

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

CORAM:

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri A.H. Jung, Member**

Petition No. 26/2005

In the matter of

Miscellaneous Petition under Regulations 24, 111 and 114 of the CERC (Conduct of Business) Regulations 1999 for restoration of equity depletion occurred as a result of fixation of tariff by GOI under Section 43A(2) of the Electricity (Supply) Act 1948, through various tariff notifications for block 1992-1997.

And in the matter of

Power Grid Corporation of India Ltd., Gurgaon

... **Petitioner**

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Kolkata
3. Gird Corporation of Orissa, Bhubaneswar
4. Damodar Valley Corporation, Kolkata
5. Department of Power, Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
8. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
9. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
10. Himachal Pradesh State Electricity Board, Shimla
11. Punjab State Electricity Board, Patiala
12. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
13. Power Development Department, Govt. of J&K, Jammu
14. Uttar Pradesh Power Corporation Ltd., Lucknow
15. Delhi Transco Ltd., Delhi
16. Chandigarh Administration, Chandigarh
17. Uttaranchal Power Corporation Ltd., Dehradun
18. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
19. Karnataka Power Transmission Corporation Ltd., Bangalore
20. Kerala State Electricity Board, Thiruvananthapuram
21. Tamil Nadu Electricity Board, Chennai
22. Electricity Department, Pondicherry,
23. Electricity Department, Govt. of Goa, Panaji.
24. Madhya Pradesh State Electricity Board, Jabalpur
25. Maharashtra State Electricity Board, Mumbai
26. Gujarat Electricity Board, Vadodara

27. Electricity Department, Admn of Daman & Diu, Daman
28. Electricity Department, Admn. Of Dadra and Nagar Haveli, Silvassa
29. Chhattisgarh State Electricity Board, Raipur ...**Respondents**

ORDER

The petition filed by the petitioner for restoration of equity depletion occurring as a result of fixation of tariff by the Central Government under Section 43A (2) of the Electricity (Supply) Act, 1948, through various tariff notifications for block 1992-1997 was dismissed by the Commission by its order dated 11.5.2005 as not maintainable. Being aggrieved by the said order dated 11.5.2005 the petitioner filed an appeal before the Appellate Tribunal for Electricity. The Appellate Tribunal by its judgment dated 16.5.2006 has allowed the appeal, and has remitted the matter to the Commission for re-determination of tariff for the period commencing from 1.4.2004 after restoration of depleted equity. The Appellate Tribunal in its judgment dated 16.5.2006 has held that:-

“33. Thus, we have no hesitation in holding that the aforesaid grave error committed by the Central Government as a regulator while determining tariff for the block year 1992-1997, requires to be rectified with effect from April 1, 2004.

34. In the light of the aforesaid discussion, the issues raised in Para 19 are determined and answered as follows:

ISSUE No.1: The regulator committed grave error in fixing equity while determining tariff for the block year 1992-1997 and 1997-2002.

ISSUE No.2: The appellant is entitled to the restoration of equity of Rs.664 crores, with effect from April 1, 1992, for the purposes of accounting.

ISSUE No.3: Consequent to restoration of equity, tariff needs to be determined for the period commencing from April 1, 2004.

ISSUE No.4: The Order of the CERC is liable to be set aside.

ISSUE No.5: The CERC shall re-determine the transmission tariff for the period commencing from April 1, 2004.

35. In view of the aforesaid determination, the appeal is allowed. The order of the CERC is set aside and the matter is remitted to it (CERC) for re-determination of the

tariff for the period commencing from April 1, 2004 in accordance with law and having regard to the observations made by us.

We make it clear that the appellant shall not be entitled to claim tariff difference from (for) the period anterior to 01.04.2004.”

2. As a consequence of the Appellate Tribunal's judgment dated 16.5.2006, the proceedings before the Commission stand revived. The judgment effectively means that all cases of tariff determination for the period 1.4.2004 to 31.3.2009 in respect of the transmission assets commissioned before 1.4.1997 are to be taken up afresh by the Commission.

3. Accordingly, the petitioner has made applications in certain cases for re-determination of tariff. Based on the details filed so far by the petitioner, we are not able to verify the exact amount of equity depletion, to be restored in individual cases wherein applications have been made. In the present petition, the petitioner has sought to explain its case by taking an example of tariff notification for Anta transmission system for the tariff blocks 1992-1997 and 1997-2002. Paras 11 and 12 of the petition in this regard are reproduced below:-

“11. It may be seen from the tariff calculations of Anta transmission system for block 1992-97 (ref. Para 8 above) that the capital cost of the assets amounting to Rs. 56.15 crores (equity = 28.08 crores, loan = 28.08 crores) have been reduced by the accumulated depreciation from the date of commercial operation up to 31.03.1992. The net asset value as on 01.04.1992 have been taken as Rs. 48.70 crores and thereafter the net value has been further divided on 50:50 basis in equity and loan components of Rs. 24.35 crores each. Thus, the petitioners equity investment of Rs. 28.08 crore at the time of completion of the Anta project got reduced to Rs. 24.35 crore by way of depreciation when tariff was being notified for period 1992-97. For arriving at the annual fixed charges, Return on Equity has been taken @ 10% for FY 1992-93 and thereafter @ 12% on the equity investment of Rs. 24.35 crores, thereby causing a loss of return on equity of Rs. 216 lakhs for tariff block 1992-97. However, this loss has been compensated to the extent of Rs. 160 lakhs by providing interest on loan @8.6% on the loan amount which otherwise would have been depleted. Thus a net loss of ROE of about Rs. 56 lakhs occurred to the Petitioner merely due to the method of tariff calculation followed.

12. While notifying tariff for block 1997-02 same method of tariff calculation was continued by MOP/GOI. Accordingly, the net asset value of Rs.48.70 crores as on 01.04.1992 of Anta Transmission System was further reduced to Rs.40.61 crore as on 1.4.1997 after adjusting the depreciation during the period 1992-97. Thereafter the Net Fixed Asset as on 01.04.1997 was divided in the ratio of 50:50 between Equity and loan i.e. equity being Rs. 20.31 crores and loan being Rs. 20.31 crores. Thus Equity of the project of Rs. 28.08 crores as on DOCO got reduced to Rs. 20.31 crores as on 01.04.1997. Thus it is quite clear that the part of the depreciation has reduced the value of equity due to the method of calculation of tariff. Reducing equity by the amount of depreciation is also against the tariff principle since the depreciation amount collected are to be utilized for debt servicing as there is no specific component in tariff for takes care of loan repayment.”

4. The petitioner along with the petition has also annexed a copy of its letter dated 22.12.2004 to the Ministry of Power, in which one of the major reasons for low return on net worth is stated to be “the depletion of the POWERGRID`s equity by Rs.646.37 crores during the tariff block 1992-97” and “as a result POWERGRID is not getting any return on this equity of Rs. 646.37 crores whereas it continues to appear in the books of POWERGRID”. It is further stated that “during the said tariff block, while the debt got repaid, the equity got depleted by Rs. 646.37 crores notionally for the purpose of Tariff.” This letter has also been relied upon in para 26 of the judgment dated 16.5.2006 of the Appellate Tribunal.

5. Now, going back to the notifications issued by the Central Government for the tariff block 1992-1997, the principle followed was that equity would reduce year by year to the extent of 50% of depreciation charged in tariff. Applying this formula to the case of Anta transmission system, equity depletion from 1.4.1992 to 31.3.1997 would be Rs. 4.925 crore (Rs.1.97 crore x 5 x 0.5). In the normal course, this should be the amount by which the equity may have to be jacked up for re-determination of return on equity with effect from 1.4.2004, in accordance with the Appellate Tribunal`s judgment. However, in the break-up of Rs. 646 crore furnished by the petitioner, equity depletion

for Anta transmission system has been stated to be Rs.7.77 crore (Rs.28.08 crore – Rs.20.31 crore). The discrepancy needs to be reconciled.

6. It is further noticed that the petitioner is taking 50% of the gross block on the date of commercial operation (Rs. 56.15 crore) in respect of Anta transmission system as the equity on which it considers itself entitled to return, whereas equity liability transferred to it on 1.4.1992 appears to be only Rs.24.35 crore as per the details furnished in the petition. The equity replenishment ordered by the Appellate Tribunal is based on the understanding that transfer of the transmission assets took place at the book value of these assets as on 1.4.1992. In this context, we take note of the following observation made by the Appellate Tribunal, in para 21 of its judgment dated 16.5.2006:

“Considering the fact that the Appellant was wholly owned and continued to be so owned by Government of India, the transfer of transmission assets from other Central Public Sector Undertakings (CPSUs) to the Appellant ought to have been done on book value only and not on any other basis. There is no controversy in this regard. Prima-facie, Government of India, in no way, disadvantaged (the Appellant) by transferring the assets on book value to the Appellant.”

7. It appears to us that the petitioner’s claim is at variance with the observations of the Appellate Tribunal reproduced above, as it can be allowed return only on the equity deemed to have been invested by it in the project, i.e. the equity which came on its books on the date of transfer of the assets. When viewed in the light of para 21 of the Appellate Tribunal reproduced above, we are sure that the Appellate Tribunal too would have taken the same view if the finer point was explained properly by the parties, instead of ordering restitution of equity of Rs.664 crore (*sic* Rs.646 crore).

8. In view of the above, the petitioner is directed to file copies of all the tariff orders (complete) for the period 1992-1997 (with amendments, if any) mentioned in

paras 4 and 5 of the present petition, latest by 31.1.2007, with an advance copy to the respondents, and also the documentary evidence in regard to the value (Gross Block or net asset value) at which each of the transmission assets was transferred to it, as on 1.4.1992, to enable the Commission to take up the process of re-determination of tariff for the petitioner's assets with effect from 1.4.2004. On receipt of the above details, the office shall process all individual cases separately for further hearing.

**Sd/-
(A.H.JUNG)
MEMBER**

**Sd/-
(BHANU BHUSHAN)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRPERSON**

New Delhi dated the 15th January, 2007