

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 532/TT/2014

Coram:

**Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Hearing: 03.03.2015

Date of Order : 31.03.2015

In the matter of:

Approval under Regulation-86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 of transmission tariff:

1. Asset-I: 1X16 MVA, 132/33 kV, 3 phase ICT at Nirjuli Sub-station (DOCO: 30.5.2014)
2. Asset-II: 1X63 MVAR, 420 kV Bus Reactor at Balipara Sub-station (DOCO: 1.4.2014)

under "Provision of Spare Transformers and Reactor in NER" in North Eastern Region from actual DOCO to 31.3.2019.

And in the matter of:

Power Grid Corporation of India Limited
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001

.....Petitioner

Vs

1. Assam Electricity Grid Corporation Limited,
(Formerly Assam State Electricity Board),
Bijulee Bhavan, Paltan Bazar,
Guwahati-781 001, Assam
2. Meghalaya Energy Corporation Limited,
(Formerly Meghalaya State Electricity Board),
Short Round Road, "Lumjingshai",
Shillong-793 001, Meghalaya

3. Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh
4. Power and Electricity Department,
Government of Mizoram,
Aizwal, Mizoram
5. Manipur State Electricity Distribution Company Limited,
(Formerly Electricity Department, Government of Manipur),
Keishampat, Imphal
6. Department of Power,
Government of Nagaland,
Kohima, Nagaland
7. Tripura State Electricity Corporation Limited,
Vidyut Bhawan, North Banamalipur,
Agartala, Tripura (W)-799 001, Tripura

.....**Respondents**

For petitioner : Shri S.S. Raju, PGCIL
Shri M.M. Mondal, PGCIL
Shri S.K. Venkatesan, PGCIL
Shri Jasbir Singh, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri Anshul Garg, PGCIL

For respondents : None

ORDER

The petitioner, Power Grid Corporation of India Limited (PGCIL) has filed this petition for approval of the transmission tariff for transmission assets under “Provision of Spare Transformers and Reactor in NER” in North Eastern Region in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations").The petitioner has also

prayed for allowing 90% of the Annual Fixed Charges claimed, in terms of proviso (i) of Regulation 7(7) of the 2014 Tariff Regulations.

2. The details and the elements covered in the petition are as follows:-

S. No.	Asset	Name of the Asset	Scheduled DOCO	Actual DOCO as on the date of petition
1	Asset-I	1X16 MVA, 132/33 kV, 3 phase ICT at Nirjuli Sub-station	22.12.2013	30.5.2014
2	Asset-II	1X63 MVAR, 420 kV Bus Reactor at Balipara Sub-station		1.4.2014

3. During the hearing on 3.3.2015, the representative of the petitioner prayed for grant of Annual Fixed Charges (AFC) in terms of proviso (i) of Regulation 7(7) of the 2014 Tariff Regulations in respect of the instant assets.

4. During the hearing, the Commission enquired from the representative of the petitioner regarding the treatment given by the petitioner to the deferred tax liability in the books of accounts of PGCIL. The representative of the petitioner submitted that the income tax on RoE has been claimed on the basis of the effective tax rate in accordance with the provisions in the 2014 Tariff Regulations. The representative of the petitioner further submitted that the deferred tax liability arising in a year is shown in the books for the purpose of accounting and will be claimed only when the said liability is materialized.

5. The Commission is of the view that the treatment of deferred tax liability for the purpose of determination of tariff during the 2014-19 period needs to be clarified for the purpose of compliance by the generating companies and transmission licensees whose tariff is regulated by this Commission. Para 9 and 10 of the Accounting Standards (AS) 22 recognize deferred tax liability as under:-

“9. Tax expense for the period, comprising current tax and deferred tax, should be included in the determination of the net profit or loss for the period.

10. Taxes on income are considered to be an expense incurred by the enterprise in earning income and are accrued in the same period as the revenue and expenses to which they relate. Such matching may result into timing differences. The tax effects of timing differences are included in the tax expense in the statement of profit and loss and as deferred tax assets (subject to the consideration of prudence as set out in paragraphs 15-18) or as deferred tax liabilities, in the balance sheet.”

6. The above provision relates to treatment of deferred tax expense in the statement of profit and loss account and treatment of deferred tax assets or deferred tax liabilities in the balance sheet of the company. However, for the purpose of tariff, the Commission has treated deferred tax liabilities differently in different tariff periods which are discussed in brief as under:-

(a) Clause (1) of Regulation 7 of the Tariff Regulations applicable for the period 2004-09 (hereinafter “2004 Tariff Regulations”) provides that tax on the income streams of the generating companies or the transmission licensees, as the case may be, from its core business shall be computed as an expense and shall be recovered from the beneficiaries. Further, fourth proviso to Clause (2) of Regulation 7 of 2004 Tariff Regulations provides that in the absence of any other equitable basis, the credit for carry forward losses and unobserved depreciation shall be given. According to Regulation 10 of the said Regulations, recovery of

income tax shall be done directly by the generating companies or the transmission licensees from the beneficiaries without making any application before the Commission.

(b) During the tariff period 2009-14, the incidence of income tax on income of the generating companies or the transmission licensees was not allowed as a pass through and it was left to the generating companies or the transmission licensees to manage their tax liability. The Commission allowed a grossed up RoE (rate of RoE grossed up at the applicable tax rate) in tariff. In this connection, Regulation 15 of the 2009 Tariff Regulations is extracted as under:-

“15. (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% for thermal generating stations, transmission system and run of the river generating station, and 16.5% for the storage type generating stations including pumped storage hydro generating stations and run of river generating station with pondage and shall be grossed up as per clause (3) of this regulation:

x x x x

Further, Regulation 39 of 2009 Tariff Regulations provides as under:-

“39. Tax on Income. Tax on the income streams of the generating company or the transmission licensee, as the case may be, shall not be recovered from the beneficiaries, or the long-term transmission customers, as the case may be: Provided that the deferred tax liability, excluding Fringe Benefit Tax, for the period up to 31st March, 2009 whenever it materializes, shall be recoverable directly from the beneficiaries and the long-term customers:”

It is apparent from the provisions of the 2009 Tariff Regulations that the beneficiaries were not made liable to pay the income tax on the income streams of the generating companies or the transmission licensees unlike the provisions

under 2004 Tariff Regulations and the liability of the beneficiaries was only limited to paying a rate of return grossed up at the applicable tax rate. Consequently, the beneficiaries were not required to bear the incidence of deferred tax liabilities created during the period 2009-14. However, if any deferred tax liability which was created during the period up to 31.3.2009 materialized during the 2009-14 period, the same was recoverable by the generating companies or the transmission licensees from the beneficiaries directly.

(c) According to Regulation 25 of the Tariff Regulations applicable for the period 2014-19 (hereinafter “2014 Tariff Regulations”), the income tax was only payable by the beneficiaries to the generating companies or the transmission licensees on the return on equity specified under Regulation 24 of the 2014 Tariff Regulations. The principle of allowing grossed up RoE during 2014-19 period is the same as was prevalent during the 2009-14 period. The only difference is that the RoE is to be grossed up at effective rate in place of applicable tax rate. Regulation 25 of the 2014 Tariff Regulations provides as under:-

“25. Tax on Return on Equity:

(1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax income on other income stream (i.e., income of non generation or non transmission business, as the case may be) shall not be considered for the calculation of “effective tax rate”.

rate. The regulation also provides that the grossed-up rate of return on equity at the end of every financial year shall be trued up based on actual tax paid together with additional tax demand including interest thereon on duly adjusted for any difference of tax including income received from the income tax authorities during the tariff period on the actual grossed income of the financial year. Regulation 49 of the 2014 Tariff Regulations deals with the treatment of deferred tax liability. The said regulation is extracted as under:-

“49. Deferred Tax liability with respect to previous tariff period: The deferred tax liability before 1.4.2009 shall be recovered from the beneficiaries or the long term transmission customers/DICs as the case may be, as and when the same gets materialised. No claim on account of deferred tax liability arising from 1.4.2009 upto 31.03.2014 shall be made from the beneficiaries or the long term transmission customers/DICs as the case may be.”

7. From the above provision it is seen that the deferred tax liability accruing before 1.4.2009, but materializing during the period 2014-19 are directly recoverable from the beneficiaries of the generating companies or the transmission licensees. It has been made abundantly clear in the said provision that there shall be no claim on account of deferred tax liability arising during the period 1.4.2009 to 31.3.2014. The reason for such a provision is that the management of the income tax on the income stream of the generating companies or the transmission licensees was the responsibility of the respective generating companies or the transmission licensees during 2009-14 period. It is relevant to note that Regulation 49 of 2014 Tariff Regulations does not provide for treatment of deferred tax liability arising during the period 2014-19, which means that the 2014 Tariff Regulations do not recognize the deferred tax liability for the purpose of

tariff and as in case of the 2009 Tariff Regulations, the generating companies or the transmission licensees are required to manage their deferred tax liability.

8. An analysis of the provisions of the Regulations relating to tax on income of the generating companies or the transmission licensees during the three tariff periods namely, 2004-09, 2009-14 and 2014-19 reveals the following:-

(a) The beneficiaries were responsible for reimbursement of the tax on the income from the core business of the generating companies or the transmission licensees during the tariff period 2004-09. Accordingly, any deferred tax liability arising during the said period but materializing during the tariff periods 2009-14 and 2014-19 are directly recoverable by the generating companies or the transmission licensees from the beneficiaries in terms of Regulation 39 of the 2009 Tariff Regulations and Regulation 49 of the 2014 Tariff Regulations.

(b) During the tariff period 2009-14, the generating companies or the transmission licensees were entitled to a rate of return to be grossed up at the applicable tax rate. There is a clear stipulation that tax on income stream of the generating companies or the transmission licensees shall not be recovered from the beneficiaries. Consequently, the beneficiaries did not have any liability for payment of deferred tax arising during each of the years of the tariff period.

(c) During the 2014-19 period, the generating companies or the transmission licensees are entitled for a return on equity grossed up at the effective tax rate to be worked out on the basis of the actual tax paid by the generating companies or the transmission licensees. There is no provision in the said regulation that the

generating companies or the transmission licensees shall be reimbursed the deferred tax liability arising during each of the years of the tariff period 2014-19.

9. In view of the above discussion, it is clarified that the generating companies or the transmission licensees whose tariff is regulated by this Commission are not permitted to claim in tariff the deferred tax liability arising in each of the years during tariff period 2014-19. Though the generating companies or transmission licensees may account for the deferred tax expense in the profit and loss account and the deferred tax assets or deferred tax liabilities in their balance sheet for the respective financial years during the 2014-19 period as per the provisions of AS 22, they are not permitted to qualify such deferred tax expense or deferred tax assets and deferred tax liabilities with the statement that the same shall be recoverable in through tariff in future years.

10. In view of the above, there is a requirement to examine that the effective tax rate adopted by the generating companies and the transmission licensees for computation of grossed-up ROE conform to the provisions of 2014 Tariff Regulations. We, therefore, direct the petitioner to submit the computation of the effective tax rate claimed, along with following additional information:-

- (i) The actual tax paid (duly adjusted) relating to the respective financial year of tariff period 2014-19.
- (ii) Details of deferred tax liability accrued upto 31.3.2014 which materialized in each of the financial years during the tariff period 2014-19.

11. We now consider the petitioner's prayer for grant of AFC under Regulation 7(7) of the 2014 Tariff Regulations. As per proviso (i) of Regulation 7(7) of the 2014 Tariff

Regulations, the Commission may grant tariff upto 90% of the AFC of the transmission system or element thereof for the purpose of inclusion in POC charges in accordance with the Central Electricity Regulatory Commission (Sharing of Inter State Transmission charges and losses), Regulation, 2010. Regulation 7(2) of the 2014 Tariff Regulations provides that the application for tariff should be made in accordance with the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004 (hereinafter referred to as "2004 Regulations"). Regulation 7(4) of the 2014 Tariff Regulations provides that such an application shall be filed as per Annexure-I of these regulations.

12. We have considered the submissions of the petitioner. The petitioner has made the applications as per Annexure-I of the 2014 Tariff Regulations. The petitioner has also complied with the requirements of 2004 Regulations, such as service of the copy of the application on the beneficiaries, publication of notice and web hosting of the application, etc.

13. After carrying out preliminary prudence check of the AFC claimed by the petitioner and taking into consideration the time over-run in case of the instant assets, which shall be looked into in detail at the time of issue of final tariff, the Commission has decided to allow tariff for the instant assets in terms of proviso (i) of Regulation 7(7) of the 2014 Tariff Regulations as given in para 7 of this order for the years 2014-15 and 2015-16.

14. The details of the tariff claimed by the petitioner and tariff allowed by the Commission are as under:-

A. Annual transmission charges claimed by the petitioner are as follows:-

(₹ in lakh)					
Assets	2014-15	2015-16	2016-17	2017-18	2018-19
Asset-I	17.32	36.97	35.92	34.85	33.80
Asset-II	73.24	77.67	75.43	73.18	70.93

B. Annual transmission charges allowed are as follows:-

(₹ in lakh)		
Assets	2014-15	2015-16
Asset-I	13.86	29.58
Asset-II	58.59	62.14

15. The provisional AFC allowed in this order shall be applicable from the date of commercial operation of the transmission system and the billing, collection and disbursement of the transmission charges shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time. Further, the transmission charges allowed in this order shall be subject to adjustment as per Regulation 7(7) of the 2014 Tariff Regulations.

16. The Commission directed the petitioner to submit the following information on affidavit with a copy to the respondents by 24.4.2015:-

- a) DOCO certificates of the instant assets;
- b) RLDC Certificate for charging of the instant assets;

- c) Details of time over-run and chronology of the activities along with documentary evidence, as there is a delay of 3 to 5 months in completion of the instant assets, covered in this petition, as per the format overleaf:-

Asset	Activity	Period of activity				Reason(s) for delay along with reference to supporting document
		Planned		Achieved		
		From	To	From	To	

- d) CEA certificate under Regulation 43 of CEA (Measures Related to Safety & Electricity Supply) Regulations, 2010 for the instant assets;
- e) A legible copy of pages 43 to 46 of the instant petition, related to delay;
- f) A copy of the Investment Approval certified by the Company Secretary;
- g) Form-4A "Statement of Capital Cost" as per Books of Accounts (accrual basis) for the instant assets and to indicate amount of Capital Liabilities in Gross Block;
- h) Form 12A for the instant assets;
- i) Form-15 (Actual Cash Expenditure) and Form-9 (Details of allocation of corporate loans to various transmission elements) in respect of the instant assets, if any;and
- j) Reasons for considering interest rate corresponding to Bond XL since there are no actual loans.

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(A.S. Bakshi)
Member

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(A.K. Singhal)
Member