

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No.24 of 2013
Date of Order: 14.01.2014**

In the matter of: Petition under Section 65, 86(1), 86(4) of the Electricity Act 2003 regarding adjustment of ROE against subsidy and matters relating to subsidy payment by Govt. of Punjab.

AND

In the matter of: Shri Gurnek Singh Brar, # 1, Ranjit Bagh, Opp: Modi Mandir, Patiala-147001.

Versus

1. Govt. of Punjab represented by Principal Secretary/Power
2. PSPCL, Patiala.

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

ORDER

Shri Gurnek Singh Brar, a retired Superintending Engineer of erstwhile Punjab State Electricity Board, has filed this petition under Sections 65, 86(1) and 86(4) of the Electricity Act, 2003 regarding adjustment of Return on Equity (RoE) against subsidy and matters related to payment of subsidy by Government of Punjab (GoP). The petitioner has submitted that the Commission had passed Tariff Order dated 10.04.2013 for Punjab State Power Corporation Limited (PSPCL) for FY 2013-14 and determined subsidy amounting to ₹5607.42 crore to be paid in advance monthly instalments. GoP had committed to pay the same vide letter dated 04.04.2013 and had conveyed that subsidy of ₹5607 crore had been sanctioned by GoP for the year 2013-14. In the Tariff Order dated 10.04.2013 vide para 6.4, the Commission had also directed that payment of unpaid balance subsidy of previous years was to be made immediately as under:

FY 2011-12	:	₹304.46 crore
FY 2012-13	:	₹412.39 crore

2. The petitioner has annexed a copy of a proposal/note/statement dated 28.03.2013 of Joint Secretary/Finance, GoP, regarding revised payable subsidy to PSPCL during FY 2012-13, wherein it has been shown that RoE amounting to ₹405.73 crore for FY 2012-13 is to be adjusted against subsidy for FY 2012-13. The petitioner has submitted that unpaid subsidy as ₹412.39 crore for FY 2012-13 was determined by the Commission on the basis that RoE was to be retained by PSPCL. This had been the position as per Tariff Orders for all the previous years. The Commission had included enhanced RoE amounting to ₹942.62 crore in the ARR of PSPCL for FY 2013-14 in its Tariff Order dated 10.04.2013 implying that this amount was not payable to Government of Punjab. This issue had been decided by this Commission in Tariff Order for FY 2009-10 as under:

“RoE/RoR is allowed to the Board as per the Tariff Regulations of the Commission. RoE/RoR becomes payable to the owner only if the utility is in profit and the amount becomes available. In a situation, where the Board has huge accumulated losses, the question of disbursement of RoE/RoR to the Govt. does not arise”.

3. The petitioner has further submitted that GoP did not raise the issue of adjustment of RoE against subsidy before the Commission at all during tariff determination exercise for FY 2013-14. The proposal vide letter dated 28.03.2013 by Finance Department of GoP is in complete contradiction to the above position.

4. The petitioner has further submitted that as per Section 65 of the Electricity Act, 2003, the subsidy is required to be paid by GoP in advance. In this context the Hon'ble APTEL in its Order dated 26.05.2006 in Appeal Nos.4, 13, 14, 23, 25, 26, 35, 36, 54 & 55 of 2005 had held as under:

“116. Keeping in view the provisions of the Act, the Commission was bound to require the Govt. to pay the outstanding subsidy including Rural Electrification subsidy. The manner of payment was also to be specified under Section 65 of the Act by the Commission and the State Govt. would be bound

by such specification. Section 29(2) (d) and (e) and subsection (5) of Section 29 of the 1998 Act is also to the same effect. It can not be left to the discretion of the State Govt. how the subsidy is to be paid to the Board

In compliance of the directions of the Hon'ble APTEL in its Judgement dated 26.05.2006, the Commission passed Order dated 13.09.2007:

“3.9 The second direction of the Tribunal concerns the mode of payment of such subsidy. It is necessary to refer, in this connection, to Section 65 of the Electricity Act, 2003 which inter-alia states that if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall notwithstanding any direction which may be given under Section 108, pay the amount, in advance and in such manner as the State Commission may direct. Quite evidently, the subsidy payable by the State Government to PSEB needs to be paid in advance as per requirement of the law. In view of the matter, the question of any adjustment of subsidy towards principal (loans) does not arise. In fact, the State Government has already started making payments of the amount of subsidy by cheque at the end of each quarter with effect from 2004-05 onwards. In line with the legal position brought out above, the Commission decides that the State Government will hereafter make payment of subsidy in quarterly instalments at the beginning of each quarter. The amount due to be paid to the Board for each quarter will, for the purpose of ease of reckoning, be one fourth of the total amount of subsidy payable in any particular year as determined by the Commission”.

The petitioner has further submitted that the National Electricity Policy (NEP) published under Section 3 of the Act stipulates as under:-

“5.5.4 The State Governments may give advance subsidy to the extent they consider appropriate in terms of section 65 of the Act in which case necessary budget provision would be required to be made in advance so that the utility does not suffer financial problems that may effect its operations. Efforts would be made to ensure that the subsidies reach the targeted beneficiaries in the most transparent and efficient way”.

The State Commission shall be guided by the NEP under Section 86(4) of the Act.

The petitioner has brought out the adverse impacts on the working of PSPCL if RoE is adjusted against subsidy, apart from alleged illegality of such action on the part of the State Government. The petitioner has also submitted that State Government has defaulted in paying the full monthly subsidy payment amounting to ₹467.28 crore as per Tariff Order dated 10.04.2013 for April, 2013 as it has paid only ₹300 crore towards subsidy.

The petitioner has prayed that the Commission may pass following orders:

- a) That GoP proposal dated 28.03.2013 (annexure-1) for adjustment of RoE against subsidy for 2012-13 is illegal and contravening section 65 and 86(1) of the Act as well as APTEL judgement of 26.05.2006, Commission Order of 13.09.2007, Commission Order dated 10.04.2013 and Commission Order for tariff of 2009-10.
- b) To restrain GoP from making any adjustment of RoE against subsidy for 2013-14
- c) To direct GoP to honour its commitment given in annexure-XI of Tariff Order dated 10.04.2013.
- d) To fix a time period of one month for the GoP to make the following subsidy payments as contained in the Commission Order of 10.04.2013.

Balance/unpaid subsidy of 2011-12 ₹304.46 crores

Balance subsidy for 2012-13 ₹412.39 crores

- e) To direct GoP to correctly and truly implement the Commission Order of 10.04.2013 which prescribes the advance monthly payment of subsidy at the rate of ₹467.28 crore per month for the period Apr-13 to Sep-13 and ₹467.29 crore per month for the period Oct-13 to Mar-14.
- f) To take action under section 65 for levy of full tariff in case the advance monthly subsidy payment for April, May 13 as per Commission Order of 10.04.2013 is not ensured by the GoP.
- g) To direct the State Govt. to confirm the Budgetary provision for subsidy as per clause 5.5.4 of N.E.Policy.
- h) To direct the State Govt. to cure the default in payment of subsidy for April 2013 forthwith and in case of failure to do so, action under section 65 of the Act may be taken.
- i) To pass any such order as the Commission may consider justified in view of the facts and circumstances of this case.

5. The petition was admitted vide Order dated 09.05.2013 and respondents were directed to file reply by 04.06.2013. PSPCL filed reply vide C.E./ARR & TR memo No.5765 dated 10.06.2013. PSPCL submitted that adjustment of RoE amounting to ₹405.73 crore against the subsidy by GoP for the year 2012-13 was not in line with the provisions of the Companies Act, 1956, which provides under Section 205 as under:

“No dividend shall be declared or paid by a company for any financial year except out of the profits of the company arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government”.

PSPCL has accumulated losses amounting to ₹1772 crore for FY 2010-11, FY 2011-12 and FY 2012-13. As per provisions of the Companies Act 1956, which is applicable to PSPCL, being a company under that Act, it can not declare dividend as it has accumulated loss. The Commission had also held in Tariff Order for FY 2009-10 that “.....where the Board has huge accumulated loss, the question of disbursement of RoE/RoR to the Govt. does not arise”. PSPCL has also requested vide memo No.1235 dated 17.05.2013 to GoP to withdraw the book adjustment of RoE amounting to ₹405.73 crore against the subsidy payable to PSPCL during FY 2012-13.

6. GoP, Department of Power, prayed during hearing on 11.06.2013 for more time to file reply. GoP again filed a request dated 02.07.2013 that issues involved are inter-departmental, therefore, preparation of reply was taking some time and requested to extend time upto 16.07.2013 for filing the reply. GoP filed further requests for extension in time to file reply vide memo dated 16.08.2013, 10.09.2013 and 18.11.2013 submitting that the case was under active consideration at the highest level and it would take more time to file reply. The Commission during hearing on 24.12.2013 observed that a number of adjournments of the case has already been allowed at the request of GoP, Department of Power but the reply has not been submitted and decided to close the further hearing of the petition.

Order was reserved.

7. The Commission has gone through the submissions of the petitioner and reply of PSPCL. There are two issues which need to be decided in this case.

- (a) Retention of RoE
- (b) Payment of subsidy

The observations and decision of the Commission on these issues is as under:-

(a) The Commission notes that Government of Punjab had earlier claimed that RoE should be given to Govt. of Punjab by erstwhile PSEB (now PSPCL

and PSTCL). The issue was settled/decided by this Commission in Tariff Order for PSEB for FY 2009-10 (as per Annexure-II – Page-204) as under:-

“8: Return on Equity/RoR

The State Govt. has stated that the Board has neither paid RoE/RoR amounting to ₹2108 crore from 2002-03 to 2008-09 to the State Govt. nor this amount has been converted into debt or equity. It has further stated that the Commission should direct the Board to pay the entire amount of RoE/RoR allowed by the Commission from 2002-03 to 2008-09 to the State Govt. alongwith the interest.

View of the Commission

RoE/RoR is allowed to the Board as per the Tariff Regulations of the Commission. RoE/RoR becomes payable to the owner only if the utility is in profit and amount becomes available. In a situation, where the Board has huge accumulated losses, the question of disbursement of RoE/RoR to the Govt. does not arise”.

The Commission also notes that PSPCL in its reply has referred to Section 205 of the Companies Act, 1956, wherein it has been provided that a company in a loss/not earning profit, can not declare any dividend and hence has requested the GoP that the proposal to adjust RoE/RoR, allowed by the Commission under its Tariff Regulations may be withdrawn.

The Commission observes that issue of retention of RoE by PSPCL or its owner i.e. Govt. of Punjab is required to be tackled and settled by PSPCL and GoP under the provisions of the Companies Act, 1956.

(b) As regards the payment of subsidy committed by the Government of Punjab to PSPCL is concerned, the Commission holds that the same has to be made as per Section 65 of the Electricity Act, 2003 without effecting any sort of adjustment, on account of RoE. The Hon’ble APTEL in its judgement dated

26.05.2006 passed in Appeal Nos.4, 13, 14, 23, 25, 26, 35, 36, 54 & 55, all of 2005 filed by Industrial Consumers and PSEB against the Tariff Order dated 14.06.2005 passed by this Commission for FY 2005-06 for PSEB, has observed in para 116 as under:

“Keeping in view of the provisions of the Act, the Commission was bound to require the Government to pay the outstanding subsidy including Rural Electrification subsidy. The matter of payment was also to be specified under section 65 of the Act by the Commission and the State Government would be bound by such specification. Section 29 (2) (d) and (e) and sub-section (5) of Section 29 of the 1998 Act is also to the same effect. It can not be left to the discretion of the State how the subsidy is to be paid to the Board. The State appears to be adjusting against the interest alleged due from the Board on account of Government loans, which is not permissible, as the Act provides for the actual payment as a statutory obligation. Factually, the subsidy has not been paid in cash and has merely been adjusted not against the principal but against interest. In case if subsidy would have been adjusted against the principal amount, the loans would have been substantially reduced and consequently, the interest payable by the Board would have come down drastically”.

The Hon’ble APTEL had given directions vide its aforesaid Judgment dated 26.05..2006 which included:

- “(i) -----
- (ii) The directions contained in this Judgment shall be carried out by all concerned including the State of Punjab, the Commission and the Board.
- (iii) -----
- (iv) -----
- (v) -----

The Commission had passed Order dated 13.09.2007 in compliance with the directions of the Hon’ble APTEL. The Commission had dealt the issue

of payment of subsidy committed by GoP in para 3 of the Order and had concluded vide paras 3.9 and 3.10 as under:-

“3.9 The second direction of the Tribunal concerns the mode of payment of such subsidy. It is necessary to refer, in this connection, to Section 65 of the Electricity Act, 2003 which inter-alia states that if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall notwithstanding any direction which may be given under Section 108, pay the amount, in advance and in such manner as the State Commission may direct. Quite evidently, the subsidy payable by the State Government to PSEB needs to be paid in advance as per requirement of the law. In view of the matter, the question of any adjustment of subsidy towards principal (loans) does not arise. In fact, the State Government has already started making payments of the amount of subsidy by cheque at the end of each quarter with effect from 2004-05 onwards. In line with the legal position brought out above, the Commission decides that the State Government will hereafter make payment of subsidy in quarterly instalments at the beginning of each quarter. The amount due to be paid to the Board for each quarter will, for the purpose of ease of reckoning, be one fourth of the total amount of subsidy payable in any particular year as determined by the Commission.

3.10 The Commission is also required {direction (iii)} to determine the extent to which subsidy could be adjusted against outstanding government loans to the Board. It is normal practice that a loan is granted under mutually agreed terms and conditions. Accordingly, the lender and the borrower enter into a bilateral contractual agreement to abide by such terms & conditions of the payment and

repayment of the loans before the loan is disbursed. The Commission is of the view that it would, therefore, be inappropriate if any adjustment of outstanding subsidy is effected against outstanding government loans to the Board. Section 65 of the Electricity Act 2003 adequately provides for a situation where subsidy payable is not forthcoming and a recourse to those provisions is always available in the event of a default”.

The ibid Judgment of the Hon’ble Tribunal and above Order of this Commission makes it abundantly clear that subsidy has to be paid in advance to the utility and no adjustment of alleged payment of RoE from PSPCL is permissible under the provisions of Section 65 of the Act. The GoP proposal dated 28.03.2013 to adjust RoE against subsidy for 2012-13 is not in accordance with law as laid down in the Electricity Act, 2003, Judgement dated 26.05.2006 of Hon’ble APTEL and Order dated 13.09.2007 of this Commission. The GoP shall not make any adjustment of RoE against the subsidy for FY 2012-13 and FY 2013-14 and shall make the advance monthly payment of the subsidy as per Tariff Order dated 10.04.2013 for FY 2013-14 for PSPCL.5

The petition is, accordingly, disposed of.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Virinder Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh
Dated: 14.01.2014