

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

Appeal No. 197 of 2013 & I.A. No. 273 of 2013

Dated: 18th October, 2014

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

In the matter of:

Tamil Nadu Power Producers Association,

Represented by its Authorized Signatory,
6, Sardar Patel Road, Guindy,
Chennai-600 032

... Appellant

Versus

**1. Tamil Nadu Transmission
Corporation Limited (TANTRANSCO),**
Represented by its Chairman and Managing Director,
No. 144, Anna Salai, Chennai- 600 002.

2. Tamil Nadu Electricity Regulatory Commission,
TIDCO Office Building,
No. 19-A, Rukmani Lakshmiipathy Salai,
Marshalls Road, Egmore,
Chennai-600 008.

...Respondent(s)

Counsel for the Appellant(s) : Mr. N.L. Rajah,
Mr. S. Santanam Swaminadhan
Mr. Arun Anbumani

Counsel for the Respondent(s) : Mr. S. Vallinayagam for R-1
Mr. G. Umapathy for TNERC
Mr. T. Mohan for
Mr. A. Yogeshwaran,

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

Appeal No. 197 of 2013 has been filed by Tamil Nadu Power Producers Association challenging the order dated 20.6.2013 passed in Petition No. 2/13 by Tamil Nadu Electricity Regulatory Commission (“State Commission”) determining the transmission tariff of Tamil Nadu Transmission Corporation Ltd. (“TANTRANSCO”).

2. Tamil Nadu Transmission Corporation Ltd. (“TANTRANSCO”), the transmission licensee, is the Respondent no. 1. The State Commission is the Respondent no. 2.

3. The brief facts of the case are as under:

3.1 The Appellant is an Association registered under the Tamil Nadu Societies Registration Act whose

members are involved in the business of power production in the State of Tamil Nadu.

3.2 The Government of Tamil Nadu by order dated 8.10.2008 accorded in principle approval for the reorganization of Tamil Nadu Electricity Board (“TNEB”) by establishing of a holding company namely, TNEB Ltd. and two subsidiary companies, namely Tamil Nadu Transmission Corporation Ltd. (“TANTRANSCO”) and Tamil Nadu Generation and Distribution Corporation Ltd. (“TANGEDCO”). TANTRANSCO was incorporated on 1.12.2009 and it started functioning as such w.e.f. 1.11.2010.

3.3 On 19.2.2013, TANTRANSCO the Respondent No. 1, filed its application before the State Commission for final true up for FY 2010-11, provisional true up for FY 2011-12, Annual Performance Review for

FY 2012-13 and Multi Year Tariff Petition for 2013-14 to 2015-16 along with application for determination of Intra-state transmission tariff and other related charges.

3.4 After inviting objections and suggestions from public, conducting public hearing and considering the comments and suggestions from the stakeholders, the State Commission passed the impugned order dated 20.6.2013. Aggrieved by the impugned order dated 20.6.2013, the Appellant has filed this Appeal.

4. The following issues have been raised by the Appellant:

(i) Violation of the public hearing process:

After admitting the petition the State Commission sought information and clarification from TANTRANSKO. In replies to various questions raised

by the State Commission, TANTRANSCO has altered the numbers furnished in the original Petition. These revisions were accepted by the State Commission without bringing the same to the notice of the public for open hearing. Despite the clear observation of the Tribunal in the judgment dated 9.4.2013 in Appeal No. 257 of 2013 when a similar issue was raised, the State Commission has chosen not to place these communications in public domain. Thus, the impugned order passed by the State Commission was opposed to the principles of natural justice and violative of the orders of this Tribunal and the public hearing process as provided for in the Conduct of Business Regulations of the State Commission.

(ii) Applicability of transfer scheme of the State Government to the Tariff settling process:

The State Commission has allowed all the interest and

finance expenses reflected in the opening balance sheet of TANTRANSCO dated 1.11.2010 which was as per the transfer scheme notified by the State Government. As per the opening balance sheet of TANTRANSCO dated 1.11.2010, the actual capital liabilities are only to the tune of Rs. 2118 crores. The “generic” loan of Rs. 9602 crores represents the debt that has been taken to fund the revenue deficits due to non-revision of tariff. The generic loans taken to fund revenue deficit should have been disallowed by the State Commission for calculating the interest charges.

(iii) Employees costs: The increase in employees cost for FY 2011-12 over FY 2010-11 is approximately 6% and for FY 2012-13, it is 9% over FY 2011-12, as against escalation in O&M of 4% specified in the Regulations. Therefore, only 4% escalation should have been allowed in employees expenses on actual

employees expenses of FY 2010-11. O&M expenses are controllable and therefore, should not be allowed beyond the norms. The true up petition of FY 2011-12, indicates 50% reduction in employees costs from their approved values for the last three years, suggesting that TANTRANSCO had inflated its claim for employees costs while filing the initial petition.

(iv) Capital Investment Plan: Regulation 17 of 2005 Tariff Regulations mandates that the licensee shall file a detailed Capital Investment Plan every year which has to be approved before filing the ARR and Application for determination of tariff. The State Commission has wrongly allowed equity inflow for years 2010-11 and 2011-12 and proposed equity inflow for the remaining years when the same should have only been based on the estimated capitalization of Rs. 1000 crores per annum for each of the years

from FY 2012-13 to 2015-16. Therefore, the return on equity, depreciation and interest on loan have to be reworked on the basis of Capital Investment Plan which the licensee has been directed to file as per the orders of the State Commission.

(v) Interest on working capital: The State Commission has erred in determining the interest on working capital by considering the amount of receivables in the calculation of working capital which is more than the gross ARR for two months. In the transmission tariff order dated 30.3.2012 for FY 2012-13, the cumulative Revenue Requirement approved for FY 2012-13 was Rs. 3075.99 crores. However, in the impugned order the State Commission has approved a Net ARR of only Rs. 2007.24 crores for FY 2012-13 whereas the approved revenue for transmission charges for the year is maintained at the same level as

approved earlier i.e. Rs. 3075.99 crores. From this it emerges that against an ARR requirement of Rs. 2007.24 crores only, TANTRANSCO is being allowed recovery of Rs. 3075.99 crores. Therefore, the State Commission has erred in approving two months receivables in working capital requirement. Thus, additional burden of interest has been passed on to the consumers.

(vi) Deductions for insurance: The 2009 MYT Regulations provides for insurance cost to the distribution licensee but there is no provision for the transmission licensee. Therefore, the State Commission should not have allowed insurance cost to TANTRANSCO.

(vii) Incentive @ 1% of equity: Claim for incentive for second control period should not have

been allowed by the State Commission. According to the Regulations, incentive is allowed only post facto if the transmission licensee actually achieves availability in excess of the target availability.

(viii) Provisional estimate for open access and scheduling charges from Short Term Open

Access: The State Commission has made provisional estimate of Rs. 97.65 crores provided by TANTRANSCO as Open Access and Scheduling Charges for Short Term Open Access consumers in FY 2012-13 when in reality no data was collected from the State Load Dispatch Centre on actual Short Term Open Access capacity and payments for FY 2012-13, even for cross checking.

(ix) Transmission charges for Short Term Open Access and Long Term Open Access: The State

Commission has wrongly equalized the Short Term Open Access charges and Long Term Open Access charges even though Short Term Open Access consumers have the lowest allotment priority and will be curtailed first in case of any congestion in transmission.

(x) Scheduling and System Operation Charges for SLDC: The State Commission should not have approved Scheduling and System Operation Charges for the State Load Dispatch Centre (“SLDC”) in the absence of ring fencing of SLDC. The SLDC has not been ring fenced despite explicit directive from the State Commission in the order dated 30.3.2012.

5. On the above issues, we have heard Shri N.L. Rajah, learned counsel for the Appellant, Shri S. Vallinayagam, learned counsel for

TANTRANSCO and learned counsel for the State Commission. They have also filed written submissions. The Respondents in their submissions have supported the findings in the impugned order and we shall be dealing with the same while considering the various issues.

6. On the basis of the rival contentions of the parties, the following questions would arise for our consideration:

(i) Whether the procedure followed by the State Commission in accepting several clarifications from the Respondent no. 1 after filing of the Petition and not making such clarifications public, would violate the public hearing process and the directions of this Tribunal in Appeal No. 257 of 2012 and is against the principles of natural justice?

(ii) Whether the State Commission was right in allowing interest and finance expenses as reflected in the opening balance sheet of the Respondent no. 1 on the premise that it has to abide by the transfer scheme approved by the State Government without considering that the loans shown in the balance sheet included debt taken to fund revenue deficit?

(iii) Whether the State Commission was right in not conducting prudence check on employees cost submitted by the Respondent No. 1 and allowing an escalation of 9% per annum, in excess of the specified norm of 4% p.a.?

(iv) Whether the State Commission was correct in according provisional approval to the capital expenditure proposed by the first

Respondent without approval of Capital Investment Plan in violation of the Regulations?

(v) Whether the State Commission has erred in allowing the interest on working capital by considering the amount of receivables in the calculation of working capital when the Net ARR for FY 2012-13 was much less than the approved revenue from the transmission charges?

(vi) Whether the State Commission has erred in allowing insurance charges to the Respondent No. 1 in contravention to the Regulations?

(vii) Whether the State Commission was correct in allowing incentive @ 1% on annual availability in the ARR when the Regulations allow incentive to be determined post facto?

(viii) Whether the State Commission was right in estimating the Open Access and Scheduling Charges from Short Term Open Access consumers for FY 2012-13 without collecting the data from the SLDC?

(ix) Whether the State Commission was correct in equating the transmission charges for Short Term Open Access and Long Term Open Access?

(x) Whether the State Commission was right in approving Scheduling and System Operation Charges in the absence of proper ring fencing of the SLDC as per the directive given by the State Commission in an earlier order?

7. Let us take up the first issue regarding violation of principles of natural justice.

8. According to learned counsel for the State Commission, the clarifications were submitted by the Respondent No. 1 in response of the queries raised/additional information sought by the State Commission in the process of prudence check of various expenses proposed. As suggested by the Tribunal in Appeal No. 257 of 2012, the State Commission has issued an amendment to the Tariff Regulations 2005 for hosting all the documents or proposals submitted by the Applicant on its own subsequent to filing the Tariff Petition other than response to State Commission's queries by way of prudence check. If all the information sought by the State Commission in the process of prudence check is put in public domain it will delay the process of tariff determination exercise beyond the period of 120 days stipulated under the Electricity Act, 2003.

9. It is further submitted by the learned counsel for the State Commission that the allegations of the Appellant that the Respondent No. 1 had altered the facts and figures which were originally submitted resulting in camouflaging and violating of the public hearing process, is totally unfounded and has no basis at all. The Respondent No. 1 had filed the Petition on 19.2.2013 before the State Commission with actual expenses incurred in the first half of the FY 2012-13 for estimating the expenses. In order to have much more accuracy of the said estimate and to prudently verify the expenses, the State Commission directed the Respondent No. 1 to provide actual expenses and operational data for the entire FY 2012-13. The first Respondent had only provided the additional information sought by the State Commission. The ARR filed by the first Respondent in

the Tariff Petition for FY 2013-14 was Rs. 2522.27 crores. After prudence check, the same was reduced to Rs. 2375.78 crores by the State Commission in the impugned order to the advantage of the Appellant.

10. Shri Vallinayagam, learned counsel for the first Respondent has submitted that in compliance with the directions of this Tribunal in judgment dated 9.4.2013 in Appeal No. 257 of 2012, the State Commission issued the amendment on 26.11.2013 which was notified on 18.12.2013. The impugned order was issued on 20.6.2013, i.e., prior to the said amendment.

11. The above issue was considered by this Tribunal in its judgment dated 9.4.2013 in Appeal No. 257 of 2012. The relevant extracts of the judgment are as

under:

“9.9 We are in agreement with the contentions of the State Commission that the clarification sought by the Commission and reply furnished by the licensee in the process of prudence check need not be put to public notice for suggestions/objections. Section 64 of the Electricity Act also envisages publication of the application filed by the licensee in abridged form as specified by the Commission. The Regulations also provide for publication of the application in an abridged form as per the directions of the Commission and making available copies of the petition and the documents filed on payment besides hosting them on website. However, the Regulations do not provide making available to public the replies to the clarifications sought by the Commission in the process of prudence check of the data furnished with the petition by the licensee.

9.10 *The Appellant has also not been able to clearly specify how they were prejudiced by non-availability of the clarifications furnished by the distribution licensee on the queries raised by the State Commission in the process of prudence check or point out any particular discrepancy in the facts and figures in the tariff petition and that given in the tariff order. The Appellant has challenged the specific findings of the State Commission by which it has been aggrieved in this Appeal which have been dealt with in this judgment.*

9.11 *The tariff determination proceedings are not adversarial proceedings like adjudication of disputes u/s 86(1) (f) of the Act and the State Commission has to apply prudence check to the documents submitted by the licensee in support of its claim for ARR tariff and in the process it can seek clarification from the licensee.*

9.12 *Thus, we do not find any reason to set aside the impugned order only because the clarifications furnished by the licensee on the queries raised by*

the Commission in the process of prudence check was not put in public domain in this case.

9.13 Having decided the issue in this Appeal, we want to give certain directions to the State Commission on this issue for future.

9.14 In order to avoid any controversy in future and for maintaining complete transparency in tariff determination process, the State Commission may consider to review and amend its Regulations so as to put any information furnished by the licensee or generating company to the State Commission subsequent to filing of the petition on its website, in view of the fact that justice is not only to be done but also appears to be done.”

In the above judgment, the Tribunal had suggested to the State Commission to consider to review and amend its Regulations so as to put any information furnished by the licensee or generating

company to the State Commission subsequent to the filing of the Petition, on its website.

12. We find that in pursuance to the above suggestions, the State Commission has since amended its Regulations on 26.11.2013. However, the impugned order was passed on 20.6.2013, before the notification of the amendment to the Regulations. Thus, there is no violation of the directions of this Tribunal.

13. The impugned order was passed after duly following the provisions of Section 64 of the Electricity Act, 2003. We also find that the State Commission has since modified its Regulations in pursuance of the directions given by us in our judgment in Appeal No. 257 of 2012. In view of the explanation given by the State Commission regarding information furnished by

the first Respondent in response to the query of the State Commission, we do not find any violation of public hearing process and principles of natural justice.

14. The second issue is regarding interest and finance charges.

15. According to Shri Vallinayagam, learned counsel for the Respondent No. 1, the State Commission was right in observing that it was bound by the transfer scheme. As per Section 131 (3) (b) of the Electricity Act, 2003, the transaction of any description effected in pursuance of transfer scheme, shall be binding on all persons.

16. Learned counsel for the State Commission has also referred to Section 131 of the Electricity Act, 2003

in support of its contention that the transfer scheme is binding on all.

17. The above issue has been dealt with by this Tribunal in its judgment dated 4.2.2013 in Appeal No. 102 of 2012. The relevant extracts are given below:

“31. We find that the transmission tariff of the Tamil Nadu has not been revised since the year 2005-06 and has been revised now after a lapse of 7 years. Similarly, the distribution tariff in the Tamil Nadu has also been revised after a long time and tariff order was issued only after the restructuring of the Electricity Board. The long gap in determination of tariff has resulted in revenue gap and excess borrowings and diversion of capital funds to revenue account. Even though the State Commission has deviated from its Regulations, the State Commission has now given a calculation, according to which, if the Regulations are followed and Return on Equity is allowed as per the Regulations, it will only result in increase in ARR and tariff and there will not be any reduction in

tariff as sought by the Appellant. The State Commission has also stated that adjustment will be made after finalization of the balance sheet and the restructuring of the loans as per the recommendations of the committees appointed by the Government of India.

32. According to the learned counsel for the Appellant, the interest on loan should be allowed as per the Tariff Regulations but the Return on Equity should not be allowed as it was not pressed by the Respondent no. 2. We are unable to accept this contention. Firstly, the Respondent no. 2 had sought Return on Equity as per the Regulations. Secondly, if the interest on loan has to be allowed as per the Regulations then the Return on Equity has also to be allowed as per the Regulations. Even though we feel that the State Commission should have determined interest on loan and Return on Equity as per the Regulations, in view of the submissions made by the State Commission that allowing ROE and interest on loan as per Regulations will only result in increase in ARR and tariff and that the adjustment will be made after

finalization of the balance sheet of the successor companies of the Electricity Board viz. Respondent nos. 1 and 2 and the proposed restructuring of loan, no purpose will be served by interfering with the order of the State Commission.

“ 33. In view of above, we do not want to interfere with the findings of the State Commission regarding the treatment given to the interest on loan in the impugned order.”

18. We notice from the impugned order that the State Commission has not allowed Return on Equity on the equity base as on 1.11.2010 since the actual loans borrowed by TANTRANSCO are more than the capital expenditure amounts. The excess interest allowed is Rs. 186.22 crores while ROE disallowed is Rs. 230.89 crores. The State Commission has also taken a view that the entire equity base allocated to TANTRANSCO as on 1.11.2010 has been diverted for funding the revenue expenditure prior to unbundling.

Hence, the State Commission has considered the opening equity base as on 1.11.2010 as zero.

19. In view of above, we do not want to interfere with the findings of the State Commission with regard to interest and finance charges.

20. The third issue is regarding employees costs.

21. According to Shri Rajah, learned counsel for the Appellant the O&M cost is controllable and the State Commission in allowing inflation rate of 9% instead of 4% as specified in the 2005 Tariff Regulations has acted contrary to the Regulations. The State Commission has approved Dearness Allowance to the employees at a very high rate as given below:

	FY 2011 (5 months)	FY 2012	FY 2013
Dearness Allowance (Rs. crore)	37	106	143
Escalation		18.9%	35.21%
Total O&M Expenses (Rs. crore)	198	518	599
Escalation		8.78%	15.69%

Shri Rajah has argued that such abnormal DA component against the 4% escalation provided in the Regulation is not in the interest of the consumers as total O&M expenses in turn have increased by 8.78% and 15.69% during FY 2011-12 and 2012-13 respectively.

22. According to learned counsel for the State Commission, Dearness Allowance linked to All India Consumer Price Index (AICPI) is provided to the employees in order to mitigate the impact of inflation. Hence, increase in employees costs to the extent of DA variation has only been allowed as a pass through in tariff in accordance with the Commission's Regulations while all other expenses were escalated at 4% only. The cost on account of inflation has been considered as uncontrollable in the Regulations.

23. Let us examine the 2005 Tariff Regulations. The relevant clauses are reproduced below:

“14. Multiyear Tariff

(1) The Commission may implement multi year tariff for the Transmission and Distribution licensees for a period to be notified by the Commission.

(2) The Commission may determine Tariff and revenue for the base year, after proper evaluation and verification of the submission made by the licensee.

(3) The Commission may seek expert consultation in the process to determine allowable costs of the licensees for each of the years of the control period.

(4) The control period shall be the subsequent years following the previous year.

(5) All the uncontrollable costs shall be allowed as pass through in tariff and the uncontrollable costs will include the following:

- (a) Cost of fuel;*
 - (b) Costs on account of inflation;*
 - (c) Taxes and duties; and*
 - (d) Variation in power purchase unit cost from base line level including on account of hydro-thermal mix in case of force majeure and adverse natural events like drought.*
- (6) The Operation and Maintenance cost shall be controllable cost and be based on escalation indices or other mode determined during determination of tariff for the base year.”*

“25. Operation and Maintenance Expenses

- (1) The operation and maintenance expenses shall be derived on the basis of actual operation and maintenance expenses for the past five years previous to current year based on the audited Annual Accounts excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission. The Commission may, if*

considered necessary engage Consultant / Auditors in the process of prudence check for correctness.

(2) The average of such normative operation and maintenance expenses after prudence check shall be escalated at the rate of 4% per annum to arrive at operation and maintenance expenses for current year i.e. base year and ensuing year.

(3) The base operation and maintenance expenses so determined shall be escalated further at the rate of 4% per annum to arrive at permissible operation and maintenance expenses for the relevant years of tariff period.”

24. Let us examine the Multi Year Tariff Regulations, 2009. The relevant provisions are as under:

“3(viii) Mechanism of pass through of approved gains or losses on account of uncontrollable factors.

As stipulated in Regulation 14 of Tariff Regulations, the following constitute uncontrollable costs.

a) Cost of fuel;

- b) Costs on account of inflation;*
- c) Taxes and duties and*
- d) Variation in power purchase unit cost from base line level including variation on account of hydro- thermal mix in case of force majeure and adverse natural events like draught.*

The licensee shall file application for revision on account of such variation for Commission's consideration and orders”.

“9) Operation and Maintenance (O&M)

The Operation and Maintenance expenses include the following:

Repairs & maintenance costs

Employee-related costs and

Administrative & general expenses

The O&M expenses shall be derived on the basis of actual expenses for the past five years previous to base year based on the audited Annual Accounts, after prudence check by the Commission.

The O&M expenses so arrived for the base year may be escalated by four per cent per annum for every year of the control period.

The licensee may also propose indexation for estimating the O&M expenses.

O&M expenses is a controllable cost and the licensee cannot recover the cost in excess of norms. The licensee shall share the gains on account of savings with the beneficiaries as provided in regulation 3 (ix).”

25. Regulation 14 of the 2005 Tariff Regulations stipulate that the Commission may implement Multi Year Tariff and that the costs on account of inflation shall be uncontrollable and shall be allowed as pass through. According to the Regulation 14 (6) the Operation and Maintenance cost shall be controllable cost and be based on escalation indices or other mode determined during determination of tariff for the base

year. Regulation 25 of the 2005 Tariff Regulations provides that O&M expenses shall be derived on the basis of actual O&M expenses for the past five years previous to current year based on the Audited Annual Accounts after prudence check. The average of such normative O&M expenses shall be escalated by 4% per annum to arrive at O&M expenses for current year i.e. base year and ensuing year.

26. The Multi Year Tariff Regulations, 2009 also specify costs on account of inflation as uncontrollable and the licensee can file application for revision on account of such variation for Commission's consideration and orders. Regulation 9 of the MYT Regulations, 2009 provide that O&M expenses shall be derived on the basis of actual expenses for the past five years previous to base year based on the audited Annual Accounts, after prudence check. The O&M

expenses for the base year then may be escalated by 4% p.a. for every year of the Control Period. The distribution licensee can also propose indexation for estimating the O&M expenses. O&M expenses as per Regulation 9 are controllable.

27. Let us now examine the impugned order regarding determination of O&M expenses.

28. MYT period considered in the impugned order is from FY 2013-14 to FY 2015-16. The base year is FY 2012-13.

29. We find that the Respondent No. 1 in its petition had claimed employees expenses for FY 2010-11 (5 months period from 1.11.2010 to 31.3.2011 after formation of TANTRANSCO), FY 2011-12 and FY 2012-13 much less than what was allowed in the respective tariff orders by the State Commission. The

reason given by the TANTRANSCO as elaborated in the impugned order is that in the last Petition the employees expenses were submitted based on assumptions due to unavailability of separate accounts for distribution and transmission functions. However, all the employees expenses have been accounted for except the terminal benefits. Therefore, the State Commission has reworked the employees expenses on the basis of the submissions of the Respondent No. 1 and corrections for terminal benefits. Consequently the same amount was adjusted in the employees expenses of TANGEDCO, the generation and distribution company.

30. As TANTRANSCO was constituted after unbundling of the Electricity Board only on 31.10.2010, it was difficult to derive the actual O&M expenses pertaining to transmission activities for the

last 5 years as provided in the Regulations. Hence, the expenses for FY 2012-13 were based on the expenses for FY 2010-11 (5 months period) and FY 2011-12.

31. The State Commission has estimated the employees expenses for FY 2012-13 by escalating the approved employees expenses for FY 2011-12 at 4% on all components except DA for arriving at the employees expenses for FY 2012-13. The State Commission has given the following explanation in the impugned order:

“3.27 As per the TNERC regulations, only, the increase in costs due to inflation is required to be passed through in tariff. Hence, DA percentage notified by the GoTN is depended on inflation and hence increase in employee costs to the extent of DA variation should be allowed as a pass through in tariff. Therefore, the DA rates as notified by GoTN have been used for estimating the dearness

allowance instead of taking an escalation of 4% as per TNERC regulations.”

32. We also find that the employees expenses finally approved by the State Commission in the impugned order for FY 2010-11, 2011-12 and 2012-13 are less than that approved in the respective tariff orders.

33. For estimating employees expenses for FY 2013-14 to FY 2015-15 also, the State Commission has escalated the approved employees expenses for FY 2012-13 at 4% on all components except DA.

34. We agree with the State Commission that DA increase is based on the All India Consumer Price Index to mitigate the impact of inflation on the employees. TANGEDCO has proposed DA increase in line with the State Government policy in this regard.

35. The State Commission has estimated the employees expenses for the base year (2012-13), taking into account the impact of DA. The MYT Regulation provides that the licensee can also suggest the escalation factor which the State Commission can consider. Accordingly, we do not find any infirmity in the State Commission considering the DA enhancement in the employees expenses. The expenses on account of D.A increase allowed to TANTRANSCO is a prudent cost to compensate the employees for inflation. The Regulation provides for allowing costs on account of inflation as uncontrollable costs. Accordingly, we decide this issue as against the Appellant.

36. The fourth issue is regarding approval of the capital expenditure without the approval of the Capital Investment Plan.

37. According to the State Commission, TANTRANSCO had filed the capitalization Petition for the first control period together with the Tariff Petition. There were many discrepancies in the capital expenditure and capitalization information filed in the Petition. In response to the data gaps and clarifications, TANTRANSCO provided some information. In order to verify the prudence of capital expenditure, the State Commission developed suitable formats and directed TANTRANSCO to submit the capital expenditure information in those formats. However, TANTRANSCO was able to provide only partial information in the required formats. Therefore, the Capital Investment Plan required further analysis and explanation from TANTRANSCO, the Respondent no. 1 before it could be approved. However, the State Commission was of the view that disallowance of

capital expenditure will significantly hamper the Respondent No. 1 in improving the existing infrastructure and creating new evacuation system required to cater to the existing and the future loads. Therefore, the State Commission approved the capital expenditure and capitalization submitted by TANTRANSCO provisionally with the following directions.

- *To reconcile its accounts with respect to capital expenditure and prepare the voltage wise and scheme wise data as per the formats specified by the Commission.*
- *To file the progress of the capital expenditure and capitalization on quarterly basis*
- *To submit all its schemes within 90 days from issuance of the Tariff Order along with its cost benefit analysis.”*

38. We find that the State Commission has also given the following directions to TANTRANSCO.

“4.27 Commission directs TANTRANSCO to reconcile its accounts with respect to capital expenditure and prepare the scheme wise data as per the formats specified by the Commission. Commission also directs TANTRANSCO to file the progress of the capital expenditure and capitalization on quarterly basis.

4.28 The capital investment plan for second control period requires further analysis and explanation from TANTRANSCO before according approval of cost proposed by TANTRANSCO. Pending final approval, the Commission accepts the Capital Expenditure submitted by the petitioner provisionally. Commission hereby directs the Transmission licensee to submit all its schemes proposed for the second control period within 90 days from issuance of the Order along with its cost benefit analysis. In the absence of compliance to this directive Commission may approve the capitalization and capital expenditure based on industry norms and information available.”

.....

“4.30 The capital expenditure and capitalization considered in this order is tabulated below.

Any variation in capital expenditure and capitalization due to prudence verification based on the data submitted by the TANTRANSCO and finalization of transfer scheme will be addressed during the next tariff order.”

39. We find that the Regulation 17(5) of the Tariff Regulations, 2005 and Regulation 3 (v) of MYT Regulations, 2009 specifies that the licensee shall get the Capital Investment Plan approved by the State Commission before filing of the ARR and application for determination of tariff. However, the State Commission has approved the capital expenditure without approval of the Capital Investment Plan contrary to the Regulations.

40. We also find that the State Commission has approved the capital expenditure and capitalization for

the Control Period 2013-14 to 2015-16 as submitted by the TANTRANSCO without any prudence check and without considering the past performance of the TANTRANSCO. The capital expenditure provisionally approved for the FY 2010-11 (5 months), 2011-12 and 2012-13 was Rs. 733.19 crores, Rs. 1435.77 crores and Rs. 1449.62 crores based on the audited accounts/provisional accounts. The capitalization approved for FY 2010-11, 2011-12 and 2012-13 was also Rs. 59.22 crores, Rs. 89.63 crores and Rs. 1841.67 crores. However, for the second Control Period i.e., FY 2013-14, FY 2014-15 and 2015-16, the State Commission has approved capital expenditure of Rs. 4526, Rs. 5627 crores and Rs. 2505 crores respectively and capitalization of Rs. 2610 crores, Rs. 7218 crores and Rs. 3026 crores. The capital expenditure and capitalization for the second Control

Period appears to be very optimistic considering the past performance of TANTRANSCO. We feel that the State Commission has erred in approving the capital expenditure/capitalization without considering the details of the capital Investment Plan and the past performance of TANTRANSCO.

41. We, therefore, direct the State Commission to true up/provisionally true up the capitalization for FY 2013-14 immediately and the short fall if any should be accounted for while determining the tariff for the FY 2015-16, with carrying cost on the impact of the variation on this account on the ARR. We direct TANTRANSCO to submit the actual accounts of capital expenditure and capitalization during FY 2013-14 by 30.11.2014 to the State Commission. TANTRANSCO shall also submit the application for Capital Investment Plan for FY 2014-15 and 2015-16

in the requisite formats to the State Commission for approval as per the Tariff Regulations by 30.11.2014, if not already done. The State Commission shall accordingly approve the Capital Investment Plan of TANTRANSCO for the FY 2014-15 and 2015-16 after following due process of law, if not already done, and consider the same while approving the tariff for the FY 2015-16.

42. Accordingly, the fourth issue is decided in favour of the Appellant.

43. The fifth issue is regarding interest on working capital.

44. According to the Appellant, the cumulative Revenue Requirement approved for FY 2012-13 was Rs. 3075.99 crores. However, in the impugned order the State Commission has approved net ARR of only

Rs. 2007.24 crores for FY 2012-13. Therefore, there was no need to approve interest on two months receivable included in the working capital.

45. According to the State Commission, they have provided for Interest on Working Capital as per the Tariff Regulations.

46. We find that the State Commission has determined the Interest on Working Capital as per the Regulations. Regarding surplus revenue for FY 2012-13, the State Commission has allowed interest cost on the surplus for FY 2012-13 @ 11% while determining the revenue surplus at the end of the period FY 2010-13. The revenue surplus at the end of FY 2012-13 has been duly deducted from the Revenue Requirement for FY 2013-14. Thus, we do not find any infirmity in the impugned order.

47. The sixth issue is regarding insurance charges allowed in the ARR.

48. According to the Appellant, the State Commission should not have allowed the insurance charges.

49. According to the learned counsel for the State Commission, the insurance charges are provided for in the Tariff Regulations @ 0.5% of the capital cost.

50. We find that the 2005 Tariff Regulations provide for insurance as under:

“30. Insurance

The Generating Company and licensee may adopt the practice of Self Insurance and a provision upto 0.5% of the capital cost shall be allowed by the Commission in their revenue requirement. The reserves shall be utilised to replace the assets lost due to accident, fire,

flood, cyclone and other force majeure conditions.”

Thus, self insurance upto 0.5% of the capital cost is permissible to TANTRANSCO as per the Tariff Regulations 2005.

51. Learned counsel for the Appellant has referred to Regulation 34 of the MYT Regulations, 2009 which provides for self insurance charges for the Distribution licensee and, therefore, 2009 Regulations distinguish the Transmission licensee in respect of insurance.

52. We find that the MYT Regulations, 2009 provide that these Regulations shall be read along with the 2005 Tariff Regulations. Regulation 4 of the MYT Regulations, 2009 provides that the general principles of computing cost and return and calculation of ARR, etc., are to be adopted for tariff filing under MYT frame

work also. MYT Regulations do not specifically bar insurance charges from the transmission licensee. Regulation 30 of 2005 Regulations has a provision of self insurance @ 0.5% of capital cost which is to be utilized to replace the assets lost due to accident, fire, flood, cyclone and other force majeure conditions. Therefore, we do not find any infirmity in the State Commission allowing self insurance @ 0.5% as per the Tariff Regulations.

53. The seventh issue is regarding incentive of 1% of equity for availability of transmission system in excess of the norm.

54. According to the Appellant, the incentive for higher availability can be allowed only post facto.

55. According to the learned counsel for the State Commission, the incentive for the 1st control period

has been allowed on the basis of the actual availability certified by the SLDC. For the second Control Period, the State Commission has provisionally accepted the transmission availability estimated by the licensee and accordingly approved incentive. The difference in incentive on account of variation in the actual and projected availability will be suitably accounted for in the future tariff orders.

56. Let us examine the 2005 Tariff Regulations. The relevant Regulation is reproduced below:

“63. Incentive

The Transmission licensee shall be entitled to incentive @ 1% of equity for each percentage point of increase in annual availability beyond the target availability prescribed under regulation 58 (b) in accordance with the following formula.

$$\text{Incentive} = \text{Equity} \times (\text{Annual Availability achieved} - \text{Target availability}) / 100$$

The incentive shall be shared by the long term customers in the ratio of their average allotted capacity.”

The incentive is to be allowed if the annual availability achieved is in excess of the Target Availability. The actual annual availability will be known only at the end of the Financial Year. The incentive is also be recovered from the long term customers only in the ratio of the average allotted capacity. The incentive is also not included in the component of transmission tariff as specified in Regulation 59.

57. Therefore, the State Commission was not correct in allowing incentive on the projected availability for the second Control Period i.e. FY 2013-14 to

FY 2015-16. This is contrary to the Regulations. The incentive is to be determined post facto after annual availability achieved is computed after the completion of the Financial Year. The finding of the State Commission in this regard is set aside. The State Commission is, therefore, directed to provide necessary relief to the users of the transmission system on account of excess recovery of revenue on account of incentive in the transmission tariff during FY 2013-14 and FY 2014-15 with carrying cost in the ARR and tariff for FY 2015-16. The ARR for the FY 2015-16 shall also be corrected by the State Commission for the incentive incorrectly provided for higher availability in the impugned order.

58. The eighth issue is regarding estimates for Open Access and Scheduling Charges from Short Term Open Access.

59. According to the Appellant, the State Commission has under estimated the charges for open access and scheduling from Short Term Open Access customers for FY 2012-13 and such estimation was made without asking for the desired information for such customers from SLDC.

60. In response to above, learned counsel for the State Commission has submitted as under:

“It is submitted that it is not right for the appellant to allege that Commission has not called for any information pertaining to Short Term Open Access (STOA) consumers. Transmission licensee in its Petition has estimated other income of Rs. 38.34 crores for FY 2012-13 including the revenue from STOA consumers.

It is submitted that in the process of prudence check, Commission has asked the transmission licensee to provide month wise actual revenue

collected from STOA consumers. Based on the information submitted by the Commission has approved Rs. 97.65 crores as revenue from STOA consumers.

It is submitted that considering appellant's claim of Rs. 326 crores as revenue from STOA consumers and scheduling charges of around Rs. 30 crores, the revenue to be recovered from transmission charges come around Rs. 296 crores.

It is submitted that in the last tariff Order, Commission has approved Rs. 0.27011 per unit as STOA transmission charges. For the licensee to recover revenue for Rs. 296 crores, 10960 MUs of units (134% of total wheeled units) are required to be wheeled through STOA. However, as per the information submitted by the licensee, the total energy wheeled estimated by the Commission for FY 2012-13 is 8200 MUs. With majority of the open access consumers in Tamil Nadu being long term consumers, there is no rationale in appellant's claim that Commission has underestimated the

revenue from STOA consumers atleast by Rs. 228 crores and needs to be out rightly rejected.

Further it is submitted that the Directive in respect of filing of quarterly reports for month wise revenue collected from transmission charges, scheduling and system operation charges and reactive energy charges from LTOA consumers and STOA consumers has been complied by the first respondent and the quarterly report upto 3rd quarter has been submitted to the Commission. The directives are being monitored by the Commission regularly”.

61. In view of the above submission of the State Commission, we do not find any reason to interfere with the findings of the State Commission with regard to estimate for charges from Short Term Open Access customers. However, the State Commission shall true up the same as per the actual revenue recovery from STOA customers, with carrying cost.

62. The ninth issue is regarding equating the Short Term Open Access (STOA) and Long Term Open Access (LTOA) charges.

63. According to the Appellant, the STOA customer has the lowest allotment priority and will be curtailed first in case of any congestion and, therefore, the charges for STOA customers should be lower than charged from LTOA customers.

64. Learned counsel for the State Commission has submitted that when STOA customers had lower charges it was observed that they had started to take advantage of this provision for applying for short term open access and then extending it every year instead of applying for long term open access. Also due to differential pricing between LTOA and STOA, frequent disputes were raised regarding the LTOA and STOA

charges, compensation for relinquishing rights, etc. Therefore, the State Commission has not differentiated between the transmission charges applicable for LTOA and STOA.

65. We do not find any infirmity or illegality in keeping LTOA and STOA charges equal. The Appellant has not stated that this is contrary to the Regulations. We accept the explanation given by the State Commission for equating to LTOA and STOA charges.

66. The tenth issue is regarding approval of Scheduling and System Operation Charges in the absence of proper ring fencing of SLDC.

67. Shri Rajah, learned counsel for the Appellant has argued that SLDC has not been ring fenced despite explicit direction from the State Commission in the order dated 30.3.2012 to submit the status of ring

fencing within 90 days and to submit a separate ARR for SLDC.

68. According to learned counsel for the State Commission, as long as SLDC is discharging its functions properly, the scheduling and system operation charges cannot be reduced just because it has not been ring fenced.

69. Learned counsel for the State Commission has further stated that in the last tariff order dated 30.3.2012 for FY 2012-13, the State Commission had directed the Respondent No. 1 to submit the status of ring fencing of SLDC and to submit a separate petition for approval of its ARR. Pursuant to these directions, SLDC had filed a petition on 23.4.2013. However, the State Commission did not admit this Petition as it was filed late and then expenses were included in

TANTRANSCO's petition filed on 19.2.2013. The State Commission has maintained status quo and approved scheduling and system operation charges of Rs. 2000 per day, though the licensee had prayed to approve charges @ 2500 per day.

70. In view of above, we do not find any merit in the contention of the Appellant to disallow System Operation and Scheduling Charges. We, however, direct the State Commission to take necessary action with regard to compliance of their direction for ring fencing of SLDC. The Respondent no. 1 is also directed to ensure filing of a separate petition with regard to approval of SLDC charges for FY 2015-16 before the State Commission at the earliest.

71. Summary of our findings

(i) Violation of the public hearing process:

We do not find any violation of public hearing process and principles of natural justice in the present case.

(ii) Interest and finance charges: The State Commission has not allowed ROE on equity base as on 1.11.2010 since the actual loans borrowed by TANTRANSCO are more than the capital expenditure amounts. The excess interest allowed is Rs. 186.22 crores while ROE disallowed is Rs. 230.89 crores. Allowance of ROE and interest as per Regulation would only increase in the ARR. In view of this, we do not want to interfere with the findings of the State Commission with regard to interest and finance charges.

(iii) Employees costs: We do not find any infirmity in the State Commission considering the DA enhancement in the employees expenses as this is required to compensate the employees for inflation.

(iv) Approval of the capital expenditure without approval of the Capital Investment Plan:

We feel that the capital expenditure and capitalization for the second Control Period appears to be optimistic considering the past performance of TANTRANSCO. We, therefore, direct the State Commission to true up/provisionally true up the capitalization for FY 2013-14 immediately and the short fall, if any, should be accounted for while determining the tariff for the FY 2015-16, with carrying cost on the impact of variation on this account on the ARR. We direct TANTRANSCO

to submit the actual accounts for capital expenditure and capitalization during FY 2013-14 by 30.11.2014 to the State Commission alongwith Capital Investment Plan for FY 2014-15 and 2015-16 in the requisite formats, if not already done. The State Commission shall accordingly approve the Capital Investment Plan of TANTRANSCO for the FY 2014-15 and 2015-16 after following due process of law and consider the same while approving the tariff for the FY 2015-16.

(v) Interest on working capital: The State Commission has determined the Interest on Working Capital as per the Regulations. Regarding surplus revenue for FY 2012-13, the State Commission has allowed interest cost on the surplus for FY 2012-13 @ 11% while determining

the revenue surplus at the end of the period FY 2010-13. The revenue surplus at the end of FY 2012-13 has been deducted from the ARR for FY 2013-14. Thus, we do not find any infirmity in the impugned order.

(vi) Insurance charges: We do not find any infirmity in the State Commission allowing self insurance @ 0.5% as per the Tariff Regulations.

(vii) Incentive of 1% of equity for availability of transmission system in excess of the norm:

The State Commission has incorrectly allowed incentive on the projected availability for the second Control Period i.e. FY 2013-14 to FY 2015-16. This is contrary to the Regulations. The incentive is to be determined post facto after annual availability achieved is computed after the completion of the Financial Year. The finding of

the State Commission in this regard is set aside. The State Commission is, therefore, directed to provide necessary relief to the users of the transmission system on account of excess recovery of revenue on account of incentive in the transmission tariff during FY 2013-14 and FY 2014-15 with carrying cost in the ARR and tariff for FY 2015-16. The ARR for the FY 2015-16 shall also be corrected by the State Commission for the incentive incorrectly provided for higher availability in the impugned order.

(viii) Estimates for Open Access and Scheduling Charges from Short Term Open Access:

We do not find any reason to interfere with the findings of the State Commission with regard to estimate for charges from Short Term Open Access customers. However, the State Commission

shall true up the same as per the actual revenue recovery from STOA customers, with carrying cost.

(ix) Equating the Short Term Open Access (STOA) and Long Term Open Access (LTOA) charges:

We do not find any infirmity or illegality in keeping LTOA and STOA charges equal. The Appellant has not stated that this is contrary to the Regulations. We accept the explanation given by the State Commission for equating to LTOA and STOA charges.

(x) Approval of Scheduling and System Operation Charges in the absence of proper ring fencing of SLDC:

We do not find any merit in the contention of the Appellant to disallow System Operation and Scheduling Charges. We, however, direct the State Commission to take necessary action with regard

to compliance of their direction for ring fencing of SLDC. The Respondent no. 1 is also directed to ensure filing of a separate petition with regard to approval of SLDC charges for FY 2015-16 before the State Commission at the earliest.

72. In view of above, the Appeal is allowed in part as indicated above. The State Commission is directed to pass consequential orders in terms of our findings on those issues at the earliest. No order as to costs.

73. Pronounced in the open court on this **18th day of October, 2014.**

**(Rakesh Nath)
Technical Member**

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

√

REPORTABLE/~~NON-REPORTABLE~~

Vs