

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-221 SECTOR-34-A CHANDIGARH**

**Petition No. 45 of 2012
Date of hearing: 03.10.2012
Date of Order: 10.10.2012**

In the matter of : Petition for review under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 64 of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of the order dated 16.7.2012 in Petition No.67 of 2011 passed by the Commission approving the revenue requirements and tariff for the year 2012-13 and review of financials for the year 2011-12.

AND

In the matter of: Punjab State Transmission Corporation Limited, PSEB Head Office, The Mall, Patiala-147001.

Present: Smt.Romila Dubey, Chairperson
 Shri Virinder Singh, Member
 Shri Gurinderjit Singh, Member

For petitioner: Shri Vinod Bansal, Financial Advisor
 Shri M.G.Ramachandran, Sr. Advocate
 Shri Anand K.Ganesan, Advocate

ORDER

This review petition has been filed by the Punjab State Transmission Corporation Limited (PSTCL) for review of the order dated 16.7.2012, in Petition No.67 of 2011, passed by the Commission approving the revenue requirements and tariff for the year 2012-13 and review of financials for the year 2011-12. The petition was admitted vide Order 13.09.2012 and PSTCL was directed to file written submissions by 27.09.2012. The counsel for PSTCL filed written submissions during hearing on 03.10.2012. The Commission has carefully

considered the review petition and written submissions filed by the petitioner and observes that the petitioner has sought review on the limited aspect of the applicable return on equity (ROE) for the tariff years 2011-12 and 2012-13. The petitioner while referring to Regulation No.15 of CERC submitted that ROE be allowed by grossing up the rate to 23.48% (inclusive of tax payment). The Commission in the Tariff Order dated 16.7.2012 had allowed ROE @15.5% to the petitioner in accordance with Regulation 25 of the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005. The Regulation provides for ROE on the paid up equity capital determined in accordance with Regulation 24 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 as amended by the CERC from time to time. Regulation 32 of the PSERC Tariff Regulations ibid further provides for allowing any obligatory tax payable by the Licensee on account of receipts/income from licensed business.

2. The petitioner had submitted that in the Tariff Order of FY 2011-12 the Commission had allowed ROE based on CERC Tariff Regulations, 2004 against which PSTCL had filed an appeal No. 76 of 2011 before the Hon'ble APTEL. The Hon'ble Tribunal vide its Order dated 2nd March, 2012 decided the said petition and held that an analysis of Regulation 25 notified by the State Commission referred to above, makes it clear that the intention of the Commission is to follow the CERC Regulations, 2009. The Hon'ble Tribunal observed that the Commission was quite conscious of the necessity of following the norms, principles and methodologies enunciated in the CERC Regulations. In the judgment, the Tribunal further observed that where two interpretations of any law are possible then the interpretation beneficial to the subject should be acceptable and as such the Hon'ble APTEL had answered the point accordingly.

3. PSTCL has stressed the need for allowing ROE to the petitioner in terms of Regulation 15 of the CERC Tariff Regulations 2009 which provides for allowing ROE at the rate of 15.5% (pre tax), grossed up to 23.48% (post tax). The petitioner has stated that with the change in CERC Tariff Regulations,

2009, the rate of tax or the payment relating to the tax has become irrelevant for the purpose of determination of ARR because ROE is to be allowed post tax at the grossed up rate of 23.48% i.e. inclusive of tax. Petitioner has further stated that keeping in view the grossed up provisions of the rate of ROE in the CERC Tariff Regulations, 2009, Hon'ble APTEL in its Order dated 2nd March, 2012 had made it clear that tax payment is the liability of the licensee and it need not be passed on to the consumers. Accordingly, the actual tax payment by the Licensee has, therefore, become irrelevant.

4. The Commission in the Tariff Order of FY 2012-13 had allowed ROE at the rate of 15.5% in the Review of 2011-12 as well as in determination of the ARR of the petitioner for FY 2012-13. The Commission had adopted and approved ROE at the rate of 15.5%, in line with Regulation 15 of the CERC Tariff Regulations, 2009 as also Regulation 32 of the PSERC Tariff Regulations 2005, which provides for allowing obligatory taxes, if any, on the income of the generating company/licensee from its core/licensed business as an expense in the ARR of the licensee.

5. During processing of the ARR of the petitioner for FY 2012-13, the Commission had discussed this issue at length. It was of the considered view that the Commission has adopted the CERC Tariff Regulations in the matter of allowing ROE to the licensee at the rate of 15.5% and it is also allowing separately the obligatory taxes on the income from the licensed business of the licensee as provided under Regulations 25 and 32 of the PSERC Tariff Regulations, 2005 respectively. Thus, the licensee or the petitioner is not put to any loss on this account. The Commission reiterates that the petitioner has been allowed ROE of 15.5% as per Regulation 25 of PSERC Tariff Regulations which are guided, as per as feasible, by CERC Regulations. In addition, the Commission allows obligatory taxes in line with Regulation 32 of PSERC Tariff Regulations. In seeking grossed up rate of ROE of 23.48%, which is inclusive of tax, the petitioner is seeking a double benefit which cannot be allowed. The PSERC Tariff Regulations, 2005 are in conformity with the CERC Regulations, 2009 in as much as they both provide for allowing ROE as also any obligatory

taxes paid by the licensee. The only difference is that the Central Commission has embodied the two provisions under Regulation 15 whereas both these have been provided under two separate Regulations i.e. Reg.25 and Reg. 32 of the PSERC Tariff Regulations, 2005. It is also pointed out that the application of grossed up rate of return on equity is not automatic but will be applied only in case the licensee pays tax on its income. ***Regulation 15 (3) of the CERC Regulations, 2009 provides for that return on equity with respect to the actual tax rate applicable to the generating company or the transmission licensee, as the case may be in line with the provisions of the relevant Finance Acts.***

The contention of the petitioner that the amount of tax paid by the licensee is irrelevant also has no locus standi. It is amply clear that the licensee will not get the benefit of the grossed up rate of ROE in case he is not liable to pay any tax. It is equally true that under Regulation 32 of PSERC Tariff Regulations, 2005 any payment of tax allowed as expense will also be trued up. The Commission observes that the intention of the Petitioner in claiming ROE at the grossed up rate implies that he will claim a tax amount in advance whether his liability to pay the obligatory taxes arises or not. It also needs to be stressed that in case the liability of tax payment of the licensee is ascertained as nil/less during true up the amount allowed in excess, if any, by way of applying grossed up rate will become recoverable from him along with interest at the SBI Advance Rate. This principle is applicable in order to maintain parity with allowability of interest to the licensee on the amount of revenue gap for any year.

6. The Commission notes that PSTCL had not claimed any tax liability in its ARR for the years 2011-12 and 2012-13.

7. Thus, the decision of the Commission to allow ROE for FY 2011-12 and FY 2012-13 @ 15.5% was a well considered and conscious one, keeping in view the existing provisions of Regulations 25 and 32 of the PSERC Tariff Regulations, 2005 which provide for allowing ROE and obligatory taxes under two separate Regulations.

8. In the light of the above, the Commission observes that the Tariff Order dated 16.7.2012 is in line with PSERC Regulations as well as CERC Regulations on the issue of allowability of ROE. The review petition is devoid of any merit and is accordingly dismissed.

Sd/-
(Gurinderjit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 10.10.2012