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ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
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Present: Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member

Case Nos. 44, 45 & 46 of 2005 and 58, 59 & 60 of 2006 and 65, 66 & 67 of 2007 and 141,142
&143 of 2009 and 147, 148 & 149 of 2010 and 94, 95 & 96 of 2011 and 104,105, 106 of
2012 and 86, 87 & 88 of 2013 and 29, 30 & 31 of 2007 (Truing Up)

ERSTWHILE DISCOMs (WESCO, NESCO & SOUTHCO) Petitioners

Vrs.

GRIDCO Limited & Others

..... Respondents

IN THE MATTER OF: Compliance with the common order dated 05.10.2023 passed by the Hon'ble Supreme Court of India in Civil Appeal No.759 of 2007 to carry out the directives issued by the Hon'ble APTEL contained in the judgments passed in the corresponding Appeals preferred by the Petitioners herein challenging the orders of this Commission pertaining to ARR & fixation of Tariff for the erstwhile DISCOMs.

AND

IN THE MATTER OF: Compliance with the common order dated 05.10.2023 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.3595-97 of 2011 to carry out the directives issued by the Hon'ble APTEL contained in the judgments passed in the corresponding Appeals preferred by the Petitioners herein challenging the orders of this Commission pertaining to ARR & fixation of Tariff for the erstwhile DISCOMs.

AND

IN THE MATTER OF: Compliance with the common order dated 05.10.2023 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.10251-63 of 2013 & Civil Appeal Nos.2625-38 of 2014 to carry out the directives issued by the Hon'ble APTEL contained in the judgments passed in the corresponding Appeals preferred by the Petitioners herein challenging the orders of this Commission pertaining to ARR & fixation of Tariff and Truing Up of Accounts for the erstwhile DISCOMs.

AND

IN THE MATTER OF: Compliance with the common order dated 05.10.2023 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.3858-60 of 2014 to carry out the directives issued by the Hon'ble APTEL contained in the judgments passed in the corresponding Appeals preferred by the Petitioners herein challenging the orders of this Commission pertaining to ARR & fixation of Tariff for the erstwhile DISCOMs.

AND

IN THE MATTER OF: **Compliance with the common order dated 05.10.2023 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.1380-82 of 2015 and Civil Appeal Nos.8037-39 of 2015 to carry out the directives issued by the Hon'ble APTEL contained in the judgments passed in the corresponding Appeals preferred by the Petitioners herein challenging the orders of this Commission pertaining to ARR & fixation of Tariff for the erstwhile DISCOMs.**

For Petitioners: **Shri Buddy Ranganadhan, Learned Senior Counsel, Shri Dushyant Minocha, Learned Advocate & Shri Hasan Murtaza, Learned Advocate on behalf of the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO).**

For Respondents: **Shri R.K. Mehta, Learned Senior Counsel along with Shri B.K. Das, Sr. GM & Shri L.K. Mishra, DGM (F) R&T on behalf of GRIDCO Ltd., Shri Bibhu Charan Swain, the Authorized Representative of M/s. UCCI and Ms. Sonali Pattnaik, Manager (Legal), DoE, Government of Odisha.**

ORDER

Date of Hearing:19.03.2025

Date of Order:17.05.2025

These Cases were registered under Sections 62 & 64 and other applicable provisions of the Electricity Act, 2003 read with the OERC (Conduct of Business) Regulations, 2004 for fixation of tariff and truing up of accounts pertaining to the Financial Years 2006-07 to 2014-15 (except for the Financial Year 2009-10), during which period, the present Petitioners were the Distribution Licensees in the State of Odisha. Challenging the orders passed by this Commission in those proceedings, the Petitioners-the erstwhile Distribution Licensees/DISCOMs (WESCO, NESCO & SOUTHCO) preferred Appeals before the Hon'ble APTEL and being aggrieved by the Orders passed/directives issued by the Hon'ble APTEL in those Appeals, this Commission and the erstwhile DISCOMs & GRIDCO in some Cases, had approached the Hon'ble Supreme Court of India by filing the Civil Appeals referred to above.

There were three categories of Appeals, which are related to:

- (a) ARR & BST order of GRIDCO passed by this Commission for the FY 2006-07, FY 2007-08 & FY 2011-12,
- (b) ARR & Transmission Tariff (TT) order of OPTCL passed by this Commission for the FY 2006-07 & FY 2007-08 and

- (c) ARR & Retail Supply Tariff (RST) orders of DISCOMs for the FY 2006-07 to FY 2012-13 (except FY 2009-10) and true-up order of DISCOMs for the period from FY 1999-00 to FY 2010-11 passed by this Commission.

The Hon'ble Supreme Court of India has been pleased to dispose of those Appeals vide the common order dated 05.10.2023. The concluding part of the said order (The Net Result) is quoted herebelow:

“The net result of the aforesaid discussion is as under:

- i. The order impugned in Civil Appeal no.414 of 2007 is modified as stated in paragraphs 29 and 34 above. This appeal, only to that extent, is partly allowed;*
 - ii. The order impugned in Civil Appeal No.417 of 2007 is modified in terms of paragraph 40 above. This appeal is partly allowed only to the above extent;*
 - iii. The rest of the appeals are dismissed;*
 - iv. The Commission shall proceed to implement the impugned orders of the Appellate Tribunal as modified above; and*
 - v. The Commission shall pass consequential and incidental orders in accordance with law.”*
2. It is pertinent to mention here that the Case Nos.43 of 2005 & 56 of 2006 of this Commission pertaining to Annual Revenue Requirement (ARR) & Transmission Tariff Order of Odisha Power Transmission Ltd. (OPTCL) for the FY 2006-07 & FY 2007-08 respectively and subsequent Civil Appeal No.417 of 2007 before the Hon'ble Supreme Court of India (arising out of the Hon'ble APTEL's judgment dated 13.12.2006 in Appeal Nos. 71-73 of 2006) preferred by OPTCL and Civil Appeal Nos.2939-41 of 2011 before the Hon'ble Supreme Court of India (arising out of the Hon'ble APTEL's judgment dated 08.11.2010 in Appeal Nos. 55-57 of 2007) preferred by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) have already been disposed of by this Commission vide a separate order dated 24.07.2024 in line with common order/direction dated 05.10.2023 passed by Hon'ble Supreme Court of India.
3. Further, the Case No. 42 of 2005, Case No.55 of 2006 and Case No.144 of 2010 of this Commission pertaining to ARR & Bulk Supply Tariff (BST) Orders of GRIDCO for the FY 2006-07, FY 2007-08 & FY 2011-12 and subsequent Civil Appeal No.414 of 2007 before the Hon'ble Supreme Court of India (arising out of the Hon'ble APTEL's judgment dated 13.12.2006 in Appeal Nos. 74-76 of 2006) preferred by GRIDCO, Civil Appeal Nos. 463 & 572 of 2011 & Civil Appeal Nos. 2942 & 2943 of 2011 (arising out of the Hon'ble APTEL judgment dated 09.11.2010 in Appeal Nos. 58 & 59 of 2007) preferred by GRIDCO & erstwhile DISCOMs (WESCO & NESCO) respectively and Civil Appeal

Nos.2674 of 2013 (arising out of the Hon'ble APTEL's judgment dated 29.11.2012 in Appeal No. 116 of 2011) preferred by this Commission have already been disposed of by this Commission vide a separate order dated 09.05.2025 in line with common order/direction dated 05.10.2023 passed by Hon'ble Supreme Court of India.

4. Pursuant to the order passed by the Hon'ble Apex Court in Civil Appeals as quoted above relating to the erstwhile DISCOMs, the Cases have been reopened/revisited for compliance in terms of the directives issued by the Hon'ble APTEL as well as by the Hon'ble Apex Court in the corresponding Appeals. For the sake of ready reference, the following Table is drawn to indicate the Case numbers of this Commission along with corresponding Appeals and date of their disposal.

Table

Case Nos. of the OERC	Date of Order (Common Order passed in the Case/Batch of Cases) by OERC	Corresponding Appeal Nos. before the Hon'ble APTEL	Date of Order/Common Order in Appeals/Batch of Appeals	Civil Appeal Nos. before the Hon'ble Supreme Court of India	Date of the Common Order passed in the Appeals
44/2005 (WESCO), 45/2005 (NESCO) & 46/2005 (SOUTHCO)	23.03.2006	77/2006 (NESCO), 78/2006 (WESCO) & 79/2006 (SOUTHCO)	13.12.2006	759 of 2007 (OERC)	05.10.2023
58/2006 (WESCO), 59/2006 (NESCO) & 60/2006 (SOUTHCO)	23.03.2007	52/2007 (WESCO), 53/2007 (NESCO) & 54/2007 (SOUTHCO)	08.11.2010	3595-97 of 2011(OERC)	05.10.2023
65/2007 (WESCO), 66/2007 (NESCO) & 67/2007 (SOUTHCO)	20.03.2008	26/2009 (SOUTHCO), 27/2009 (WESCO) & 28/2009 (NESCO)	03.07.2013	10251-63 of 2013 by OERC & 2625-38 of 2014 by WESCO, NESCO & SOUTHCO	05.10.2023
141/2009 (WESCO), 142/2009 (NESCO) & 143/2009 (SOUTHCO)	20.03.2010	160/2010 (WESCO), 161/2010 (NESCO) & 162/2010 (SOUTHCO)	03.07.2013		
147/2010 (NESCO), 148/2010 (WESCO) & 149/2010 (SOUTHCO)	18.03.2011	147/2011 (WESCO), 148/2011 (SOUTHCO) & 149/2011 (NESCO)	03.07.2013		
94/2011 (NESCO),	23.03.2012	193/2012 (WESCO),	03.07.2013		

Case Nos. of the OERC	Date of Order (Common Order passed in the Case/Batch of Cases) by OERC	Corresponding Appeal Nos. before the Hon'ble APTEL	Date of Order/Common Order in Appeals/Batch of Appeals	Civil Appeal Nos. before the Hon'ble Supreme Court of India	Date of the Common Order passed in the Appeals
95/2011 (WESCO) & 96/2011 (SOUTHCO)		194/2012 (NESCO) & 195/2012 (SOUTHCO)			
29-31 of 2007 (Truing Up from FY 1999-00 to FY 2010-11)	19.03.2012	196/2012 (WESCO, NESCO & SOUTHCO)	03.07.2013		
		12/2013 (WESCO, NESCO & SOUTHCO) Review Petition against APTEL Order dated 03.07.2013	25.10.2013		
104/2012 (WESCO), 105/2012 (NESCO) & 106/2012 (SOUTHCO)	20.03.2013	112/2013 (WESCO), 113/2013 (NESCO) & 114/2013 (SOUTHCO)	11.02.2014	3858-60 of 2014 (OERC)	05.10.2023
86/2013 (WESCO), 87/2013 (NESCO) & 88/2013 (SOUTHCO)	22.03.2014	154/2014 (NESCO), 156/2014 (SOUTHCO) & 157/2014 (WESCO)	30.11.2014	1380-82 of 2015 (by OERC) & 8037-39 of 2015 (by GRIDCO)	05.10.2023

5. Keeping in view the nature and inter-se relationship of the issues involved and for the sake of convenience and for better appreciation of facts, circumstances and materials on record and also for avoidance of repetition of findings and discussions, all these Cases are taken up together for disposal in this common order.
6. Pursuant to the order of the Hon'ble Apex Court, the Commission invited views/suggestions from the Petitioners-the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) as well as other stakeholders in order to comply with the directives of the Hon'ble Apex Court, issued vide common judgment dated 05.10.2023. In response to the same, the Petitioners, Department of Energy, Government of Odisha, GRIDCO Limited and the Authorized Representative of M/s. UCCI & Others have filed their respective written submissions before this Commission.

7. It is also pertinent to mention here that the present Distribution Licensees (TPNODL, TPWODL & TPSODL) having appeared suo-motu, filed their petitions for impleadment in the present proceeding. However, the Commission rejected said Petitions of the present Distribution Utilities citing reasons inter-alia that as the subject matter of the instant Cases relate to the period when the present Utilities were not the Distribution licensees of the State, lacks locus standi to participate in the proceeding on that ground. However, liberty was granted to them to agitate their grievances, if any, in accordance with the Vesting Orders through separate proceedings and the same would be taken into consideration according to law. Similarly, the representative of UCCI stated that it is not possible to recover the present tariff claimed by the Petitioner-erstwhile DISCOMs from the consumers, whose existence at present time cannot be ascertained.
8. We have heard the parties through hybrid mode. Since the directives issued in the corresponding Appeals are clear and specific, we refrain from burdening this order with the lengthy pleadings/written submissions of the rival sides, save to the extent as necessary, for the purpose of fresh disposal of the Cases.
9. To reiterate, these Cases pertain to the issues arising out of Tariff fixation and Truing-up matters relating to the period during which the Petitioners were the Distribution Licensees of the State. It is mentioned here that the Distribution Licenses of the Petitioners has since been revoked vide the order dated 04.03.2015 passed by this Commission under Sub-section 3 of Section 19 of the Electricity Act, 2003. The said order has already attained finality vide the order dated 21.08.2017 passed by the Hon'ble APTEL in Appeal No.64 of 2015 read with the order dated 24.11.2017 passed by the Hon'ble Supreme Court of India in Civil Appeal No.18500 of 2017 preferred by the present Petitioners- erstwhile DISCOMs.
10. Before advertng to the contentions advanced by the parties in course of hearing, we feel it apposite to quote herebelow the observations of the Hon'ble Apex Court vide the Paragraphs-23 to 26 of the common judgement dated 05.10.2023 in corresponding Civil Appeals.

“23. We may note here that these appeals are preferred invoking Section 125 of the Electricity Act, which provides for an appeal to this Court from a decision or order of the Appellate Tribunal. Section 125 expressly provides that an appeal to this Court will lie on the grounds set out under Section 100 of the Code of Civil Procedure, 1908 (for short, ‘CPC’). Thus, the scope of the present appeals is very limited. An appeal against an order or decision of the Appellate Tribunal will lie to this Court only on substantial questions of law. In the case of DSR Steel (Private) Limited v. State of Rajasthan & Ors. 2, this

Court had an occasion to deal with the scope of appeal under Section 125 of the Electricity Act. In paragraph 14 of the said decision, this Court held thus:

*“14. An appeal under Section 125 of the Electricity Act, 2003 is maintainable before this Court only on the grounds specified in Section 100 of the Code of Civil Procedure. Section 100 CPC in turn permits filing of an appeal only if the case involves a substantial question of law. Findings of fact recorded by the courts below, which would in the present case, imply the Regulatory Commission as the court of first instance and the Appellate Tribunal as the court hearing the first appeal, cannot be reopened before this Court in an appeal under Section 125 of the Electricity Act, 2003. Just as the High Court cannot interfere with the concurrent findings of fact recorded by the courts below in a second appeal under Section 100 of the Code of Civil Procedure, so also this Court would be loath to entertain any challenge to the concurrent findings of fact recorded by the Regulatory Commission and the Appellate Tribunal. The decisions of this Court on the point are a legion. Reference to *Govindaraju v. Mariamman* [(2005) 2 SCC 500: AIR 2005 SC 1008], *Hari Singh v. Kanhaiya Lal* [(1999) 7 SCC 288: AIR 1999 SC 3325], *Ramaswamy Kalingaryar v. Mathayan Padayachi* [1992 Supp (1) SCC 712: AIR 1992 SC 115], *Kehar Singh v. Yash Pal* [AIR 1990 SC 2212] and *Bismillah Begum v. Rahmatullah Khan* [(1998) 2 SCC 226: AIR 1998 SC 970] should, however, suffice.” (Emphasis added).*

We may also note here that while issuing notice/admitting these appeals, this Court had not framed any substantial questions of law. Nevertheless, we have heard these appeals on merits, while keeping in view the provisions of Section 125 of the Electricity Act. The reason is that these appeals are very old, starting from the appeal of the year 2007.

*24. The Commission exercises the power to fix tariffs conferred by Section 62 of the Electricity Act. We will have to note the nature of power exercised by the Commission while fixing the tariff under Section 62 of the Electricity Act. A Constitution Bench of this Court dealt with this issue in the case of *PTC India Ltd. v. Central Electricity Regulatory Commission*³. In paragraphs no.25 and 26, it is held thus:*

“25. The 2003 Act contains separate provisions for the performance of dual functions by the Commission. Section 61 is the enabling provision for framing of regulations by the Central Commission; the determination of terms and conditions of tariff has been left to the domain of the Regulatory Commissions under Section 61 of the Act whereas actual tariff determination by the Regulatory Commissions is covered by Section 62 of the Act. This aspect is very important for deciding the present case. Specifying the terms and conditions for determination of tariff is an exercise which is different and distinct from actual tariff determination in accordance with the provisions of the Act for supply of electricity by a generating company to a distribution licensee or for transmission of electricity or for wheeling of electricity or for retail sale of electricity.

26. The term “tariff” is not defined in the 2003 Act. The term “tariff” includes within its ambit not only the fixation of rates but also the

rules and regulations relating to it. If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the appropriate Commission under Section 61 of the said Act. Under the 2003 Act, if one reads Section 62 with Section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section 111. These provisions, namely, Sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions viz. decision-making and specifying terms and conditions for tariff determination.” (Emphasis added)

However, in the same decision, in paragraph 50, the Constitution Bench held thus:

“50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes “tariff” as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter “trading margin” in a different statutory context as will be demonstrated by discussion hereinbelow.” (Emphasis added)

Thus, the function of the Commission of tariff fixation under Section 62 is quasi-judicial.

25. We may also note here that we are dealing with the decisions of the bodies of experts like the Commission and the Appellate Tribunal. The appointment of the members of the Commission is made by a committee constituted under Section 85 of the Electricity Act, which is headed by a Judge of the High Court. Section 84 of the Electricity Act has laid down the qualifications for the posts of Chairperson and members. It reads thus:

“84. Qualifications for appointment of Chairperson and Members of State Commission. —

(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.” (Emphasis added)

Thus, the members of the Commission are experts in the field. As far as the Appellate Tribunal is concerned, it consists of the Chairperson and three other members. As provided in the proviso to clause (b) of sub-section (2) of Section 112 of the Electricity Act, every Bench of the Appellate Tribunal must have one judicial member and one technical member. The qualifications for the posts of Chairperson, judicial members and technical members have been laid down under sub-rule (13) of Rule 3 of the Tribunal (Conditions of Service) Rules, 2021 in view of Section 117A of the Electricity Act. Sub-rule (13) of Rule 3 reads thus:

“3. Qualifications:-

.....

(13) In case of Appellate Tribunal for Electricity under the Electricity Act, 2003 (36 of 2003), a person shall not be qualified for appointment as,-

(a) Chairperson, unless he, —

(i) is, or has been, a Judge of Supreme Court; or

(ii) is, or has been, Chief Justice of a High Court.

(b) Judicial Member, unless he,—

(i) is, or has been, a Judge of a High Court; or

(ii) has, for a combined period of ten years, been a District Judge and Additional District Judge; or

(iii) has been an advocate for ten years with substantial experience in litigation in matters relating to power sector before Central Electricity Regulatory Commission, State Electricity Regulatory Commission, Appellate Tribunal for Electricity, High Court or Supreme Court.

(c) Technical Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twenty-five years in matters dealing with electricity generation, transmission, distribution, regulation, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which is useful to the Appellate Tribunal.” (Emphasis added)

Thus, as far as the technical members are concerned, he has to be an expert in the field having an experience of twenty-five years. Therefore, when we consider the challenge to the decisions of the Commission and the Appellate Tribunal, we must keep in mind that the decisions are of a body of experts. This limitation is apart from the constraints of Section 125 of the Electricity Act of

entertaining an appeal only on a substantial question of law. Therefore, this Court will normally be slow in interfering with the factual findings recorded by the Commission and/or by the Appellate Tribunal.

26. There is one more aspect of the matter. As held by the Constitution Bench, under Section 62, the Commission exercises quasi-judicial powers. There are appeals preferred by the Commission against the orders of the Appellate Tribunal in appeals under Section 111 of the Electricity Act. The Appellate Tribunal in appeals has dealt with the legality and validity of the decisions of the Commission rendered in the exercise of quasi-judicial power. In short, the Appellate Tribunal has tested the correctness of the orders of the Commission. The Commission is bound by the orders of the Appellate Tribunal. Therefore, we have serious doubt about the propriety and legality of the act of the Commission of preferring appeals against the orders of the Appellate Tribunal in appeal by which its own orders have been corrected. The Commission cannot be the aggrieved party except possibly in one appeal where the issue was about the non-compliance by the Commission of the orders of the Appellate Tribunal. If the Commission was exercising legislative functions, the position would have been different.”

11. The Hon’ble Apex Court in several other Cases also, such as Gujarat Urja Vikas Nigam Ltd. v. Essar Power Limited; (2008) 4 SCC 755, Tamil Nadu Generation & Distribution Corporation Ltd. v. PPN Power Generating Co. Pvt. Ltd.; (2014) 11 SCC 53, Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Others.; (2016) 3 SCC 468 and Gujarat Urja Vikas Nigam Limited v. Amit Kumar & Others; (2021) SCC On Line 194 has been pleased to hold that the Regulatory Commission is qua Civil Courts or a substitute of Civil Courts. Once the Commission is given the status of “Civil Courts”, then the Law of Precedence, estoppel, etc. have to be followed.
12. It is the submissions of both M/s. GRIDCO Ltd. and the Government of Odisha that almost all the issues or majority of the issues germane to the Cases at hand having already been addressed and decided on merit by this Commission in Revocation Proceeding/Case No.55/2013, vide the Order dated 04.03.2015, and the said order having already attained finality in view of the judgment dated 21.08.2017 passed by the Hon’ble APTEL in Appeal No. 64 of 2015 read with the Order dated 24.11.2017 of the Hon’ble Apex Court in Civil Appeal No. 18500 of 2017, and the above being a development subsequent to the disposal of the subject Appeals by the Hon’ble APTEL as enumerated in the Table vide Paragraph-4 above, those issues cannot be reopened now.
13. The above submissions of the aforementioned Respondents are strongly opposed by the Learned Counsel for the Petitioners on the ground that the same is misconceived and that any such argument of the Respondents, if accepted, would be violative of the express directions of the Hon’ble Supreme Court of India. He submits that such a contention

raised by this Commission as Appellant before the Hon'ble Supreme Court of India has been rejected. He, in support of his contention, has referred to the observation of the Hon'ble Apex Court made in Paragraphs-19 & 78 of the common judgment dated 05.10.2023. The Petitioners-erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) further submit as follows:

“Even otherwise the license Revocation Judgment is of the Hon'ble APTEL. Although the Hon'ble Supreme Court did think it proper not to interfere with the same, there is not 'judgment' of the Hon'ble Supreme Court on the above. Therefore, in Law, there can be no question of an APTEL judgment being used to defeat a Supreme Court judgment.”

14. The aforesaid order dated 24.11.2017 of the Hon'ble Supreme Court in Civil Appeal No. 18500 of 2017 is quoted herebelow:

“We do not find any reason to interfere with the impugned order dated 21.08.2017 passed by the Appellate Tribunal for Electricity, New Delhi.

In view of this, we find no merit in the Appeal.

Accordingly, the appeal is dismissed.”

15. With due regard to the said Order dated 24.11.2017 of the Hon'ble Supreme Court in Civil Appeal No.18500 of 2017, we are unable to accept the argument advanced on behalf of the Petitioners-the erstwhile DISCOMs that the said Order on account of being not a “Judgment” lacked effect of upholding the findings, opinion & decision of the Hon'ble APTEL rendered in Revocation Appeal, i.e. Appeal No.64 of 2015, or ultimately, giving finality to the order dated 04.03.2015 of this Commission in the Revocation Proceeding in Case No.55 of 2013.
16. It is true, while disposing of the Appeal No. 64 of 2015, the Hon'ble APTEL was aware of its earlier orders and pendency of Appeals before the Hon'ble Supreme Court. In the context, it is pertinent to refer to the Paragraph-40 of the order in the said Appeal which is reproduced below:

“Before we go to the grounds of revocation, we need to advert to the general submission made by Mr. Ranganadhan that the revocation of the licenses is based on alleged noncompliance of certain obligations such as reduction of Distribution losses, Energy Audit, Funding for terminal benefits of employees etc. According to counsel these issues have been held in favour of the Appellants by this Tribunal, however

without implementing judgements of this Tribunal, the State Commission has, inter alia, on the very same issues revoked the Appellants licenses relying on its earlier orders which have been set aside by this Tribunal. In this connection the State Commission has observed that this Tribunal has passed several orders, against its tariff orders. The said orders have been challenged by the State Commission in the Supreme Court and the appeals are pending. The Appellants' appeal raising challenge to Tariff Order for FY 2013-24 is also pending before the Supreme Court. Undoubtedly the State Commission has to comply with the orders of this Tribunal. But the facts of this case are peculiar. In any case, ultimately, all actions of the State Commission, in this case, will abide by the final orders that may be passed in the pending appeals. Mr. Mehta learned counsel for GRIDCO has relied on judgement of the Supreme Court in Kunhayammed. While examining the doctrine of merger the Supreme Court has observed that where a decree or order passed by an inferior court was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. We do not want to dwell more on this aspect. Suffice it to say that the issues involved in the pending appeals have yet to attain finality. **In any case, the impugned order reveals that even if this Tribunal's orders were given effect, the situation would not have improved.** The performance of the Appellants was below par, they did not achieve their own targets of loss reduction, their collection efficiency was miserably low. In the facts of this case, the observations of the State Commission which is an expert body of regulators cannot be brushed aside lightly." (*emphasis supplied*).

17. Thus, the Hon'ble APTEL while being conscious of the fact that their earlier orders in the Appeals preferred by the present Petitioners against the orders of this Commission regarding Tariff Fixations and Truing Up exercise were under challenge before the Hon'ble Apex Court at the instance of this Commission, recorded a finding on perusing the Revocation Order of this Commission, that even if their orders (assailed by this Commission in Appeals before the Hon'ble Apex Court) were given effect to, the situation would not have improved, the performance of the erstwhile DISCOMs being found to be below par. Notwithstanding the critical argument advanced by the

DISCOMs/Petitioners, vis-à-vis the judgment dated 21.08.2017 in Appeal No.64 of 2015 of the Hon'ble APTEL passed in the Revocation Appeal upholding the order of this Commission passed in Revocation Proceeding, there is no specific denial from their side to the submissions of GRIDCO and State Government that majority of the questions raised in the present Cases being identical to issues in the Revocation Proceeding have been addressed by this Commission in the order dated 04.03.2015, which has already attained finality. In our humble view, the observations of the Hon'ble Supreme Court vide Paragraph-78 of the judgment, regarding the cancellation of Licenses of the erstwhile DISCOMs by the order of this Commission will have no bearing on the tariff fixation of earlier years, cannot be construed as forbidding this Commission to use, apply or act upon any findings recorded in the order dated 04.03.2015 passed in Revocation Proceeding with regard to Tariff fixation, while deciding the present Cases afresh, especially when the said order has already attained finality.

18. As per para 79 (iv) & (v) of the common order dated 05.10.2023 of the Hon'ble Supreme Court of India, the Commission shall proceed to implement the impugned orders of the Hon'ble Appellate Tribunal as modified and shall pass consequential and incidental orders in accordance with law.
19. The issues which are sought to be considered afresh upon remand of the Cases, are enumerated below:
 - A) Distribution Loss Targets
 - B) Notional Sales
 - C) Consideration of Costs under following Heads: -
 - i) NTPC Bonds
 - ii) A&G Expenses
 - iii) Employees Costs
 - iv) Miscellaneous Income
 - v) Past Receivable
20. In the facts and circumstances as indicated in the preceding paragraphs, the Commission now adverts to the issues enumerated above, one by one.

(A) Distribution Loss Targets.

The Hon'ble APTEL, in Para-27 of the order dated 13.12.2006 in Appeal Nos. 77, 78 & 79 of 2006, had observed the following:

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

Submissions of erstwhile DISCOMs before the Commission

The erstwhile DISCOMs were aggrieved by setting of unrealistic targets which were fixed in a manner which was detached from the ground realities which existed in the State of Odisha then. The Appellants-erstwhile DISCOMs have submitted before us that in compliance with the direction of the Hon’ble APTEL, the loss trajectory is to be re-determined keeping in mind the ground realities which existed in Odisha at that point of time. They have pointed out that the ground realities include lack of administrative support, lack of funds, massive rural electrification, multiple trade unionism and business uncertainties etc. at that point of time. They have submitted that the then loss level for the first year i.e. FY 1999-00 is to be taken as base level loss and thereafter, in each subsequent year from FY 2000-01 to FY 2014-15 may be reset to be lower of the actual distribution loss computed during the year, or to reset the loss of the immediate past year. They have emphasized that had there been change in ground realities, the distribution loss level would have substantially gone down. The fact that the same remains unchanged, would itself clearly indicate that there is no change in ground realities. The erstwhile DISCOMs have also pointed out that notwithstanding anything contained in Business Plan order, the Hon’ble APTEL in Appeal Nos. 112-114 of 2013 has directed the Commission to re-look into the Distribution Loss trajectory.

Submission of GRIDCO and Government of Odisha

GRIDCO has submitted that the submission of DISCOMs is patently erroneous and contrary to the direction of the Hon’ble APTEL in Appeal No. 64 of 2015. They further stated that in Para 56 of the order dated 05.10.2023, the Hon’ble Supreme Court has acknowledged the directives of the Commission to look into these aspects by taking a practical view of ground realities, while undertaking truing up exercise instead of proceeding on assumptions and surmises. Distribution loss is considered as basic parameters for fixation of RST for the defined tariff period. Any interference will lead to revision of tariff for the past period. The Learned Counsel of Government of Odisha stated that the Commission cannot ignore the facts upheld in the Revocation Order in Appeal No. 64 of 2015, which has attained finality. It is to be kept in mind that basing on

the finding of facts, the licence was revoked. Such revocation of licence has been affirmed by the Hon'ble Supreme Court based on finding of facts by the Commission in its order dated 04.03.2015 passed in Case No.55 of 2013. The Commission cannot now take a different view of "ground realities" more so after the revocation of license order has been confirmed by the Apex Court. Ground realities cannot shift on the basis of nature of proceeding. The revocation of licence is permanent and irreversible. According to the Government of Odisha, in such circumstances, the ability to revisit the findings of the facts so as to return an alternative finding in the present remand proceeding is out of question.

Findings of the Commission

As regards to the Distribution losses, the Commission was directed by the Hon'ble Apex Court at para 56 of their common judgment dated 05.10.2023 to relook into the aspects by taking a practical view of the ground realities, instead of proceeding on assumption and surmises and the same is discussed in the following paragraphs:

The three DISCOMs namely WESCO, NESCO & SOUTHCO were privatised w.e.f. 01.04.1999. The Distribution loss, which is a controllable cost, is considered as the basic parameter for fixation of RST and is part of Annual Revenue Requirement, which needs no explanation. The Hon'ble Supreme Court of India in their judgement in WBERC vs. CESC Ltd. reported in AIR 2002 in S.C. 3615 has observed as follows:

"While we agree with the Commission that it is the duty of the Company to bring down the loss under this head, at the same time, we feel that the same cannot be done in its entirety forthwith because of the reasons given by the Commission itself. At the same time, we also take into consideration the fact that the loss be it transmission or distribution is not totally beyond the control of the company, which fact is established by the admission made by the respondent company xxxxxxxxxxxxxxxx. Therefore, the problem with which the company is now faced in regard to this loss is very much contributed by the inaction on the part of the Company. Therefore, we are of the opinion that the Company should bear a substantial part of this loss by itself rather than seeking to transfer the entire burden on the consumers."

Since beginning of the privatisation, DISCOMs of Odisha had apprehension about the actual distribution loss in the State, the Government of Odisha had constituted a High Level Committee in the year 2001 called 'Sovan Kanungo Committee' to suggest mid-term correction of Power Sector Reforms of Odisha and estimated overall Distribution loss level was 42.21% as on 31.03.2001. The Distribution Licensees themselves furnished the level of distribution loss in the year 2001-02 as NESCO-41.38%, WESCO-38.29%, SOUTHCO-39.14% and CESCO-43.02%, which were

approved in toto by the Committee in its Report. During Business Plan hearing in Case No. 115 of 2004 dated 28.02.2005, the Commission had also considered the loss level approved by the Sovan Kanungo Committee and accordingly, set up the trajectory for reduction of loss level for the control period from FY 2003-04 to FY 2007-08 and the same has been utilized as base loss level, in fixing distribution loss trajectory and tariff for the subsequent years.

While approving Business Plan, the Commission taking ground realities into consideration, had directed that all the DISCOMs should reduce the transmission and distribution loss each year at least @ 3% per annum in the coming three financial years i.e. during FY 2005-06, FY 2006-07 and FY 2007-08 though the Sovan Kanungo Committee recommended for reduction @5% loss per annum. Accordingly, the Commission directed that the following level of loss would be attained by the four DISCOMs during the FY 2007-08.

NESCO - 29%, WESCO- 25%, SOUTHCO - 30%, CESCO - 30%

However, the Hon'ble APTEL has directed in their order dated 11.02.2014 passed in Appeal Nos. 112-114 of 2013 that the distribution loss level should be relooked into, without any consideration of the Business Plan.

The Commission, on its own, had not set the opening distribution loss in absence of the consumer metering, feeder metering and transformer metering in full. Therefore, the Commission considering the ground reality fully accepted the submissions of the DISCOMs regarding base loss level.

The Hon'ble APTEL, while dealing with loss level adopted by the Commission for FY 2006-07, in Appeal Nos. 77, 78 & 79 of 2006 dated 13.12.2006 at para 27 had observed as follows: *"We hasten to add that the Commission need not stick to its earlier view, but it shall have a re-look in this respect by taking a practical view of the ground realities instead of proceeding on assumption and surmises. We are sure that Commission will take a re-look of the matter and grant the benefits to the Discoms."*

Basing on this, the Commission obligated to take into consideration the ground realities in the matter of distribution loss. While reviewing the loss level for FY 2005-06 to FY 2013-14 in subsequent Appeal No. 64 of 2015 dated 21.08.2017 (latest order), the Hon'ble APTEL has observed as under:

"41. (a) xxxxxxxx Following table shows that instead of reducing loss gradually over a period of nine years, the loss has remained more or less constant and in some years it has increased."

Table - 1

Overall Distribution Loss Proposed and Actual Level Achieved By Licensees (In %)

Year	NESCO			WESCO			SOUTHCO		
	Proposed by the Licensee	Approved by the Commission	Actual attained by the Licensee	Proposed by the Licensee	Approved by the Commission	Actual attained by the Licensee	Proposed by the Licensee	Approved by the Commission	Actual attained by the Licensee
2005-06	36.63%	35.00%	37.08%	32.65%	31.00%	37.80%	37.30%	36.00%	41.07%
2006-07	33.58%	31.51%	33.22%	33.00%	33.75%	36.36%	35.88%	33.00%	43.39%
2007-08	30.00%	26.00%	31.17%	31.00%	25.00%	36.13%	40.16%	30.40%	45.49%
2008-09	27.58%	25.50%	34.57%	31.51%	25.00%	33.55%	39.31%	30.42%	47.78%
2009-10	29.20%	23.00%	32.52%	33.66%	22.50%	35.09%	39.48%	27.92%	48.03%
2010-11	28.30%	18.46%	32.75%	28.45%	19.93%	38.89%	42.76%	27.82%	48.22%
2011-12	27.66%	18.40%	34.28%	31.29%	19.70%	38.89%	42.67%	26.50%	46.42%
2012-13	29.00%	18.35%	34.93%	34.51%	19.60%	38.27%	43.72%	25.50%	43.68%
2013-14	32.53%	18.35%	33.84%	35.01%	19.60%	36.68%	40.03%	25.50%	40.99%

The Appellant's contention that the State Commission has fixed notional loss in an unrealistic manner is not correct because the above table shows that the State Commission more or less accepted the loss projection made by the Appellants and gradually reduced the target figure, but the Appellants made no efforts to achieve the target. xxxxxx

This order has attained finality through the verdict of confirmation of the Hon'ble Supreme Court on an Appeal of erstwhile DISCOMs in Civil Appeal No. 18500 of 2017. It is thus apparent from the above observation of the Hon'ble APTEL, in their order dated 21.08.2017 passed in Appeal No.64 of 2015, that its own observation made in the Order dated 13.12.2006 passed in Appeal Nos. 77, 78 & 79 of 2006 has been taken into consideration. To put in the other words, the earlier order of the Hon'ble APTEL in Appeal Nos. 77, 78 & 79 of 2006 got merged with its later order in Appeal No. 64 of 2015 and hence, the issue does not survive to be re-opened as the ground realities cannot be different from the status based on which revocation of licenses of the erstwhile Distribution Licensees was confirmed by the Hon'ble APTEL as well as the Hon'ble Apex Court. The suggestion of the erstwhile DISCOMs to fix an arbitrary base level loss for the FY 1999-00 i.e. out of the scope of present compliance and the Commission cannot traverse beyond FY 2006-07 which was the initial year under scrutiny before the Hon'ble APTEL in Appeal Nos. 77, 78 & 79 of 2006.

(B) Non-recognition of Notional Sales

In this regard, the Hon'ble APTEL in its combined order dated 03.07.2013 on Appeals relating to RST order of this Commission for FY 2008-09, FY 2010-11, FY 2011-12 and FY 2012-13 had directed in Para 31 (ii) as follows:

“The issue relating to Notional Sales is covered by the judgment of the Tribunal dated 4.12.2007 in Appeal No. 100 of 2007 in the matter of Karnataka Power Transmission Company Ltd. Vs. Karnataka State Electricity Regulatory Commission. The findings of the Tribunal in Karnataka Power case will squarely apply to these Appeals. Accordingly, the Power Purchase Cost admissible to the distribution licensee has to be determined on the basis of the estimated sales revenue and the targeted distribution loss. The Power Purchase Cost on account of non-achievement of distribution loss level at the average power purchase cost has to be borne by the distribution licensees and in this way the inefficiency of the distribution licensees is not passed on to the consumers. The method of notional sales as adopted by the State Commission is set aside.”

Submissions by the Parties

The erstwhile DISCOMs have submitted that the notional sales should be treated as per the direction of the Hon’ble APTEL, who have relied upon their judgement on Karnataka Power Transmission Company Ltd. Vrs. Karnataka State Electricity Regulatory Commission. There has been no true up of the issue and same may be allowed in favour of them. GRIDCO has stated that notional sales depend upon distribution loss trajectory, therefore, the Commission should take a prudent decision with regard to re-determination of AT&C loss for the past periods based on the ground realities.

Findings of the Commission

In the above order, the Hon’ble Tribunal has in effect set-aside the principles of the Commission for determination of power purchase quantum from the past trend and future projection thereof. The Hon’ble APTEL, vide their judgment dated 04.12.2007 in Appeal No.100 of 2007, had directed that the power purchase cost admissible to the distribution licensee has to be determined on the basis of the estimated sales quantum and the targeted distribution loss. Therefore, now we have to determine the power purchase quantum basing on the direction of the Hon’ble APTEL from projected sales only. This we call the ‘bottom-up approach’. Let us see the effects on the power purchase quantum, if we adopt the bottom-up approach.

Recalculated estimated power purchase quantum (In MU)

NESCO	2008-09	2010-11	2011-12	2012-13
Projected Sales to Consumer (MU)	3,471.70	4,176.31	4,343.57	4,332.35
Distribution Loss (%)	25.50%	18.46%	18.40%	18.35%
Estimated Power purchased from GRIDCO (MU)	4,660.00	5,122.00	5,323.00	5,306.00
WESCO	2008-09	2010-11	2011-12	2012-13
Projected Sales to Consumer (MU)	4,260.26	4,999.84	5,323.89	5,222.78
Distribution Loss (%)	25.00%	19.93%	19.70%	19.60%
Estimated Power purchased from GRIDCO (MU)	5,680.00	6,244.00	6,630.00	6,496.00
SOUTHCO	2008-09	2010-11	2011-12	2012-13

Projected Sales to Consumer (MU)	1,377.63	1,709.15	2,008.76	2,270.02
Distribution Loss (%)	30.42%	27.82%	26.50%	25.50%
Estimated Power purchased from GRIDCO (MU)	1,980.00	2,368.00	2,733.00	3,047.00

In the above Table, the top row for each erstwhile DISCOM depicts the projected sales by the Commission in each year. If we factor in the distribution loss as validated by the Hon'ble APTEL in their order in Appeal No. 64 of 2015, as discussed earlier, we arrive at estimated power purchase quantum. The Table below shows that the estimated power purchase quantum by the Commission for those years is nearer to or within a reasonable variation of the actual power purchase quantum by GRIDCO (be it bottom up and top-down approach), which was verified from the audited accounts.

Actual Power Purchase and Sales Quantum from the Audited Accounts (In MU)

	2008-09	2010-11	2011-12	2012-13
NESCO				
Estimated Power Purchase by OERC	4,660.00	5,122.00	5,323.00	5,306.00
Actual Power Purchase from GRIDCO	4544.98	5108.93	5023.40	5045.36
WESCO				
Estimated Power Purchase by OERC	5,680.00	6,244.00	6,630.00	6,496.00
Actual Power Purchase from GRIDCO	6378.44	6500.88	6177.75	6391.26
SOUTHCO				
Estimated Power Purchase by OERC	1,980.00	2,368.00	2,733.00	3,047.00
Actual Power Purchase from GRIDCO	2175.78	2555.64	2814.13	2948.89

Be that as it may, the actual power purchase cost has been trued up in the truing up order dated 19.03.2012 of this Commission for those years in Case Nos. 29, 30 & 31 of 2007 & Case Nos. 6, 7 & 8 of 2012 (upto FY 2010-11) and order dated 23.03.2015 in Case Nos. 69-72 of 2014 (Truing-up for the FY 2013-14). This Commission in Para-454 of the above order dated 23.03.2015 has clearly stated that actual power purchase and its cost have been accepted. Therefore, the order of the Hon'ble APTEL has been complied with. In this regard, we are quoting the extract from Annexure A2 of the Commission's Retail Supply Tariff order for FY 2015-16 in Case Nos. 69-72 of 2014.

True up of Power Purchase Cost upto FY 2013-14

(Rs. in Crore)

DISCOMs	Approved Power Purchase	Audited power purchase	Trued up	Difference Allowed (-) / Disallowed (+)
NESCO	1660.58	1552.23	1552.23	108.35
WESCO	2124.01	2010.33	2010.33	113.68
SOUTHCO	353.85	615.39	615.39	38.46

Therefore, we have no reason to revisit the incidental power purchase cost and thus, the order of the Hon'ble APTEL has been complied with in respect of the non-recognition of notional sales.

(C) Consideration of Costs under the following Heads: -

(i) NTPC Bonds

In this regard, the Hon'ble APTEL in Para 17 of their order dated 13.12.2006 passed in Appeal Nos. 77, 78 & 79 of 2006 had held as follows:

“17. XXXXXXXX There will be a direction, directing the Regulatory Commission to allow difference of 4% interest payable for the NTPC bonds till the tariff period as well as the instalments which have already accrued due during the year 2005-06, 2006-07 and 2007-08 and allow the same to pass through the tariff.”

Submissions of the Parties

The erstwhile DISCOMs have submitted that vide order dated 29.03.2012 passed in Case No. 107 of 2011, though an arrangement was directed to be arrived at between GRIDCO and erstwhile DISCOMs, it could not fructify on account of artificially low RST and the DISCOMs were entitled to the entire amount. GRIDCO has stated that the Commission had subsequently rescheduled the bond and allowed interest rate of 8.50% for the balance dues and directed the three DISCOMs to pay Rs.50 crore each by the end of 31.03.2012 and 30.04.2012 in Case No. 107 of 2011. The aforesaid order has not been challenged by the erstwhile DISCOMs and therefore, attained finality. Due to unserviceability of the securitised dues of GRIDCO, including NTPC Bond by the erstwhile DISCOMs, the financials of GRIDCO had been affected substantially compelling GRIDCO to avail borrowings being the only recourse. Therefore, it is stated that the issue is already settled and does not require further deliberation.

Views of the Commission

The above issue was addressed by the Commission in the order dated 29.03.2012 passed in Case No. 107 of 2011 pursuant to the petitions filed by the erstwhile DISCOMs. In the said order, vide paragraph-14, the Commission rescheduled Rs.400 Crs. NTPC Bond and allowed the Interest Rate of 8.50% for Balance Dues and directed the three DISCOMs to pay Rs.50 Crore each by the end of 31.03.2012 and 30.04.2012 respectively. The balance amount of Rs.208.45 Crores was directed to be settled before 31.03.2013 with minimum payment of

Rs.10 Crore/month. The Commission further directed that the simple interest @ 8.5 % shall be charged on balance outstanding amount of Rs.208.45 Crore (on the reduced amount on month-to-month basis). The aforesaid order dated 29.03.2012 having not been challenged by the erstwhile DISCOMs, has attained finality.

In concluding part of the order referred to above, the Commission had indicated that “*Since resolution of dispute on NTPC Bond as outlined in para 14 has been arrived at after due deliberation with GRIDCO and the three DISCOMs, this should be taken as award on consent of both the parties.*”.

In view of above, no further order is called for with regard to the NTPC Bonds inasmuch as the same does not survive as an issue calling for any further decision. Accordingly, the direction in this regard by the Hon’ble APTEL has been complied with.

Therefore, the submission of the erstwhile DISCOMs has no relevance inasmuch as the Hon’ble APTEL in their later order dated 08.10.2011 in Appeal Nos. 52, 53 & 54 of 2007 at Para-7 (A) had directed that whatever interest is payable by the Appellant to the GRIDCO shall be allowed as a pass through in the ARR of the Appellants. Since the DISCOMs had agreed to pay interest @8.50% on NTPC Bond to GRIDCO and the Commission had allowed it in Case No. 107 of 2011, the issue does not survive anymore.

(ii) A&G Expenses

In this regard, the Hon’ble APTEL in Para 37 (v) of their order dated 08.11.2010 in Appeal Nos. 52, 53 & 54 of 2007 had stated as follows:

“xxxxxx In regard to Administrative and General Expenses, the State Commission has also disallowed the additional costs on account of distribution of spot billing on consumers and conducting of energy audit. These activities were initiated by the Appellants as non-introduction of the spot billing and not conducting energy Audit were some of the grounds for seeking revocation of the license of the Appellants by the State Commission. However, the expenditure on carrying out their activities was not allowed in the ARR for FY 2007-2008 even though the Appellants had submitted details of the expenditure to the State Commission. Therefore, findings of the State Commission on this issue cannot be held valid. xxxxx”

Views of the Commission

The Commission in the ARR order of the DISCOMs in Case Nos. 57, 58, 59 & 60 of 2006, dated 23.03.2007 had not allowed the proposed expenditure towards

energy audit and spot billing by the DISCOMs for FY 2007-08. The details of proposed expenditure in this regard by DISCOMs, expenditure approved by the Commission and differential amounts are as follows:

For FY 2007-08

(Rs. In Crore)

	Energy Audit (Proposed by DISCOMs)	Energy Audit (Approved by OERC)	Differential Amount now to be passed on to DISCOMs	Spot Billing (Proposed by DISCOMs)	Spot Billing (Approved by OERC)	Differential Amount now to be passed on to DISCOMs
WESCO	1.96	NIL	1.96	2.29	NIL	2.29
NESCO	1.71	NIL	1.71	1.73	NIL	1.73
SOUTHCO	1.65	NIL	1.65	1.97	NIL	1.97
Total			5.32			5.99

Now, in obedience to the direction of the Hon'ble APTEL, the Commission allows the expenditure proposed by three erstwhile DISCOMs with respect to Energy Audit and Spot Billing individually totaling to Rs.11.31 Cr. (Rs.5.32 Cr. + Rs.5.99 Cr.) for FY 2007-08 in their ARR.

In this regard, the Hon'ble APTEL in its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, 2010-11, 2011-12 and 2012-13 had directed in Para 31 (x) as follows:

“Regarding Administrative and General expenses, the findings of the Tribunal in judgment dated 8.11.2010 in Appeal No. 52 of 2007 and batch will squarely apply to the present Appeals. The State Commission shall give effect to the findings of the Tribunal in these Appeals by allowing expenses incurred on account of spot billing and energy audit.”

Views of the Commission

The Commission in the ARR order of DISCOMs for FY 2008-09, 2010-11, 2011-12 and 2012-13 had not allowed the proposed expenditure towards energy audit and spot billing by the DISCOMs for those years. The details of expenditure proposed by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) in this regard, approved expenditure by the Commission and differential amount are as follows:

**Additional Expenditure to be recognised for FY 2008-09, FY 2010-11, FY 2011-12
and FY 2012-13**

(Rs. in Crore)

Year	DISCOMs	Energy Audit (Proposed by DISCOMs)	Energy Audit (Approved by the Commission)	Differential Amount now to be passed on to DISCOMs	Spot Billing (Proposed by DISCOMs)	Spot Billing (Approved by the Commission)	Differential Amount now to be passed on to DISCOMs
2008-09	WESCO	1.96	NIL	1.96	2.37	NIL	2.37
	NESCO	5.68	NIL	5.68	3.81	NIL	3.81
	SOUTHCO	1.74	NIL	1.74	3.40	NIL	3.40
	Total	9.38		9.38	9.58		9.58
2010-11	WESCO	3.46	NIL	3.46	0.13	NIL	0.13
	NESCO	3.46	NIL	3.46	0.11	NIL	0.11
	SOUTHCO	3.46	NIL	3.46	0.09	NIL	0.09
	Total	10.38		10.38	0.33		0.33
2011-12	WESCO	1.34	NIL	1.34	0.66	NIL	0.66
	NESCO	0.16	NIL	0.16	3.06	NIL	3.06
	SOUTHCO	1.16	NIL	1.16	0.42	NIL	0.42
	Total	2.66		2.66	4.14		4.14
2012-13	WESCO	1.44	NIL	1.44	5.63	NIL	5.63
	NESCO	1.44	NIL	1.44	5.51	NIL	5.51
	SOUTHCO	0.16	NIL	0.16	6.54	NIL	6.54
	Total	3.04		3.04	17.68		17.68
Grand Total		25.46		25.46	31.73		31.73

In obedience to the direction of the Hon'ble APTEL, the Commission allows an expenditure of Rs.57.19 Cr. towards energy audit (Rs.25.46 Cr.) and spot billing (Rs.31.73 Cr.) to WESCO, NESCO & SOUTHCO in their ARR for the respective years.

In Appeal Nos. 112-114 of 2013 relating to ARR and Retail Supply Tariff order of the Commission for FY 2013-14 at Para 12 (C), the Hon'ble APTEL has directed as follows:

“xxxxxx, there is no norm given in the Regulations by which such abnormal A&G expenses statutorily needed to be expended could be curtailed by the Orissa Commission. On this issue also we are fully in agreement with the submissions made by the learned counsel for the Appellants and the findings on the issue recorded by the Orissa Commission are also quashed and this issue is also decided in favour of the Appellants.”

Views of the Commission

In view of the above, directives/observations of the Hon'ble APTEL, the Commission allows projection of the DISCOMs towards the A&G Expenses for the FY 2013-14 & FY 2014-15. The details of which are as follows:

A&G Expenses for the FY 2013-14 & FY 2014-15

(Rs. in Crore)

DISCOMs	A&G Expense Projected by DISCOMs	A&G Expense approved by the Commission	Differential amount of A&G expense	A&G expense now allowed in compliance to the order of the Hon'ble APTEL
FY 2013-14				
NESCO	53.57	18.99	34.58	34.58
WESCO	47.16	27.41	19.75	19.75
SOUTHCO	46.16	16.63	29.53	29.53
Total	146.89	63.03	83.86	83.86
FY 2014-15				
WESCO	54.01	29.69	24.32	24.32
NESCO	55.00	20.68	34.32	34.32
SOUTHCO	58.93	18.15	40.78	40.78
Total	167.94	68.52	99.42	99.42
Grand Total	314.83	131.55	183.28	183.28

As per the directive of the Hon'ble Supreme Court, the Commission allows the following additional amount towards A&G expenses, which was not considered in Retail Supply Tariff order of this Commission for the FY 2007-08 to FY 2014-15 (except FY 2009-10), the details of which are given in the Table below:

Financial Year	DISCOMs	Additional A&G Expenses allowed in this compliance order (Rs. Cr)
2007-08	WESCO	4.25
	NESCO	3.44
	SOUTHCO	3.62
	Total	11.31
2008-09	WESCO	4.33
	NESCO	9.49
	SOUTHCO	5.14
	Total	18.96
2010-11	WESCO	3.59
	NESCO	3.57
	SOUTHCO	3.55
	Total	10.71
2011-12	WESCO	2.00
	NESCO	3.22
	SOUTHCO	1.58
	Total	6.80
2012-13	WESCO	7.07
	NESCO	6.95
	SOUTHCO	6.70
	Total	20.72
2013-14	WESCO	34.58

Financial Year	DISCOMs	Additional A&G Expenses allowed in this compliance order (Rs. Cr)
	NESCO	19.75
	SOUTHCO	29.53
	Total	83.86
2014-15	WESCO	24.32
	NESCO	34.32
	SOUTHCO	40.78
	Total	99.42
Grand Total		251.78

Therefore, the differential amount of Rs.251.78 Cr. towards A&G expenses is allowed to the erstwhile DISCOMs i.e. WESCO (Rs.80.14 Cr.), NESCO (Rs.80.74 Cr.) and SOUTHCO (Rs.90.90 Cr.) in complying with the direction of the Hon'ble APTEL for the aforesaid period due to ARR re-determination. This is over and above the A&G expenses allowed by the Commission in the ARR & RST orders for the said period.

Accordingly, the order of the Hon'ble APTEL is complied with in respect of A&G expenses.

(iii) Employees Costs

In this regard, the Hon'ble APTEL in their order in Appeal Nos. 52, 53 & 54 of 2007 dated 08.11.2010 in Para 37 (v) had stated as follows:

“xxxxxx In the Financial year 2008-2009, the Commission has acted upon the actuarial valuation and given the benefit for the same in the ARR. In our view, this benefit would apply to the Appellants in respect of FY 2007-2008 also. xxxxx”

Submission of the Parties

The requirement of corpus fund was supposed to be made up from the revenues generated from tariffs. In the tariff order for the FY 2008-09, the Commission in fact had acted upon the actuarial valuation and had given the benefit of the same, but same principle was not followed for other years. The arrears of 6th Pay Commission was to be included in the ARR. GRIDCO had submitted that after completion of true up exercise, the issue does not survive. GRIDCO has further submitted that in terms of vesting order, employees have been transferred to the present DISCOMs. The employees of the erstwhile DISCOMs are being granted benefits by the present DISCOMs, which in turn seek approval of expenses related to employee's benefits in its ARR. The erstwhile DISCOMs submit that if the benefits are being taken over by new DISCOMs, the liabilities should also be passed on. If the liabilities are passed on, then only, the issue does not survive.

Views of the Commission

In obedience to the above order dated 08.11.2010 of the Hon'ble APTEL, the Commission in the Retail Supply Tariff order for FY 2012-13 in Case Nos. 93, 94, 95 & 96 of 2011 had taken cognizance of fund requirement of DISCOMs for payment of terminal liability, which was done through actuarial valuation cumulatively upto FY 2012-13. The fund requirement for FY 2007-08 is subsumed in the cumulative figure upto FY 2012-13 and accordingly, the Commission had provided funds in the ARR for FY 2012-13. This is evident from the paragraphs 353 to 355 in the order of the Commission in the aforesaid case, the extract of which are given below:

“353. The differential funding requirement as on 31.03.2012 as per the valuation arrived by the Commission after 5% escalation and the expected corpus fund availability as estimated above is accordingly arrived and shown in the table below:

Table – 60

(Rs. Cr.)

Differential Funding requirement						
Licensee	Estimated corpus fund as on 31.03.2012	Corpus availability as on 31.03.2012	Difference to be funded	Allowed for FY 2012-13	Carrying cost for the balance amount	Approved for FY 2012-13
<i>WESCO</i>	408.41	342.28	66.13	66.13	0.00	66.13
<i>NESCO</i>	375.80	307.92	67.88	67.88	0.00	67.88
<i>SOUTHCO</i>	379.21	310.40	68.81	68.81	0.00	68.81
<i>CESU</i>	741.90	501.06	240.84	140.84	9.00	149.84

354. In accordance with the above calculations, the Commission decides to fund the requirement of WESCO, NESCO and SOUTHCO of Rs.66.13 cr, Rs.67.88 cr and Rs 68.81 cr respectively. The differential funding required for CESU is on the higher side to the tune of Rs. 240.84 cr. Therefore, it would not be possible to fund CESU the entire amount at one go. The Commission, therefore, decides to allow the funding of differential requirement to CESU in two instalments. Accordingly an amount of Rs.149.84 cr. along with carrying cost is approved towards terminal liabilities for FY 2012-13. The balance requirement of Rs.100 cr. would be funded during finalisation of next year ARR in case of CESU.

355. Commission accordingly allows following amounts towards terminal Liabilities of DISCOMs for FY 2012-13.

Table – 61

(Rs. Cr.)

Name of the DISCOM	WESCO	NESCO	SOUTHCO	CESU
<i>Amount to be charged to ARR (in Crore)</i>	66.13	67.88	68.81	149.84

Actual availability in terminal benefit fund basing on accretion and payment from the fund

In this regard, the Hon'ble APTEL in Para 31 (iv) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, 2010-11, 2011-12 and 2012-13 had directed as follows:

“In computing the terminal benefits of the employees, the State Commission should have taken into account the payouts from the fund to the employees as also the interest earned on the fund invested in securities and fixed deposits. The State Commission has since trued up the accounts till 2010-11 on the basis of audited accounts and therefore the issue does not survive. However, as a matter of principle, the accretion to the fund as also the payments from the fund has to be considered to arrive at actual availability of the fund in the ensuing year.”

Views of the Commission

The above observation of the Hon'ble APTEL was addressed in Retail Supply Tariff order for FY 2013-14 in Case Nos. 104-107 of 2012 and differential amount of estimated corpus fund and corpus availability in addition to expected cash out go were allowed. The Commission recognized Rs.93.21 Cr., Rs.71.21 Cr. and Rs.55.66 Cr. for WESCO, NESCO & SOUTHCO respectively towards terminal liability (at Para 235, Table 40 of the same order).

- **Assessment of terminal liability by Independent Actuary**

In this regard, the Hon'ble APTEL in Para 31 (viii) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, 2010-11, 2011-12 and 2012-13 had directed as follows:

“We find that the State Commission had decided to appoint an independent Actuary to assess the terminal liability while deciding with issue in the previous tariff order i.e. 2009-10. Therefore, we do not want to interfere with the decision of the State Commission regarding appointment of independent Actuary. However, there is an inordinate delay in getting the report of the Actuary and the Commission in the absence of the report of its Actuary has been deciding the terminal liability since 2009-10 provisionally. This is not proper. We, therefore, direct the State Commission to expedite the report of the independent Actuary or else rely on the report of the Actuary appointed by the Appellants subject to prudence check and true up the terminal liabilities of the Appellants for the period 2010-11 to 2012-13 within 180 days of the date of this judgment.”

Views of the Commission

The above observation of the Hon'ble APTEL was addressed by the Commission at Para 233 of their order in Case Nos. 104-107 of 2012 relating to RST determination for FY 2013-14 based on the Independent Actuary Valuation Report of M/s. Darashaw &

Company Pvt. Ltd. on terminal corpus fund and the Para 233 of the said order is reproduced below:

“233. Xxxxx

As per the valuation given by M/s Darashaw & Company Pvt. Ltd., Mumbai, the total corpus estimation upto 31.3.2011 was Rs.388.96 crore, 357.90 crore, 361.15 crore and 706.57 crores respectively for NESCO, WESCO, SOUTHCO & CESU. Commission in the last RST Order i.e. 2012-13 allowed an escalation of 5% over the level of 31.3.2011 and accordingly estimated the corpus requirement for 31.3.2012 at Rs.408.41 crore, 375.80 crore, 379.21 crore and Rs.741.90 crore respective for NESCO, WESCO, SOUTHCO & CESU.

Commission in line with the last year have decided to further escalate the estimation of the corpus requirement as on 31.3.2012 by allowing @5% rise to the requirement as on 31.3.2013. The estimated corpus requirement after allowing 5% rise is tabulated below:-

Table – 38

	(Rs. Cr.)			
	WESCO	NESCO	SOUTHCO	CESU
<i>Estimated corpus as on 31.03.2012</i>	<i>408.41</i>	<i>375.80</i>	<i>379.21</i>	<i>741.90</i>
<i>%age rise allowed for 2012-13</i>	<i>5.00</i>	<i>5.00</i>	<i>5.00</i>	<i>5.00</i>
<i>Estimated corpus as on 31.03.2013</i>	<i>428.83</i>	<i>394.58</i>	<i>398.17</i>	<i>778.99</i>

- **Appointment of Independent Actuary for evaluation of Terminal Liability**

Similarly, in this regard the Hon’ble APTEL in Para 31 (viii) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, 2010-11, 2011-12 and 2012-13 had directed as follows:

“xxxxx We, therefore, direct the State Commission to expedite the report of the independent Actuary or else rely on the report of the Actuary appointed by the Appellants subject to prudence check and true up the terminal liabilities of the Appellants for the period 2010-11 to 2012-13 within 180 days of the date of this judgment.”

Views of the Commission

The Commission had accepted the actuary valuation report of M/s. Darashaw & Company Pvt. Ltd., Mumbai, the Independent Actuary for evaluation of terminal liability of DISCOMs up to FY 2012-13 and accordingly allowed the same in the ARR and Tariff order for FY 2013-14 at Para 350 which is reproduced as under:

“350. Commission has been appointing independent actuary to undertake assessment of pension, gratuity and leave encashment liability of the employees of four DISCOMs (WESCO, NESCO, SOUTHCO & CESU) and OPTCL. Commission engaged M/s Darashaw & Company Pvt. Ltd., Mumbai as actuary for undertaking valuation of pension, gratuity and leave encashment liability of the employees of four DISCOMs (WESCO, NESCO, SOUTHCO & CESU) and OPTCL upto 31.03.2009 with projection for FY 2009-10 and FY 2010-11 during last FY 2010-11. The Commission in line with the earlier years, during FY 2011-12 undertook the process of appointment of independent actuary for valuation of pension, gratuity and leave encashment liability of the employees of four

DISCOMs (WESCO, NESCO, SOUTHCO & CESU) and OPTCL upto 31.03.2010 with projection for FY 2010-11 and 2011-12. The Commission after due process appointed an independent actuary for undertaking such valuation in letter dated 17.09.2011. However, in letter dated 8th Nov 2011, actuary expressed its inability to undertake such assignment due to grounds of circumstances beyond their sphere of control. In the meantime filing of ARR by Licensee was due on 30th November 2011 and therefore Commission in such an event decided that terminal liability to the Licensees may be allowed provisionally based on the last valuation of actuary which can be updated periodically within a gap of 3 to 5 years.

351. *The projection for the terminal liabilities of the Licensees has been accordingly done on the basis of the valuation given by the actuary during the last year i.e upto 31.03.2009 with projection for FY 2009-10 and FY 2010-11. A summary of such valuation is given in the table below:*

Table – 58
Actuarial Valuation as given by the Actuary M/s DARASHAW, Mumbai
(Rs. Cr.)

	WESCO	NESCO	SOUTHCO	CESU
31.03.09				
<i>Pension</i>	290.91	267.44	271.37	528.46
<i>Gratuity</i>	32.77	30.38	28.22	54.32
<i>Leave</i>	34.24	29.74	27.61	62.42
Total	357.92	327.56	327.2	645.20
31.03.10				
<i>Pension</i>	301.97	278.2	281.22	552.8
<i>Gratuity</i>	36.52	32.61	31.16	57.71
<i>Leave</i>	37.13	32.37	30.68	67.7
Total	375.62	343.18	343.06	678.21
31.03.11				
<i>Pension</i>	310.17	285.88	293.18	571.63
<i>Gratuity</i>	38.69	36.17	34.13	61.53
<i>Leave</i>	40.1	35.85	33.84	73.41
Total	388.96	357.9	361.15	706.57
%age rise over previous year	3.55	4.29	5.27	4.18
Estimated corpus as on 31.03.2012 based on above % age rise	402.77	373.25	380.19	736.12
%age rise allowed for 2011-12	5.00	5.00	5.00	5.00
Estimated corpus as on 31.03.2012	408.41	375.80	379.21	741.90

As revealed from the table above the percentage rise in the valuation upto 31.03.2011 over the level upto 31.03.2010 ranges from 3.45% to 5.27%. Commission, however, with a view to fund the corpus have prudently allowed escalation of the corpus requirement at the rate of 5% over the level as on 31.03.2011 uniformly across the Licensee to estimate the corpus requirement as on 31.03.2012.

- “352 *The expected corpus fund on terminal liability as per funds approved in the ARRs from FY 1999-00 onwards till FY 2011-12 is stated in the table below:*

Table – 59
Expected Corpus Availability

(Rs. Cr.)

	WESCO	NESCO	SOUTHCO	CESU
<i>OB As on 01.04.99/Fund transfer from GRIDCO to DISTCOs</i>	70.77	68	67.39	138.56
<i>Allowed by the Commission</i>				
<i>1999-00</i>	6.71	5.62	7.78	0.00
<i>2000-01</i>	6.27	7.07	7.07	0.00
<i>2001-02</i>	7.92	7.00	6.63	6.09
<i>2002-03</i>	8.08	7.21	6.81	6.27
<i>2003-04</i>	8.96	7.56	7.57	6.90
<i>2004-05</i>	11.30	8.35	9.40	3.25
<i>2005-06</i>	12.06	8.92	10.03	3.51
<i>2006-07</i>	12.07	9.55	9.73	13.19
<i>2007-08</i>	16.36	15.30	13.97	18.28
<i>2008-09</i>	37.02	25.16	24.49	48.10
<i>2009-10</i>	37.04	27.19	20.53	49.68
<i>2010-11</i>	51.81	51.13	58.22	75.84
<i>2011-12</i>	55.91	59.86	60.78	131.39
<i>Sub-Total</i>	271.51	239.92	243.01	362.50
Grand Total	342.28	307.92	310.40	501.06

353. The differential funding requirement as on 31.03.2012 as per the valuation arrived by the Commission after 5% escalation and the expected corpus fund availability as estimated above is accordingly arrived and shown in the table below:

Table – 60

(Rs. Cr.)

Differential Funding requirement						
Licensee	Estimated corpus fund as on 31.03.2012	Corpus availability as on 31.03.2012	Difference to be funded	Allowed for FY 2012-13	Carrying cost for the balance amount	Approved for FY 2012-13
<i>WESCO</i>	408.41	342.28	66.13	66.13	0.00	66.13
<i>NESCO</i>	375.80	307.92	67.88	67.88	0.00	67.88
<i>SOUTHCO</i>	379.21	310.40	68.81	68.81	0.00	68.81
<i>CESU</i>	741.90	501.06	240.84	140.84	9.00	149.84

- Payment of 6th Pay Commission arrear & salary**

In this regard, the Hon'ble APTEL in Para 31 (viii) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, 2010-11, 2011-12 and 2012-13 had directed as follows:

“xxxx The arrears of 6th Pay Commission have to be allowed as in the truing up of the Accounts. However, the Appellants are directed to act on the directions given by the State Commission to improve the recovery of dues from the consumers and furnish the details sought by the State Commission.”

Findings of the Commission

In Para 454 (d) of RST order for FY 2015-16 in Case Nos. 69-72 of 2015, the Commission had allowed employee cost considering 6th pay commission salary and arrear as shown in the audited account excluding terminal benefits.

- **Employees Cost (actuarial valuation for terminal benefits)**

In Appeal Nos. 112-114 of 2013 relating to ARR and Retail Supply Tariff order of the Commission for FY 2013-14 at Para 12 (B), the Hon'ble APTEL has directed as follows:

“xxxxxx The State Commission was directed by this Tribunal to either expedite the Report of its Actuary or else rely on the report of the Actuary appointed by the Appellant. The impugned order has in fact done precisely to the contrary. Whilst without considering the Actuary Report filed by the Appellant, continues to rely upon the old Actuary Valuation undertaken by the Orissa Commission and provisionally estimating a percentage increase on the same. This issue is also, being contrary to the view or preposition of law laid down by this Appellate Tribunal, decided in favor of the Appellants and all the findings recorded in the impugned order in support by the Orissa Commission are hereby quashed.”

Views of the Commission

The Business of DISCOMs so also the terminal liability corpus fund were matter of concern. The Commission was to fund them through ARR as per the actuarial valuation. Consequent upon the direction of the Hon'ble APTEL relating to ARR and RST order for FY 2013-14, the Commission reviewed the fund position in the terminal liability corpus fund in the ARR order for FY 2015-16. In this regard, the order of this Commission for FY 2015-16 in Case Nos. 69-72 of 2014 at Para No. 382 to 388 may be referred to, the details of which are as follows:

“Terminal Liability

382. *The DISCOMs have projected increase in their terminal liability for the ensuing year FY 2015-16 except NESCO. A comparative position of the approved terminal liability in ARR of FY 2014-15 vis-a-vis projection made by the DISCOMs for FY 2015-16 is given in the following table:*

Table – 42

(Rs. Cr.)

<i>Name of the Company</i>	<i>Approved FY 2014-15</i>	<i>Proposed FY 2015-16</i>	<i>Percentage increase (in %)</i>
<i>CESU</i>	<i>122.89</i>	<i>135.30</i>	<i>10.10</i>
<i>WESCO</i>	<i>95.38</i>	<i>107.76</i>	<i>12.98</i>
<i>NESCO</i>	<i>96.53</i>	<i>90.96</i>	<i>-5.77</i>
<i>SOUTHCO</i>	<i>77.73</i>	<i>96.95</i>	<i>24.73</i>

383. *WESCO, NESCO and SOUTHCO in their submission have stated that the estimate on contribution to the pension fund, gratuity fund and leave encashment*

to be made for the FY 2015-16 is based on the actuarial valuation carried out by M/s. Bhudev Chatterjee as on 31.3.2014. These licensees while computing the contribution to fund the employee trust, have considered the actual investments as on 01.04.2014, estimated investments as on 01.04.2015, income from investments during the year 2015-16 and the payments to the retiring employees during the year 2015-16. CESU in their submission have stated that the terminal benefit has been considered on the basis of actuarial valuation for the FY 2013-14 and projection has been made towards gratuity@ 8% growth, leave salary as 10 month's salary and pension as per actuarial projection.

384. The Commission has been analysing the expected corpus fund available with the DISCOMs taking into account the provision allowed in the successive tariff orders of the Commission. The expected corpus fund liability as per funds approved in the ARR from FY 1999-00 onwards till FY 2014-15 is stated in the table below:

Table – 43

(Rs. in Cr.)

Expected Corpus Fund Availability				
	WESCO	NESCO	SOUTHCO	CESU
<i>OB As on 01.04.99/Fund transfer from GRIDCO to DISTCOs</i>	70.77	68.00	67.39	138.56
<i>Allowed by the Commission</i>				
1999-00	6.71	5.62	7.78	0.00
2000-01	6.27	7.07	7.07	0.00
2001-02	7.92	7.00	6.63	6.09
2002-03	8.08	7.21	6.81	6.27
2003-04	8.96	7.56	7.57	6.90
2004-05	11.30	8.35	9.40	3.25
2005-06	12.06	8.92	10.03	3.51
2006-07	12.07	9.55	9.73	13.19
2007-08	16.36	15.30	13.97	18.28
2008-09	37.02	25.16	24.49	48.10
2009-10	37.04	27.19	20.53	49.68
2010-11	51.81	51.13	58.22	75.84
2011-12	55.91	59.86	60.78	131.39
2012-13	66.13	67.88	68.81	149.84
2013-14	93.21	71.21	55.66	210.50
2014-15	95.38	96.53	77.73	122.89
<i>Sub-Total</i>	526.23	475.54	445.21	845.73
Grand Total	597.00	543.54	512.60	984.29

385. The DISCOMs were asked to submit the actual Corpus fund available up to 31st March 2014. As per the information submitted by the DISCOMs the actual corpus fund available is far less than what actually should have been by 31.3.2014. The following table shows the actual corpus fund available:

Table – 44

(Rs. in Cr.)

Actual Corpus fund Available as on 31.03.2014			
	Pension Fund	Gratuity Fund	Total
<i>CESU</i>	189.47	29.42	218.89
<i>WESCO</i>	108.33	19.42	127.75
<i>NESCO</i>	89.72	12.03	101.75
<i>SOUTHCO</i>	30.78	9.60	40.38

386. *The above two tables reveal that the actual corpus fund available is much lower than the expected. This implies that the amounts allowed by the commission in the successive ARR's are not fully transferred to the corpus fund. Such default by the DISCOMS has put the employee's interest in jeopardy resulting in gross violation of the statutory obligation as per the license condition. The commission hereby directs the DISCOMS to submit their action plan to recoup the deficit and to build up the corpus fund adequately by 30.06.2015.*
387. *Commission from time to time have been appointing independent actuary to undertake assessment of pension, gratuity and leave encashment liability of the employees of four DISCOMS WESCO, NESCO, SOUTHCO & CESU. Commission have appointed an independent actuary to assess terminal valuation up to 31.03.2013 with projection up to 31.03.2014 and 31.03.2015. However, the said actuary is yet to submit its final report and therefore the commission has not been able to consider any valuation towards terminal benefit in the ensuing ARR 2015-16. In order to meet the requirement towards terminal liability Commission therefore provisionally allows the liability as projected by the DISCOMS in their ARR submission for FY 2015-16.*
388. *Commission accordingly allows following amount towards terminal Liabilities of DISCOMS for FY 2015-16.*

Table – 45

	(Rs. in Cr.)			
Name of the DISCOM	CESU	WESCO	NESCO	SOUTHCO
Amount to be charged to ARR (in Cr.)	135.30	107.76	90.96	96.95

From the above, it is clear that though the Commission had been replenishing the corpus fund regularly as per actuarial valuation in the past, but the actual fund availability is less due to inability of DISCOMS to transfer the required money to the corpus fund as per the funding approval of the Commission. This was utter failure of the DISCOMS to discharge their responsibility towards the employees and compliance of the order of the Hon'ble APTEL. However, to protect the interests of the employees, the Commission without finding any other way, allowed the amount whatever the DISCOMS had projected towards the requirement of terminal liability for FY 2015-16. From the order of the Commission as quoted above, it is clear that due to delay in submission of final report of independent actuary, WESCO, NESCO and SOUTHCO were allowed Rs.107.76 Cr., Rs.90.96 Cr. and Rs.96.95 Cr. respectively towards terminal liability, which were similar to that of their projection for the FY 2015-16. Accordingly, the order of the Hon'ble APTEL regarding terminal liability is complied with and the grievances of the DISCOMS not allowing the same is also addressed.

(iv) Miscellaneous Income

In this regard, the Hon'ble APTEL in Para 21 of their order dated 13.12.2006 in Appeal Nos. 77, 78 & 79 of 2006 had directed as follows:

“21. xxxxxx According to the appellants, the Regulatory Commission should have taken or adopted audited accounts of the year 2004-05 as the base and computed the miscellaneous income of the Discoms. Such an over-assessment of miscellaneous income affects the appellants. The appellants also placed the figures relating to first four months and the expected income for the remaining part of the year. It is pointed out that there are obvious errors and this has been erroneously factored into the tariff. Instead of ourselves deciding, we direct Regulatory Commission to take this at the time of truing up exercise and assess the miscellaneous income of the three Discoms and give consequential relief to them.”

Similarly, regarding miscellaneous income, the Hon'ble APTEL in Para 37 (iv) of their order dated 08.11.2010 in Appeal Nos. 52, 53 & 54 of 2007 had observed as follows:

“xxxxxx In our view, if cost of meters is not allowed in the ARR of the Appellants, the meter rent shall also not be included in the miscellaneous income of the Appellants. Also unless the Appellants are entitled to retain the Commission on collection of electricity Duty the income on the Commission ought not be included in the Miscellaneous income. Therefore, this point is answered in favour of the Appellants.”

Submission of erstwhile DISCOMs

The erstwhile DISCOMs have submitted that meter rent was allowed to be charged as per tariff order. However, cost of meters was not included in the ARR of erstwhile DISCOMs. Similarly, electricity duty was collected by the DISCOMs and the same was remitted to the Government, therefore, the same could not be included in the projected revenue for the year. In the true up order also, this miscellaneous income was not considered.

Views of the Commission

In Truing up order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007, the Commission had considered the audited accounts the WESCO, NESCO & SOUTHCO of each year upto FY 2010-11 for trued up exercise and the miscellaneous receipt was accounted for as per the audited accounts (excluding DPS and overdrawal penalty). The contentions of the erstwhile DISCOMs that the Commission had considered meter rent and commission on collection of electricity duty as part of the miscellaneous income, is factually incorrect. This

matter was dealt at Para 28 of the above truing up order. The meter rent and electricity duty are ARR neutral. The meter rent is collected to make up the expenditure related to purchase of meter. However, Commission had never included electricity duty as miscellaneous income as claimed by the erstwhile DISCOMs in the ARR of DISCOMs. There is no question of truing up these expenses as such expenses are not part of the ARR. The contention of DISCOMs is not based on facts. Therefore, the direction of the Hon'ble APTEL as above, on computation of Miscellaneous income is complied with.

(v) Past Receivables

In this regard, the Hon'ble APTEL in Para 37 (vi) of their order dated 08.11.2010 in Appeal Nos. 52, 53 & 54 of 2007 has stated as follows:

“xxxxx The truing up cannot be a process where the projections are compared with the projections. According to the Appellants, they had undertaken the audit of the past receivables as per the guidelines of the state Commission and submitted the same to the Commission in the month of March 2008. We, therefore, direct the State Commission to revisit this issue after taking into account the audit of the past receivables of the Appellants.”

Submission of erstwhile DISCOMs

The erstwhile DISCOMs has submitted that they are entitled to the figures which the Auditors have opined, are attributable to the two categories which include PDC and Ghost consumers. The erstwhile DISCOMs further submit that the cumulative gap in the true up order is yet to be adjusted.

Views of the Commission

The Hon'ble APTEL has directed the Commission to take into account the audited value of the past receivables while undertaking truing up exercise. In obedience to the order of the Hon'ble APTEL, this Commission revisited past receivables issue in their order dated 14.01.2011 passed in Case Nos. 68, 69, 70 & 71 of 2007 and their order dated 19.03.2012 passed in Case Nos. 29, 30 & 31 of 2007 wherein DISCOMs are directed as follows:

“35. As regards to the second allegation of R-Infra managed DISCOMs that the truing up exercise being provisional Commission would like to make it clear that this is because of the fact that order on receivable audits have not been finalized by DISCOM till 14.01.2011. In the meantime order on receivable audit have been finalized and the Commission observed the following in the RST Order FY 2011-12 at Para 498 to 501 which is reproduced below:

“498. In this regard the Commission earlier observed the following in Para 478 of the RST Order for FY 2010-11 which is reproduced below:

“478. In line with the earlier order of the Commission holds the opinion that the outcome of the order on receivable audit has some bearing on the income of GRIDCO and hence decides to undertake final truing up exercise after the pronouncement of the final order on receivable audit for DISCOMs.”

“499. The Commission in the meantime has pronounced the final order on receivable audit in Case No. 68, 69, 70 & 71 of 2007 dtd.14.01.2011 and has directed following for compliance of DISCOMs.

“21. To summarise the Commission decides and directs as follows:

- i. The Commission decides in principle to consider the following receivable as bad debt completely:*
 - (a) Receivables of all LD/ permanently disconnected consumers.*
 - (b) Receivables of ghost consumers*
- ii. Licensees are directed to furnish consumer-wise list of all LD, PDC and ghost consumers in a soft copy along with hard copy duly certified by concerned SDOs and respective auditors.*
- iii. The list should be submitted to the Commission on or before 28.02.2011.*
- iv. The final truing up exercise in respect of bad debt shall be carried out after the licensees submit the data within the scheduled date as stated above.”*

500. As per the above direction of the Commission the DISCOMs were required to submit the requisite information by 28.02.2011. On the basis of receipt of such information the Commission would have decided on the quantum of non-recoverable amount for each DISCOM to be written off and finalization of the truing up exercise in the ARR for FY 2011-12 towards bad and doubtful debt. However no DISCOM has filed the requisite information within the date line given by the Commission. SOUTHCO has in-fact prayed for extension of time for submission of such information. In view of such a scenario the quantum of non-receivable up to 31st March, 2005 cannot be finalised in terms of the order of the Commission in this regard dated 14.01.2011 and therefore the truing up in this ARR is approved on provisional basis.

501. The Commission on the basis of the truing up exercise allows the amortization of Regulatory assets to SOUTHCO and CESU in the ARR of 2011-12 who have landed up with negative Regulatory Assets, in the following manner:

Table – 94

(Rs. Crore)

Year	WESCO	NESCO	SOUTHCO	CESU
Amortization of Regulatory Assets for FY 2011-12	Nil	Nil	35.00	7.30

In view of the above observation of the Commission and basing upon compliance thereof from the DISCOMs the order on final truing up would be pronounced along with the ARR for the ensuing year i.e. FY 2012-13.”

36. All the DISCOMs submitted the consumer-wise list of all LDC (Long Disconnected Consumer), PDC (Permanently Disconnected Consumer) and ghost consumers certified by concerned SDOs and the respective auditors on the following dates.

WESCO	-	17.3.2011
NESCO	-	19.12.2011
SOUTHCO	-	17.3.2011
CESU	-	12.5.2011

37. The analysis of figures of PDC and ghost consumers as on 31.3.2005 filed by the licensee is given below:

Table - 3

(Rs. in crore)

Name of the company	Outstanding in respect of PDC & Ghost consumers as on 31.3.2005
WESCO	155.39
NESCO	222.45
SOUTHCO	124.75
CESU	147.86

In line with the Order dtd. 14.01.2011, the Commission decides that the above amount be adjusted against the provision towards bad and doubtful debts allowed for the purpose of truing up. A table showing provision allowed by the Commission up to 31.03.2005, total amount of PDC and ghost consumers allowed by the Commission, difference, regulatory gap as per true up exercise and approved regulatory gap after adjustment of the PDC and ghost consumers are depicted in the table below:

Table - 4

(Rs. in Cr.)

Name of the Company	Provision for bad debt allowed by Commission in tariff order upto 2004-05	Total amount PDC and Ghost consumers upto 2004-05	Difference to be adjusted in the True up	Regulatory Gap as per Truing up Exercise upto 2010-11 (para 30 of Table-2)	Approved Gap after adjustment of the PDC and Ghost consumers upto 2010-11
WESCO	88.86	155.39	-66.53	1223.39	1156.86
NESCO	59.57	222.45	-162.88	317.39	154.51
SOUTHCO	40.65	124.75	-84.10	-0.46	-84.56
CESU	104.01	147.86	-43.85	390.43	346.58
Total	293.09	650.45	-357.36	1930.75	1573.39

It is seen from the above table that only SOUTHCO is entitled for amortisation of Regulatory assets since it is posted with the negative gap of Rs.84.56 cr. other three companies are not entitled to get any regulatory assets as they have posted positive gap.

Hence, the Commission allowed an amount of Rs.9 cr. towards amortization regulatory assets in respect of SOUTHCO for the FY 2012-13 and the balance would be considered in the subsequent truing up and ARR.

38. The Commission would like to clarify that the adjustment of PDC and Ghost consumers from the provision of bad and doubtful debts is only limited to truing

up exercise. The licensee are directed not to write off the bad debt on account of PDC and ghost consumers from their consumer ledger unless the clear picture of the debtors as a result of implementation of One Time Settlement Scheme by the DISCOMs come out.”

From above statements, it is clear that after completion of true up exercise, WESCO and NESCO were posted with positive gap of Rs.1156.86 Cr. and Rs.154.51 Cr. respectively whereas SOUTHCO is posted with a negative gap of Rs.84.56 Cr. Hence, the Commission had allowed an amount of Rs.9 cr. towards amortization regulatory assets in respect of SOUTHCO for the FY 2012-13 and the balance would be considered in the subsequent truing up and ARR. The erstwhile DISCOMs might have overlooked or misunderstood above direction of the Commission. Accordingly, order of the Hon’ble APTEL in this regard has been complied with in our Truing Up order dated 19.03.2012 passed in Case Nos. 29, 30 & 31 of 2007.

21. The compliance of the other issues, which are pertinent to the directions of the Hon’ble APTEL confirmed by the Hon’ble Apex Court on the ARR & RST order for the FY 2006-07 to FY 2014-15 (except FY 2009-10), are summarised as under:

(a) Regular passing of gaps between the ARR and expected revenue

In this regard, the Hon’ble APTEL at Para 20 of their order dated 13.12.2006 in Appeal Nos. 77, 78 & 79 of 2006 has directed as follows:

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

Views of the Commission

The observation is regarding bridging the gap between expected revenue from tariff and the ARR. In this regard, it is submitted that the Commission in its order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007 had trued up gaps in the ARR of DISCOMs upto FY 2010-11. In the Table 2 of the said order, the Commission had found out Rs.1223.30 Cr. in case WESCO, Rs.317.39 Cr. in case of NESCO and (-)Rs.0.46 Cr. in case of SOUTHCO as cumulative surplus or deficit upto FY 2010-11. To be more elaborative, the Commission had trued up the deficit/gaps in the ARR of each year

starting from FY 1999-00 to FY 2010-11 basing on the mandate of Tariff Policy and Business Plan order etc. Accordingly, in the Retail Supply Tariff order for FY 2011-12, the Commission had allowed amortization of Regulatory assets of Rs. 147.72 Cr. and Rs.82.82 Cr. cumulatively for NESCO and SOUTHCO respectively for the period from FY 2006-07 to FY 2009-10.

Therefore, in the meantime the order of the Hon'ble APTEL regarding the issue of regular passing of deficit/gap has been complied with by the Commission in the order dated 19.03.2012 passed in Case Nos. 29, 30 & 31 of 2007.

(b) Estimation of Simultaneous Maximum Demand (SMD).

So far as the determination of Simultaneous Maximum Demand (SMD) and consequent determination of demand and energy charge are concerned, the Hon'ble APTEL at Para 25 of order dated 13.12.2006 in Appeal Nos. 77, 78 & 79 of 2006 has directed as follows:

“25. There is force in this contention advanced and it is clear from the following three tables placed before this Appellate authority and in the absence of denial those details deserve acceptance. However, it would be fit and proper for the Regulatory Commission to work out this in the truing up exercise instead of ourselves carrying out such an exercise. In this respect the table set out here under speaks for themselves and the Commission is expected to examine the claims of the appellants while truing up exercise.”

Views of the Commission

The Commission observes that the above direction of the Hon'ble Tribunal was based on the submission of the Appellant before the Hon'ble Tribunal, which states that the estimated SMD in the tariff order could not be achieved in reality and therefore, their revenue requirement had increased. It is pointed out here that when tariff order is issued each year, the SMD is estimated basing upon the trends of the past months/period. But in the audited accounts of that year, the real SMD for that period is reflected. The Commission had taken into consideration the audited accounts upto FY 2010-11 and had calculated revenue shortfall of each year due to non-achievement of estimated SMD, which was approved by the Commission in the ARR of respective financial year. This shortfall was finally recognized as gap in respective financial year and was trued up accordingly upto the FY 2010-11 in Case Nos. 29, 30 & 31 of 2007. The grievance of the Appellants has been addressed as such. Accordingly, the direction of the Hon'ble APTEL has been complied with in this regard.

(c) Computation of sales and expected revenue

With regard to the computation of expected revenue, the Hon'ble APTEL in Para 28 and 31 of their order dated 13.12.2006 passed in Appeal Nos. 77, 78 & 79 of 2006 has directed as follows:

“28. XXXXXXXX The approach of the Regulator in this respect definitely requires interference. The learned counsel appearing for the Regulatory Commission in this respect merely stated that when taking up the actuals, the same will be subjected to truing up. By such an approach, the projection will be rendered futile but reflects on the finance of the Discoms and its retail tariff. The truing up at the end or after the year is of no value or effect. If it is allowed to await the truing up such an approach will seriously affect the estimates. This requires a re-look and we are confident that the Commission in the future years to come to assess the estimated sales at the slab or at least take the actuals of the previous tariff year as the base and proceed to assess. We direct the Regulatory Commission to take up truing up exercise at the earliest and complete the same at least, if necessary, on half yearly basis and such truing up is possible in these days when the entire accounting is computerized. This point is answered accordingly.

XXXXXX

31. It is further contended that the Regulatory Commission had ignored legitimate cost and overestimated the revenue while approving the ARR. This requires consideration in the hands of the Regulatory Commission, as such a contention deserves to be decided on factual details. Hence, we direct the Regulatory Commission to look into this aspect.”

Views of the Commission

In this context, it is mentioned that during the pendency of the Appeal before the Hon'ble Apex Court, the Commission had issued Truing up order dated 19.03.2012, wherein, the Commission had considered the audited accounts of the erstwhile DISCOMs i.e. WESCO, NESCO & SOUTHCO for each year upto FY 2010-11. In the said order, the revenue estimated by the Commission for FY 2006-07 in each slab was trued up based on the actual revenue for that year. Therefore, computation of estimated revenue lost its relevance after completion of true up exercise. In the above background, the direction of the Hon'ble APTEL stood complied with, after issuance of truing up order dated 19.03.2012 for FY 2006-07 passed in Case Nos. 29, 30 & 31 of 2007.

(d) Truing up exercise for the past years.

Regarding Truing up Exercise for the past years, the direction of Hon'ble APTEL in paragraph-30 of its order dated 13.12.2006 passed in Appeal Nos. 77, 78 & 79 of 2006 is reproduced below:

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

Views of the Commission

The truing up of the accounts of the erstwhile DISCOMs was carried out by this Commission and accordingly order dated 19.03.2012 in Case Nos. 29, 30, & 31 of 2007 up to the FY 2010-11 including FY 2006-07 was passed by the Commission during the pendency of the Appeal before the Hon'ble Supreme Court of India. The Commission used to undertake truing exercise on regular basis for subsequent years. Therefore, nothing in the order of the Hon'ble APTEL on this account survives for compliance by this Commission.

(e) Revenue computation on average tariff basis for LT, HT and EHT category.

In this regard, the Hon'ble APTEL, in Para 37 (iii) of its order dated 08.11.2010 in Appeal Nos. 52, 53 & 54 of 2007 has stated that *"In our view, the slab-wise assessment within the same voltage category will give more accurate assessment of the revenue"*.

Views of the Commission

In truing up of ARR for FY 2007-08, which has been carried out by the Commission in Case Nos. 29, 30 & 31 of 2007 dated 19.03.2012 subsequent to issuance of order dated 08.11.2010 by the Hon'ble APTEL in Appeal Nos. 52, 53 & 54 of 2007, the assessment of revenue on average tariff basis has been tallied with the actuals in the audited accounts of the DISCOMs. Once the actuals are available in audited accounts, the estimation made earlier has lost its relevance. Therefore, the direction of the Hon'ble APTEL in this regard has been complied with. However, the practice of slab-wise assessment within same voltage is being followed in subsequent years.

(f) Truing up and amortisation of regulatory assets

In so far as the Truing up and amortisation of regulatory assets are concerned, the Hon'ble APTEL, vide Para 37 (vi) of the judgment dated 08.11.2010 passed in Appeal Nos. 52, 53 & 54 of 2007, has observed as follows:

"xxxxx The truing up cannot be a process where the projections are compared with the projections. According to the Appellants, they had undertaken the audit of the past receivables as per the guidelines of the state Commission and submitted the same to the Commission in the month of March 2008. We, therefore, direct the State Commission to revisit this issue after taking into account the audit of the past receivables of the Appellants."

Views of the Commission

The Hon'ble APTEL has directed the Commission to take into account the audited value of the past receivables while undertaking truing up. In obedience to the order of the Hon'ble APTEL, this Commission had passed order dated 14.01.2011 in Case Nos. 68,

69, 70 & 71 of 2007 and had directed the following for compliance by the DISCOMs in Case Nos. 29, 30 & 31 of 2007 dated 19.03.2012:

“35. As regards to the second allegation of R-Infra managed DISCOMs that the truing up exercise being provisional Commission would like to make it clear that this is because of the fact that order on receivable audits have not been finalized by DISCOM till 14.01.2011. In the meantime order on receivable audit have been finalized and the Commission observed the following in the RST Order FY 2011-12 at Para 498 to 501 which is reproduced below:

“498. In this regard the Commission earlier observed the following in Para 478 of the RST Order for FY 2010-11.

“478. In line with the earlier order of the Commission holds the opinion that the outcome of the order on receivable audit has some bearing on the income of GRIDCO and hence decides to undertake final truing up exercise after the pronouncement of the final order on receivable audit for DISCOMs.”

“499. The Commission in the meantime has pronounced the final order on receivable audit in Case No. 68, 69, 70 & 71 of 2007 dtd.14.01.2011 and has directed following for compliance of DISCOMs.

“21. To summarise the Commission decides and directs as follows:

v. The Commission decides in principle to consider the following receivable as bad debt completely:

(c) Receivables of all LD/ permanently disconnected consumers.

(d) Receivables of ghost consumers

vi. Licensees are directed to furnish consumer-wise list of all LD, PDC and ghost consumers in a soft copy along with hard copy duly certified by concerned SDOs and respective auditors.

vii. The list should be submitted to the Commission on or before 28.02.2011.

viii. The final truing up exercise in respect of bad debt shall be carried out after the licensees submit the data within the scheduled date as stated above.”

500. As per the above direction of the Commission the DISCOMs were required to submit the requisite information by 28.02.2011. On the basis of receipt of such information the Commission would have decided on the quantum of non-recoverable amount for each DISCOM to be written off and finalization of the truing up exercise in the ARR for FY 2011-12 towards bad and doubtful debt. However no DISCOM has filed the requisite information within the date line given by the Commission. SOUTHCO has in-fact prayed for extension of time for submission of such information. In view of such a scenario the quantum of non-receivable up to 31st March, 2005 cannot be finalised in terms of the order of the Commission in this regard dated 14.01.2011 and therefore the truing up in this ARR is approved on provisional basis.

501. The Commission on the basis of the truing up exercise allows the amortization of Regulatory assets to SOUTHCO and CESU in the ARR of

2011-12 who have landed up with negative Regulatory Assets, in the following manner:

Table – 94

(Rs. Crore)

Year	WESCO	NESCO	SOUTHCO	CESU
Amortization of Regulatory Assets for FY 2011-12	Nil	Nil	35.00	7.30

In view of the above observation of the Commission and basing upon compliance thereof from the DISCOMs the order on final truing up would be pronounced along with the ARR for the ensuing year i.e. FY 2012-13.”

36. All the DISCOMs submitted the consumer-wise list of all LDC (Long Disconnected Consumer), PDC (Permanently Disconnected Consumer) and ghost consumers certified by concerned SDOs and the respective auditors on the following dates.

WESCO - 17.3.2011
NESCO - 19.12.2011
SOUTHCO - 17.3.2011
CESU - 12.5.2011

37. The analysis of figures of PDC and ghost consumers as on 31.3.2005 filed by the licensee is given below:

Table - 3

(Rs. in crore)

Name of the company	Outstanding in respect of PDC & Ghost consumers as on 31.3.2005
WESCO	155.39
NESCO	222.45
SOUTHCO	124.75
CESU	147.86

In line with the Order dtd. 14.01.2011, the Commission decides that the above amount be adjusted against the provision towards bad and doubtful debts allowed for the purpose of truing up. A table showing provision allowed by the Commission up to 31.03.2005, total amount of PDC and ghost consumers allowed by the Commission, difference, regulatory gap as per true up exercise and approved regulatory gap after adjustment of the PDC and ghost consumers are depicted in the table below:

Table - 4

(Rs. in Cr.)

Name of the Company	Provision for bad debt allowed by Commission in tariff order upto 2004-05	Total amount PDC and Ghost consumers upto 2004-05	Difference to be adjusted in the True up	Regulatory Gap as per Truing up Exercise upto 2010-11 (para 30 of Table-2)	Approved Gap after adjustment of the PDC and Ghost consumers upto 2010-11
WESCO	88.86	155.39	-66.53	1223.39	1156.86
NESCO	59.57	222.45	-162.88	317.39	154.51
SOUTHCO	40.65	124.75	-84.10	-0.46	-84.56
CESU	104.01	147.86	-43.85	390.43	346.58
Total	293.09	650.45	-357.36	1930.75	1573.39

It is seen from the above table that only SOUTHCO is entitled for amortisation of Regulatory assets since it is posted with the negative gap of Rs.84.56 cr. other three companies are not entitled to get any regulatory assets as they have posted positive gap.

Hence, the Commission allowed an amount of Rs.9 cr. towards amortization regulatory assets in respect of SOUTHCO for the FY 2012-13 and the balance would be considered in the subsequent truing up and ARR.

38. *The Commission would like to clarify that the adjustment of PDC and Ghost consumers from the provision of bad and doubtful debts is only limited to truing up exercise. The licensees are directed not to write off the bad debt on account of PDC and ghost consumers from their consumer ledger unless the clear picture of the debtors as a result of implementation of One Time Settlement Scheme by the DISCOMs come out.”*

Accordingly, the direction of the Hon’ble APTEL in this regard has been complied with in our Truing Up order dated 19.03.2012 passed in Case Nos. 29, 30 & 31 of 2007.

(g) Non-consideration of Load Regulation in revenue

In this regard, the Hon’ble APTEL in Para 31 (iii) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for the FY 2008-09, 2010-11, 2011-12 & 2012-13 and true up order for the period from FY 1999-00 to FY 2010-11 has directed as follows:

“The third issue regarding non-consideration of load regulation does not survive in view of truing up order dated 19.3.2012 passed subsequently. However, as matter of principle, the State Commission having promulgated the load regulation, should have taken into consideration the impact of load regulation on the revenue of the Appellants.”

Views of the Commission

The Commission has considered the impact of Load Regulation as loss of sales revenue in true up order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007 (Upto FY 2010-11) and true up order in Case Nos. 69-72 of 2014 (up to FY 2013-14), wherein the actual sales has been reflected. Therefore, the non-consideration of load regulation, in the tariff order has lost its relevance after completion of true up exercise. Accordingly, the direction of the Hon’ble APTEL has been complied with.

(h) True up provision for bad and doubtful debts on the trued-up figures on sales revenue.

In this regard, the Hon’ble APTEL in Para 31 (xi) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09,

2010-11, 2011-12 & 2012-13 and truing up order for the period from FY 1999-00 to FY 2010-11 has directed as follows:

“The State Commission shall true up the provision for bad and doubtful debts on the trued-up figures of sales revenue.”

Views of the Commission

The Commission had trued up the bad and doubtful debts in their true up order in Case Nos. 69-72 of 2014 upto FY 2013-14. While dealing with the matter, in para 454 (g) of the said order, the Commission has stated that in the ARR, bad and doubtful debt is allowed as 1% of HT and LT sales only. This is in line with Business Plan order of the Commission passed in Case Nos. 41, 42 & 43 of 2007 and Case No. 22 of 2008, wherein the Commission had approved collection efficiency of 99% for FY 2011-12 and FY 2012-13. The same percentage is applied on the true up sales for arriving at the provisions towards bad and doubtful debts for the purpose of true up. Accordingly, the Commission had allowed an amount of Rs.19.20 Cr., Rs.11.72 Cr. and Rs.7.38 Cr. towards bad debts in the truing up for WESCO, NESCO & SOUTHCO respectively as shown in the Table below:

Truing up of bad debts		
(Rs. in Crore)		
	Trued up Revenue from sale of power	Trued up amount allowed for bad debt on HT & LT sales
WESCO	2905.54	19.20
NESCO	2110.88	11.72
SOUTHCO	988.41	7.38

Accordingly, the direction of the Hon’ble APTEL regarding bad and doubtful debt has been complied with.

(i) Revenue of the Appellants needs to be trued up taking into account the impact of the ‘take or pay’ scheme.

In this regard, the Hon’ble APTEL in in Para 31 (xiii) of its combined order dated 03.07.2013 on the Appeals relating to RST order of the Commission for FY 2008-09, FY 2010-11, FY 2011-12 & FY 2012-13 and truing up order for the period from FY 1999-00 to FY 2010-11 has directed as follows:

“Regarding computation of revenue for the FY 2012-13, we find that the State Commission has revisited the “Take or Pay” scheme and revised the same by its order dated 30.7.2012. However, the original scheme as approved in the impugned order dated 23.3.2012 in which concessions were given to some HT & EHT consumers remained applicable during the period April-June 2012. Therefore, the revenue of the Appellants need to be trued up taking into account the impact of the scheme on the sales

revenue of the Appellants during the period the scheme was in vogue. Accordingly, the State Commission shall true-up the sales revenue of the Appellants.”

Views of the Commission

The Commission had trued up total revenue from sale of power upto FY 2013-14 for all the DISCOMs of the State including WESCO, NESCO & SOUTHCO in their order in Case Nos. 69-72 of 2014 considering “Take or Pay” scheme. Therefore, the order of the Hon’ble APTEL on revenue from ‘take or pay’ tariff as stated above has been complied with.

(j) Truing up for FY 2011-12

In Appeal Nos. 112-114 of 2013 relating to ARR and Retail Supply Tariff order of the Commission for FY 2013-14 at Para 12 (D), the Hon’ble APTEL in their order dated 11.02.2014 has directed as follows:

“xxxxxx The Orissa Commission is directed to give a detailed order regarding the truing up explaining the expenses allowed or disallowed. Without such explanation, it is not possible to examine the correctness of the true up order. This issue is also decided in favor of the Appellants.”

Views of the Commission

From the above direction of the Hon’ble APTEL, it is evident that the Hon’ble APTEL has not interfered with our Truing up order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007. It is still valid and the Hon’ble APTEL has asked this Commission to give details of expenses allowed or disallowed. In order to comply with the direction of the Hon’ble APTEL as above, a reference may be made to the factual background of the truing up order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007. This truing up order relates to the truing up of the accounts of DISCOMs upto FY 2010-11. The truing up of accounts in that order is based on Multi-Year Tariff (MYT) order dated 28.02.2011 of the Commission passed in Case No. 133 of 2009, which was not challenged and thus, attained finality. In the said MYT order, the Commission had categorized different costs into controllable and non-controllable, which are as follows:

Summary of Controllable and Uncontrollable costs

Sl No.	ARR Item	Controllable / Uncontrollable Cost
1	Employee Cost	Controllable
2	Repair and Maintenance	Controllable
3	Administrative & General Expenses	Controllable
4	Interest and Finance Charges	Controllable
5	Depreciation	Controllable
6	Return on Equity	Controllable

SI No.	ARR Item	Controllable / Uncontrollable Cost
7	Non-tariff income	Controllable
8	Power Purchase Costs	Uncontrollable
9	Fuel Costs	Uncontrollable
10	Taxes on Income	Uncontrollable
11	Inflation	Uncontrollable
12	Exchange rate variation	Uncontrollable
13	Force Majeure Conditions	Uncontrollable

While undertaking truing up of a particular component of ARR, the Commission had allowed the expenditures in the audited accounts in case of uncontrollable cost only. In case of controllable components, the approved amount in the tariff order / Kanungo Committee Report / Business Plan order have been taken into consideration. As the truing up of accounts was undertaken for a long period (11 years) from FY 1999-00 to FY 2010-11, the Commission had relied upon different base documents such as loss projected before Kanungo Committee, order(s) relating to Business Plan for different period etc. for deciding the cost associated with controllable component, which was not challenged before any Forum by the Appellant. As a part of Truing up exercise, the Commission had recomputed the ARR for each financial year based on the audited accounts and norms for various key efficiency parameters as laid down by the Commission in their Business Plan order dated 20.03.2010 in Case Nos. 41, 42 & 43 of 2007 for control period for FY 2008-09 to FY 2012-13. In consonance with the MYT order, the Commission in its truing up order had adopted certain principles, the extract of such principles as mentioned in that order runs as follows:

- **Truing up Principle**

	FY-00	FY-01	FY-02	FY-03	FY-04	FY-05	FY-06	FY-07	FY-08	FY-09	FY-10	FY-11
Power Purchase and its Cost	As per the audited accounts, power purchase costs accepted in full											
Distribution Losses	Audited Distribution losses accepted	Distribution losses to the Kanungo Committee	Audited Distribution Losses accepted for true up; same as the benchmark accepted in the Business Plan order dated. 28.02.2005 (from the FY 2002-03 & 2003-04)	Benchmark losses as per the Business Plan Order dated 28.02.2005 accepted for true-up (for FY 2004-05 to 2007-08)				Benchmark losses as per the Business Plan Order dated 20.03.2010, considered for true-up (for FY 2008-09 to 2010-11)				
Sales	As per Audited Accounts	Saleable Energy Determined as per Actual Power purchase	Saleable Energy Determined as per the Actual Power Purchase and benchmark Distribution losses as per the Business	Saleable Energy Determined as per the Actual Power Purchase and benchmark Distribution losses as per the Business Plan Order dated 28.02.2005				Saleable Energy Determined as per the Actual Power Purchase and benchmark Distribution losses as per the Business Plan Order dated 20.03.2010				

	FY-00	FY-01	FY-02	FY-03	FY-04	FY-05	FY-06	FY-07	FY-08	FY-09	FY-10	FY-11
			and Distribution Loss filed by the DISCOMs to Kanungo Committee	Plan dated 28.02.2005 which is same as audited figure								

- **Employee Cost**

Wages and salaries during the control period includes the base year values of Basic Pay, Grade Pay and Dearness Allowance escalated for annual salary increments and inflation based on Government Notification. Terminal liabilities are being provided based on a periodic actuarial valuation in line with the prevailing Indian Accounting Standards. The financial impact of any award by the Government of India/Government of Orissa are taken care of in subsequent year in truing up.

- **Repair and Maintenance (R&M) Cost**

The R&M cost is being considered as 5.4% of the Gross Fixed Assets (GFA).

- **Administration & General Expenses**

The Commission in its MYT Order dtd.28.02.2011 had outlined the following principles:

“A&G expenses were allowed @ 7% escalation over the base year value in ARR during the first control period. DISCOMs in their submission have submitted to link it to CPI and WPI in proportion of 60:40 on actual A&G expenses. A&G should also be allowed for undertaking various initiatives towards loss reduction measures and growth due to RGGVY programme. The Commission in this regard observes that A&G expenses should be incurred prudently and only for the activities required for the purpose incidental to the activity and functions of the DISCOMs. The Commission, however, in addition to the normal A&G expenses of 7% also allows additional expenses for activities such as IT automation, call center and expenses toward energy police station. In view of the submissions and facts the Commission would continue to allow normal Administrative and General Expenses @7% escalated over the base year value during the second control period also. In addition to above Commission would also allow expenses in addition to the normal A&G expenses for special measures undertaken by the DISCOMs towards reduction of AT&C losses and improving collection efficiency, after prudent check. No adjustment in ARR shall be made on account of actual values being different from these performance targets for the O & M costs during the control period.”

- **Bad & Doubtful Debts**

Bad & Doubtful debts are allowed as a percentage of sales revenue. During the previous control period i.e. 2002-03 to 2007-08, the Commission had allowed Bad & Doubtful debts 2.5% on the sales revenue. During the 2nd control period

i.e. 2008-09 to 2012-13 the Commission had allowed bad and doubtful debts in the ARR as follows:

FY 2008-09	2.5% of the total annual revenue billing
FY 2009-10	2% of the total annual revenue billing
FY 2010-11	2% of the total annual revenue billing on HT and LT sales.
FY 2011-12	1% of the total annual revenue billing on HT and LT sales. (As per MYT order dated 28.02.2011)
FY 2012-13	1% of the total annual revenue billing on HT and LT sales. (As per MYT order dated 28.02.2011)

- **Depreciation**

The Hon'ble High Court of Orissa in its order dtd.28.02.2003 and modified order dtd.14.03.2003 had directed that depreciation is to be calculated on the pre-upvalued assets as on 01.04.1996 at pre-1992 rates as notified by the Govt. of India. For the purpose of truing up, the Commission had accepted actual depreciation till FY 2000-01 and for subsequent period from FY 2001-02 to FY 2010-11, the above directive of the Hon'ble High Court was followed.

- **Interest Chargeable to Revenue**

The Commission had accepted the actual cost of financing for all the loans approved by the Commission for the purpose of truing up. Regarding interest on loan on NTPC Power bonds, the Commission did not allow interests from the year 2008-09 as the Case was sub-judice before the Hon'ble Supreme Court in Civil Appeal No.759 of 2007 and Civil Appeal No. D-4688 of 2011.

- **Computation of the revenue of DISCOMs**

As a part of truing up exercise, the Commission had considered the annual revenue based on saleable energy and the distribution loss accepted by the Commission for truing up exercise. From the financial year 2004-05 till 2010-11, the saleable energy is arrived based on the normative distribution loss as per the key/efficiency parameters set out in the Business Plan for the control period. The saleable energy thus arrived was multiplied with the average rate of billing (as computed based on the audited data filed by the licensee) to arrive at the revenue billed for the purpose of truing up.

- **Miscellaneous Revenue**

The Miscellaneous receipts as shown in the audited accounts has been considered for the purpose of truing up excluding DPS and over-drawal penalty.

The details of the calculation of different elements of their ARR as trued up have been indicated in Annexure-1 of the True-up order dated 19.03.2012 in Case Nos.29, 30 & 31 of 2007.

Most of the claims of DISCOMs herein have been resolved through the above truing up order dated 19.03.2012, which has not been interfered with by the Hon'ble APTEL. The Hon'ble APTEL has asked us to show the components of ARR which have been allowed or disallowed in the truing up order. In obedience to the order of the Hon'ble APTEL, the Commission has done so as stated above. Accordingly, the direction of the Hon'ble APTEL is complied with.

22. Now, we are summerising the compliance of the common judgment dated 05.10.2023 of the Hon'ble Supreme Court of India and the Orders of the Hon'ble APTEL which relate to ARR and RST order of the Commission from FY 2006-07 to FY 2014-15 (except FY 2009-10) and truing up order for the period from FY 1999-00 to FY 2010-11. Most of the issues were addressed after completion of true up exercise upto the FY 2010-11 basing on the audited accounts. However, as per the direction of the Hon'ble Apex Court, we have allowed additional A&G expenses in each year from FY 2007-08 to FY 2014-15 (except FY 2009-10), which was missing in our earlier Retail Supply Tariff (RST) order, the details of which are given hereunder:

Financial Year	DISCOMs	Additional A&G Expenses allowed in this compliance order (Rs. Cr.)
2007-08	WESCO	4.25
	NESCO	3.44
	SOUTHCO	3.62
	Total	11.31
2008-09	WESCO	4.33
	NESCO	9.49
	SOUTHCO	5.14
	Total	18.96
2010-11	WESCO	3.59
	NESCO	3.57
	SOUTHCO	3.55
	Total	10.71
2011-12	WESCO	2.00
	NESCO	3.22
	SOUTHCO	1.58

	Total	6.80
2012-13	WESCO	7.07
	NESCO	6.95
	SOUTHCO	6.70
	Total	20.72
2013-14	WESCO	34.58
	NESCO	19.75
	SOUTHCO	29.53
	Total	83.86
2014-15	WESCO	24.32
	NESCO	34.32
	SOUTHCO	40.78
	Total	99.42
Grand Total		251.78

Therefore, a sum of Rs.251.78 Crores is payable to the erstwhile DISCOMs i.e. WESCO (Rs.80.14 Cr.), NESCO (Rs.80.74 Cr.) and SOUTHCO (Rs.90.90 Cr.) for the period from FY 2007-08 to FY 2014-15 (except FY 2009-10) due to re-determination of ARR (Tariff). This calls for revision of ARR of respective erstwhile DISCOMs for the financial years as mentioned above. This revision, if taken up, is akin to truing up of ARR and shall be carried forward to the next financial year. Therefore, Rs.251.78 Cr. as part of the Truing up exercise has to be lawfully passed on to the successor Utilities (WESCO Utility, NESCO Utility & SOUTHCO Utility) formed after revocation of licenses as going concern, which were later taken over by TP DISCOMs (TPWODL, TPNODL & TPSODL). In support of the above statement, the Commission may also refer to the Order dated 19.01.2023 passed by the Hon'ble Tribunal in Appeal No. 23 of 2023; DFR No. 2250/2019 NESCO & Ors. Vrs. OERC. This Appeal was directed against the order dated 09.04.2019 passed by this Commission in Case Nos. 40-42 of 2018 filed for review of the order dated 22.03.2018 in Case Nos. 79-81 of 2017 pertaining to approval of ARR and Wheeling & Retail Supply Tariff (RST) for FY 2018-19. It was filed in the year 2019 after the revocation of licenses of the erstwhile DISCOMs. Here, the erstwhile DISCOMs had prayed for disbursement of interest, depreciation etc. applicable to Distribution Utilities ((WESCO Utility, NESCO Utility & SOUTHCO Utility) formed after revocation of licenses to them as determined and allowed in the Retail Supply Tariff proceeding. The Hon'ble Tribunal dismissed the said Appeal as the Appellants sought liberty to pursue such other remedies, as are available to them in law, for relief, which they had sought before this Commission, for review of their order dated 22.03.2018.

Be that as it may, the Trued-up amount cannot be recovered from the consumers in the form of revised tariff for past period and that is also endorsed by the Hon'ble APTEL in order dated 03.07.2013 passed in Appeal Nos. 26, 27 & 28 of 2009, while dealing with the tariff order for FY 2008-09, where the Hon'ble APTEL has observed as follows:

*“22.3 We are in the agreement with the Learned Counsel for the State Commission. The tariff year 2008-09 has since been over long and the revenue has been collected from the consumers as per the tariff order. The consumers are also not before us to represent their case. **We do not want to interfere with the tariff of the consumers for 2008-09 at this stage as it may result in additional payment liability of the consumers for a period which is long over.** In any case the revenue sales of the Appellants have since been trued up and no prejudice will be caused to the Appellants if we do not interfere with the tariff order.”*

From the above order of the Hon'ble APTEL, it is clearly established that the redetermined ARR in the form of Truing up cannot be recovered from the consumers. Moreover, the DISCOMs are not eligible to claim for above amount due to their inefficiency in operation, which is evident from the following observations of the Hon'ble APTEL in Appeal No. 64 of 2015 dated 21.08.2017:

“41 (f) xxxxxxx The contention of the Appellants that no allocation has been made to energy audit in ARR is baseless. Energy audit is a part of the Appellants regular activity of Administrative and General (A&G) expenses. Had the Appellants made the expenditure for energy audit the State Commission would have allowed it in the next true-up. In this connection, following extract from MYT order dated 28/01/2011 is material. “In addition to the above, the Commission would allow expenses in addition to the normal A&G expenses for special measures undertaken by the DISCOMs towards reduction of AT&C losses and improving collection efficiency after prudent check

Analysis of the A&G expenses shows that the Appellants have been incurring more expenses than the approved amounts in the ARR in that head. The additional expenditure incurred has been allowed in true-up exercise. Therefore, energy audit would not have been hampered due to alleged lack of funds. Up to 2012-13, dues of electricity amounting to Rs.2756.40 crores have remained uncollected. The Appellants ought to have collected the dues and done energy audit. Any allocation for energy audit would have become fruitless. The Appellants are claiming huge amounts for metering. These steps should have been taken by the Appellants at the right time after privatization. Section 19(1)(c)(i) of the Electricity Act, is attracted to this default.”

Only the accounts of DISCOM(s) or its successor Distribution Licensee(s)/Utilities can be trued up. In the meantime, the WESCO Utility, SOUTHCO Utility & NESCO Utility have been vested with TPWODL, TPSODL & TPNODL vide this Commission's Orders passed on 28.12.2020 (in Case Nos. 82 of 2020 & 83 of 2020) and on 25.03.2021 (in Case No. 09 of 2021) respectively under Section 21 of the Electricity Act, 2003. The new Distribution licensees (TPWODL & TPSODL) have taken over the operation w.e.f. 01.01.2021 and TPNODL has taken over the operation on 01.04.2021. The erstwhile

Distribution Utilities had prepared their statutory balance sheet as on the day before the vesting of the Utilities. The Commission had approved the same and accordingly, had prepared/carved out opening balance sheet of new DISCOMs through different segregation of balance sheet orders on 23.11.2021, 25.11.2021 and 26.11.2021 for TPWODL, TPNODL & TPSODL respectively. Those orders have been issued as a part of the responsibility of the Commission under the respective Vesting Orders and the same have not been challenged and hence, have attained finality.

Now, we recast the closing balance sheet of erstwhile Utilities as shown in the segregation of balance sheet order. The trued-up amount is to be reflected in the balance sheet as '**trade receivable**'. Now, we have to add Rs.80.14 Cr, Rs.80.74 Cr and Rs.90.90 Cr. respectively to the '**trade receivable**' in the closing balance sheet of the erstwhile Utilities (WESCO Utility, NESCO Utility & SOUTHCO Utility), but these receivable amounts become bad debt in view of the un-workability and impossibility of the recovery from the consumers as a part of revision of the past tariff which is echoed by the Hon'ble APTEL in their order dated 03.07.2013. The inefficiency in operation of erstwhile DISCOM(s) to establish metering infrastructure at right time through capex infusion to carry out energy audit (to know actual loss level) and for poor collection efficiency i.e. collection of outstanding electricity dues amounting to Rs.2756.40 Crs., which are endorsed in the Hon'ble APTEL's order dated 21.08.2017, cannot be passed on to the ultimate end consumers of the State. Therefore, it will have no effect on the closing balance sheet of the erstwhile Utilities approved by the Commission. Accordingly, our segregation of balance sheet orders as stated earlier do not require any review or alteration.

23. In view of our above analysis and observations, all the Orders of the Hon'ble Apex Court in Civil Appeal No. 759 of 2007, Civil Appeal Nos. 3595-97 of 2011, Civil Appeal Nos. 10251-63 of 2013, Civil Appeal Nos. 2625-38 of 2014, Civil Appeal Nos. 3858-60 of 2014, Civil Appeal Nos. 1380-82 of 2015 and Civil Appeal Nos. 8037-39 of 2015 pertaining to ARR & RST orders of the erstwhile DISCOMs for the FY 2006-07 to FY 2014-15 (except FY 2009-10) and Truing-up Orders of erstwhile DISCOMs for the FY 1999-00 to FY 2010-11 stand complied with.

Sd/-
(**S.K. Ray Mohapatra**)
Member

Sd/-
(**G. Mohapatra**)
Member