(F) Re. Charges payable to KPTCL.

45. Learned counsel for the appellant contended that the Commission is required to allow, in the ARRs, revenue requirements of the appellants all amounts payable to KPTCL as per orders of this Tribunal dated August 29, 2006 in appeal No. 84 of 2006 and order dated October 19, 2006 in appeal No. 107 of 2006 and order dated December 04, 2007 in appeal No. 100 of 2007. The financial outflow to the appellant on account of these expenses during 2006-07 may be directed to be allowed as per actuals with carrying cost in the truing up at the time of MYT tariff for 2007-08 to 2009-10.

Decision.

46. Once a decision has been taken by a higher authority in judicial hierarchy, it is necessary that these decisions are implemented expeditiously with alacrity. We direct that the Commission expeditiously takes up implementation of this

Tribunal's orders as mentioned in the aforesaid para No 45 above during the next truing up.

(G) Re. Repair and Maintenance Expenses.

47. Learned counsel for the appellants stated that the Commission has not allowed the quantum of R&M expense claimed by the appellants only on the ground that the same would increase the Repair and Maintenance Cost by 50% and that the Commission has not followed the principles laid down by this Tribunal in appeal No. 84 of 2006 vide its judgment dated August 29, 2006 namely that the Commission should not ordinarily interfere with the projections by the utility and if the projections are wrong the same could always be adjusted based on actuals instead of disallowing the cost upfront and thereby causing financial strain to the utility. He further submitted that the actual R&M expenses of the appellants during the tariff period 2006-07 were more than what has been allowed by the Commission. He pleaded that the financial outflow to the distribution companies on account of the actual R&M expenses during 2006-07 should be allowed

along with carrying cost in the truing up during determination of tariff for MYT 2007-08.

48. Per contra learned counsel for the Commission contended that R&M cost of 15-20 % over and above the actuals of the previous year has been allowed and that the BESCOM and CESC have claimed increase of 50.49% and 83.22% which is unreasonable and, therefore, the Commission has allowed 20% increase which is fully justified. He fairly stated that the actual for FY 2006-07 are available and the Commission would consider the same subject to prudence check during truing up as and when truing up proposals are filed by the appellants.

Analysis and decision:

49. Repair and Maintenance is very important for optimal utilization of machinery and equipment on long term basis. It is important that proper repair, overhaul and maintenance is carried out regularly and wherever replacements are required the same are effected to ensure reliable supply of power and to

achieve the fair life of the equipment. Therefore, it should be left to the wisdom of the management of the utility to make cash projections required for R&M. Concedingly, the Commission has fairly stated that the actual for R&M expenses for FY 2006-07 which are already available shall be considered subject to prudence check after the truing up proposals are filed by the appellants. We expect the Commission takes up this exercise expeditiously and allows actual R&M expenses with carrying cost subject to prudence check.

(H) Re. Additional reduction in tariff:

50. Mr. M.G.Ramachandran, learned counsel contended on behalf of the appellants that the Commission has made an ad hoc reduction in tariff by stating that such reduction will have marginal effect which results in reduction in the revenues of the appellants to the extent of Rs. 192 crores.

51. Learned counsel for the Commission stated that considering the huge surplus of Rs. 1162 crores the reduction of Rs. 192 crore is insignificant.

Analysis and decision:

52. We consider that Rs. 192 crores, by no means, is a small amount to be cut with one stroke. Whether or not, there is a surplus, any reduction of this magnitude has to be explained. We are not probing into the question of surplus which has been contested by the appellants. We do not agree with this ad hoc reduction of Rs. 192 and direct the Commission to restore the same.

(I) Re. Differential industrial tariff.

53. Learned counsel for the appellant contended that the Commission has implemented differential industrial tariff on the ground that the same will encourage shifting of the industries from Bangalore and that this is outside the purview of the function of the Commission. He stated that such decisions are for the Government of Karnataka to consider as

a matter of industrial policy and it is not for the Commission to unilaterally decide while dealing with the electricity tariff.

54. In this regard, the Commission, in its order dated 16th October, 2006 has stated as under:

"Commissions Views:

The Commission had introduced in the tariff order 2005, separate tariffs under LT 5(a) for Bangalore Metropolitan and under LT 5(b) applicable to all the areas other than Bangalore Metropolitan Area and village panchayats. The consumers in areas other than Bangalore Metropolitan Area pay lower fixed and demand charges. Energy charges are the same for both the sub-categories. This lower tariff in fixed charge for the areas other than Bangalore Metropolitan Area, was introduced to encourage mainly the rural industry and also partly to compensate for poor quality of supply.

<u>Fixed Charges in Higher Range connected loads</u>: The present fixed charges for connected load of 67 HP and

above is Rs.110 per HP per month under LT5 (a) and Rs.100 per HP per month under LT5 (b) categories.

Further, a large no. of Rice millers have represented that the existing tariff is very high especially for loads exceeding 67 HP and urged the Commission to grant substantial relief in the tariffs.

Keeping these representations in view, the Commission reduces the fixed charges from Rs.100 per HP per month to Rs.80 per HP per month under LT5 (b) category while retaining the existing tariff under LT5(a) category. Also in the case of demand based tariff, the Commission agrees to reduce the fixed charges in respect of 67 HP & above from the existing Rs.150 per KW of billing demand to Rs.130 per KW under LT5(b) category.

The Commission does not see any need to increase the energy charges by 40 paise per unit for this category as proposed, as the ESCOMs would have surplus with subsidy with the existing tariff. The Commission proposes to retain the tariff under 5 (a). Commission on hearing

public representations, feels it necessary to reduce energy charges by 15 paise per unit to consumers under 5(b) in all area other Bangalore Metropolitan areas.

Further, in order to encourage rural industries the Commission decides to reduce the energy charges by 15 paise per unit in respect of LT5 (b) category.

……."

55. At this juncture, it is necessary to advert to sub section 62(3) of the Act extracted blow for our reference.

"The State Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

56. As per sub Section 62(3) above, the Commission may determine differential tariffs according to the geographical

locations of the Consumers. Though promoting rural industry may be in the purview of the policy of the Government yet we cannot find fault with the Commission as long as it has acted in accordance with the Act, and its action may have helped in waning the industrial activity in the Metropolitan area of Bangalore. Accordingly, we uphold the decision of the Commission with regard to the Differential Tariff.

(J) Re. Bad Debt. Provisions.

57. Learned counsel for the appellants contended that the Commission has erred in not allowing proper provisions for bad debt for some of the appellants without giving proper reasons. The Commission in its order dated October 16, 2006, in case of BESCOM has stated that the provisions of bad debt would not be allowed on ad hoc basis and that actual bad debt could be claimed by the appellant by providing full details which would be allowed by the Commission subject to prudence check.

Analysis and decision:

58. It is normal accounting practice to allow bad debts. The Commission has fairly stated in its order for allowing the same on receipt of full details and, therefore, we need not interfere with the order of the Commission with regard to the provision for bad debts.

59. In the result, the appeals are allowed in part in respect of issues (A), (B), (C), (D), (E), (F), (G), (H) & (J) to the extent indicated hereinabove but with no order as to costs.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. H.L. Bajaj)
Technical Member