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

Petition No.30 of 2014
Date of Order: 05.09.2014

In the matter of : Aggregate Revenue Requirement (ARR) & Determination of Tariff for FY 2014-15 under Section 62, 64 and 86 of the Electricity Act, 2003 read with the Regulation 13 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 (including its amendments) and other applicable relevant Regulations and Guidelines of the Commission for the Electricity Business of Punjab State Transmission Corporation Limited (PSTCL) and State Load Despatch Centre (SLDC)

AND

In the matter of: Petition for pass through of entire Minimum Alternate Tax (MAT) paid by Punjab State Transmission Corporation Limited (PSTCL) during Financial Year 2013-14 in the ARR for FY 2014-15 pursuant to Regulation 32 & 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 and its subsequent amendments.

AND

In the matter of: Punjab State Transmission Corporation Limited(PSTCL), PSEB H.O. The Mall, Patiala.

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

ORDER

Punjab State Transmission Corporation Limited (PSTCL) filed this petition for pass through of entire Minimum Alternate Tax (MAT) paid by PSTCL during Financial Year 2013-14 in the ARR for FY 2014-15 in terms of Regulations 32 and 45 of the Punjab State Electricity Regulatory Commission

(Terms and Conditions for Determination of Tariff) Regulations, 2005 (Tariff Regulations, 2005) and its amendments. PSTCL has submitted that Regulation 32 of the Tariff Regulations, 2005, specifies as under:-

> "32. Tax on income
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> (a) Obligatory taxes, if any, on the income of the generating company or the licensee from its core licensed business shall be computed as an expense and shall be recovered from the customers / consumers. Provided that tax on any income other than the core / licensed business shall not constitute a pass through component in tariff and tax on such other income shall be payable by the generating company or the licensee.
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> (b) Tax on income, if actually liable to be paid, shall be limited to tax on return on equity allowed, excluding incentives.
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> (c) The tax on income shall be considered at income tax rate including surcharges, cess, etc. as applicable during the relevant year in accordance with the provisions of Income Tax Act, 1961 duly amended from time to time.
>
> (d) The benefits of tax holiday and the credit for carrying forward losses applicable as per the provisions of the Income Tax Act, 1961 shall be fully passed on to the customers / consumers".

PSTCL has submitted that in some other States, the State Commissions are allowing the actual tax including MAT paid and is not restricting the claim of the tax to the extent of the tax on Return on Equity, unlike PSERC in terms of regulation 32 reproduced above. PSTCL has further submitted that in the FY 2012-13 and FY 2013-14, the income of the petitioner liable to MAT was higher mainly on account of the fact that various expenditures as projected by the petitioner and the other expenditure allowed by the Commission for investment during FY 2012-13 and FY 2013-14 did not mature. As a result the revenue receipts from PSPCL allowed as transmission tariff exceeded the actual expenditure incurred by the petitioner. The excess revenue thus earned by the petitioner will not be retained by the petitioner as the same will be adjusted in the ARR for FY 2014-15 onwards through review / true up of the ARRs of FY 2012-13 and FY 2013-14. However, on account of provision of MAT, PSTCL had to pay higher tax but there is no provision of submission of revised return of MAT in the Income Tax Act (ITA) for claiming refund of MAT already paid on the basis that excess revenue will be adjusted by the Commission in subsequent years. The petitioner has submitted that in case full MAT paid by it, is not allowed as pass through in ARR for FY 2014-15, the cash-flow of the petitioner will be adversely affected. The petitioner has further submitted that regulation 45 of Tariff Regulations, 2005, empowers the Commission to remove any difficulty, in case difficulty arises in giving effect to any regulation of the Tariff Regulations.

The petitioner has further submitted that there is provision in the Income Tax Act, under which MAT actually paid gets adjusted as and when the regular income tax is paid in the subsequent years and in that event there will not be any claim of regular tax to the extent of MAT already paid. Thus, there are no additional implications on the tariff to the consumers of the State. PSTCL prayed for the relief by way of removing difficulties in implementing the Tariff Regulations relating to tax on income, in view of the peculiar circumstances as submitted, and to allow the pass through of the actual amount of tax as MAT paid by the petitioner for the FY 2013-14 in the ARR/ Tariff of FY 2014-15.

2. The petition was admitted vide Order dated 27.05.2014. Punjab State Power Corporation Limited (PSPCL) was made respondent and was directed to file its response to the petition by 10.06.2014. PSPCL filed reply vide C.E./ARR & TR memo No.5714/TR-5/637 dated 12.06.2014. PSPCL submitted that PSTCL earned book profit more than Return on Equity, which means the consumer had to pay more amount than allowed by Tariff Regulations. If MAT is also allowed as pass through, on this extra profit, then

there would be double burden on the consumers. PSPCL submitted that PSTCL has already earned extra revenue in the past years and would also be allowed RoE at the rate of 15.50% in the future years and as its expenses are not generally disallowed by the Commission, the amount of MAT paid by it can be easily borne by PSTCL. The MAT actually paid will also be adjusted against the payment of income tax if PSTCL falls into the normal tax provisions within 10 years as per Income Tax Act, 1961. PSPCL further submitted that the Tariff Regulations provide that allowance of tax paid be limited upto the amount of tax on Return on Equity. PSPCL submitted that the excess MAT paid by PSTCL may not be allowed and allowance of MAT paid be limited to the tax on the amount of RoE.

3. PSTCL filed rejoinder to the response of PSPCL vide Financial Advisor PSTCL memo No.1577/FA/ARR-401 dated 19.06.2014. PSTCL reiterated its submissions and prayed to invoke Regulation 45 of Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 for removing genuine difficulties to be faced by PSTCL on account of disallowance of MAT on additional profit and allow the excess MAT paid by it as the pass through in the ARR of FY 2014-15.

4. The Commission has considered the submissions of PSTCL and PSPCL alongwith the Tariff Regulations 2005. The Commission observes that windfall ‘book profit’ made by PSTCL is on account of non-execution of projects / works included in ARR for FY 2012-13 and FY 2013-14 and admittedly not on account of any efficiency on the part of PSTCL in execution of these projects / works. It is expected from every Licensee to plan its projects carefully and only then include the necessary amount that could be expended during the year, in its ARR for that financial year. On account of this huge ‘book profit’, PSTCL has to pay MAT exceeding the maximum limit as provided in regulation 32 of the Tariff Regulations, 2005, as regulation 32 limits the tax on income due to return on equity (RoE) only. Regulation 32 of PSERC Tariff Regulations, 2005 is absolutely clear and unambiguous and no difficulty arises in giving effect to it. Invocation of regulation 45 for removing a non-existing difficulty, is not justified. Further the Commission notes that MAT

paid during FY 2013-14 will be adjusted by Income Tax Department during subsequent years after setting off all losses of previous years of PSTCL as per Section 115JAA of Income Tax Act, 1961 which provides for calculation and carry forward of MAT credit in respect of MAT paid under Section 115 JB(1) for the assessment year commencing on 01.04.2006 and any subsequent assessment year. The amount of tax paid under Section 115 JB is allowed to be carried forward to the extent of the MAT paid in excess of the regular income tax and is set off against tax payable upto the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under provisions of Section 115JAA. Thus excess amount of MAT paid by PSTCL in 2013-14 would be taken care of during the next ten years through tax adjustments allowed under Income Tax Act, 1961.

PSTCL has further submitted that payment of MAT, if not allowed to be a pass through in ARR for FY 2014-15, would impact cash flow for 2014-15. It is pertinent to mention here that no working capital loans have been taken by PSTCL during FY 2013-14. PSTCL had shown a revenue surplus of Rs.224.86 crore for FY 2013-14 (Review) as per ARR Petition for FY 2014-15, which means that revenue surplus of Rs.224.86 crore was available with PSTCL in FY 2013-14 and it had no shortage of cash / working capital. Therefore the plea of PSTCL that payment of MAT impacts the cash flow of PSTCL for FY 2014-15 has no merit. PSTCL has further submitted that the excess revenue for FY 2012-13 and FY 2013-14 will not be retained by it as the excess revenue gets adjusted in the revenue requirements of the subsequent financial years and thus there would be a serious impact on the cash flow of the petitioner. PSPCL on the contrary submitted that PSTCL has already earned extra revenue in previous financial years and will be allowed RoE at the rate of 15.50% in future years and the expenses of the petitioner are not generally disallowed by the Commission, therefore, PSTCL can easily bear extra MAT. PSPCL further submitted that PSTCL earned book profit more than RoE, for which consumers had to pay more amount than allowed by tariff regulations. If MAT is also allowed as pass through on this extra profit, it will be a double burden on the consumers. The Commission considers the view of PSPCL as just and fair.

This Commission has already passed the Tariff Orders for PSTCL and PSPCL for FY 2014-15 and has allowed tax of Rs.19.68 crore for FY 2013-14 limited to RoE in accordance with PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 towards ARR for PSTCL and has consciously rejected the pass through of excess MAT paid by PSTCL during previous years.

In view of above discussion, the prayer of the petitioner is not acceded to.

Sd/-	Sd/-	Sd/-
(Gurinder Jit Singh) **Member**	**(Virinder Singh)** **Member**	**(Romila Dubey)** **Chairperson**

Chandigarh
Dated: 05.09.2014