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

**Review Petition No. 05 of 2017
in Petition No.90 of 2016
Date of order: 03.04.2018**

In the matter of: Review Petition under Section 94 of the Electricity Act 2003 for seeking review of the Tariff Order dated 23.10.2017 passed by the Commission in Petition 90 of 2016 for MYT Control Period from FY 2017-18 to FY 2019-20.

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

PRESENT: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

ORDER

Punjab State Power Corporation Limited (PSPCL) has filed the present Petition seeking review of the Tariff Order dated 23.10.2017 whereby the Commission has approved the Annual Revenue Requirements of Punjab State Power Corporation Limited (PSPCL) for the MYT Control Period from FY 2017-18 to FY 2019-20 along with True-Up for the years FY 2014-15, FY 2015-16 and Review for FY 2016-17. The Petitioner has submitted that there are errors apparent on the face of record in the order passed by the Commission on account of which there is under-recovery of the legitimate cost and expenses and the Petitioner has been gravely prejudiced.

2. The Petition was admitted by the Commission vide order dated 22.01.2018 and as it involved public interest at large, PSPCL was directed to issue public notice inviting suggestions/ objections from public. The Petition was made available on the respective websites of the Commission and PSPCL. The public notice was published in 'The Tribune' dated 26.01.2018, 'Ajit' dated 26.01.2018 and 'Punjab Kesari' dated 28.01.2018. The public was informed that Commission shall also hear the comments of public at large in the hearing of the Petition fixed for 28.02.2018.

3. The Commission received five objections in response to the public notice. Objection No.1 was filed by Director, Department of Local Government, Punjab and received on 15.02.2018. Objection No.2 was filed by Regional Director, PHD Chamber of Commerce & Industry vide email dated 27.02.2018. Objection No.3 was filed by Vice President (E & U), Nahar Fibers vide e-mail dated 28.02.2018. Objection No.4 was filed by President, Mandi Gobindgarh Induction Furnace Association vide e-mail dated 28.02.2018. Objection No.5 was filed by Vardhman Textiles Limited vide e-mail dated 28.02.2018. PSPCL has submitted reply to Objection No.1 vide Memo No. 8480/4/186 dated 27.2.2018, which was revised by PSPCL vide Memo. No. 8489/4/191 dated 01.03.2018.

4. In the hearing held on 28.02.2018, only one representative of the public was present whose views were heard along with views of the officers of PSPCL. The Commission vide order dated 06.03.2018 reserved its order and further directed PSPCL to submit its reply to the suggestions/ comments received from Public

immediately and furnish the unit wise segregation of annual fixed cost of Bhatinda Plant within a week.

5. PSPCL vide Memo. No. 8565 dated 20.03.2018 submitted that the unit wise break up of cost of GNDTP Plant for 2010-11 and 2011-12 is not available as the generation cost is calculated for the generating station as a whole. Further, Memo. No.8566 dated 20.03.2018, PSPCL furnished reply to the Objections No.2, 3, 4 and 5.

6. **Observations and Decision of Commission**

The Commission has examined the Review Petition, submissions made by the Petitioner and the objections raised by the objectors. The Petitioner has sought review of the Order dated 23.10.2017 on two issues i.e. **Interest & Finance Charges (diversion of working capital loans into long term loans)** (from FY 2010-11 to FY 2016-17) **and Generation Incentive** (for FY 2010-11 and FY 2011-12) and to revise the Annual Revenue Requirements to the extent as submitted in the Petition. The observations and decision of the Commission on the issues raised in the Review Petition are as under:

Issue No.1 - Interest and Finance Charges (diversion of working capital loans into long term loans)

Petitioner's Submissions

Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 provide that debt-equity ratio in case of a new project shall be 70:30. Further, in case if the actual equity employed is less than 30%, then the actual debt and equity shall be considered for determination of tariff. The Petitioner has submitted that in the actual scenario, there is no equity contribution being provided by the Government of Punjab in the capital expenditure of new projects; hence, the entire capital investment plan is financed 100% from debt.

The Petitioner further submitted that the Commission has also recognized the aforesaid facts and relied upon the same. The following extract from the Commission's Order dated 23.10.2017 has been quoted:

> *"5.15.4 The Commission vide letter no. PSERC/Tariff/198/4453 dated 16.08.2016, required PSPCL to explain the source of funding its capital expenditure for the Control Period. The utility in its reply vide Memo No1031/CC/DTR.245/Deficiency dated 30.09.2016, submitted that entire capital expenditure shall be funded from Debt. Accordingly, the Commission approves long term loan for funding the capital expenditure."*

Petitioner has also submitted that due to non availability of funds, it sources its asset addition of a year from consumer contribution, depreciation, net addition in term loans/GPF and diversion of working capital loans.

Petitioner has further submitted that the interest is allowed by the Commission only on the net addition in long term loan raised instead of allowing the same on entire loan used for funding the addition of capital assets in the absence of deployment of any equity. Thus, in addition to long term loans, it has to also divert working capital loans to fund the asset addition for the year.

In view of the above, PSPCL has worked out Rs.2846.33 crore as accumulated amount of working capital loans diverted for funding the capital expenditure from FY 2010-11 to FY 2016-17. PSPCL has sought the claim as advance against depreciation.

Accordingly, the Petitioner has prayed to the Commission to allow interest on diverted working capital loans (from FY 2010-11 to FY 2016-17) along with carrying cost, considering the same as 'Advance Against Depreciation'.

Objection(s) raised in response to Public Notice

Vardhman Textiles Ltd. has objected that the Petition is not tenable as the issue raised by PSPCL is not a mistake apparent from record. Other objectors have objected that the claim made by PSPCL is for several past years, which has not been dealt in the Tariff Order under consideration, accordingly, the Petition is barred by limitation.

PSPCL, in its reply to the objections, reiterated its submissions and justified the claims made in the Petition. PSPCL's reply, in brief, is as under:-

- Capital assets have been commissioned by PSPCL and the value of the assets is not in dispute. The only issue is on the funding of capital assets.
- Each tariff order is a separate cause of action and is not barred by res-judicata.
- PSERC Regulations provide for equity to be considered on actual subject to a maximum of 30%. There is no minimum quantum of equity to be considered; only the maximum limit is prescribed.
- PSPCL has been prejudiced by not investing equity

because Return on Equity is higher at 15.50% pre-tax as against loan wherein the interest rate is much lesser. Also, Return on Equity is provided at a constant rate for the life of the asset as against the interest on loan which is on reducing balance of the loan as loan gets repaid over the period.

The Commission has taken into consideration the objections raised by the objectors while deciding the issue.

Commission's Decision

The Petitioner has based its claim on Commission's Order dated 23.10.2017 wherein the Commission has allowed 100% funding of capital expenditure from long term loan for MYT Control Period from FY 2017-18 to FY 2019-20. In this regard, it is pertinent to note that the Petitioner has not quoted the complete text from the Tariff Order on the issue of funding of capital expenditure. The complete text from the tariff Order is quoted below for ready reference:

"5.15.4 The Commission vide letter no. PSERC/Tariff/198/4453 dated 16.08.2016 required PSPCL to explain the source of funding its capital expenditure for the Control Period. The utility in its reply vide Memo No1031/CC/DTR.245/Deficiency dated 30.09.2016, submitted that entire capital expenditure shall be funded from Debt. Accordingly, the Commission approves long term loan for funding the capital expenditure. However, actual capital expenditure incurred and loan taken by the utility shall be re-examined for any variance in utilization of debt, based on the loan agreement(s) utilization details which the utility shall produce at the time of Annual Performance Review."

As clearly specified in the Tariff Order, the Commission approved long term loan for funding the capital expenditure, however, subject to fulfillment of certain important conditions/requirements i.e. the actual capital expenditure incurred and loan taken by the utility shall be re-examined for any variance in utilization of debt, based on the loan agreement(s) utilization details which the utility shall produce at the time of Annual Performance Review. Accordingly, in order to substantiate its claim and avail 100% financing through debt, the Petitioner has to additionally file details of actual capital expenditure incurred and corresponding loan taken by the utility along with loan agreement(s) entered with the lenders during the APR stage. Further, the Commission consciously allowed funding of capital expenditure through long term loan for the years which have impending APRs in near future i.e. for FY 2017-18 to FY 2019-20 and was not meant to be applied retrospectively (from FY 2010-11 to FY 2016-17).

Without prejudice to the above, the Commission in Tariff Order (dated 23.10.2017) has dealt with years starting from FY 2014-15 and thereafter. Accordingly, even if Petitioner's claim is to be considered, period from FY 2010-11 to FY 2013-14 cannot be reviewed under the instant Petition as these years were covered in previous Tariff Order(s) and not the Order dated 23.10.2017, which are beyond the purview of this Review Petition.

Further, it is a well established principle that once the tariff has been trued up for a particular year, it cannot be reopened by the Commission. Needless to say that any such subsequent revision in the true-up will burden the beneficiaries / consumers of

PSPCL. The Petitioner did not raise this issue of source of financing when true-up for years under consideration were undertaken by the Commission. It was reiterated that decision of allowing long term loan for financing the capital expenditure during MYT period is specific to facts and circumstances of the years covered under MYT years and cannot be applied retrospectively to earlier years. No fresh cause of action arises in respect of years already trued up and decided. This principle has also been upheld in the following decisions:

a) Order of the Hon'ble APTEL dated 04 December, 2007 in Appeal No. 100 of 2007 and IA No.122 of 2007. Relevant text from the decision is reproduced below:

> *"….Once the truing up exercise has been carried out, the Commission is not permitted to again take up the truing up exercise based on new assumptions…."*
>
> *"…It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee..."*

b) Order of the Hon'ble APTEL dated 18 May, 2015 in Petition No. 180 of 2013. Relevant text from the decision is reproduced below:

> *"We feel that this issue cannot be raised in the present Appeal as these were decided by the State Commission in the respective tariff orders. No Appeals were filed against those orders and since attained finality. We do not find any reason to interfere with the findings of the State Commission on this issue."*

c) The Hon'ble Supreme Court in 2009(6) SCC 235 in UP Power Corporation Limited vs. NTPC has held that:

"In a fact situation obtaining herein, we are of the opinion that the claim of the respondent - corporation was not justified as the Central Commission should not have been asked to revisit the tariff after five years and when everybody had arranged its affairs."

In view of the above, FY 2010-11 to FY 2013-14, whose True-Up has already been concluded cannot be re-opened. Further, in all previous years, the Commission had allowed the interest on long term loans for capital expenditure as per the claim of the petitioner. In addition to the long term loans, the Commission had also allowed interest on General Provident Fund as claimed which had been utilized for the purpose of capital investment as per PSPCL. The petitioner had never claimed advance against depreciation in the previous years though it is provided for in the relevant regulations. It is only in the review petition that petitioner is raising the new claim of advance against depreciation.

The scope of an application for review is restricted and the Commission can review its Order on discovery of new or important matters or evidence or if it is shown that Orders sought to be reviewed suffer from some mistake/error apparent on face of record or other reasons which in the opinion of the Commission is sufficient for reviewing the earlier Order/decision. This claim of the Petitioner is not tenable and cannot be considered as 'mistake apparent from record'.

Issue No.2 - Incentive/Disincentive for Plant Availability Factor (PAF) of GNDTP:

PSPCL's Submissions

PSPCL has submitted that the Commission in the Tariff Order for FY 2017-18 under para 2.10.6, had calculated the incentive for FY 2010-11 and FY 2011-12 for GNDTP, by considering the PAF as 58.58% and 59.93% respectively and calculated the disincentive of Rs.81.99 crore for FY 2010-11 and Rs.86.05 crore for FY 2011-12. During the true up exercise of FY 2010-11 and FY 2011-12, it was submitted that the Unit III of GNDTP remained under R&M from 14.01.2010 to 06.12.2012 and Unit-IV of GNDTP remained under R&M from 05.11.2011 to 26.09.2014. The revised PAF of GNDTP after excluding R&M period works out to 78.11% and 92.29% respectively. The same was validated by SLDC vide its letter no. 318 dated 03.10.2017 as under:

GNDTP Units	**PAF (%)**	
	FY 2010-11	**FY 2011-12**
Unit-I	74.58	92.54
Unit-II	85.05	90.53
Unit-III	—	—
Unit-IV	74.69	94.81
Overall	78.11%	92.29%

PSPCL requested the Commission that incentive may be re-calculated and allowed by considering PAF of GNDTP as mentioned above.

Commission's Decision

In response to the public notice issued by the PSPCL in the Petition, one of the objector M/s PHD Chamber of Commerce and Industry, raised the issue that PSPCL in its review petition has sought to treat the R&M period of Unit III& IV separately. As such, the fixed cost of Units III & IV needs to be segregated and excluded from ARRs and incentive may be re-determined based on Annual Fixed Costs (AFC) of Unit I & II only.

The Commission vide its order dated 06.03.2018 directed PSPCL to furnish the unit wise segregation of AFC of Bathinda Plant within a week. PSPCL vide Memo. No. 8565 dated 20.03.2018 submitted that the unit wise break up of cost of GNDTP Plant for FY 2010-11 and FY 2011-12 is not available as the generation cost is calculated for the station as a whole. Thus, the Commission decides to allocate the total AFC of GNDTP for the respective financial years, equally amongst the four units. Accordingly, incentive/disincentive applicable for GNDTP units for FY 2010-11 and FY 2011-12 has been reworked as under:

(i) For FY 2010-11

GNDTP	AFC (Rs. crore)	Unit wise AFC (Rs.crore)	PAF as validated by SLDC (%)	Normative Plant Availability (%)	AFC inclusive of Incentive/ disincentive (Rs. crore)	Incentive/ disincentive (Rs. crore)
Unit I	263.79	65.95	74.58	85	57.87	(-)8.08
Unit II		65.95	85.05	85	65.99	0.04
Unit III		65.95	—	—	—	—
Unit IV		65.95	74.69	85	57.95	(-)8.00
Total Incentive/(-)disincentive for the Year						(-)16.04
Incentive/(-)disincentive already allowed in the TO for FY 2017-18						(-)81.99
Incentive/(-)disincentive now payable for the Year						**65.95**

(ii) For FY 2011-12

GNDTP	AFC (Rs. crore)	Unit wise AFC (Rs.crore)	PAF as validated by SLDC (%)	Normative Plant Availability (%)	AFC inclusive of Incentive/ disincentive (Rs. crore)	Incentive/ disincentive (Rs. crore)
Unit I	291.76	72.94	92.54	85	79.41	6.47
Unit II		72.94	90.53	85	77.69	4.75
Unit III		72.94	—	—	—	—
Unit IV (01.04.2011 to 5.11.2011)		43.45	94.81	85	48.46	5.01
Unit IV (05.11.2011 to 31.03.2012)		29.49	—	—	—	—
Total Incentive/(-)disincentive for the Year						16.23
Incentive/(-)disincentive already allowed in the TO for FY 2017-18						(-)86.05
Incentive/(-)disincentive now payable for the Year						**102.28**

Incentive now payable to GNDTP units for FY 2010-11 and FY 2011-12 works out to Rs.168.23 crore (65.95+102.28), which the Commission allows. As the Tariff Order for FY 2018-19 is under process, the Commission decides to take cognizance of the same in the said Tariff Order.

The Petition is disposed of accordingly.

Sd/-	Sd/-	Sd/-
(Anjuli Chandra)	**(S.S. Sarna)**	**(Kusumjit Sidhu)**
Member	**Member**	**Chairperson**

Chandigarh
Dated: 03.04.2018