

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No.6/RP/2016 in
Petition No. 135/TT/2012**

Coram:

**Shri Gireesh B. Pradhan, Chairman
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 08.02.2017

In the matter of:

Review of the order dated 18.12.2015 in Petition No.135/TT/2012 under Sections 61, 62 and 86(1)(a) of the Electricity Act, 2003.

And In the matter of:

Jindal Power Limited
Tamnar-496 107, District Raigarh,
Chhattisgarh

.....Petitioner

Vs

1. Jindal Power Limited,
Tamnar-496 107, District Raigarh,
Chhattisgarh
2. Lanco Power Limited
Plot No.397, Phase-III, Udyog Vihar, Gurgaon
Haryana 122016
3. ACB (India) Ltd.,
Chakabura, Korba,
Chhattisgarh
4. Chhattisgarh State Power Distribution Company Limited,
PO: Sundernagar, Dangania,
Raipur-492 013



5. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan, Race Course,
Vadodra-390 007
6. MSEDCL,
Prakashgad, 5th Floor, Bandra East,
Mumbai-400 051
7. MP Power Trading Company Limited,
Shakti Bhavan, Vidyut Nagar, Rampur,
Jabalpur-482 008
8. Goa Electricity Department,
Government of Goa, 3rd Floor,
Vidyut Bhavan,
Panjim-403 001
9. Electricity Department,
Union Territory of Daman & Diu,
Sachivalaya, Moti Daman,
Daman-396 210
10. UT of Dadra Nagar and Haveli,
Secretariat, Electricity Department,
66 kv Amla Road, Silvassa-396 230
11. Power Grid Corporation of India Limited,
Bhadravati HVDC, Sumthana Village, Bhadravathi Tehsil,
Chandrapur District, Maharashtra-442 902
12. Power Grid Corporation of India Limited,
Vindhyachal HVDC, PO: Vindhyanagar, Post Box no. 12,
Singrauli District, Madhya Pradesh-486 885
13. Power Grid Corporation of India Limited,
Western Region-1 Headquarters, PO: Uppalwadi,
Sampritinagar, Nagpur-400 026
14. Torrent Powergrid Limited,
Torrent House, Off Ashram Road, Ahmedabad,
Gujarat-380 009
15. Western Region Transmission (Maharashtra) Private Limited,
12th Floor, Building No. 10-B, DLF Cyber City,
Gurgaon, Haryana-122 002



16. WRTL (GUJ REL),
Western Region Transmission (Maharashtra) Private Limited,
12th Floor, Building No. 10-B, DLF Cyber City,
Gurgaon, Haryana-122 002
17. Bharat Aluminium Company Limited,
Captive Power Plant-II, BALCO Nagar, Korba,
Chhattisgarh-495 684
18. JSPL DCP
Kharsia Road, Raigarh,
Chhattisgarh 496001
19. ESSAR Power MP Limited,
Thana Road, New Chunkumari stadium,
Waidhan, District-Singrauli,
Madhya Pradesh-486 886
20. ESSAR Power Transmission Company Limited,
A-5, Sector-3, Gautam Buddha Nagar, Noida,
Uttar Pradesh-201 301
21. KSK Mahanadi Power Company Limited,
8-2-293/82/A/431/A,
Road No. 22, Jubilee Hills,
Hyderabad-500 033
22. EMCO, Plot No.B-1
Mohabala MIDC Growth Centre,
Post Tehsil-Warora,
Dist- Chandrapur, Maharashtra
23. Vandana Vidyut Company Ltd.,
Vandana Bhavan, M.G. Road,
Raipur, Chhattisgarh
24. Korba West Power Co. Ltd.
Korba West Power Co. Ltd.,
Village Chhote Bhandar,
P.O. Bade Bhandar, Tehsil-Pussore,
Dist.- Raigarh-496100, Chhattisgarh
25. DB Power,
Village – Baradarha, Post – Kanwali,
Dist. – Janjgir,



Champa, Chhattisgarh 495 695

26. Jaypee Nigrie STPP,
Jaiprakash Power Ventures Limited,
Sector – 128, Noida,
Uttar Pradesh – 201304
27. Essar Steel India Pvt. Ltd.
27th km, Surat Hazira Road, Surat,
Gujarat – 394270
28. Adani Power Limited
Shikhar, Nr. Adani House, Mithakhali Six Roads,
Navarangapura,
Ahmedabad – 38009

.....Respondents

Parties present

For petitioner: Shri Siddharath Barik. Advocate, Jindal Power Ltd.,
Ms. Divya Chaturvedi, Advocate, JPL
Shri Rajesh Maurya, JPL
Shri K.K. Agarwal, JPL
Shri M.N. Ravi Shankar, JPL
Shri Shiva Ranjan, JPL

For respondents: None

ORDER

The instant review petition has been filed by Jindal Power Limited (JPL) against the order dated 18.12.2015 in Petition No.135/TT/2012. Transmission tariff for 400 kV JPL Tamnar-Raipur D/C line and 2 Nos.315 MVA, 400/220 kV Transformer along with 4 number of 400 kV bays and 2 number of 220 kV bays (instant assets) was allowed for the 2009-14 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “2009 Tariff Regulations”) in the impugned order. The Return on Equity (RoE) and Interest on Loan



(IoL) was not allowed for the instant assets in the impugned order. RoE was not allowed as the petitioner did not infuse any equity into transmission business however, liberty was given to the petitioner to submit the details of equity infused into licensed transmission business at the time of truing up. IoL was also not allowed as there was no outstanding loan as on the date of issue of transmission licence. The relevant portions of the impugned order are as follows:-

“33. The petitioner has claimed the RoE as per Regulation 15 of the 2009 Tariff Regulations. However, as mentioned under para-30, the petitioner has not earmarked or infused share capital against the licensed business and therefore, entire funding has been treated as debt. Accordingly, return on equity works out NIL for respective tariff block with no equity.

34. It has also been noticed that the petitioner was in the process of separating the accounts of the licensed transmission business and generation business at the time of filing petition. Based on the separated accounts, if equity is allocated against the licensed transmission business, the petitioner is granted liberty to submit the same at the time of truing-up.”

“37. The outstanding debt as on effective date has been worked out by taking into account the actual repayment of loan and outstanding loan. Similar principle was adopted in Petition No.60/2001 while allowing tariff for Chamera HE Project Stage I. The outstanding loan as on license debt has been considered as given hereunder:-

Particulars	(₹ in lakh)		
	2011-12	2012-13	2013-14
Gross Normative Loan	24228.42	24228.42	24228.42
Cumulative Repayment upto Previous Year	24228.42	24228.42	24228.42
Net Loan-Opening	-	-	-
Addition due to Additional Capitalization	-	-	-
Repayment during the year	-	-	-
Net Loan-Closing	-	-	-
Average loan	-	-	-
Weighted average rate of Interest on loan	-	-	-
Interest	-	-	-

38. As the transmission assets of the petitioner were not regulated by the Commission prior to issue of the license, the debt is to be considered with reference to the actual repayment. However, the petitioner has claimed the cost of debt on normative loan considering the repayment equal to depreciation but the issue of the cost of debt does not exist as the repayment has already been made and net outstanding loan is NIL as on the date of licence. The consideration of the cost of debt even after the repayment of the loan would lead to additional servicing of the investment. Thus, no interest on loan is allowed in the instant petition.”



Background

2. The review petitioner has set up a Thermal Power Plant at Tanmar, Rajgarh district of Chhattisgarh having capacity of 1000 (4x250) MW. As part of the generation project, the review petitioner has established a dedicated transmission line having length 258.40 km for connecting the generating station upto inter-State transmission system (ISTS) for onward transmission of power. The generating units of the review petitioner's plant are connected with the various units of Jindal Steel Power Ltd (JSPL). JSPL has set up a captive plant of 358 MW and was in the process of commissioning 450 MW plant. The JSPL intended to use the dedicated transmission line to sell surplus power of JSPL.

3. The review petitioner approached the Commission for grant of inter-State transmission license for using the instant dedicated assets as ISTS which was granted vide order dated 9.5.2011 in Petition No. 105/2010. The license came into force from 9.5.2011 and the instant assets are part of ISTS system from the said date. The review petitioner filed Petition No. 135/TT/2012 for approval of annual transmission charges for the instant for the period from 9.5.2011 to 31.3.2014, which was granted in the impugned order.

4. The review petitioner has also filed Petition No.313/TT/2014 for truing-up of the tariff of 2009-14 period and grant of tariff for the 2014-19 tariff period.

5. The instant review petition has been admitted on 26.7.2016 and the respondents were directed to file reply. None of the respondents have filed any reply.



6. The review petitioner has submitted that (a) disallowance of RoE on the ground that no equity was allocated to the transmission business and (b) disallowance of IoL as there was no outstanding loan on the date of issue of licence are apparent errors and need to be reviewed and rectified.

7. The review petitioner has made the following submissions in support of the review petition:-

a. The audited accounts alongwith balance sheet containing the elements of share capital and shareholders fund was submitted in the main petition. The Commission took cognisance of the same, however RoE was not allowed as the share capital and shareholders fund appearing in the audited balance sheet was not allocated between generation and transmission business. However, the review petitioner was granted liberty to file separate apportioned accounts with share capital and shareholders fund and claim necessary relief at the time of the true up. The truing up of the tariff of the 2014-19 tariff period would take some more time and deferring RoE for the years 2011-12 to 2013-14 till truing up would cause irreparable damage to the review petitioner;

b. The segregated shareholder's fund between the generation and the transmission business on the basis of their respective gross fixed assets and the financing plan has been submitted. The value of the gross fixed assets of the transmission activities works out to ₹316.56 crore. The same has been apportioned in the debt equity ratio of 80:20 as on the date of commercial



operation and requested consider the financing of the transmission assets on the basis of debt:equity ratio of 80:20.

c. ₹5.31 crore was incurred towards fixed assets for transmission business from the date of commercial operation till the date of grant of license. A certificate to show that the shareholder's fund and additional capitalisation has been apportioned in terms of debt:equity ratio of 80:20 as on the date of license is also submitted.

d. 20% of the gross fixed assets are required to be treated as shareholders fund related to the transmission assets and should be serviced by RoE as per the Regulations. The entire project was funded on equity as on the date of the grant of licence and the value of the gross fixed assets minus the amount apportioned to equity and the depreciation on normative basis for the period from the date of commercial operation to the date of the grant of licence is required to be treated as a normative loan. The repayment of the loan prior to the date of commercial operation will not in any manner affect the review petitioner's entitlement for the interest on loan. The review petitioner has submitted that repayment of loan during the period from the date of commercial operation to the date of grant of licence was a substitution of equity (shareholders' fund) in place of the loan borrowed from the lender.

e. The review petitioner has the option to (a) fund the entire project cost through equity, (b) fund the project with higher amount of equity and lesser amount of actual loan, (c) refinance the project by replacing higher interest bearing loan



with lower interest bearing loan and (d) substitute the actual loan at any time with equity. In all the above cases, the entire project cost or the gross value of the fixed assets will be apportioned between debt and equity based on either the financing scheme or on the basis of the actuals as on the date of commercial operation. The equity component will be restricted to the above ratio and in case the project is funded with higher amount of equity, the balance equity would be treated as normative debt. There is no restriction on the quantum of equity to be used for funding the project. It is the discretion of the Project Developer to fund the project with higher amount of equity, even to the full extent of the project cost. The Project Developer has the discretion to require the shareholders to contribute for funding the project cost or in the case of combined business such as generation and transmission of the electricity, by not declaring dividends, by allocating surplus earned to free reserves and by any other means of using the retained earnings. As per the 'Explanation' to Regulation 12 of the 2009 Tariff Regulations, the retained earnings and free reserves are to be treated as shareholders fund and equity. The substitution of the actual loan taken as well as the excess equity contributed over and above 20% of the debt equity ratio are to be treated as normative debt and serviced as in the case of actual loan notwithstanding that the balance sheet of the review petitioner indicates that the actual loan has been repaid.

f. The review petitioner has submitted that the Commission erred while coming to the conclusion that debt does not exist as repayment was already made and the net outstanding loan as NIL. The term 'debt' includes not only the actual



loan taken but also the normative loan (arising out of excess equity contributed to the project cost including by substitution of actual loan with equity/shareholders fund) and the repayment of actual loan by shareholders fund would convert the actual loan to a normative debt which would stand discharged progressively with reference to the depreciation on the transmission assets, as per the 2009 Tariff Regulations.

g. No revenue was earned from the transmission business during 2011-12, 2012-13 and 2013-14 but has incurred expenses towards the open access charges paid to the Regional Load Dispatch Centre and to PGCIL for dispatching the power.

Analysis and Decision

Disallowance of Return on Equity

14. We have considered the submissions of the review petitioner. As per Regulation 15 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009, the review petitioner, a transmission licensee is required to maintain separate accounts for each business. The review petitioner did not submit separate accounts for its transmission business in the main petition. As the details of equity infused into transmission business was not available, RoE was not allowed and the review petitioner was given the liberty to submit the same at the time of truing up. We are therefore of the view that disallowance of RoE in the absence of separate accounts for the transmission business is not an apparent error as contended by the review petitioner.



15. The review petitioner was directed to submit (a) the separated audited accounts in proper format of accounts prescribed under Companies Act, 1956, as well as Companies Act, 2013 for the transmission business, generation business along with combined business as on the date of issue of licence i.e. 9.5.2011 and for the period when the transmission business started with generation business i.e. for the years 2008-09, 2009-10 and 2010-11 and (b) separate audited accounts for transmission business for the period ending 31.3.2012, 31.3.2013 and 31.3.2014. In response, the review petitioner vide affidavits dated 11.11.2016 and 2.1.2017 has submitted the separated audited accounts along with notes and schedules for transmission and generating business for 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and as on the date of licence date, i.e. 9.5.2011. It is observed that the company has allocated the balance under the head Equity, Reserves & Surplus (from liability side) and Gross Block, Depreciation and Net Block (from assets side) between generation and transmission business. The balances under other heads, like investments, current asset, non-current liability and current liability are not allocated between generation and transmission business. The Director's Report and Auditor's comments have also not been submitted. Calling for further information would take some more time and delay the disposal of the instant review petition. We would not like to delay the disposal of the review petition any further. Accordingly, the review petitioner is directed to submit the audited balance sheet of transmission and generation business alongwith Director's Report and Auditor's comments from the actual date of commercial operation onwards including the date of licence at the time of truing up.



Disallowance of Interest on Loan

16. While disallowing IoL, the Commission in the impugned order held as under:-

"As the transmission assets of the petitioner were not regulated by the Commission prior to issue of the license, the debt is to be considered with reference to the actual repayment. However, the petitioner has claimed the cost of debt on normative loan considering the repayment equal to depreciation but the issue of the cost of debt does not exist as the repayment has already been made and net outstanding loan is NIL as on the date of license. The consideration of the cost of debt even after the repayment of the loan would lead to additional servicing of the investment. Thus, no interest on loan is allowed in the instant petition."

17. The review petitioner has contended that term 'debt' includes not only the actual loan taken but also the normative loan. We are of the view that the entire loan was repaid in the instant case and no loan was outstanding on the date of issue of licence. Servicing of loan even after repayment would amount to additional servicing of loan. Accordingly, IoL was disallowed. Further, the petitioner has not submitted any fresh reason or justification to review our decision in order dated 18.12.2015. We do not find any reason for reviewing our earlier decision and accordingly review on this account is not allowed.

18. The review petitioner is directed to file audited balance sheet of the transmission asset as stated in para 15 above in Petition No.313/TT/2014, for truing up the tariff of the 2009-14 tariff period and grant of tariff for 2014-19 tariff period.

19. This order disposes of Petition No. 6/RP/2016.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

