

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 10/RP/2012
in Petition No. 35/2012**

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

Date of Hearing: 21.6.2012

Date of Order: 9.5.2013

In the matter of

Review of the order dated 27.3.2012 in Petition No. 35/2012 (suo-motu) relating to determination of generic levelised generation tariff under Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012.

**And
In the matter of**

Moser Bear Clean Energy Limited

..Applicant

Following were present:

Shri Pankaj Prakash, MBCEL
Shri Ashish Nandan, MBCEL

ORDER

This application has been made by the petitioner, Moser Baer Clean Energy Limited, seeking review of the Commission`s order dated 27.3.2012 in Petition No. 35/2012 (suo-motu), determining the generic levelised generation tariff under Regulation 8 of the Central Electricity Regulatory Commission (Terms and



Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012 (hereinafter referred to as 'Tariff Regulations, 2012').

Background

2. The Commission vide its order 27.3.2012 in Petition No. 35/2012 (Suo motu) had determined generic levelised generation tariff under Regulation 8 of the Tariff Regulations, 2012. While determining the levelised tariff, discount factor equivalent to post tax weighted average cost of capital was considered as per Regulation 10(2) of the Tariff Regulations, 2012.

3. The petitioner has submitted that the pre tax cost of debt should not have been discounted by tax rate for arriving at post tax cost of debt and discount factor for calculation of levelised tariff should be considered as Post Tax WACC = (70% × Pre Tax Cost of Debt) + (30% × Post Tax Cost of Equity).

4. The petitioner has submitted that in terms of Regulation 10 (2) of the Tariff Regulations, 2012, the discount factor equivalent to post tax weighted average cost of capital is to be considered. As the relative weights of debt and equity do not remain the same for each year during the life of the project, the discount factor would need to be changed every years as per Tariff Regulations, 2012.

5. During the course of hearing on 21.6.2012, the representative of the petitioner submitted that the discount rate computation by the Commission considers tax available as a shield to the generator. Regulation 10 (2) of the Tariff Regulations, 2012 provides that for the purpose of levelised tariff computation, the discount factor equivalent to post tax Weighted Average Cost of Capital (WACC) shall be considered. As explained by the Commission in the Statement of Reasons of the Tariff Regulations, 2012, the post-tax cost of capital is the weighted average of the various components of financing, such as loans and equity. The loan component of WACC goes on reducing over the period of 10 years so as to make it zero after 12 years. Since it goes down, the weightage of loans goes down in WACC. However, while computing WACC, the Commission has only considered one rate. The petitioner further submitted that it has to vary over the years as the loan goes down and equity remains as 30%. The weightage of equity goes up from 30% to 100%, whereas the weightage of loan goes down from 70% to 0%. There is an error in arithmetic calculation of the discount rate which needs to be corrected. The representative of the petitioner also submitted that the 20% MAT has to be considered for balance useful life. While calculating WACC, only 32.445% has been considered whereas 20% should have been considered for the first 10 years. He also submitted that the calculation of post tax WACC has come due to the tax shield. The tax shield, though available in the instant case, to the petitioner, it is passed on to the consumers and not kept with the petitioner. Hence, this factor should not have been used and the tax rate should have been zero in this calculation.

6. We have perused the petition and heard the representative of the petitioner. Regulation 10 of the Tariff Regulations 2012 provides for tariff design specified for determination of generic levelled tariff as under:

“10. Tariff Design

.....

(2) For the purpose of levelled tariff computation, the discount factor equivalent to Post Tax weighted average cost of capital shall be considered.

.....”

7. The Statement of Objects and Reasons of Tariff Regulations, 2012 dated 6.2.2012, also specified as under:

“3.5 REGULATION 10(2) TARIFF DESIGN : DISCOUNT FACTOR

In the draft Regulations, it is specified that for the purpose of levelled tariff computation, the discount factor equivalent to Post Tax Weighted Average Cost of Capital (WACC) shall be considered.

3.5.1. COMMENTS RECEIVED ON THIS PROVISION:

InWEA has submitted that the returns under RE tariff regulations are proposed to be regulated in Pre-Tax terms. Hence, the time value should also be factored in pre-tax terms of weighted average cost of capital (WACC), as was computed under earlier first control period regime. They have further suggested that in order to work out “Post Tax Cost of Debt” consideration of applicable tax as Weighted Average of MAT and Corporate Tax Rate would be the right approach.

Reliance Power Ltd. has suggested that WACC should be considered on the basis of Pre-tax and do away with the suggestion for Post tax till clarity is evolved on the DTC and applicable tax regime. They further submitted Shift from Pre-Tax to Post Tax should not hamper returns due to any change in tax regimes. The Cost of Equity is higher for CSP projects and these projects commensurately need a higher ROE.

NTPC Limited has submitted that Pre Tax WACC should be considered as discount factor for levelled tariff computation in line with previous control period.

Greenenergy Renewables Pvt. Limited has submitted that since Return on Equity is on pre-tax basis and also income tax is not part of the tariff, for the purpose of levelled tariff computation, discount factor equivalent to Pre Tax weighted average cost of capital shall be considered.

3.5.2 COMMISSION'S DECISION

While taking the investment decisions, the developer considers post tax WACC as the discount rate to post tax incremental cash flows to arrive at NPV of the project. Considering the same, the Commission has decided to retain the provisions made in the draft Regulations”.

Analysis and decision

8. Thus, the discount factor for the purpose of levelised tariff computation has been provided in the Regulations and the generic tariff order has been issued on the basis of the Regulations. Therefore, the Review Petition in effect is seeking review of the RE Tariff Regulations.

9. Section 94 (1) (f) of the Electricity Act, 2003 provides that Commission shall have the same power as vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court, which passed the order under the following circumstances:

(a) On discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced at the time when the decree was passed or order made, or

(b) *on account of some mistake or error apparent on the face of the record, or*

(c) *for any other sufficient reasons.*

10. The review petitioner's plea for review is to be considered in the light of the above noted legal position. The petitioner is seeking in effect corrections to certain provisions of the Tariff Regulations, 2012 in order to address the problems arising out of the computation of discount rate. The petitioner has prayed to correct the discount factor from 10.62% to 13.41%. It is clarified that the Commission under Section 178 of the Act has been vested with the power to make, amend and repeal the regulations on the subjects which have been authorized under various provisions of the Act. Action to make or amend the regulations is initiated when the Commission is satisfied that there is need for such regulations or amendment to the regulations. Therefore, the regulations made by the Commission are not subject to review. Since the discount factor adopted in the order dated 27.3.2013 is based on the RE Tariff Regulations, 2012 which is not amenable to review, the prayer of the petitioner for review of the order dated 23.7.2012 cannot be sustained.

11. Review Petition No. 10/2012 stands disposed of at the admission stage, in terms of the above.

Sd/-
(M.Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member

sd/-
(S.Jayaraman)
Member

sd/-
(Dr.Pramod Deo)
Chairperson

