

**Central Electricity Regulatory Commission
NEW DELHI**

Petition No. 17/2010

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member**

Date of hearing: 16.3.2010

Date of Order: 3.8.2010

In the matter of:

Miscellaneous Petition under Regulation 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 rate applicable for the Financial Year 2009-10 onwards, for the period 2009-10.

In the matter of:

Powerlinks Transmission Limited

.....**Petitioner**

Vs

Powergrid Corporation of India Ltd., Gurgaon

..... **Respondent**

1. Rajashan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
and others in Northern Region
2. West Bengal State Electricity Board, Kolkata
and Others in Eastern Region

.....**Proforma Respondents**

The following were present:

1. Sh. Suresh Sachdev, Powerlinks
2. Ms. Nita Jha, Powerlinks
3. Sh. Ajay Bagri, Powerlinks
4. Sh. R. B. Sharma, Advocate, BSEB

ORDER

The petitioner, Powerlinks Transmission Limited, an inter-State transmission licensee has submitted that as per Regulation 15(2) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009,

(hereinafter "2009 regulations") Return on Equity shall be computed on pre-tax basis rate of 15.5 % to be grossed up as per clause (3) of the said Regulation. Clause 15(3) of the 2009 regulations provides that the rate of return on equity shall be computed by grossed up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or transmission licensee.

2. The Petitioner has submitted that in the year 2008-09, MAT tax rate was 10% whereas by the Finance Act of 2009, it is substantially increased to 15% for the Financial Year 2009-10 and onwards and such increase has major impact on tariff on year to year basis. The Petitioner has further submitted that truing up of Return on Equity with actual MAT tax rate with the tariff petition filed for the next tariff period would result in substantial difference of tariff on year to year basis for the tariff block 2009-14 would result in cash flow mismatch. The Petitioner has submitted that MAT rate of 16.995% which includes surcharge of 10% and Education cess of 3% may be allowed to be considered while grossing up the Return on Equity for the tariff block 2009-14. Accordingly, the Petitioner has sought relaxation of clause 15(3) of the 2009 regulations under Regulation 44 thereof for a specific direction for calculation of tariff by grossing up Return on Equity with the MAT tax rate given in the Finance Act, 2009.

3. Reply to the petition has been filed by UPPCL. Vide its affidavit dated 10.2.2010. UPPCL has not commented on the merit of the claim of the Petitioner. UPPCL has prayed that the Petitioner be directed to submit documentary proof of applicable MAT rate of 16.995% under the Finance Act,2009, latest provision under para 207.1-2 of the Income Tax Act,1961 governing the MAT rate applicable to the transmission licensee and certificate from Chartered Accountant in Form No.29B as per Para

207.1-3 of the Income Tax Act, 1961. The Petitioner in its rejoinder affidavit dated 15.3.2010 has submitted an extract of the Finance Act, 2009, a certificate from the Chartered Accountant showing the applicable MAT rate in terms of Section 115JB of the Income Tax Act, 1961 for the Financial Year 2009-10 (Assessment Year 2010-11) and a certificate from the Chartered Accountant in Form 29B as required under section 115 JB of Income Tax Act, 1961 for the Financial Year 2009-10.

4. Regulation 15 of the 2009 Regulations provides as under:

“15. **Return on Equity.** (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.

(3) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee, as the case may be:

Provided that return on equity with respect to the actual tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up separately for each year of the tariff period along with the tariff petition filed for the next tariff period.”

4. Regulation 15(2) of the 2009 regulations provide that the applicable rate of return on equity shall be calculated by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee. The rationale behind grossing up with the normal tax rate for

the year 2008-09 was that the applicable tax rates for various years of the tariff period was not expected to change to a great extent and tariff impact on account of any slight variation in the tax rate would be taken care of at the time of truing up.

Regulation 6 of 2009 Regulations provide for truing up of expenditure as under:

“(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.

Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.

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(5) Where after the truing up the tariff recovered is less than the tariff approved by the Commission under these regulations the generating company or the transmission licensee, as the case may be, shall recover from the beneficiaries or the transmission customers, as the case may be, 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.”

Thus as per the provisions of Regulation 15 read with Regulation 6 of the 2009 regulations, under-recoveries made by the generating companies or transmission licensees on account of variation in the applicable tax rate on year to year basis can be recovered after truing up which will be carried out while approving the tariff for the next tariff period. The generating companies or transmission licensees are at liberty to come one more time prior to 2013-14 for the revision. This scenario was provided in the regulations on the basic premise that there would not be wide variation between the tariff approved by the Commission for a generating station or transmission asset and tariff arrived at after the truing up exercise for the said generating station or transmission asset.

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 true 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. The Petitioner has approached the Commission under Regulation 44 of the 2009 regulations for relaxation of the provisions of Regulation 15(3) for allowing the current applicable MAT rate of 16.955% including surcharge and education cess and is not limited to the petitioner only. In view of our directions in para 5 above, we are not inclined to invoke our power under Regulation 44 of the 2009 regulations in case of the petitioner as the prayer of the petitioner will be taken care of after amendment of the regulations. Accordingly, the petition is dismissed.

Sd/-
[M. DEENA DAYALAN]
MEMBER

sd/-
[V.S.VERMA]
MEMBER

sd/-
[S. JAYARAMAN]
MEMBER

sd/-
[Dr. PRAMOD DEO]
CHAIRPERSON