

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SCO 220-21, SECTOR – 34-A, CHANDIGARH**

**Petition No. 55 of 2014**  
**(Suo-Motu)**  
**Date of Order: 14.05.2015**

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

In the matter of: Compliance of Judgment dated 11.09.2014 of Appellate Tribunal for Electricity in Appeal No.174 of 2012 filed by Punjab State Power Corporation Limited Versus PSERC impugning the Tariff Order dated 16.07.2012 passed by the Commission for the year 2012-13 in ARR Petition No.69 of 2011.

AND

In the matter of : Punjab State Power Corporation Limited, Patiala.

**ORDER**

The Commission passed Tariff Order dated 16.07.2012 in Petition No.69 of 2011 whereby the Commission approved the Annual/Aggregate Revenue Requirement of Punjab State Power Corporation Limited (PSPCL) and determined the tariff for PSPCL for FY 2012-13 and reviewed the finances of PSPCL for FY 2011-12. PSPCL filed Appeal No.174 of 2012 before Hon'ble APTEL against above said Tariff Order under Section 111 of the Electricity Act, 2003. The appellant raised following five issues in the Appeal:-

- (i) O & M and Employees cost,
- (ii) Improvement in efficiency and loss level,

- (iii) Return on Equity,
- (iv) Generation Norms and Target for Recovery of Fixed Charges and Incentive,
- (v) Interest and Finance Charges due to Diversion of Funds.

The Hon'ble APTEL decided the Appeal vide Judgment dated 11.09.2014. The summary of findings and directions of Hon'ble APTEL are reproduced below:

**“40. Summary of Finding**

40.1. The State Commission has, in the impugned order, wrongly effected a reduction of 17.22% in the employees cost of the appellant on the ground that the employees cost of the appellant are high. The approach of the State Commission in reducing the employees cost to the extent of 17.22% on the ground that the employees cost of the appellant is higher and the appellant does not have control over its employees cost is erroneous and arbitrary. Further, the State Commission is not justified in applying the Wholesale Price Index (WPI) to increase in employees cost and dearness allowance. We do not approve this approach of the State Commission. We agree to the findings laid down by this Appellate Tribunal in its judgments dated 02.03.2012 & 18.10.2012 delivered in Appeal No. 76 of 2011 and Appeal No. 7, 46 & 122 of 2011 respectively. Thus, both the issues i.e. Issue Nos. (i) & (ii) are allowed by us directing the State Commission to re-examine both these issues in the light of our findings

recorded earlier in the judgments dated 02.03.2012 and 18.10.2012 in Appeal No. 76 of 2011 and Appeal No. 7 of 2011 & batch.

- 40.2. The State Commission is justified in reducing the claim of interest and finance charges on account of the alleged diversion of funds. The State Commission is also justified in dis-allowing the interest and finance charges on the loans taken by the appellant to meet its revenue deficit. The State Commission has not penalized the appellant for the shortfall in revenue which required the appellant to take the loans to meet its additional working capital requirements. Thus, the approach of the State Commission in deciding Issue Nos. (iii), (iv) & (vii) against the appellant is perfectly legal, just and correct one to which we agree.
- 40.3. The State Commission is legally justified in not providing the return on equity in terms of Tariff Regulations by grossing up pre-tax rate of return on equity by the tax rate. The approach of the State Commission while deciding Issue No. (v) is perfectly legal and valid one. Our finding while considering the same issue in Appeal No. 27 of 2013 decided on 18.02.2014 is re-affirmed by us.
- 40.4. The State Commission is not justified in applying the provisions of Tariff Regulations for generation target availability for recovery of fixed charges and incentive. The said approach of the State Commission while deciding issue no. (vi) is illegal and ill-founded. We

have decided issue no. (vi) in favour of the appellant as the same issue is covered by the earlier judgment of this Appellate Tribunal dated 18.10.2012 passed in Appeal No. 7 of 2011 & batch wherein it was held that when the provisions of the Tariff Regulations of the Central Commission have been incorporated by reference in the Tariff Regulations of the State Commission, the same is required to be followed and cannot be ignored by the State Commission. The State Commission has indicated that in the absence of segregated accounts for generation, the incentive cannot be worked out as per the Regulations for which we have given certain directions under paragraph 38. Accordingly, the State Commission shall examine the same issue afresh as per the directions given by this Appellate Tribunal in the aforesaid judgment dated 18.10.2012.

41. In the result, the instant appeal partly succeeds and is partly allowed subject to the observations made by us in respect of the concerned issues. The State Commission shall pass appropriate order treating the matter as remand in respect of those issues which have been allowed by us in this appeal, of course, upon hearing the parties. No costs”.

The Commission initiated proceeding vide this petition suo-motu and directed PSPCL through Notice dated 18.09.2014 to file its written submissions in respect of the directions of Hon'ble APTEL in its Judgment dated 11.09.2014. PSPCL was also

directed to file actual Employees Cost for the FY 2012-13 as per FORMAT-8 of PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 by 30.09.2014. PSPCL did not file written submissions by 30.09.2014 and was again directed vide Order dated 13.10.2014 to file the same by 07.11.2014. Hearing of the case was fixed for 11.11.2014.

PSPCL submitted vide its letter dated 27.10.2014 that as the accounts for Generation and Distribution Business were not yet segregated, PSPCL has prepared only the allocation statement for FY 2012-13.

After hearing PSPCL on 11.11.2014, the Commission observed that PSPCL was required to provide certain clarifications with regard to Allocation Statement attached with its submissions dated 27.10.2014 vis-à-vis segregation of its accounts for Generation and Distribution Business of PSPCL, after discussing the matter with Director/Tariff of the Commission, by 13.11.2014. Hearing was closed and Order was reserved.

Meanwhile PSPCL had filed Petition No.71 of 2014 for approval of ARR and Determination of Tariff for PSPCL for FY 2015-16. The same was taken up by the Commission in a time-bound manner and these two important components of ARR i.e. Employees Cost and Generation Norms and Target for Recovery of Fixed Charges and Incentive, were also under consideration of the Commission in aforesaid ARR Petition in view of the directions of Hon'ble APTEL in Appeal No.174 of 2012, for compliance of which these suo-motu proceedings vide this petition were initiated. The Commission has since passed the Tariff Order dated 05.05.2015 for PSPCL for FY 2015-16. The Commission has taken up the issues of Employees Cost and Generation Norms and

Target for Recovery of Fixed Charges and Incentive in paras 4.10.6 and 7.6, respectively, of the Tariff Order which is reproduced as under:

“4.10.6 Punjab State Power Corporation Limited (PSPCL) challenged the Tariff Order dated 16.07.2012 passed by the Commission for FY 2012-13 before Hon’ble APTEL in Appeal No.174 of 2012, on various grounds. Hon’ble APTEL framed following issues among others:

- (i) Whether the State Commission is justified in not allowing the employees cost as claimed by the appellant, in reducing the same by 17.22%?
- (ii) Whether the State Commission is justified in applying the Wholesale Price Index (WPI) to increase in the employees cost and dearness allowance?

The Hon’ble APTEL gave the following findings on the above issues in its Judgment dated 11th September, 2014:

“40.1 *The State Commission has, in the impugned order, wrongly effected a reduction of 17.22% in the employees cost of the appellant on the ground that the employees cost of the appellant are high. The approach of the State Commission in reducing the employees cost to the extent*

*of 17.22% on the ground that the employees cost of the appellant is higher and the appellant does not have control over its employees cost is erroneous and arbitrary. Further, the State Commission is not justified in applying the Wholesale Price Index (WPI) to increase in employees cost and dearness allowance. We do not approve this approach of the State Commission. We agree to the findings laid down by this Appellate Tribunal in its judgments dated 02.03.2012 & 18.10.2012 delivered in Appeal No.76 of 2011 and Appeal No.7, 46 & 122 of 2011 respectively. Thus, both the issues i.e. Issue Nos. (i) & (ii) are allowed by us directing the State Commission to re-examine both these issues in the light of our findings recorded earlier in the judgments dated 02.03.2012 and 18.10.2012 in Appeal No.76 of 2011 and Appeal No.7 of 2011 & batch”.*

The Commission sought Review of the above Judgment in Review Petition No.6 of 2015 in Appeal No.174 of 2012. The Review was sought on the ground that above findings of the Hon'ble Tribunal was not in terms of the Regulations of the Commission specifying that the increase in employee cost is to be limited to Wholesale Price Index (WPI) (all

commodities) in terms of Regulation 28 of Tariff Regulations made by this Commission in exercise of powers conferred on it under the Electricity Act, 2003 (No.36 of 2003) having the force of sub-ordinate legislation. The Hon'ble APTEL has dismissed the Review Petition of the Commission by its Order dated 30.03.2015.

The Hon'ble APTEL has decided as under:

*“This Appellate Tribunal in its previous judgment also considered the Regulations and the Wholesale Price Index and held that actual costs need to be considered. We after considering the previous judgment and discussion on the said issue at length in our judgment dated 11.09.2014 in the said Appeal No.174 of 2012, after referring to the decision of the State Commission on the Wholesale Price Index, directed that the actual amount spent, subject to prudent check, is to be considered.” (Emphasis supplied)*

‘Actual amount spent’ in the Hon'ble APTEL Judgment can be considered at the time of True-up only. The Commission allowed actual employee cost in the True-up for FY 2011-12 in Tariff Order for FY 2014-15 based on the provisions in PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 as amended from time to time. Due to non-availability of Audited Annual Accounts for FY 2012-13 and FY 2013-14, the True-up exercise for these years could not be carried out. As the information regarding ‘actual amount spent’ is not available at the time of projections and review, the Commission has no alternative except to



determine the employee cost based on the prevalent PSERC Regulations. Further, the Commission is also considering legal course.

The Commission has, therefore, decided to continue determination of the Employees Cost in this Tariff Order as per its Regulations.

## **7.6 Separate Tariff for each Function**

7.6.1 The Hon'ble APTEL decided Appeal Nos. 245, 176, 237 and 191 of 2012 by common judgement dated 12.09.2014. The findings of the Hon'ble APTEL on the issue of non-segregation of cost of generation from distribution (Para 88 (iii)) are as under: -

*“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.”*

The Commission initiated suo-motu proceedings vide Petition No. 56 of 2014 to comply with the directions of the Hon'ble APTEL and called upon the parties to file written submissions with regard to the directions

of the Hon'ble APTEL. Siel Chemical Complex, Mandi Gobindgarh Induction Furnace Association (Regd.), Open Access Users Association and PSPCL filed their written submissions. The Commission in Chapter 2 of this Tariff Order has decided not to carry out the true up of FY 2012-13. As such, the Commission is not determining the station-wise/function-wise expenditure for FY 2012-13 in this Tariff Order as ordered by the Hon'ble APTEL in its judgement dated 12.09.2014 in Appeal Nos. 176, 191, 237 and 245 of 2012. Further, the judgement of the Hon'ble APTEL dated 12.09.2014 has been stayed by the Hon'ble Supreme Court as per its Order dated 27.03.2015 in Civil Appeal No(s). 2151-2152/2015.

The Commission in its letter no. 11488 dated 01.10.2014 requested PSPCL as under, in the matter of determining separate tariffs for generation and distribution:

*“The Commission is to determine the separate tariffs for Generation and Distribution (Wheeling and Retail Supply) of electricity as per Electricity Act and the Tariff Regulations notified by the Commission. Further as per Orders of Hon'ble APTEL dated 11.09.2014, the Commission has been directed to determine the separate tariffs for Generation and Distribution. As such, the audited details of costs/figures be filed separately for Generation (Plant wise), Wheeling and Retail Supply Business so that Commission could determine the Generation Tariff (Plant wise Fixed/Capacity charges*

*and Energy charges), wheeling charges and retail supply charges separately. The existing performae may be used for this purpose and for any left out information, additional performae may be designed at your level.”*

PSPCL commented as under in its ARR for FY 2015-16:

*“The detail of segregated cost/figures for generation, transmission and distribution for the FY 2012-13 has already been supplied vide this office Memo no. 920/924/A-45 dated 27th October, 2014. So far as the information for FY 2013-14 & FY 2014-15 is concerned, it is intimated that the accounts for FY 2013-14 is under preparation. Thereafter the accounts for the year FY 2014-15 will be prepared.”*

PSPCL was again asked to supply the information in the matter vide Commission’s letter no. 13250 dated 01.12.2014, as under:

*“Cost audit report and the compliance report duly authenticated and signed by the cost accountant in the specified formats (Performae A to H) as per the notification of Ministry of Corporate Affairs dated 07.12.2011 may be furnished. Separate plant-wise statement in performa C as per notification for each type of generation viz Hydroelectric, Thermal, Atomic etc. and for captive consumption, power sold within country and power exported may also be furnished.”*

PSPCL vide its letter no. 1229 dated 09.12.2014 commented as under:

*“PSPCL submits that the firm of professional Cost Accountants has already been appointed and work regarding Cost Audit of the cost accounting records for FY 2012-13 had already being in process and will get finalized as early as possible. However, the Cost Accounting record and Cost Audit Report for FY 2011-12 has been finalised and Cost Audit Report submitted by Cost Auditor is put up to Board of Directors vide Agenda No. 196/CC/528 dated 7th October, 2014. PSPCL will submit the report as soon as it receives.”*

PSPCL has not supplied the station-wise/function-wise figures for FY 2015-16. Further, Regulation 44 of the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 states as under:

*“**Special Provisions** During the period, the PSEB remains an integrated utility, the Commission may waive any of the provisions of these Regulations in any matter if, in the opinion of the Commission, it is impracticable or inexpedient to proceed as per these Regulations. In such a situation, after recording its reasons, the Commission may adopt any other approach which is reasonable and is consistent with the overall approach of these Regulations.”*

PSPCL has submitted in the ARR petition that it is one of the "Successor Companies" of the erstwhile Punjab State Electricity Board (Board) duly constituted under the Companies Act, 1956 on 16.04.2010 after restructuring of the Board by Govt. of Punjab vide Notification No. 1/9/08-EB(PR)/196 dated 16.04.2010, under the "Punjab Power

Sector Reform Transfer Scheme”. As per the transfer scheme, the erstwhile Punjab State Electricity Board (the predecessor) has been unbundled into two companies i.e. POWERCOM and TRANSCO. The POWERCOM has been named as Punjab State Power Corporation Limited and TRANSCO has been named as Punjab State Transmission Corporation Limited. As per the transfer scheme, the Govt. of Punjab has segregated the “Transmission Business of erstwhile Punjab State Electricity Board, concerning the transmission of electricity and the State Load Dispatch Center (SLDC) function. Hence, PSPCL is left with the Distribution, Generation and allied activities of the erstwhile PSEB. As per the PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, [Regulation – 1(3)(k)], PSPCL is considered as an integrated utility since it is currently engaged in multiple functions, namely, Generation, Trading and Distribution of electricity. Now, since PSPCL is an integrated utility engaged in multiple functions of Generation, Trading and Distribution of electricity, it is impracticable to proceed as per PSERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, in the matter of determination of station-wise/function-wise expenditure prudently and as such, in view of provisions of Regulation 44 of the ibid Regulations, the Commission decides to determine the station-wise/function-wise expenditure of PSPCL for FY 2015-16 on the same methodology as adopted by the Commission in its earlier Tariff Orders”.

As indicated in para 4.10.6 of the Tariff Order passed by the Commission for FY 2015-16 for PSPCL (reproduced above), the Commission has filed Appeal before Hon'ble Supreme Court of India under Section 125 of the Electricity Act, 2003 vide DDR No.16100 dated 12.05.2015 against the Hon'ble APTEL Judgment dated 11.09.2014 holding that the Commission is not justified in applying the Whole Sale Price Index (WPI) to increase in employees cost and dearness allowance.

In view of above position, no further action towards compliance of the Hon'ble APTEL directions vide its Judgment dated 11.09.2014 regarding employees cost can be taken till the Appeal of the Commission is decided by the Hon'ble Supreme Court.

As regards the directions of Hon'ble APTEL on the issue of non-segregation of cost of Generation from Distribution, the Commission has extensively discussed the issue in para 7.6 (reproduced above) and the matter rests at that at this point of time.

The same issue was also taken up in Petition No.56 of 2014 (Suo-Motu) for making compliance of the directions of Hon'ble APTEL passed in Appeal Nos.245, 176, 191 and 237 of 2012. That petition was similarly disposed of, so far as this issue is concerned.

The petition is disposed of accordingly.

**Sd/-**  
**(Gurinder Jit Singh)**  
**Member**

**Sd/-**  
**(Romila Dubey)**  
**Chairperson**

**Chandigarh**  
**Dated: 14.05.2015**