

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

On Remand by the Hon'ble APTEL
vide Order dated 09.07.2024
in Appeal No. 214 of 2016
& Appeal No. 75 of 2018.
Date of Order: 13.11.2024

Petition No. 37 of 2014

Petition for approval of annual fixed cost of 100 MW Malana II Hydro-Electric Project for the period from 01.04.2014 to 31.03.2015; truing up of expenses for FY 2012-13 and FY 2013-14 under Section 62 of The Electricity Act, 2003 read with Regulation 56 (2), (3) and (4) of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

And

In the matter of: Everest Power Private Limited, Ground Floor, 145-146,
Udyog Vihar, Phase-IV, Gurgaon122015, Haryana.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited, the Mall Patiala, Patiala-147001.
2. PTC India Limited, 2nd Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi-110066

.....Respondents

Alongwith Review Petition No. 09 of 2015

Review Petition 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 Order dated 31.08.2015 in Petition No.37 of 2014

AND

In the matter of: Everest Power Private Limited, Ground Floor, 145-146,
Udyog Vihar, Phase-IV, Gurgaon122015, Haryana.

....Petitioner

Versus

1. Punjab State Power Corporation Limited, the Mall Patiala, Patiala-147001.
2. PTC India Limited, 2nd Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi-110066.

....Respondents

And Petition No. 17 of 2017

Petition for approval of annual fixed cost of 100 MW Malana II Hydro-Electric Project and truing up for FY 2015-16 under Section 62 of the Electricity Act, 2003 read with Regulation 56 (2) and (3) of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

And

In the matter of: Everest Power Private Limited, Hall A, First Floor, Plot No.143 -144, Udyog Vihar, Phase IV, Gurgaon-122015, Haryana.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited, the Mall Patiala, Patiala-147001.
2. PTC India Limited, 2nd Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi-110066

.....Respondents

Commission: **Sh. Viswajeet Khanna, Chairperson**
Sh. Paramjeet Singh, Member

EPPL: Sh. Parinay Deep Shah, Advocate, (through VC)

PSPCL: Sh. Amal Nair, Advocate (through VC)
Ms. Harmohan Kaur, CE/ARR&TR
Sh. Baljinderpal Singh AEE/TR-5
Sh. Vineet Verma, ASE

PTC: None

ORDER

1. The Commission disposed of the Petition No. 37 of 2014, Review Petition No. 09 of 2015 filed in Petition No. 37 of 2014 and

Petition No. 17 of 2017 vide orders dated 31.08.2015, 29.01.2016 and 18.12.2017 respectively. EPPL filed Appeals No. 214 of 2016 and 75 of 2018 before the Hon'ble APTEL challenging the above orders passed by the Commission. The Hon'ble APTEL has disposed of the above Appeals vide order dated 09.07.2024. The Hon'ble APTEL framed 7 issues in the above Appeals. Issue No. 1 O & M Expenses, Issue No. 02 Wrongful Deduction of Rs. 5,05,62,000/-, Issue No. 03 Deduction of Rs. 76,74,098/- towards 'Reimbursement of SOC MOC' from AFC of FY 2014-15 considered as 'Non-Tariff Income', Issue No. 4 'Audit Fees' not allowed on Actual Basis, Issue No. 5 Deduction of 'Income from Unscheduled Interchange', Issue No. 6 Wrongful Computation of one of the components of working Capital i.e. 'receivables' by not considering the precedence followed by the State Commission in orders dated 27.11.2013 and 04.12.2014 in Petition No. 54 of 2012 and Issue No. 7, Wrongful Deduction of Rs. 3,09,93,185/- towards insurance. Issues Nos. 1,3,4,5 & 6 have been decided in favour of the Appellant and issue No. 07 has been disposed of as not pressed. Issue No. 02, i.e. wrongful deduction of Rs. 5,05,62,000/- was remanded to the Commission for fresh consideration strictly in terms of the conclusion made in the judgment. The Hon'ble APTEL further directed that the consequential orders shall be passed by the Commission expeditiously.

Notice dated 23.07.2024 was issued to the parties to appear and file their respective submissions with a copy to each other. PSPCL filed consolidated written submissions vide memo no. 6293 dated 19.08.2024 and EPPL filed consolidated written submissions on 17.09.2024. After hearing the parties on 09.10.2024, order was reserved.

2. Observations and Decisions of the Commission.

The Commission has examined the Order dated 09.07.2024 passed by the Hon'ble APTEL directing the Commission to revisit/pass fresh orders. While considering the directions contained in the said orders, the submissions made by EPPL and PSPCL have been examined and after hearing the parties the Commission decides and passes the order as under:

I IssueNo.1– O&M Expenses.

APTEL's Observations:

The Appellate Tribunal has observed as under:

128. to 143

144. *This Tribunal while considering the above has upheld the order dated 27.11.2013 passed by PSERC in Appeal No.30 of 2014 and Appeal No.35 of 2014 which reads as under: -*

“231. As per the information furnished by the Everest Power before the State Commission it is stated that it was not feasible to determine the base for allowable O&M expenses for the FY 2012-13. Though the expenses for the part of the FY 2012-13 are available, the same are insufficient for making a suitable assessment of base O&M expenses as per Punjab State Electricity Regulatory Commission Regulations, 2005.

232. In view of the above, the State Commission considered it appropriate to apply Central Commission's Regulations, 2009 as mandated in the present case and allow the O&M Expenses amounting to Rs. 912.89 lacs for the part of the FY 2012-13 which was worked out as 2% of the original cost of the project i.e., Rs. 63346.83 lacs.

233. In view of the above situation, we cannot conclude that the calculation made in respect of O&M expenses by the State Commission is wrong.”

145. Undisputedly, within the powers of the State Commission, it has assessed and determined the O&M expenses based on

the CERC norms, which has also been upheld by this Tribunal, thus, this principle of computation of base year O&M charge by the State Commission has attained finality as no further appeal was made, the PSERC now cannot revert to a different principle of determining base year O&M expense.

- 146. Therefore, at this stage of Truing up, it cannot be allowed to decide contrary to its decision which has been upheld by this Tribunal and cannot be said to be contrary to the PSERC Regulations.*
- 147. It is also a settled principle of law that the methodology cannot be revised or changed at the stage of Truing up of accounts.*
- 148. Further, the PSERC itself approved the capital cost of the Project at Rs.837.28 cr., and after that, calculated the base O&M expenses at 2% worked out to Rs.16.77cr. For FY2012-13 and Rs.12.08cr. From 12.07.2012 to 31.03.2013.*
- 149. Although the PSERC neither in its 27.11.2013 order nor in its Impugned Order mentioned the word "normative", but the principle adopted in the order dated 27.11.2013 is that O&M charges are approved based on norms rather than actual, and this is based on the underlying principle that there should be certainty of O&M expenses and the efficiency gain should be incentivized and hence, this is in accordance with Tariff Policy and such underlying principle also been upheld in various order of this Tribunal as it is in the consumer interest.*
- 150. The submission of the PSPCL is also rejected because the Appellant himself as asked O&M based on actual expenses, any claim contrary to the law is certainly bad in law and cannot be accepted.*
- 151. Therefore, we agree with the Appellant's contention that the O&M expenses as granted vide order dated 27.11.2013 are final, and accordingly, the Issue is decided in favour of the Appellant.*

PSPCL's Reply:

PSPCL submitted that in case of EPPL this Commission vide order dated 27.11.2013 in Petition No. 54 of 2012 had allowed O&M expenses

on the basis of the norms as provided for, however, while passing the orders dated 31.08.2015 and 29.01.2016, this Commission has adopted the principle of 'lower of normative and actuals'.

PSPCL further submitted that the Appellate Tribunal has held that methodology cannot be revised or changed at the stage of true up. In this regard, the Appellate Tribunal has held the issue relating to O&M Expenses in favour of EPPL. Accordingly, the O&M Expenses as granted *vide* order dated 27.11.2013 have been made final. PSPCL stated that no interest/carrying cost has been awarded to EPPL.

Accordingly, the O&M Expenses are to be restricted only to Rs. 12.08 Crores as worked out by this Commission in order dated 31.08.2015 passed in Petition No. 37 of 2014.

EPPL's Submissions:

EPPL submitted that it is noted that Issues 1 (O&M Expenses), have been decided in favour of the petitioner, with only consequential orders to be passed by this Commission, including working out the issue of carrying cost/interest.

EPPL requests the Commission to allow the claims of the petitioner in line with the directions of the Hon'ble Appellate Tribunal for Electricity in its order dated 09.07.2024.

Commission's Analysis:

In order dated 31.08.2015 for true up of FY 2012-13 the Commission had allowed Rs 8.16 Crores of O&M expenses on actual basis. The Appellate Tribunal observed that the Commission had adopted CERC Regulations for calculating base O&M expenses in its order dated 27.11.2013 while allowing AFC for FY 2012-13 on normative basis, so at the time of true-up it cannot deviate from the policy adopted. The

Commission had allowed capital cost of Rs 837.28 Crores in its order dated 04.12.2014 upto 12.07.2012, therefore O&M expenses at 2% of the Capital cost (837.28 Crore) works out to Rs. 12.08 Crores which is allowable as per Hon'ble APTEL's decision. Accordingly, the Commission allows Rs 3.92 (12.08-8.16) Crores in addition to Rs.8.16 Crores already allowed during true up of FY 2012-13 in petition no 37 of 2014.

II Issue No.2-Wrongful Deduction of Rs.5,05,62,000/-

APTEL's Observations:

The Appellate Tribunal has observed as under:

“ 153.....

154.

155. *As mentioned earlier in the discussion of O&M charges, the State Commission after computing O&M expenses under different heads as per Norms used to allow O&M expenses based on 'lower of actual or Norms'.*

156. *Therefore, first, it needs to be examined whether the Appellant received the consultancy charges in 2013-14, in 2013-14 The claim of the petitioner and expenses approved by the State Commission are tabulated below:*

(Rs. Crore)

O&M head	Actual Expense	Approved by the Commission
<i>Employee expense</i>	3.23	3.16
<i>Repair and Maintenance</i>	10.69	7.18
<i>Administrative and General expense</i>	11.36	6.96

157. *As A&G expense approved by the State Commission is less by 4.4crs than the actual expenditure claimed, so some part recovery of consultancy charges (5.06-4.4= 0.66 crs) has been made by the Appellant through approved A&G charges.*

158. *The Appellant made payment of consultancy charge of 5.06 crs in 2015-16 and claimed it under A&G charges in 2015-16.*

(Rs. Crores)

O&M head	Actual Expense	Approved by the Commission
<i>Employee expense</i>	<i>3.96</i>	<i>3.70</i>
<i>Repair and Maintenance</i>	<i>7.18</i>	<i>6.98</i>
<i>Administrative and General expense</i>	<i>12.33 inclusive of 5.06 crore on account of consultancy charges</i>	<i>7.07</i>

Note:(Para 4.2 of Order in Petition No.17 of 2017.)

159. *The State Commission approved A&G expense less by Rs 5.26 crs. than the actual expenditure claimed, therefore, no recovery of consultancy charges (5.06 crs) has been made by the Appellant through approved A&G charges.*

160. *Hence, we find the State Commission's contention that consultancy charges have been paid under A& G charges is erroneous.*

161. *It is important to note that as per the methodology of computation of O&M charges under different heads adopted by the State Commission, based on base year charges and escalation, it is not possible to recover such onetime payments made in later years because in the base year such expenditure was not there or not covered under 2% limit, also as mentioned earlier in case of O& M expense, the State Commission is adopting "lower of actual or norm".*

162. *In case, the commission sticks to payment of O&M expenses*

through norms, then through retention of efficiency gain, gradually it could have been recovered.

163. Also, the recovery of one-time expenditures like consultancy charges can be possible by considering this under additional capitalization and recovering through tariff or one-time payment recovered through tariff in that particular year.

164. Hence, the Appellant's proposal to consider as negative Non-tariff income (expense) and add into AFC is worth considering after adjusting part recovery in 2013-14.

165. Therefore, as per analysis, it is clear that consultancy charges have not been paid to the Appellant in 2015-16, hence the State Commission is directed to review its decision regarding this specific expenditure.”

PSPCL's Reply:

PSPCL submitted that the Appellate Tribunal has held that Rs. 0.66 Crores towards consultancy charges stands recovered by EPPL during FY 2013-14 (Para Nos. 156 and 157). This is also made clear by the findings in Para No. 164 where EPPL's proposal to consider consultancy charges as negative non-tariff income (expense) to be added into AFC has been subjected to the adjustment of such part recovery of Rs. 0.66 crores made in FY 2013-14.

PSPCL further submitted that therefore, the finding on the issue is limited to the consultancy charges not being paid to EPPL in FY 2015-16.

PSPCL submitted that the Appellate Tribunal has held that the consultancy charges have not been paid to EPPL in FY 2015-16 and in this regard, has directed this Commission to review its decision. The need for such clarification arose since the consultancy charges were

booked as an expense by EPPL in FY 2013-14 and reversed in FY 2014-15. Subsequently, as per EPPL, consultancy charges was thereafter booked and paid in FY 2015-16.

PSPCL stated that the consultancy charges on principle has been allowed by the Appellate Tribunal to be recovered by EPPL in its AFC.

PSPCL further stated that during FY 2013-14, EPPL had hired a consultant to carry out its functions, which otherwise had to be performed by itself. PSPCL submitted that EPPL cannot seek to have the entire cost as a pass through merely because the same was incurred. Even under the scheme of tariff determination, A&G expenses in terms of the applicable regulations are allowed to a generator. The entire scope of work purported to have been outsourced to a consultant falls squarely within the purview of the A&G Expenses. If that be the case, no cost on actuals can be awarded as pass through.

PSPCL further submitted that the claim of consultancy charges ought to be rejected by this Commission and in any event, no claim was either made towards interest/carrying cost or has been allowed by the Appellant Tribunal.

EPPL's Submissions:

EPPL in its submissions dated 14.09.2024 submitted that consultancy services were being rendered in FY 2012-13 and FY 2013-14, the invoice by such consultants was raised in FY 2014-15. The same was accounted for by the Petitioner in its books for FY 2013-14. However, based on an agreement with the consultant dated 01.07.2014, the Petitioner reversed the accounting entry in FY 2014-15 as the payment was contingent on tariff realization. However, it merits due consideration that such entries were for mere accounting purposes wherein the net effect was zero up to FY 2014-15.

EPPL further submitted that there was a reversal of expenses due to renegotiation and it cannot be treated as a "miscellaneous receipt", as no actual income was received, and the Petitioner merely deferred the due date of the expenses. The invoices were only raised and duly paid in FY 2015-16. Therefore, the reversed entry cannot be treated as "Non-Tariff Income" and deducted from AFC for FY 2014-15. Accordingly, the AFC for FY 2014-15 ought to be re-determined after removing the erroneous disallowance of Rs. 5.06 Crore as Non-Tariff Income.

Further EPPL submitted that AFC for FY 2015-16 ought to be allowed for Rs. 171.99 Crore instead of 166.68 Crore. in view of the expenditure of an amount of Rs. 5.06 Crore., being the expenditure incurred by Petitioner in FY 2015-16 towards consultancy charges paid to M/s Balaji.

EPPL submitted that the Hon'ble Tribunal, in its Order dated 09.07.2024, in paragraph 163 as extracted above, concluded that the recovery of one-time expenditures, such as consultancy charges, could be justified by categorizing them under additional capitalization. These costs can be recovered either through the tariff or as a one-time payment within the tariff for the specific year in question.

EPPL further submitted that the Hon'ble Tribunal in paragraph 164 of the Order dated 09.07.2024 , held that the Appellant's proposal to treat this as a negative Non-tariff income (expense) and include it in the AFC, after adjusting for partial recovery in 2013-14, is worthy of consideration for purposes of determining AFC for FY 2015-16.

EPPL submitted that in paragraphs 163 and 164 of its judgment and order dated 09.07.2024, the Hon'ble Tribunal has remanded Issue No. 2, concerning the "Wrongful Deduction of Rs. 5,05,62,000/-," back to the Commission with the specific mandate to determine the methodology for implementing the following directives:

- (a) Rs. 5.06 Crore has been wrongly considered as Non-Tariff Income in FY 2014-15 and the same ought not to have been reduced for determining AFC for FY 2014-15.
- (b) For determining AFC for FY 2015-16, the recovery of one-time expenditures like consultancy charges be considered under additional capitalization and allowed to be recovered through tariff or one-time payment recovered through tariff in that particular year.
- (c) Accordingly, the Hon'ble Tribunal further directed that the Appellant's proposal to consider as negative Non-Tariff income (expense) and add into AFC be considered after adjusting part recovery in 2013-14 for the AFC to be determined for FY 2015-16.

EPPL submits that Regulation 28(2), of the Tariff Regulations 2005, provides that the Commission while determining the O&M expenses for generation functions within the State, the Commission shall be guided, as far as feasible, by the principles and methodologies of CERC on the matter, as amended from time to time.

As per Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

“9. Additional Capitalisation. (1) The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

(i) Undischarged liabilities;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares within the original scope of work, subject to the provisions of regulation 8;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(v) Change in law

Provided that the details of works included in the original scope of work along with estimates of expenditure, undischarged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.

(2) The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(ii) Change in law;

(iii) Deferred works relating to ash pond or ash handling system in the original scope of work;

(iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of powerhouse attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become for successful and efficient plant operation; and

(v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:

Provided that in respect sub-clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009.

EPPL submitted that in light of Regulation 9(2)(iv), any additional works or services, which have become essential for the efficient and successful operation of the plant but were not included in the original capital cost, shall be considered for additional capitalization for the purpose of tariff determination, effective from 1.4.2009. In this regard, it is submitted that the consultancy services rendered by M/s Balaji were necessary and integral to ensuring the efficient and smooth operation of the plant. As such, these services qualify as additional works/services required for the successful operation of the plant and ought to be admitted by this Commission under the said regulation. Accordingly, it is prayed that this Commission be pleased to allow the sum of Rs.5.06 Crores towards the essential consultancy services provided by M/s Balaji to the Petitioner.

EPPL requests the Commission to grant the claims of the petitioner in line with the directions of the Hon'ble Appellate Tribunal for Electricity in its order dated 09.07.2024.

Commission's Analysis:

EPPL had not paid M/s Balaji Operations and Maintenance Services Pvt. Ltd., the consultancy charges provisioned in its books in FY 2013-14 and therefore had reversed it in FY 2014-15. The Appellate Tribunal has observed in para 157 of its order that some part recovery of consultancy charges amounting to Rs. 0.66 Crores (5.06-4.40) has been made through approved A&G charges in FY 2013-14.

EPPL had subsequently released payment to M/s Balaji in FY 2015-16. The Appellate Tribunal observes that the recovery of one-time expenditures like consultancy charges can be possible by considering this under additional capitalization and recovering through tariff or one-time payment recovered through tariff in that particular year. The Commission observes that this being an O&M expense cannot be

considered as a part of capex. Normative A&G expenses are being allowed to EPPL for operations of the plant. These Consultancy charges paid to M/s Balaji for running the plant (which EPPL was supposed to run itself in the usual course) are not in nature of capital expenditure which had become necessary or additional in nature for the efficient plant operations in terms of CERC Regulations 9(2)(iv) quoted above.

The Commission had reduced Rs 5.06 Crores as non-tariff income from AFC of FY 2014-15 since EPPL had shown the same as "other income - creditors written back" in its books of accounts. Since it was just a book entry and no income was earlier generated by EPPL, **the Commission allows Rs 4.40 (5.06-0.66) Crores in the AFC for FY 2014-15 on account of erroneous deductions made, as observed by APTEL.**

III Issue No 3: Deduction of Rs. 76,74,098/- towards 'Reimbursement of SOC MOC' from AFC of FY2014-15 considered as 'Non-Tariff Income'.

APTEL'S Observations:

The Appellate Tribunal has observed as under:

"167.

168. *The Appellant claimed that Rs.0.77 Cr. booked in the audited accounts of FY 2014-15 about reimbursement of System Operation Charges (in short "SOC"), Market Operation Charges (in short "MOC"), Unified Load Despatch and Communication (in short "ULDC") Charges & National Load Despatch Centre – Power grid portion (in short "NLDC") Charges, and are recoverable from beneficiaries in accordance with Regulation 42A of the CERC (Terms and Conditions of Tariff) Regulations.*

169. *It is important to note here that these charges are regulated as per CERC Regulations.*

170. *Also, Clause 4.6 of the Power Purchase Agreement (in short "PPA") and Clause 4.7 of the Power Sale Agreement (in short "PSA") provide that PTC/ PSPCL shall bear all applicable RLDC/SLDC charges, in fact, these expenses/charges have already been excluded under the*

Tariff Filing Forms of the 'O&M Expenses' for FY 2014-15, and the Appellant has not claimed such charges in FY 2014-15 under O&M Expenses.

171. *Undisputedly, these charges like reimbursement in accordance with CERC Regulations, therefore, such reimbursement of expenses is neither an income nor an expense in the hand of the Appellant, further, the Appellant has not earned any income on account of such reimbursement collected from the PTC.*
172. *We are satisfied that the State Commission has erred in considering the Rs.0.77 cr. towards 'Reimbursement of SOC, MOC ULDC & NLDC Charges' as 'Non-Tariff Income/Miscellaneous Receipt' and deducting it from AFC of FY 2014-15.*
173. *The Impugned Order is set aside on this count, and Issue No. 3 is decided in favour of the Appellant."*

PSPCL's Reply:

PSPCL submitted that the Appellate Tribunal has held that the charges such as of the present nature are in the nature of reimbursement and are in accordance with applicable regulations. Therefore, Appellate Tribunal has held that reimbursement of expenses cannot be considered as 'Non-Tariff Income/Miscellaneous Receipt' and accordingly cannot be deducted from AFC of FY 2014-15.

PSPCL stated that no interest/carrying cost has been awarded to EPPL by the Appellate Tribunal.

EPPL's Submissions:

EPPL prays to the Commission to allow the claims of the petitioner amounting to Rs.0.77 Crores in line with the directions of the Hon'ble Appellate Tribunal for Electricity in its order dated 09.07.2024.

Commission's Analysis:

The Commission had considered Rs 0.77 Crores as Non-tariff income as it was booked as "other income" in the books of accounts for FY 2014-

15.The Appellate Tribunal has held that reimbursement of expenses cannot be considered as 'Non-Tariff Income/Miscellaneous Receipt' and accordingly cannot be deducted from AFC of FY 2014-15.Accordingly,the Commission allows Rs 0.77 Crores towards Reimbursement of SOC MOC for FY 2014-15.

IV Issue No.4-'Audit Fees' not allowed on Actual Basis

APTEL's Observations:

The Appellate Tribunal has observed as under:

"175. The Appellant submitted that Proviso to Regulation 28 (2) (b) of the PSERC Tariff Regulations inter-alia states as below: "Provided that any expenditure on account of license fee, initial or renewal, fees for determination of tariff and audit fee shall be allowed on actual basis over and above the A&G expenses approved by the Commission."

176. It is clear from the said Regulation that Audit fees shall be allowed on an actual basis over and above A&G expenses approved by the Commission, therefore, the PSERC wrongly disallowed Audit fees in violation of Regulation 28 (2) (b) of the PSERC Tariff Regulations.

177. As already noted, the Regulations once framed and notified are binding, and the State Commission cannot act contrary to the Regulation.

178.The Respondents have not filed their written submissions on the issue except that the PSPCL as part of its reply has contended that the said provision is only applicable to the Government Companies where the audit is mandated and needs to be done, the same cannot be simply applied to the Appellant especially when it is not clear as to why the audit is mandatory or compulsory for the Appellant.

179. We decline to accept such a contention as the State Commission has not made any observation on whether such an audit is allowed or not, instead, only disallowed the same stating that it has been part of the O&M expenses.

180. Therefore, the Audit fees have to be allowed over and above the A&G expenses, the Issue No. 4 is decided in favour of the Appellant."

PSPCL's Reply:

PSPCL submitted that relying on Proviso to Regulation 28 (2) (b), the Appellate Tribunal has held that audit fees have to be allowed over and above the A&G Expenses.

PSPCL stated that no interest/carrying cost has been awarded to EPPL by the Appellate Tribunal.

EPPL's Submissions:

EPPL prays to the Commission to allow the claims amounting to Rs. 0.39Crores in line with the directions of the Appellate Tribunal in its order dated 09.07.2024.

Commission's Analysis:

As per Regulations any expenditure on account of license fee, fee for determination of tariff and audit fee is allowed on actual basis over and above the A&G expenses .**The Commission therefore, allows Rs 0.24Crores for FY 2012-13 and Rs.0.15Crores for FY 2013-14 on actuals as claimed by EPPL over and above the A&G expenses allowed for that financial year as per Appellate Tribunal decision.**

V Issue No 5- Deduction of 'Income from Unscheduled Interchange'

APTEL'S Observations:

The Appellate Tribunal has observed as under:

"182. The Appellant submitted that the deduction is contrary to Regulation 34 of PSERC Tariff Regulations, 2005, the UI /Deviation Charges, is an arrangement completely outside the purview of tariff determination process and is purely an arrangement between the entity (generator in this case) and the Grid, the beneficiary, is entitled at all times to receive its scheduled power, or UI revenue in case of any shortfall, and therefore is neutral to any revenue or cost to the generator towards UI/Deviation, in any case the energy charges are levied by the Appellant on the basis of Scheduled Energy, and therefore, UI charges and expenses/Deviation Charges

(paid and received) have to be on account of the generator and not to be accounted in the AFC.

183. *In the instant case, while approving AFC, any income i.e. UI/Deviation charges (received) cannot be deducted from AFC under the head 'Other Income', accordingly, corresponding UI/Deviation charges (paid) should also not be considered by the PSERC while approving AFC.*

184. *Also contended that if UI/Deviation charges (received) are to be deducted from AFC, under 'Non-Tariff Income', then the expenses of UI/Deviation charges (paid) should also be allowed as part of AFC.*

185. *Therefore, the Income and Expenses associated with UI cannot be considered as non-tariff income, the issue is decided in favour of the Appellant."*

PSPCL's Reply:

PSPCL stated that the Appellate Tribunal has held that UI deviation charges and expenses are outside the purview of tariff determination process and is purely an arrangement between the generator and the grid. As the beneficiary at all times is entitled to receive its scheduled power or UI revenue in case of any shortfall therefore, the beneficiary is neutral to any revenue or cost towards UI/deviation. Accordingly, the Appellate Tribunal has held that income and expenses associated with UI cannot be considered as non-tariff income.

PSPCL stated that no interest/carrying cost has been awarded to EPPL by the Appellate Tribunal.

EPPL's Submissions:

EPPL prays to this Commission to allow an amount of Rs 0.74 Crores in line with the directions of the Appellate Tribunal for Electricity in its order dated 09.07.2024

Commission's Analysis:

The Appellate Tribunal has held that income and expenses associated with UI cannot be considered as non-tariff income and if UI/Deviation charges (received) are to be deducted from AFC, under 'Non-Tariff Income', then the expenses of UI/Deviation charges (paid) should also be allowed as part of AFC. **The Commission therefore, allows claim of EPPL amounting to Rs 0.74 Crores for FY 2013-14.**

VI Issue No.6 -Wrongful computation of one of the components of working capital.

APTEL Observations:

The Appellate Tribunal has observed as under:

"187.

188.the Appellant submitted that as per Regulation 30 of PSERC Tariff Regulations, Working Capital includes O&M Expenses for one month, Receivables equivalent to two months and Maintenance spares @ 15% of O&M Expenses.

189. The State Commission vide Orders dated 27.11.2013 and consequential Order dated 04.12.2014, had considered 'Receivables' as Annual Fixed Cost approved for FY 2012-13 (Partial Year) and FY 2013-14 before adjustment of 'Non-Tariff Income', such methodology of computation of Working Capital was upheld by this Tribunal vide Judgment dated 12.11.2014 in Appeal Nos.30 and 35 of 2014 and Supreme Court vide Order dated 24.04.2015 in Civil Appeal Nos. 3346-3347 of 2015 and also stand implemented vide consequential Order dated 04.12.2014.

190. Further, claimed that the PSERC in the Impugned Order has considered "Receivables" as AFC for 2 months after deducting Non-Tariff Income because "Receivables" is the amount to be received by the Petitioner after adjusting Non-Tariff Income, thus, computation of "Receivables" is contrary to PSERC's methodology adopted vide Orders dated 27.11.2013 and consequential Order dated 04.12.2014, wherein, PSERC had considered 'Receivables'

as Annual Fixed Cost approved for FY 2012-13 (Partial Year) and FY 2013-14 prior to adjustment of 'Non-Tariff Income'.

191.Considering, that the methodology cannot be changed or revised during the True Up stage, the order of the State Commission is erroneous, accordingly, this Issue is decided in favour of the Appellant.”

PSPCL's Reply:

PSPCL submitted that the Appellate Tribunal has held that this Commission has erred in considering 'receivables' as a component of working capital after deducting non-tariff income. EPPL further submitted that the Appellate Tribunal has held that the methodology followed by this Commission is in contravention to its earlier methodology followed in orders dated 27.11.2013 and 04.11.2014. Accordingly, the Appellate Tribunal has held that methodology cannot be changed or revised at the stage of true-up.

PSPCL stated that no interest/carrying cost has been awarded to EPPL by the Appellate Tribunal.

EPPL's Submissions:

EPPL prays to this Commission to allow an amount of Rs 2.21 Crores in line with the directions of the Appellate Tribunal for Electricity in its order dated 09.07.2024.

Commission's Analysis:

The Appellate Tribunal has held that the methodology followed by this Commission is in contravention to its earlier methodology followed in orders dated 27.11.2013 and 04.12.2014. Therefore, working capital interest on revised receivables (prior to adjustment of 'non-tariff income') is allowed.

EPPL has wrongly determined the working capital interest on revised

receivables as Rs. 2.21 Crores whereas interest on working capital allowable for FY 2012-13, FY 2013-14 and FY 2014-15 works out to Rs.0.63 Crore as determined in Table No 1, 2 and 3 below.

The Commission vide order dated 31.08.2015 in petition no 37 of 2014 in true up of FY 2012-13 and FY 2013-14, had determined Non-tariff income of Rs 1.64 Crores and Rs.1.44 Crores for FY 2012-13 and FY 2013-14 respectively and Rs 6.28 Crores for FY 2014-15 in order dated 20.12.2016. Therefore, working capital interest on revised receivables prior to non-tariff income is determined as under:

Table No 1: Revised calculation of Working Capital interest for FY 2012-13
(Rs. Crore)

Sr. No	Allowed in true up in Petition no 37 of 2014 dated	Allowed in true up in Petition no 37 of 2014 (order dated 31.08.2015)	Allowed in Review Petition No 9 of 2015 (order dated 29.01.2016)	Now allowed by the Commission (without NTI)
1	O&M expenses	8.16	8.18	12.32
2	Depreciation	29.40	29.40	29.40
3	Interest and Finance	56.57	55.38	55.38
4	Return on equity	28.05	28.05	28.05
5	Working capital	3.13	3.04	3.25
6	Total AFC	125.31	124.05	128.40
7	Less Non-tariff income(NTI)	-1.84	-1.84	0.00
8	Annual fixed cost (considered for Receivable)	123.47	122.21	128.40
	Calculation of Working capital requirement and interest			
9	Maintenance 15% of O&M(Sr no 1)	1.22	1.23	1.85
10	O&M for one month (Sr no 1)	0.94	0.94	1.03
11	Receivable for 2 months(Sr no 8)	20.57	20.37	21.40
12	Total working capital requirement (9+10+11)	22.73	22.54	24.28
13	interest on working capital @ 13.38% (on Sr no 12)	3.13	3.04	3.25

The Commission allows an additional working capital interest amounting to Rs. 0.21 Crores (3.25-3.04) as determined above for FY 2012-13

Table No 2: Revised calculation of working Capital Interest for FY 2013-14

(Rs. Crore)

Sr.No	Particulars	Allowed in true up in Petition No 37 of 2014 (order dated 31.08.2015)	Allowed in Review Petition No 9 of 2015 (order dated 29.01.2016)	Now allowed by the Commission (without NTI)
1	O&M expenses	17.75	17.79	17.94
2	Depreciation	40.87	40.87	40.87
3	Interest and Finance	72.71	73.67	73.67
4	Return on equity	38.96	38.96	38.96
5	Working capital	4.48	4.51	4.58
6	Total AFC	174.77	175.80	176.02
7	Less Non-tariff income(NTI)	-1.44	-1.44	0.00
8	Annual fixed cost (considered for Receivable)	173.33	174.36	176.02
	Calculation of Working capital requirement and interest			
9	Maintenance 15% of O&M(Sr no 1)	2.66	2.67	2.69
10	O&M for one month(Sr no 1)	1.48	1.48	1.50
11	Receivable for 2 months (Sr no 8)	28.89	29.06	29.34
12	Total working capital requirement (9+10+11)	33.03	33.21	33.53
13	Interest on working capital @13.66% (on Sr no 12)	4.48	4.51	4.58

The Commission allows an additional working capital interest amounting to Rs. 0.07 crore (4.58-4.51) as determined above for FY 2013-14.

Table No. 3: Revised calculation of working capital interest for FY 2014-15

(Rs. Crore)

Sr.No	Particulars	Allowed in true up in Petion No 55 of 2015 (order dated 20.12.2016)	Now allowed by the Commission(without NTI)
1	O&M expenses	16.39	16.39
2	Depreciation	40.79	40.79
3	Interest and Finance	69.93	69.93
4	Return on equity	38.98	38.98
5	Working capital	4.38	4.73
6	income tax	8.17	8.17
7	Total AFC	178.64	178.99
8	Less Non tariff income	-6.28	0.00
9	Annual fixed cost (considered for Receivable)	172.36	178.99
	Calculation of Working capital requirement and interest		
10	Maintenance 15% of O&M(Sr no 1)	2.46	2.46
11	O&M for one month(Sr no 1)	1.37	1.37
12	Receivable for 2 months(Sr No.9)	27.33	29.83
13	Total working capital requirement(10 +11+12)	31.16	33.66
14	interest on working capital@14.06%(on Sr no 13)	4.38	4.73

The Commission allows an additional working capital interest amounting to Rs. 0.35 Crore (4.73-4.38) as determined above for FY 2014-15.

The Commission therefore allows working capital interest amounting to Rs.0.63 Crores (0.21+0.07+0.35) for FY 2012-13,FY 2013-14 and FY 2014-15.

Summary of Expenses allowed by the Commission

The Commission therefore allows the following expenses to EPPL in compliance to APTEL's order dated 09.07.2024:

Table No 4: Summary of Expenses allowed

(Rs. Crore)

Sr.No	Particulars	Claimed by EPPL	Allowed by the Commission
1	O&M Expenses for FY 2012-13	3.92	3.92
2	Consultancy Charges for FY 14-15	5.06	4.40
3	Reimbursement of SOC MOC Expenses for FY 2014-15	0.77	0.77
4	Audit fees for FY 2012-13 & FY 2013-14	0.39	0.39
5	Unscheduled Interchange Expenses for FY 2013-14	0.74	0.74
6	Interest on Working Capital for FY 2012-13, FY 2013-14 and FY 2014-15.	2.21	0.63
	Total	13.09	10.85

VI Carrying cost

EPPL Submissions:

EPPL submitted that PSPCL, in its submissions, erroneously contends that no interest should be awarded to the Petitioner. EPPL submitted that the Hon'ble Tribunal, by allowing Appeals Nos. 214 of 2016 and 75 of 2018, has granted the prayer for carrying cost/interest as sought by the Appellant in the appeals. Consequently, the carrying cost/interest stands allowed as part of the relief awarded by the Hon'ble Tribunal. The prayer regarding carrying cost/interest as sought in Appeal No.214 of 2016 is extracted below:

“20. RELIEFS SOUGHT:-

In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to;

(c) Allow Carrying Cost / Interest on difference between Annual Fixed Cost as determined by Respondent NO.1 vide the Impugned Orders by considering income and expenses cited at Para 8 in the Grounds of Appeal as

mentioned above contrary to the provisions of PSERC (Terms and Conditions for Determination of Tariff) Regulations 2005 and Annual Fixed Cost as allowable to the Appellant in the instant Appeal from the date of the Impugned Order dated 31.08.2015 to the date of passing of the Judgment in the instant Appeal by this Hon'ble Tribunal at the applicable rates as. per Regulation 9(4) of PSERC (Terms and Conditions for Determination of Tariff) Regulations 2005."

EPPL further submitted that in giving the directive to pass consequential relief to the Commission, the Hon'ble Tribunal directed that the interest/carrying cost be worked out by this Commission and allowed to the Petitioner. Without prejudice to this assertion, the following submissions are made on the issue of interest. Regulation 9(4) of the PSERC Tariff Regulations, 2005, inter alia, states as follows:

"While approving such expenses/revenues to be adjusted in the future years as arising out of the Review and/or Truing up exercise, the Commission may allow the carrying cost as determined by the Commission of such expenses/revenues. Carrying costs shall be limited to the interest rate approved for working capital borrowings."

The above Regulation clearly establishes that while truing up of expenses, the Petitioner is to be allowed carrying cost on revenue gaps.

EPPL stated that in so far as the workings of the consequential relief, including the interest for all issues, i.e., Issue 1 (O&M Expenses); Issue 2 (Wrongful Deduction of Rs. 5,05,62,000/-); Issue 3 (Deduction of Rs. 76,74,098/- towards 'Reimbursement of SOC MOC' from AFC of FY 2014-15 considered as 'Non-Tariff Income'); Issue 4 (Audit Fees not allowed on Actual Basis), Issue 5 (Deduction of 'Income from Unscheduled Interchange'); and Issue 6 (Wrongful computation of one of the components of working capital; i.e., 'receivables,' by not considering the precedence followed by the State Commission in orders dated

27.11.2013 and 04.12.2014 in Petition No. 54 of 2012), it is submitted that, pursuant to the order dated 09.07.2024 by the Hon'ble APTEL, the workings on the issue including the quantum of carrying cost calculated up to 09.07.2024 is annexed with the petition. The summary of arrears with carrying cost is as below:

Table No 5: Summary of Arrears and Carrying Cost as per APTEL Order dated 09.07.2024 claimed by EPPL

(Amount in Rs.)

S.No	Particulars	Arrears	Carrying cost on Arrears till 9.07.2024	Total
A	B	C	D	E=C+D
1	O&M Expenses	3,92,00,000	4,29,19,973	8,21,19,973
2	Creditor's Written back	5,05,62,000	3,96,51,344	9,02,13,344
3	Reimbursement of SOC MOC charges	76,74,098	84,02,349	1,60,76,447
4	Audit fees for FY 2012-23 & FY 2013-14	38,82,000	42,50,391	81,32,391
5	Unscheduled Interchange Expenses	74,16,000	81,19,758	1,55,35,758
6	Interest on Working Capital	2,21,00,000	2,41,97,229	4,62,97,229
	Total	13,08,34,098	12,75,41,044	25,83,75,142

EPPL requests the Commission to allow the claims with interest/carrying cost as detailed above in line with the directions of the Hon'ble Appellate Tribunal for Electricity in its order dated 09.07.2024.

PSPCL's Reply:

PSPCL submitted that no claim was either made towards interest/carrying cost or has been so allowed by the Appellate Tribunal.

Commission's Analysis:

The Commission refers to Hon'ble APTEL's orders which reads as under:

“The State Commission shall pass consequential orders afresh in strict terms as noted herein.”

The Commission observes that the expenses allowed are for past years and APTEL had allowed the appeal with consequential relief .

Accordingly ,the Commission refers to the provision of Regulation 9 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 (as amended) for determining the carrying cost which provides as under :

“9. REVIEW AND TRUING UP

1.
2.
3. *The Revenue Gap of Ensuing Year shall be adjusted as a result of Review and Truing Up exercises.*
4. *While approving such expenses/revenues to be adjusted in the future years as arising out of the Review and / or Truing up exercises, the Commission may allow the carrying costs .Carrying costs shall be limited to the interest rate approved for working capital borrowings.*
5.*additional supply is ordinarily met by the beneficiary category.*

As per the above Regulations, the Commission may allow the carrying costs as determined by the Commission of such expenses/revenue.

Carrying costs shall be limited to the interest rate approved for working capital borrowings. The provision of Regulation 30 (5) of Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 (as amended) regarding Interest rate on working capital provides as under:

“Regulation 30:

- (5) *The rate of interest on working capital shall be equal to the actual rate of interest paid/payable on loans by the licensee (s) or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is lower. The interest on working capital shall be payable on normative basis notwithstanding that the licensee (s) has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on the normative figures.*

Therefore, the Commission allows carrying cost on the additional cost allowed in this order as per Regulation 9 and Regulation 30(5) of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005.

The Petition is disposed off accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Dated: 13.11.2024
Chandigarh.