

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 159/2010

**Coram : Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member**

DATE OF HEARING: 8.7.2010

DATE OF ORDER: 10.8.2010

In the matter of

Miscellaneous petition under Regulations 44 "Power to Relax" of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for grossing up Return on equity at MAT tax relaxation of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

And in the matter of

Torrent Power Limited, Ahmedabad

.... **Petitioner**

Vs

1. Torrent Power Limited, (Ahmedabad Distribution), Ahmedabad
 2. Torrent Power Limited, (Surat Distribution), Ahmedabad
 3. PTC India Limited, New Delhi
 4. M.P.Power Trading Company Limited, Jabalpur
- ... **Respondents**

The following were present:

1. Shri Samir Shah, TPGL
2. Shri K.K.Sha, TPGL
3. Shri C.M.Bundela, TPGL
4. Shri V.Vansi, PGCIL
5. Shri Prasant Kanaujia, PGCIL

ORDER

The petitioner, a generating company, owning the Sugen Combined Cycle Power Project (hereinafter "the generating station") in the State of Gujarat has filed this petition under Regulation 44 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "2009 regulations").

2. The generating station has been granted Mega Power Project Status by Ministry of Power and is having Power Purchase Agreements for sale of power to the distribution licensees in Gujarat viz. Torrent Power Limited (Ahmedabad Division) and Torrent Power Limited (Surat Division) and to Madhya Pradesh through Power Trading Corporation. The petitioner had filed petition No. 109/2009 for approval of tariff from the date of commercial operation till 31.3.2014. The Commission in exercise of its power under Section 62(1)(a) read with section 79(1)(b) had approved the tariff of the generating station vide order dated 11.01.2010 in accordance with 2009 regulations.

3. The petitioner has submitted that according to Regulation 15(2) of 2009 regulations, Return on Equity (ROE) shall be computed on pre-tax basis at the rate of 15.5% to be grossed up as per clause (3) of the said Regulations. Clause (3) of Regulation 15 of the 2009 regulations provides that the ROE shall be

computed by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the generating company or transmission licensee as the case may be. It has been further submitted that the MAT rate was 11.33% (inclusive of applicable surcharge and education cess) applicable till Financial Year 2008-09 and has been enhanced to 16.995% (inclusive of applicable surcharge and education cess) through the Finance Act, 2009 and then to 19.931% (inclusive of applicable surcharge and education cess) for the Financial Year 2009-10.

4. The petitioner has submitted that it is paying Minimum Alternate Tax (MAT) and is not subject to the normal corporate tax. During the pendency of the Petition No.109/2009 for approval of tariff of the generating station, the petitioner filed a Supplementary Affidavit dated 21.8.2009 in which it was submitted that in view of the increase in MAT tax rate through the Finance Act, 2009, ROE should be based on MAT tax rate @16.995% (inclusive of applicable surcharge and education cess) instead of 11.33%(inclusive of applicable surcharge and education cess). However, the Commission in para 26 of the order dated 11.1.2010 has considered the MAT rate of 11.33% (inclusive of applicable surcharge and education cess) in terms of the provisions of 2009 regulations.

5. The Petitioner has submitted that change in tax rate has a major impact on tariff on year to year basis. If not permitted to recover the ROE at the applicable MAT rate, the petitioner will be subjected to severe and serious cash flow problems on yearly basis which cannot be compensated at the time of truing up of tariff in the next tariff period as per the provisions of 2009 regulations. This will also result in recovery of huge amount of arrears from the consumers. Accordingly, the petitioner has filed the present petition under Regulation 44 of 2009 regulations seeking relaxation of clause (3) of Regulation 15 of 2009 regulations to allow calculation of tariff by grossing up the ROE with the MAT rate of 16.995% (inclusive of applicable surcharge and education cess) as per the Finance Act, 2009 for Financial Year 2009-10 and 19.931% (inclusive of applicable surcharge and education cess) as per the Finance Act, 2010 for 2010-11 and onwards upto 2013-14.

6. We have already considered the issue in our order dated 3.8.2010 in Petition No.17/2010. The relevant portion of our order is extracted as under:

“5. After the notification of the 2009 regulation on 20.1.2009, the MAT rate which was 10% for the financial year 2008-09 has been increased to 15% for the Financial Year 2009-10 and 18% for the Financial Year 2010-11. This substantial change in the MAT rate has serious impact on the funds position of the generating company/ the transmission licensee and the beneficiaries. The generating companies/transmission licensees are required to pay income tax in the relevant financial year. If requisite fund is not made available to them for meeting this statutory obligation, they will face problem in cash flow as they will be able to get the under-recovered amount (along with simple interest at the rate equal to the short-term Prime Lending Rate of State Bank of India as on 1st April of the respective year) from the beneficiaries in just six instalments after the truing up exercise at the end of the tariff period. On the other hand, the

beneficiaries and long term transmission customers will have to pay a huge amount of tax arrears in just six instalments and may result in tariff shock to the consumers. This situation needs to be addressed.

6. We are of the view that this issue of 'grossing up the base rate with the normal tax rate for the year 2008-09' is generic in nature and therefore, it will be appropriate to make suitable provisions in the 2009 regulations to cater to any future changes in the tax rate. Accordingly, we direct the staff of the Commission to prepare and submit draft amendment to the 2009 regulations for allowing grossing up of base rate of return with the applicable tax rate as per the Finance Act for the relevant year and direct settlement of tax liability between the generating company/transmission licensee and the beneficiaries /long term transmission customers on year to year basis. Any under/over recovery on account of direct settlement of tax liability shall be subject to the final adjustment at the time of true up exercise."

7. This petition is disposed of at the admission stage in terms of our decision in Petition No.17/2010 as extracted above.

Sd/-
[V.S.VERMA]
MEMBER

sd/-
[Dr. PRAMOD DEO]
CHAIRPERON