

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 144/2010**

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

**Date of Hearing:25.5.2010**

**Date of Order:8.6.2011**

**In the matter of:**

Miscellaneous petition under sub-section (4) of Section 28 of the Electricity Act, 2003 and Regulation 44 "Power to Relax" of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, in the matter of approval of transmission tariff for Stage-I of 400 kV Thyristor controlled series compensation project (FACTS Device) on Kanpur-Ballabgarh 400 kV S/C line at Ballabgarh in Northern Region for the period from 1.4.2009 to 31.3.2014 (in petition no. 131/2009).

**And**

**In the matter of:**

Power Grid Corporation of India Ltd., Gurgaon

...**Petitioner**

Vs

1. Himachal Pradesh State Electricity Board, Shimla
2. Punjab state Electricity Board, Patiala
3. Harayana Power Purchase Centre, Panchkula
4. Power Development Department, Govt. of J&K, Jammu
5. Uttar Pradesh Power Corporation Ltd., Lucknow
6. Delhi Transco Ltd, New Delhi
7. Chandigarh Administration, Chandigarh
8. Uttarkhand Power Corporation Limited, Dehradun
9. Rajasthan Power Procurement Centre, Jaipur
10. Ajmer Vidyut Vitran Nigam Limited, Jaipur
11. Jodhpur Vidyut Vitran Nigam Limited, Jaipur
12. Jaipur Vidyut Vitran Nigam Limited, Jaipur
13. Northern Central Railway, Allahabad
14. BSES Yamuna Power Limited, Delhi
15. BSES Rajdhani Power Limited, New Delhi
16. Northern Delhi Power Limited, New Delhi
17. New Delhi Municipal Council, New Delhi

---**Respondents**



## ORDER

1. Power Grid Corporation of India Ltd. the petitioner herein, has submitted that transmission charges for the transmission asset for the period from 1.4.2009 to 31.3.2014 were approved by the Commission by its order dated 14.9.2009 in petition no. 131/2009. The petitioner has submitted that in petition no.131/2009, ROE was calculated @ 17.481% based on the rate notified by the Commission as illustrated under regulation 15 (4) (i) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "2009 regulations"). It is further submitted that the above rate of 17.481% is based on the 2008-09 MAT rate of 11.33% (including surcharge @ 10% and education cess @ 3%).

2. The petitioner has submitted that as per the Finance Act, 2009, the applicable MAT rate was revised to 15% from 10% plus surcharge (10%) and educational cess (3%) which worked out to 18.674% for financial year 2009-10. The petitioner submitted that unless the revision of MAT is effected in computing the ROE, the cash flow of the petitioner would be adversely affected as it would be required to pay revised rate of MAT @ 15% whereas cash would be generated through ROE based on MAT @10%. The petitioner has submitted that the revision of rate of pre-tax ROE as per the Finance Act, 2009 would save both the petitioner and the beneficiaries from an additional exercise and also avoid accumulation of arrears in respect of revision of ROE for all the five years of the tariff period 2009-14. The petitioner has prayed that for the balance period of the current tariff block, grossing up may be allowed

as per the tax rate prescribed under the relevant Finance Acts and consequential impact, if any, may be allowed to be directly adjusted with the beneficiaries every year in the tariff block.

3. The petitioner has prayed to invoke Regulation 44 (Power to Relax) of 2009 regulations for relaxation of Regulation 15(3) of the 2009 regulations, so that grossing up the base rate of ROE may be allowed considering the tax rates viz., MAT, surcharge, any other, cess, charges, levies, etc., as per the relevant Finance Act of the year and consequential impact on tariff as approved vide order dated 14.9.2009 in petition No:131/2009 may be allowed to be billed and settled directly with the beneficiaries every year in the tariff block.

4. Uttar Pradesh Power Corporation, Respondent 9 in the petition, in its reply filed vide affidavit dated 21.5.10 has stated (a) that the revised MAT rate for the FY 2010-11 must be applicable only after the notification of the rates by the Government of India and (b) that the MAT is variable in nature and the pre-tax ROE for each financial year may be trued up separately for a tariff block on the basis of the Government of India's notification along with the tariff petition filed for the next tariff period as per the proviso to regulation 15(3) of the 2009 regulations.

5. The Commission has already considered and decided the issue in its order dated 3.8.2010 in Petition No. 17/2010. The relevant part of the order is extracted as under.

*“ 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 installments 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 installments and may result in tariff shock to the consumers. This situation needs to be addressed.*

*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. In the light of the above directions, amendments have been proposed to the draft regulations. The concern of the petitioner will be taken care of after notifications of the amendment.”*

6. In the light of the above directions, amendments have been proposed to the 2009 regulations. The concern of the petitioner will be taken care of after notification of the amendment.

7. The petition is disposed of in terms of our directions in para 5 above.

Sd/-

**[M. DEENA DAYALAN]  
MEMBER**

Sd/-

**[V.S.VERMA]  
MEMBER**

Sd/-

**[S. JAYARAMAN]  
MEMBER**

Sd/-

**[Dr. PRAMOD DEO]  
CHAIRPERSON**

