

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:12th Sept, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal No.245, 176, 237 and 191 of 2012

Appeal No. 245 of 2012

Steel Furnace Association of India
C/O Upper India Mfg & Engg. Co. Ltd.
Dhandari Industrial Focal Point
Ludhiana-141 010

... Appellant(s)

Versus

1. Punjab State Electricity Regulatory Commission
SCO NO.220-221,
Sector 34-A,
Chandigarh-160022

2. Punjab State Power Corporation Ltd.
The Mall,
Sector 34-A,
Patiala-147 001

.....Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Shikha Ohri
Ms. Ruth Elwin
Ms. Surbhi Sharma

**Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1
Mr. Karunakar Mahalik for R-2**

Appeal No.176 of 2012

**M/s Mawana Sugars Ltd.
5th Floor, Kirti Mahal 19,
Rajendra Place,
New Delhi-110 025**

... Appellant(s)

Versus

**1. Punjab State Electricity Regulatory Commission
SCO NO.220-221,
Sector 34-A,
Chandigarh-160022**

**2. Punjab State Power Corporation Ltd.
The Mall,
Sector 34-A,
Patiala-147 001**

. Respondent(s)

**Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Shikha Ohri
Ms. Ruth Elwin**

**Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-2
Mr. Karunakar Mahalik for R-2**

Appeal No. 237 of 2012

**Open Access Users Association
A-48, Second Floor,
Sector-8, Dwarka
New Delhi-110 075**

... Appellant(s)

Versus

**1. Punjab State Electricity Regulatory Commission
SCO NO.220-221,
Sector 34-A,
Chandigarh-160022**

**2. Punjab State Power Corporation Ltd.
The Mall,
Sector 34-A,
Patiala-147 001**

.....Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.

Ms. Shikha Ohri

Ms. Ruth Elwin

Ms. Surbhi Sharma

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

Mr. Anand K. Ganesan

Ms. Swapna Seshadri for R-2

Appeal No.191 of 2012

**Mandi Gobindgarh Induction Furnace Association
Grain Market, Mandi Gobindgarh,
Punjab
PIN Code-147 301**

.....Appellant(s)

Versus

**1. Punjab State Electricity Regulatory Commission
SCO NO.220-221,
Sector 34-A,
Chandigarh-160022**

**2. Punjab State Power Corporation Ltd.
The Mall,
Sector 34-A,
Patiala-147 001**

. Respondent(s)

**Counsel for the Appellant(s) : Mr. Parijat Kishore
Mr. Manish Srivastava
Mr. Arav Kapoor
Mr. Abhinav Hamaria**

**Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1
Mr. Karunakar Mahalik for R-2**

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. This batch of Appeals have been filed by the Industrial Consumers challenging the Impugned Order dated 16.7.2012 passed by the Punjab State Commission in Annual Revenue Requirement Petition filed by the Punjab State Power Corporation Limited, the Respondent.
2. M/s. Mawana Sugars Limited is the Appellant in Appeal No.176 of 2012. It is engaged in production of caustic soda and chlorine by electro chemical process where power costs contribute to around 60% of the total manufacturing cost. As such, the Appellant is a large Supply power intensive consumer of Punjab State Power Corporation Limited, the Distribution Licensee.
3. M/s. Mandi Govindgarh Industry Furnaces is the Appellant in Appeal No.191 of 2012. The members of the Appellant are large Industrial Consumers which price their product as per the cost inputs including the cost of electricity.
4. The Open Access Consumers Association is the Appellant in Appeal No.237 of 2012. The Appellant is Association of Open

Access consumers and 80 members of large supply intensive power consumers of Distribution Licensee Punjab State Corporation Limited. The members of the Appellant's association are engaged in various industrial activities. They fall under large supply power intensive category of consumers. The members of the Appellant Association are also purchasing power through the power exchanges by availing Open Access by using the Distribution system of Punjab State Power Corporation Limited (R-2).

5. The Steel Furnace Association of India Limited is the Appellant in Appeal No.245 of 2012. The members of the Appellant's Association are power intensive Steel manufactures. They are the consumers of the Punjab State Power Corporation Limited (R-2). They fall under large supply intensive category of consumers.
6. All these Appellants on being aggrieved over the Impugned Order dated 16.7.2012 passed by the Punjab State Commission in the Annual Revenue Requirement Petition filed by the Punjab State Power Corporation (R-2).
7. The Punjab State Power Corporation Limited (R-2) filed ARR Petition in Petition No.69 of 2011 on 30.11.2011 for the Financial Year 2012-13.

8. After entertaining the said Petition, the public notice was published on 14.12.2011 inviting the objectors to file their objections with reference to the proposal made in the Petition filed by the Respondent (R-2) Power Corporation.
9. Accordingly, the Appellants and others filed the Objections before the State Commission. The public hearing was held by the State Commission on different dates lastly on 22.2.2012. Ultimately, the State Commission passed the Impugned Tariff Order on 16.7.2012 giving effect from 1.4.2012.
10. Aggrieved by this order, these Appeals have been filed in respect of various aspects.
11. The common grounds urged by the Appellants in these Appeals are as follows:
 - (a) Determination of Wheeling Charges;
 - (b) Non implementation of cost to supply;
 - (c) Non segregation of Cost of Generation from Distribution;
 - (d) High un-metered agricultural pump set consumption.

12. On these issues, the following arguments were advanced by the Appellants:

(a) **Determination of Wheeling Charges**

By the Impugned Order, the State Commission has increased the Wheeling Charges by almost 700% in relation to Open Access customers. As a result of such increase in Wheeling Charges, the Open Access transactions in the State have considerably reduced. The right of consumers to avail the Open Access has been severely curtailed by the Impugned Order. The Wheeling Charges have been increased from 18.6 Paise per unit to 124 Paise per unit. Imposition of Wheeling Charges on Open Access Customers getting power supply directly through the transmission network of the transmission licensee, is illegal. Under Regulation 25 (1), Wheeling Charges for distribution system can be only levied on Open Access Customers utilising their distribution network for Wheeling of electricity. When the Open Access customers are using the 220 KV or 132 KV transmission systems, they are liable to pay only transmission charges and not Wheeling Charges of the distribution licensee. Regulation 25 (1) is a recognition of above fundamental legislative principle. The amended Regulation 25 (5) is contrary to the legislative principle

and therefore, it has to be ignored. By interpreting the Regulations incorrectly the Respondents are attempting to levy the costs of the entire distribution network (without segregation) on all consumers irrespective of the extent of utilisation of the distribution network by a consumer under Open Access.

(b) Non implementation of cost to supply

This Tribunal in its Full Bench Judgment in SIEL Limited Vs PSERC reported in 2007 ELR (APTEL) 931 directed the State Commission to determine the tariff on cost to supply basis. However, while issuing the Impugned Order, the State Commission has failed to comply with such directions and determined the category wise cost of supply. By the Impugned Order, the State Commission has continued to adopt the combine energy cost of supply instead of following the cost to supply principle laid down by this Tribunal in various judgments. Thus, the failure to adopt the cost to supply is illegal.

(c) Non segregation of Cost of Generation from Distribution

The Power Corporation (R-2) apart from distributing electricity is also engaged in generation of electricity through the power stations owned and controlled by it.

The State Commission while passing the Impugned Order has failed to ensure segregation of all common cost and to direct the licensee to file separate petitions for annual revenue requirements for generation and distribution businesses. This is a fundamental flaw. By not filing separate ARRs, the Power Corporation (R-2) has not segregated the cost of generation. As such, the inefficiencies in the generation business and the distribution business cannot be clearly identified by the State Commission. The State Commission is mandated to determine the tariff for each generating station owned by the Distribution licensee in terms of the Regulations established by it. However, the tariff order does not show that any such exercise was undertaken by the State Commission towards such a determination.

(d) High un-metered agricultural pump set consumption

Agricultural pump set consumption which is un-metered is increased on year to year basis in the State. This is contrary to the provisions of the Electricity Act and the National Electricity Policy and Tariff Policy. The State Commission has failed to regulate the un-metered consumption. On the other hand, it has allowed increase in such consumption as a result; the entire burden of such

un-metered consumption is loaded on the paying consumers particularly on those consumers who were paying much above the cost of supply. Section 55 of the Electricity Act, 2003 casts a mandatory obligation for ensuring 100% metering within two years from the date of the enforcement of the Electricity Act, 2003. However, this has not been achieved yet. Therefore, the entire burden of Agricultural pump set un-metered consumption is required to be revisited so that the same can be rationalized.

13. In response to these contentions, the learned Counsel for the Respondent Power Corporation as well as the State Commission has elaborately argued in justification of the finding in the Impugned Order by referring to various circumstances and the reasonings given in the Impugned Order.
14. In the light of the rival contentions on these issues, we will have to deal with each of the issues.
15. The First Issue is relating to **Wheeling Charges**.
16. The submissions of the Appellants with regard to the Wheeling Charges is as follows:

“Imposition of Wheeling Charges on Open Access Customer getting power supply directly from the transmission network i.e. transmission lines on 132 KV and 220 KV, is illegal. Under Regulation 25 (1) of the Open Access Regulations, 2011 which was notified on 1.7.2011, the Wheeling Charges can be only levied on Open Access Customers utilising the Distribution Network for Wheeling of electricity. When the Open Access Customer is using the 220 KV or 132 KV transmission systems, he is liable to pay only transmission charges and not wheeling charges. Wheeling charges become payable only when the Distribution Network is used for wheeling power under Regulation 25 (1) and are to be based on the extent of distribution network used in conveyance of electricity under Open Access. The Open Access Regulations were subsequently, amended by the State Commission on 4.5.2012 by introducing a sub Regulation 25 (5). Under this Regulation, the Open Access was amended to impose an additional liability of payment of increased wheeling charges on long term, medium term and short term Open Access customers. Regulation 25 (1) is a recognition of the above said fundamental legislative principle. The amended Regulation 25 (5) is contrary to the said legislative

principle. Therefore, to apply the amended Regulation 25 (5) for levy of wheeling charges for the use of only the transmission system i.e. 132 KV and 220 KV transmission lines are illegal and therefore, the said Regulation 25 (5) has to be ignored. However, the State Commission by the Impugned Order has imposed the wheeling charges even though the Distribution network is not used. As such, the same is illegal”.

17. **Let us examine the provisions of the Electricity Act, 2003 regarding Open Access and charges to be levied for availing Open Access.**
18. U/s 2 (47), “open access” is defined as the non-discriminatory provision for use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.
19. Thus, open access is defined as provision for use of transmission lines or distribution system by any licensee or consumer or generator in accordance with the regulations specified by the Appropriate Commission.
20. “Wheeling” is defined u/s 2 (76) as operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used

by another person for conveyance of electricity on payment of charges to be determined u/s 62.

21. Thus, wheeling is use of distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, for conveyance of electricity by another person on payment of applicable charges.
22. Section 30 of the Act envisages that the State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for transmission and supply of electricity by economic and efficient utilization of the electricity.
23. Section 38(2) stipulates the functions of the Central Transmission Utility which *inter alia*, includes provision for non-discriminatory open access on its transmission system for use by a generator or licensee or any consumer as and when such open access is provided by the State Commission u/s 42(2), on payment of transmission charges and surcharge thereon, as may be specified by the Central Commission. The surcharge shall be utilized for the purpose of meeting the requirement of current level of cross subsidy. Similar provision has been made u/s 39 (2)(d) (ii) under the functions of State Transmission Utility to provide Open Access to any consumer as and when such Open Access is provided by State

Commission on payment of transmission charges and a surcharge thereon as specified by the State Commission. Section 181 (2)(i) accordingly provides for the State Commission to make Regulations for payment of transmission charges and a surcharge under Section 39(2) (d)(ii).

24. Section 40 (c) (ii) stipulates that it shall be the duty of a transmission licensee to provide non-discriminatory open access to its transmission system for use by any consumer as and when such open access is provided by the State Commission under Section 42 (2) of the Act on payment of transmission charges and a surcharge thereon, as specified by the State Commission, provided the surcharge shall be utilized for meeting the requirement of current level cross-subsidy. Section 181(2)(i), accordingly provides for the State Commission to make Regulation for payment of transmission charges and a surcharge under Section 40 (c) (ii).

25. Thus, under Section 40 of the Electricity Act, a transmission licensee has to permit open access to a consumer when open access has been introduced by the concerned State Commission for such category of consumer, by payment of transmission charges and surcharge. Thus, if a consumer is directly connected to the transmission system of a transmission licensee, he can obtain open access on payment of transmission charges and surcharge, provided the

surcharge shall be utilized for meeting the requirement of current level of cross-subsidy of the distribution licensee.

26. The Electricity Act, 2003 enables competing generating companies and licensees other than the area licensee to sell electricity to consumers when open access in distribution is introduced by the State Commission in order to promote competition. According to Section 42 (2) of the Act, the State Commissions not later than 5 years of 27.01.2004 by Regulations, has to provide open access to all consumers with load exceeding 1 MW.
27. Section 42 (2) provides for introduction of open access by the State Commission on payment of surcharge in addition to wheeling charges, which have to be determined by the State Commission. However, surcharge is not payable by a Captive Power Plant for carrying electricity to the destination of own use.
28. Thus, the Act gives a choice to a consumer to take supply from sources other than the area distribution licensee through open access to facilitate competition which is one of the main objectives of the Act. The distribution licensee can also recover additional surcharge on charges of wheeling from the Open Access consumer as specified by the State

Commission, to meet the fixed cost (straded cost) of the distribution licensee arising out of his obligation to supply.

29. Section 62 of the Electricity Act stipulates that the Appropriate Commission shall determine the tariff for wheeling of electricity as well as Section 61 of the Act provides that while determining the terms and conditions for determination of tariff the Appropriate Commission shall be guided by *various* factors which encourage competition and the generation, transmission and distribution are conducted on commercial principles and tariffs progressively reflect the cost of supply of electricity.
30. National Electricity Policy states that when open access to distribution network is introduced by the respective State Commissions for enabling bulk consumers to buy directly from competing generators, competition in the market would increase the availability of cheaper and reliable power supply. The tariff policy envisages that in terms of Section 61 (g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.
31. Clause 8.5.3 of the Tariff Policy provides that surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or CTU, depending upon

whose facilities are used by the consumer for availing electricity supply. However, in all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located.

32. Clause 8.5.5 of the Tariff Policy provides as under:

“Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.”

Thus, according to the Tariff Policy the wheeling charges should be determined on the same principles as laid down for intra-state transmission charges. In addition, the consumer would have to bear average loss compensation of the relevant voltage level at which power supply is taken by the consumer.

33. Clause 7.1 of the Tariff Policy provides for transmission charges as under:

(i) National Tariff Policy mandates that the national tariff framework should be sensitive to distance, direction and quantum of flow. This tariff mechanism should be implemented by the Central Commission by 1.4.2006.

(ii) The transmission charges could be determined on the basis of MW per circuit kilometer basis, zonal postage stamp basis or some other pragmatic variant but the

ultimate objective is to get the transmission system users to share the total transmission cost in proportion to their actual utilization of the transmission system. After the implementation of the proposed transmission tariff framework for the Inter-State transmission, a similar approach should be implemented by the State Commissions in next two years for intra-State transmission system duly considering the factors like voltage, distance, direction and quantum of flow.

34. The scheme of open access and levy of the charges for the same under the Electricity Act, 2003, National Electricity Policy and Tariff Policy is as under:

(i) The Act enables competing generating companies and licensees other than the area distribution licensee besides the area distribution licensee to sell electricity to consumers when such open access is introduced by the State Commission.

(ii) Wheeling is use of distribution system and associated facilities of transmission licensee or distribution licensee, as the case may be, for conveyance of electricity on payment of charges.

(iii) Open Access is provision for use of transmission lines or distribution system by any licensee or consumer or generator in accordance with the Regulations specified by the Appropriate Commission.

(iv) CTU, STU and transmission licensees have to provide non-discriminatory open access on their transmission system to a licensee or a generating company or a consumer when such open access is provided by the State Commission for that category of consumer, on payment of transmission charges as specified by the Appropriate Commission and subsidy, as specified by the State Commission. The subsidy collected by the CTU, STU or transmission licensee from a consumer has to be passed on to the distribution licensee in whose area the consumer is located for meeting the current level of cross subsidy of the distribution licensee.

(v) The State Commission has to introduce non-discriminatory open access to the consumers with load of more than 1 MW by Regulations by 26.1.2009 on payment of surcharge and wheeling charges. There is also a provision of levy of additional surcharge to be

specified by the State Commission to meet the fixed cost (straded cost) of the distribution licensee arising out of his obligation to supply.

(vi) The State Commission has to determine tariff for wheeling of electricity. While determining the tariff the State Commission shall be guided by *various* factors which encourage competition, following commercial principles and tariff progressively should be reflecting cost of supply.

(vii) The Tariff Policy envisages that the Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.

(viii) As per Tariff Policy, wheeling charges should be determined on the same principles as laid down for intra-State transmission charges and in addition would include average distribution loss compensation corresponding to the relevant voltage level. Thus, if open access is obtained by a consumer at 33 kV level loss corresponding to 33 kV would be included and not the loss for entire distribution system.

(ix) According to the Tariff Policy, the national transmission framework to be introduced by 1.4.2006 should be sensitive to distance, direction and quantum of flow. The ultimate objective of transmission charges is that the users share the charges in proportion to their actual utilization of the transmission system.

(x) Similar approach is to be adopted by the State Commission for intra-State transmission system duly considering the factors like voltage, distance, direction and quantum of flow.

(xi) Surcharge from consumers seeking open access can be collected by the distribution licensee or transmission licensee depending upon whose facilities are being used by the consumer availing the supply. However, in all cases the surcharge is to be passed on to the area distribution licensee.

35. Thus, according to above principles, the wheeling charges should be based on the use of the system for conveyance of electricity to the consumer taking power under open access.

36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited, this Tribunal held as under:

“On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant’s plant. Therefore, the definition as it stands, the appellant is not liable to pay wheeling charges and additional surcharge for the Open Access in respect of which it has applied for. In terms of Sub-section (4) of Section 42, the payment of additional surcharge on the charges of wheeling may not arise at all. Yet the appellant is liable to pay surcharge, whether he is liable to charges for wheeling or not and on the second point we hold that the appellant is liable to pay surcharge and not additional surcharge which may be fixed by the third Respondent, State Regulatory Commission”.

37. In Kalyani Steel case, it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of

the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Tribunal held that the consumer was not liable to pay wheeling charges when it was availing power through open access. However, the consumer was liable to pay surcharge as determined by the State Commission as per Section 42(2) of the Electricity Act, 2003.

38. **Let us now examine the Open Access Regulations, 2011 of the State Commission.**
39. Open access is defined as the non discriminatory provision for use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a generating company in accordance with these Regulations.
40. Open access customer is defined as a consumer permitted by the State Commission to receive supply from a person other than distribution licensee of his area of supply, or a generating company (including captive generating plant) or a licensee who has availed or intends to avail of Open Access.
41. Wheeling is defined as the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another

person for conveyance of electricity on payment of charges as determined u/s 62 of the Act.

42. Regulation 10(1) stipulates that subject to the provisions of the Regulation, the licensees, generating companies, captive generating plants and consumers shall be eligible for open access to intra-State transmission system on payment of transmission and other charges as determined by the State Commission.
43. Regulation 10(2) provides that subject to the provision of these Regulations, the licensees, generating companies, captive generating plants and consumers shall be eligible for open access to distribution system of a distribution licensee on payment of wheeling and other charges as determined by the State Commission under these Regulations.
44. Regulation 14 provides the following categories of Open Access consumers:
 - (1) System to which connected
 - (a) Intra-State transmission system.
 - (b) Distribution system.
 - (2) Inter-se location of drawal and injection points.
 - (a) Both within the same distribution system.
 - (b) Injection point in Intra-State transmission system.

(3) Duration of open access viz. long term, medium term and short term.

(4) Collective transactions through Power Exchange.

45. Regulation 15 provides for Application Procedure for Open Access. It also contains tables for different categories of Open Access and also show the Applicable charges for each category of Open Access.

46. Table 1 under Regulation 15 is for consumers connected to Distribution system for different inter-se location of drawal and injection point. The applicable wheeling and transmission charges for such consumers are indicated as under:

Sl.No.	Inter-se location of points of injection & drawal	Applicable wheeling & transmission charges
(1)	Both drawal and injection within the same distribution licensee	Wheeling charges. (No transmission charges indicated).
(2)	Injection point in intra-State transmission system	Both wheeling charges and Intra-State transmission charges.
(3)	Injection point in different State	Wheeling charges and transmission charges for both Inter-State and Intra-State transmission systems
(4)	Consumer availing power through Power Exchange	Wheeling charges and transmission charges for both Inter-State and Intra-State transmission system

47. Table 2 under Regulation 15 is relating to consumer connected to Intra-State transmission system. The applicable wheeling

and transmission charges for such consumers are indicated as under:

Sl.No.	Inter-se location of points of injection & drawal	Applicable wheeling & transmission charges
(1)	Both drawal and injection point in the intra-State transmission system.	Only Intra-State transmission charges. (No wheeling charges indicated).
(2)	Injection point in the distribution system within the State	Wheeling charges as applicable and Intra-State transmission system charges.
(3)	Injection point in different State	Transmission charges for Inter-State and Intra-State transmission system. (No wheeling charges indicated).
(4)	Consumer availing power through Power Exchange	Transmission charges for both Inter-State and Intra-State transmission system (No wheeling charges indicated).

48. According to above tables under Regulation 15, if a consumer is directly connected to the intra-State transmission system and injection point is either in the same State at the intra-State transmission system, or in a different State or such consumer is availing power through Power Exchange, no wheeling charges shall be payable and only transmission charges will be payable. However, if the consumer connected to the intra-State transmission charges avails power from a generating company or Captive Power Plant connected to or embedded in the distribution system of the distribution licensee of the area, then wheeling charges of the distribution system will also be payable in addition to the transmission charges of the intra-State transmission system.

49. Regulation 25 as per 2011 Regulations (unamended) specifies the Wheeling Charges as under:

“25. Wheeling Charges:

1) *Wheeling Charges shall be payable by an Open Access customer who utilises the distribution network for wheeling of electricity.*

2) *The distribution licensee shall segregate the accounts for the consumer service (retail supply) business and its wire business and submit the same to the Commission.*

3) *The Annual Wheeling Charges (AWC) will represent the cost of the wires business of the distribution licensee. The Commission shall determine the prudent level of Annual Wheeling Charges. While doing so, it shall use its own assumptions for apportioning the expenses of a licensee for the purpose of computing expenses pertaining to wires business till such time segregated accounts of the licensee are available.*

4) *The wheeling charges payable shall be calculated in accordance with the following formula:*

$$\text{Wheeling charges} = (\text{AWC}) / (\text{DIS_CAP} * 365)$$

Where:

DIS_CAP means the capacity in MW which can be served by the distribution system of the Distribution licensee and shall be the sum of import of power at each interface point of exchange of power at electrical

boundary of distribution licensee and generation from captive power plants and co-generation plants (to the extent fed into the grid) and plants generating electricity from renewable sources of energy located in the area of such licensee.

5) Long term Medium term and Short term Open Access customers availing supply at 33/66 KV, in addition to transmission charges, shall be liable to pay 15% of the wheeling charges determined by the Commission as per the Tariff Order applicable for the year; whereas customers availing supply at 11 KV shall be liable to bear 30% of wheeling charges in addition to transmission charges.

6) Where a dedicated distribution system used for Open Access has been constructed for exclusive use of an Open Access customer, the wheeling charges for such dedicated system shall be worked out by distribution licensee and shall be borne entirely by such Open Access customer till such time the surplus capacity is allotted and used for by other persons or purposes.

7) The wheeling charges for short term Open Access will be levied on the quantum in MWh cleared by the concerned Load Despatch Centre for bilateral transactions and the National Load Despatch Centre in case of collective transactions.

8) When capacity has been reserved consequent to bidding, the Open Access charges will be taken as determined through bidding:

Provided further that the charges so determined under this Regulation will be the floor price for the purpose of Regulation 18.

Note: In case of wheeling of power generated from NRSE project, transmission and wheeling charges shall be levied @ 2% of the energy injected into the State Grid, irrespective of the distance i.e. additional 2% of the total energy shall be injected at injection point(s). 10% of the average revenue realized by distribution licensee from such additional injection shall be passed on to the STU/Transmission licensee for compensating on account of transmission charges.”

50. The above Regulations provide as under:

- (i) An open access customer could be a licensee, generating company, Captive Power Plant or a consumer.
- (ii) Wheeling is defined as the operation where the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for conveyance of electricity on payment of wheeling charges. Thus, wheeling takes place when the distribution system is used for conveyance of electricity by another person.
- (iii) The application of wheeling charges and transmission charges is based on the inter-se location of the points of injection and drawal of the Open Access

customer on the principles of actual use of system as per Regulation 15. Thus, if a consumer connected directly to the transmission system avails power under open access from outside the State or through Power Exchange no wheeling charges will be payable.

(iv) Wheeling charges shall be payable by open access consumer who utilizes the distribution network for wheeling of electricity as per Regulation 25(1). This is in conformity with the provisions of the Electricity Act, National Electricity Act and Tariff Policy which relate wheeling to use of the distribution network.

(v) Wheeling charges are calculated on the basis of Annual wheeling charges to represent the cost of the distribution network and power handled by the distribution system.

(vi) The consumers that avail supply at 33/66 kV have to pay for only 15% of the wheeling charges in addition to the transmission charges of the transmission licensee. However, no wheeling charges have been levied on consumers which are physically availing power supply at 132 kV or 220 kV directly through the transmission

system. Thus, the levy of wheeling charges is as per actual use of the system in consonance with the principles laid down in the Electricity Act, National Electricity Policy and Tariff Policy.

51. Regulation 25 framed through the 2011 Regulations was amended by amending Regulation 25 (5) on 4.5.2012. The amended Regulation 25(5) is quoted below:

“25 (5) Long term, Medium term and Short term Open Access customers availing supply at 220 KV, 132 KV, 66 KV, 33 KV or 11 KV, in addition to transmission charges, shall be liable to pay wheeling charges determined by the Commission as per the Tariff Order applicable for the year.”

52. The original Regulation 25(5) specified that the open access consumer availing power at 66/33 kV and 11 kV are liable to pay 15% and 30% of the wheeling charges respectively as determined by the State Commission in the tariff order. On the other hand, the amended Regulation 25(5) simply states that the open access consumers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV in addition to transmission charges should be liable to pay wheeling charges as determined by the State Commission as per the Tariff order for the applicable year.

53. The order dated 4.5.2012 on the Review Petition filed by the Distribution Licensee (R-2) on the amendment of the Open Access Regulations which ultimately resulted in amendment in Regulations 25 (5) states as under:

“The Commission has carefully looked into the comments received from the public/stakeholders and decides to review its earlier decision to change wheeling charges, as this has been causing additional financial burden on other consumers who do not resort to open access. The Commission accordingly decides to levy wheeling charges on all open access consumers as applicable to consumers drawing power from the Licensee and the Commission has accordingly amended the Punjab State Electricity Regulatory Commission (Terms & Conditions for Intra-State Open Access) Regulations, 2011 for which notification is being got published in the State Gazette”.

Thereafter, the Regulation 25(5) of 2011 Open Access Regulations was notified on 4.5.2012.

54. Thus, we find that the levy of wheeling charges on consumers not using the distribution system for conveyance of electricity in Open Access is contrary to the scheme of the Electricity Act, 2003, Tariff Policy and the dictum laid by this Tribunal. A consumer directly connected to the transmission system can avail open access by payment of transmission charges and surcharge (as determined by the State Commission). However, the surcharge has to be passed on to the distribution

licensee for meeting the current level of cross subsidy. The levy of wheeling charges for such consumers connected to the transmission licensee (220 kV and 132 kV in the present case) is also in contravention with Regulation 25(1) and Regulation 15. The Amended Regulation 25(5) enable the State Commission to determine the wheeling charges applicable to open Access customers in the Tariff Order. The State Commission should have determined the wheeling charges in conformity to the Scheme of the Electricity Act, National Electricity Policy, Tariff Policy and various Sections of its Regulations (Regulation 15 and 25 (1). The Open Access customers have to bear the surcharge as determined by the State Commission to meet the requirement of current level of cross subsidy. They cannot be made to pay wheeling charges for the distribution system which has not been used by them in conveyance of electricity under Open Access. If the existing consumers of the distribution licensee seeking Open Access are resulting in stranded costs to the distribution licensee due to its obligation to supply, then the remedy lies in levy of additional surcharge as provided for in the Electricity Act.

55. Even if it is assumed that the 220 kV and 132 kV transmission line through which the consumer is directly connected with the transmission system of the transmission licensee is considered as a part of the distribution system, the cost of the 220 kV or

132 kV feeder supplying power to the consumer is borne by the consumer as per the Regulations of the State Commission. Therefore, charges for use of the 220/132 kV feeder by which the consumer is directly connected and which supplies power to the consumer for conveyance of electricity, cost of which is borne by the consumer, cannot be charged as wheeling charges when the consumer avails power under open access.

56. Let us now examine the impugned tariff order by which the State Commission has determined the wheeling charges. The relevant portion of the impugned order is reproduced below:

“6.10 Open Access Charges

6.10.1 As per the Open Access Regulations notified by the Commission, the wheeling charges for FY 2012-13 are Rs. 452540/MW/Month.

6.10.2 The energy requirement at the distribution periphery as per Table 4.5 of this Tariff Order for FY 2012-13 is 41515 MUs. On this basis, the wheeling charges for use of the distribution network are determined as 124 paise per unit.

As per clause 25(5) of PSERC (Open Access) Regulations, 2011 (amended on 4th May 2012), short term Open Access customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV, in addition to transmission charges determined separately in Tariff Order for PSTCL for FY 2012-13, shall also be liable to pay wheeling charges (i.e. of 124 paise/unit) determined by the Commission as per Tariff Order applicable for the year.

As per Order of the Commission dated July 11, 2012, the revised wheeling charges to short-term Open Access customers will be applicable with effect from May 07, 2012.

Wheeling charges for wheeling of NRSE power shall be governed as per provisions made in the PSERC (Open Access) Regulations, 2011.

For Long Term and Medium Term OA customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV these charges shall be Rs.452540/MW/Month of the contracted capacity.

6.10.3 *Wheeling charges payable by Open Access customers shall be as under:*

<i>Period</i>	<i>Voltage level</i>	<i>Wheeling charges (paise/unit)</i>
<i>From 1.4.2012 to 6.5.2012</i>	<i>220kv & 132 kv</i>	<i>0.0</i>
	<i>66 kv & 33 kv</i>	<i>18.6</i>
	<i>11 kv</i>	<i>37.2</i>
<i>From 7.5.2012 to 31.3.2013</i>	<i>220 kv & 132 kv</i>	<i>124.0</i>
	<i>66 kv & 33 kv</i>	
	<i>11 kv</i>	

6.10.4 *As per clause 30(2) of PSERC (Open Access) Regulations, 2011, the Open Access customers shall bear Transmission & Distribution losses as under;*

<i>i)</i>	<i>OA customers at 132/220 kV</i>	<i>2.5%</i>
<i>ii)</i>	<i>OA customers at 66/33 kV</i>	<i>15% of distribution losses (15.90%), which works out to 2.39%, in addition to Transmission Loss of 2.5%.</i>
<i>iii)</i>	<i>OA customers at 11 kV</i>	<i>40% of distribution losses (15.90%), which works out to 6.36%, in addition to Transmission Loss of 2.5%.”</i>

57. Thus, the State Commission has determined the wheeling charges for the period 1.4.2012 to 6.5.2012 as per the 2011 Regulations i.e. nil for voltage levels at 220 & 66 kV, 15% of wheeling charges for voltage levels 66/33 kV and 30% of wheeling charges for consumers at 11 kV. However, from 7.5.2012 to 31.3.2013 i.e. after the notification of the amended Regulation 25(5), the State Commission has determined uniform wheeling charges of 124 paise/ kWh of voltage i.e. same charges for consumers at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV. However, the transmission and distribution losses have been levied on the basis of voltage level at which the supply is availed.

58. We feel that the wheeling charges for the period from 7.5.2012 to 31.3.2013 have not been determined according to the provisions of the Electricity Act, National Electricity Policy,

Tariff Policy and the comprehensive consideration of the Open Access Regulations for the following reasons:

(i) Levy of wheeling charges from the Open Access consumers directly connected to the transmission system of the transmission licensee and are not using the distribution system of the distribution licensee for conveyance of electricity under Open Access in contravention to the scheme of Open Access under the Electricity Act, Tariff Policy and the dictum of this Tribunal in earlier judgment.

(ii) Regulation 25(1) clearly specifies that the wheeling charges shall be payable by an open access customer who utilizes the distribution network for wheeling of electricity. This is in consonance with the provisions of the Electricity Act and Tariff Policy and the dictum of this Tribunal.

(iii) The intent of amendment to Regulation 25 (5) is against the scheme of Open Access under the Electricity Act and the dictum of this Tribunal and also in contravention to the other provisions of the Regulation viz., Regulation 15, Regulation 25(1) and the definition of Open Access and wheeling. However, the amended

Regulation 25(5) has only made a change that the State Commission has to determine the wheeling charges for open access customers availing supply at 220 kV, 132 kV, 66 kV, 33 kV or 11 kV in the respective tariff order as against a specific percentage of wheeling charges as specified in the un-amended Regulation 25(5). The State Commission was expected to determine the wheeling charges in the tariff order keeping in view the objects of the Electricity Act which promotes competition and other provisions of the Open Access Regulations.

(iv) Regulation 25(1) clearly specifies wheeling charges to be payable on utilization of the distribution network. As per the principles as laid down by us for wheeling charges on interpretation of the Electricity Act, National Electricity Policy and Tariff Policy, the wheeling charges have to be in proportion to the actual utilization of the distribution network.

(v) While the State Commission has correctly determined the voltage wise transmission and distribution losses for availing supply at 220 kV, 132 kV, 66/33 kV and 11 kV, it has incorrectly levied

uniform wheeling charges for all voltage levels irrespective of the utilization of the distribution network.

(vi) The Open Access customer as per the 2011 Regulations is a consumer who has been permitted to receive power from a person other than the distribution licensee or a generating company including a captive generating plant or a licensee. Thus, if a generator connected at 220/132 kV, avails open access to supply to a consumer at 66 kV/33 kV/11 kV, it has to pay wheeling charges as distribution network is used in conveyance of electricity. Similarly, if a consumer availing supply at 220/132 kV i.e. directly connected to a transmission system, avails open access from a Captive Power Plant which is connected at 66 kV/33kV/11 kV i.e. embedded in the distribution system, then wheeling charges shall be leviable. However, when a consumer availing supply at 220 kV or 132 kV avails open access through inter-state transmission system, then distribution network of the distribution licensee is not used and in that case no wheeling charges can be levied for use of the distribution network.

(vii) The tables under Regulation 15 clearly indicate the applicability of charges depending on the point of injection and point of drawal of power under open access. Regulation 15 has not been amended. The State Commission should have determined the applicable charges based on the inter-se location of point of injection and point of drawal as specified in the Regulations. This was not done by the State Commission and uniform wheeling charges were determined applicable to all Open Access customers irrespective of inter-se position of point of injection and point of drawal in contravention to the Regulation.

(viii) By increasing the wheeling charges substantially and imposing the same on consumers availing Open Access at 220/132 kV from outside the State, the State Commission has tried to curb Open Access thereby acting in contravention to the scheme of the Electricity Act which mandates promotion of Open Access and competition.

(ix) By increasing the wheeling charges substantially and imposing the same on consumers availing open access at 220/132 kV from outside the State, the State Commission

has tried to curb open access thereby acting in contravention to the scheme of the Electricity Act which mandates and promotion to open access and competition.

59. In view of above, we feel that the wheeling charges have been determined by the State Commission in contravention to the provisions of the Act, Tariff Policy, National Electricity Policy and its own Regulations. Therefore, we have no option but to set aside the impugned order in respect of determination of wheeling charges applicable to Open Access customers for the period from 7.5.2012 to 31.3.2013 with directions to re-determine the wheeling charges applicable to Open Access customers as per the above findings within 90 days of communication of this judgment and pass on the consequential relief to the Appellants and other Open Access customers.
60. On the same issue, one other contention has been raised by the Appellant stating that the State Commission has erroneously given retrospective effect to the wheeling charges. The order has been passed on 16.7.2012 and made effective from 1.4.2012. As a result of this, the wheeling charges have also been implemented from 1.4.2012 for transactions which have been concluded months in advance. This is in violation of Regulation of Central Commission's Inter-State Open Access Regulations, 2008 which clearly provides that

transmission charges payable for use of the State network shall not be revised retrospectively.

61. Inter-State transmission of electricity is regulated by Central Commission's Regulation, 2008. The relevant Regulation is reproduced below:

“Transmission Charges

16. (1) In case of bilateral transactions, the transmission charges at the rate specified hereunder shall be payable by the short-term customer for the energy approved for transmission at the point or points of injection:

<i>Type of Transaction</i>	<i>Transmission charges(Total) (Rs./MWh)</i>
<i>(a) Bilateral, intra-regional</i>	80
<i>(b) Bilateral, between adjacent regions</i>	160
<i>(c) Bilateral, wheeling through one or more intervening regions</i>	240

(2) In case of the collective transactions, transmission charges at the rate of Rs.100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.

.....

.....

.....

Provided also that the transmission charges payable for use of the State network shall be conveyed to the

Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges payable for use of the State network shall not be revised retrospectively”.

Thus, according to the Open Access Regulations for inter-State transmission of electricity, the transmission charges for use of intra-State transmission system for inter-State transmission of energy under open access cannot be revised retrospectively.

62. The transaction for short term Open Access is carried out based on the prevailing charges. These charges ought not to be revised retrospectively when the transactions have been concluded based on the prevailing charges and payments have been made against the transactions. The consumers of the distribution licensee (Respondent no. 2) have availed short term open access from 1.4.2012 till 16.7.2012, the date of the impugned order based on the then prevailing charges. These transactions have been concluded till the date of the impugned order. If the revised charges had been determined by the State Commission before 1.4.2012, the consumers would have taken a call for availing power through open access based on the revised charges. Therefore, the State Commission should not have revised the intra-State transmission and wheeling

charges retrospectively for short term inter-State Open Access transaction in contravention to the Inter State Open Access Regulations of the Central Commission. Accordingly, this issue is decided in favour of the Appellants.

63. The next issue is with regard to the **Non-Implementation of the Cost to Supply.**
64. The learned Senior Counsel for the Appellant has made the following submissions on this point:

“This Tribunal in its Full Bench judgment in SEIL Limited Vs PSERC and others reported in 2007 ELR (APTEL) 931 directed the State Commission to determine their tariff on cost to supply basis. The urgent need for implementation of their directions has been stressed upon by this Tribunal in various judgments over the years. However, while issuing the Impugned Order, the State Commission failed to comply with the said directions and determined the category wise cost to supply and as such the directions given by this Tribunal have not been implemented till date and as a result, the HT Consumers are continued to be burdened with unjust cost. Even thereafter, this Tribunal by the Order dated 12.7.2012 in Review Petition No.8 of 2012 in Appeal No.63 of 2010 directed the State Commission to ensure exercise of

determination of voltage wise cost of supply of the Respondent Licensee by the end of November, 2012. However, by the Impugned Order, the State Commission has continued to adopt the combined average cost of supply instead of adopting the cost to supply principle pointed out by this Tribunal in various judgments. Therefore, the adoption of the State Commission on the basis of the combined average cost of supply instead of cost to supply is illegal”.

65. In order to analyse this issue, we have gone through the findings given by the State Commission in the Impugned Order.
66. It is noticed that in compliance of the directions given by this Tribunal, the State Commission, in fact, directed the then Punjab State Electricity Board in its tariff order for the year 2007-08 indicating the directions given by this Tribunal. They are reproduced below:

“6.6 Cost of Supply and Cross Subsidy

6.6.1 The Appellate Tribunal in para 119 of its judgement of May 26, 2006 had directed that;

- (i) The Commission shall determine the cost of supply of electricity to different classes and categories of consumers;*

- (ii) *The Commission shall determine the average cost of supply;*
- (iii) *Once the figures of cost of supply and average cost of supply are known, the Commission shall determine the extent of cross subsidies added to tariff in respect of each class/category of consumers; and*
- (iv) *The consumers who are being cross subsidized by the Commission, a limit of consumption shall be specified for which special support through cross subsidy may be provided. Once the consumer exceeds the limit, he shall be charged at normal tariff.*

These directions are to be applicable from Tariff Order 2007-08 onwards.

6.6.2 *The Appellate Tribunal had issued the above directions after considering submissions made by the Industrial Consumers wherein it was emphasized that tariff needs to be based on the cost of supply of electricity to each category of consumer having regard to the voltage at which supply is made available. As per requirements of the Act, the Commission has to ensure that tariff determination moves towards cost of supply and the cross subsidies are reduced progressively. However, the Act neither defines the term cost of supply nor clarifies whether it is with reference to class or category wise cost or average cost of supply. The Tariff Policy provides that the tariff should progressively*

reflect the cost of supply of electricity with tariffs being brought within + 20% of the average cost of supply latest by the end of 2010-11. The Tribunal took note of the existence of cross subsidies in the system and required gradual reduction to prevent tariff shock to the consumers. The Tribunal while finding no fault with the approach adopted for the determination of tariff by the Commission has at the same time not concurred with the Commission's view that the "Cost of Supply" means 'Average cost of Supply'.

6.6.3 In order to comply with the Hon'ble Tribunal's directions to determine cost of supply of electricity to different classes and categories of consumers, the Commission had called for requisite data from the Board. The latter intimated that it had appointed consultants for this purpose who had in due course submitted their report. The Board was, however, unable to agree with the findings of the Study carried out by the consultants as it was of the view that the same was based on inadequate and unrepresentative samples with the findings arrived at on the basis of a large number of assumptions. With the Board not accepting the findings of the consultants, no reliable data is presently available with the Commission to proceed further in working out cost of supply for different classes and categories of consumers.

6.6.4 The Commission notes with concern that the Board allowed their own consultants to proceed ahead with the study without any

clarity as to the manner in which samples were to be selected or the assumptions that need to be taken into account for arriving at any definitive conclusions. The Board has been separately directed to have a study undertaken in this respect based on agreed parameters and submit its findings to the Commission at the earliest.

- 6.6.5 *Average Cost of Supply has been determined by the Commission applying the same methodology as in its previous tariff orders.*
- 6.6.6 *The Commission has determined the average cost of supply and the extent of cross subsidies added to the tariff for each category of consumers as required by the Tribunal in directions referred to in para 6.6.1 (ii) and (iii).*
- 6.6.7 *In so far as the directive at 6.6.1 (iv) is concerned, the Commission notes that the first slab of Domestic Supply and Agricultural Power consumers are the only two subsidized categories in the State. A subsidized tariff is charged in the case of Domestic Supply only upto a limit of the first 100 units after which a higher tariff becomes payable. In the case of AP consumers, it is necessary to observe that out of a total of about 9.5 lac such consumers, only 13441 connections are presently metered. The Board which had been directed to effect 100% metering in the past has expressed its inability to achieve this objective in the near future for reasons that have to do both with the cost effectivity of the proposed metering and the resistance experienced from the consumers in installing the meters. While the Commission on its part has clarified to the Board that it is unable to review its earlier directive for*

comprehensive metering of agricultural power connections, the fact remains that the Board has yet to take any concrete steps in this direction. There may be several practical difficulties in evolving a normative limit for subsidized agricultural consumption given variations in agro-climatic conditions and differing cropping patterns in the State. Even if such a norm could over time be evolved, practical enforcement of minimum consumption limits for each consumer would be impossible in the absence of complete metering of agricultural connections. In these circumstances, it has not been possible for the Commission to fix a limit on subsidized consumption in the case of AP consumers.”

67. The above directions issued by the State Commission would show that the State Commission has been monitoring the actions taken by the Punjab State Power Corporation Limited in this regard from then onwards. Accordingly, the State Commission gave further directions in the subsequent tariff orders. The said directions issued by the State Commission in the tariff order for the year 2012-13 are as follows:

“6.11 Cost of Supply and Cross Subsidy

The Hon’ble Appellate Tribunal for Electricity while delivering its judgment on January 11, 2012, in various Appeals has directed the Commission to determine the category-wise Cost of Supply. PSPCL, in the ARR Petition for FY 2012-13, has submitted that it has engaged an agency (TERI) on September 23, 2010 to conduct cost of supply study and TERI has submitted the draft report on methodology to arrive at cost of service which is to be finalized by the

*committee constituted by PSPCL for this purpose. **The Commission directs PSPCL to expedite finalization of the report and submit the findings of the study to the Commission at the earliest. Thereafter, the Commission will consider and decide the issue.***

68. On these directions, the Power Corporation assigned the job of determination of voltage wise and category wise cost of supply to TERI. In pursuance of the same, the extensive research and studies were undertaken. Consequently, the cost of supply for distribution of electricity has been worked out by the consultants.
69. After this process was over, the cost of supply report was made available on the website of the Power Corporation Limited for inviting the comments and suggestions by the stakeholders. It has now been informed by the State Commission that after taking into account the comments from various consumers' organisations and also the response of Power Corporation Limited on these comments, the State Commission determined the voltage wise, category wise cost of supply for the year 2013-14 in the tariff order. As such, the State Commission has fully complied with the orders of this Tribunal.
70. In view of the above submission of the State Commission and considering that in the Impugned Order the tariffs of all

categories of consumers is within $\pm 20\%$ of the average cost of supply as per the tariff policy, we are not inclined to interfere with the impugned order on this issue.

71. Accordingly, the **Second Point** is decided as against the Appellant.
72. The next point would relate to **Non Segregation of Cost of Generation from the Distribution.**
73. On this issue, the Appellants submitted that the Power Corporation Limited is engaged in generation of electricity also through the Stations owned and controlled by it apart from distribution of electricity. For the purpose of determination of tariff, it is necessary to safeguard all common cost and to file separate Petitions for Annual Revenue Requirements for generation and distribution businesses of Punjab Power Corporation Limited. But, in the present case, the Punjab State Corporation has not segregated the cost of generation and as such, inefficiencies in the generation process and the distribution process could not be clearly identified by the State Commission.
74. According to learned counsel for the State Commission, the Commission has processed the ARR of PSPCL for FY 2012-13 as per its Tariff Regulations, after following due process of law and its Business Regulations. The Commission has

determined/ fixed the various norms and performance parameters (e.g. availability/generation, Station Heat Rate, T&D losses, Auxiliary consumption, Coal Transit loss, specific oil consumption) in Tariff Order as per its Tariff Regulations and as followed in the previous Tariff Orders. The utility will be penalized at the time of review/true up if it fails to achieve the norms/performance parameters fixed in the Tariff Order and will be incentivised for better performance. The Commission has determined the separate tariffs for generation and distribution by segregating the ARR of PSPCL, based on the information furnished by PSPCL and the audited accounts of FY 2009-10 of the erstwhile Punjab State Electricity Board, since the audited accounts for FY 2010-11 were not provided by PSPCL. Regarding segregation of accounts, the Commission after determining ARR of PSPCL for the combined business, segregated the various cost elements for distribution business and generation business, by apportioning these costs on the basis of latest audited expenditure figures made available by PSPCL.

75. We find that the State Commission has determined the variable charges of different thermal power stations after considering the operational norms viz. norms for Station Heat Rate, specific fuel consumption, auxiliary consumption, etc., as per its Regulations. However, the State Commission has

determined the Return on Equity, interest on loan, employees cost, A&G expenses, Repair and Maintenances expenses, etc., considering the combined assets/expenditure of the generation and distribution assets. The State Commission in paragraph 6.6.1 of the impugned order has stated that the segregation of ARR for FY 2012-13 of PSPCL into generation and distribution functions has been carried out on the basis of information furnished by PSPCL in its letter dated 30.3.2011 and audited accounts of FY 2009-10 of the erstwhile Board since audited accounts for FY 2010-11 are not provided by PSPCL. It is indicated that ROE is bifurcated proportionally on the value of fixed assets of each function. The State Commission then determined the fixed cost of each generating station based on the data provided by PSPCL.

76. We notice that the State Commission has not determined function wise operation and maintenance and other expenses and have simply taken the data submitted by PSPCL. ROE is also not bifurcated in proportion to the fixed assets of each function in Table 6.8 showing segregation of ARR. The depreciation charges of generation and distribution assets determined under Paragraph 4.12 have not been correctly reflected under generation and distribution in final segregation of accounts. The depreciation of Rs. 290.10 crores is determined for distribution assets under paragraph 4.12 of the

impugned order as reflected in the Table 4.25. However, the final segregated ARR shown in Table 6.8 shows depreciation of Rs.368.33 crores under the distribution function. The depreciation of transmission assets as determined under paragraph 4.12 by the State Commission has also been added in the ARR of PSPCL in Table 6.8, whereas the depreciation of transmission assets is to be added in the transmission tariff of the transmission licensee.

77. We feel that the State Commission should have determined the fixed charges for the generating stations separately. The State Commission as per its Regulations has to determine the station-wise generation tariff. Apportioning of the total fixed cost of PSPCL in some proportion to different functions of PSPCL is not in consonance with the Regulations.
78. FY 2012-13 is already over and is due for truing up. Therefore, the State Commission is directed to correct the discrepancies as stated above and true up station-wise/function-wise expenditure after prudence check. Accordingly, this point is decided in favour of the Appellant.
79. The next point is relating to **High Un-metered Agricultural Pump Sets Consumption.**

80. On this issue, it is argued by the Appellants that Agricultural pump sets consumption which is un-metered has increased on year to year basis considerably and as a result, the entire burden of such un-metered consumption is loaded on the paying consumers particularly those consumers who were paying much above the cost of supply.
81. The State Commission has not ensured to see that compliance of the mandatory provisions u/s 55 of the Electricity Act for ensuring 100% metering within two years from the date of the Notification of the Act.
82. According to the State Commission, in its tariff order, the State Commission has been issuing directions to the Distribution Companies in the State for ensuring 100% metering of electricity connections in compliance with the provisions u/s 55 of the Electricity Act. The State Commission has referred to its tariff order for the FY 2012-13 to such directions has been given periodically. The same is as follows:

“The Commission draws attention of the utility to the Electricity Act, 2003 which mandates 100% metering. The Commission in a meeting on Directives in Sept. 2011 had emphasized the need for 100% metering and had advised the utility to prepare a plan to implement the mandate.

The pilot project to measure AP consumption of each AP consumer through AMR system undertaken in Ajitgarh (Mohali) circle of PSPCL may be got implemented on lease/rental basis covering installation, maintenance and up keep of AMR meters. In addition this project may also include

installation, maintenance and up keep of LT capacitors at each AP consumer end on lease/rental basis. This may prove to be a least cost and efficient solution to the 100% AP metering and improving AP power factor.

The utility is advised to furnish a plan to the Commission for implementing 100% metering and AP power factor correction within two months of this Tariff Order.”

83. In the absence of 100% metered of AP connections, the State Commission has been estimating the AP consumption on the basis of consumption recorded by sample meters installed against AP connections up to Tariff Orders for FY 2012-13.
84. It is also submitted by the State Commission that the State Commission in the Tariff Order for the FY 2013-14 assessed the AP consumption on the basis of the Pumped energy recorded by the meters installed at Grid sub-stations on pure agriculture feeders. Accordingly the Power Corporation Limited has already segregated the AP load from other mixed loads and more than 95% AP load is being fed from pure AP feeders.
85. This shows that the State Commission has taken efficient steps by directing Power Corporation Limited for the FY 2013-14 to install AMR meters on all AP consumers in a phased manner so as to complete the job by FY 2016-17.

86. Therefore, we do not find any lacunae in the efforts taken by the State Commission to ensure the compliance of Section 55 of the Electricity Act.

87. Therefore, this point is decided as against the Appellant.

88. Summary of Our Findings

- (i) Wheeling charges: We feel that the wheeling charges have been determined by the State Commission in contravention to the provisions of the Act, Tariff Policy, National Electricity Policy and its own Regulations. Therefore, we have no option but to set aside the impugned order in respect of determination of wheeling charges applicable to Open Access customers for the period 7.5.2012 to 31.3.2013 with directions to re-determine the wheeling charges applicable to Open Access customers as per the above findings within 90 days of communication of this judgment and pass on the consequential orders granting the relief to the Appellants and other Open Access customers. The retrospective revision of the intra-State transmission charges and wheeling charges for short term inter-State open access transactions by the Open Access customers is also set aside as it is in contravention to the Inter-State**

**Open Access Regulations of the Central Commission.
This issue is decided in favour of the Appellants.**

(ii) Non-implementation of cost of supply: In view of the submissions of the State Commission and considering that the State Commission in the Impugned Order has fixed the tariff of all categories of the consumers within $\pm 20\%$ of the average cost of supply, we are not inclined to interfere with the impugned order.

(iii) Non-segregation of cost of Generation from Distribution: We find that the State Commission has determined the variable charges of different thermal power stations after considering the operational norms viz. norms for Station Heat Rate, specific fuel consumption, auxiliary consumption, etc., as per its Regulations. However, the State Commission has determined the Return on Equity, interest on loan, employees cost, A&G expenses, Repair and Maintenances expenses, etc., considering the combined assets/expenditure of the generation and distribution assets. The State Commission in paragraph 6.6.1 of the impugned order has stated that the segregation of ARR for FY 2012-13 of PSPCL into generation and distribution functions has been

carried out on the basis of information furnished by PSPCL in its letter dated 30.3.2011 and audited accounts of FY 2009-10 of the erstwhile Board since audited accounts for FY 2010-11 are not provided by PSPCL. It is indicated that ROE is bifurcated proportionally on the value of fixed assets of each function. The State Commission then determined the fixed cost of each generating station based on the data provided by PSPCL. We have observed some discrepancies in the bifurcated function-wise expenses as pointed out in paragraph 76. We feel that the State Commission should have determined the fixed charges for the generating stations separately. The State Commission as per its Regulations has to determine the station-wise generation tariff. Apportioning of the total fixed cost of PSPCL in some proportion to different functions of PSPCL is not in consonance with the Regulations. FY 2012-13 is already over and is due for truing up. Therefore, the State Commission is directed to correct the discrepancies as stated above and true up station-wise/function-wise expenditure after prudence check. This issue is decided in favour of the Appellant.

(iv) High un-metered agriculture pump-set consumption: Therefore, we do not find any lacunae in the efforts of the State Commission to ensure the compliance of Section 55 of the Electricity Act. Therefore, this point is decided as against the Appellant.

89. In view of above, the Appeal is allowed in part in respect of some of the issues as indicated above. The State Commission is directed to pass consequential orders in terms of the observations and directions given in this judgment. However, there is no order as to costs.

90. The Registry is directed to send a copy of the judgment to all the Regulatory Commissions forthwith.

91. Pronounced in the open court on this 12th day of September, 2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:12th Sept, 2014

√REPORTABLE/NON-REPORTABLE