

**Jharkhand State Electricity Regulatory Commission
Ranchi**

FORM OF PROCEEDING

Case No. 16 of 2012

Tata Steel Ltd. (TSL) Petitioner

Sl.No.	Date of proceeding	Proceedings of the Commission with signature	Office action taken with date
1	2	3	4
06	09.11.2012	<p style="text-align: center;"><u>ORDER</u></p> <p>The petitioner, Tata Steel Limited, Jamshedpur has filed a review petition under Section 94 of the Electricity Act, 2003 read with Regulation 36 of the Jharkhand State Electricity Regulatory Commission (Conduct of Business) Regulations 2011 for review of JSERC Tariff Order for the petitioner for FY 2012-13 dated 15th June, 2012 on the following three counts:-</p> <p>A. RPO OBLIGATION FOR FY 2011-12.</p> <p>B. ASSESSABLE INCOME FOR COMPUTATION OF INCOME TAX FOR FY 2010-11.</p> <p>C. CARRYING COST OF REVENUE GAP FOR FY 2010-11.</p> <p>The petitioner was heard.</p> <p>Since the issue of RPO Obligation is related to M/s. JUSCO, another distributions licensee as well, they were also noticed who joined the proceedings.</p> <p>Let us discuss the issues raised in the review petition under consideration.</p>	

A. RPO OBLIGATION FOR FY 2011-12:-

The petitioner has submitted that the Commission while calculating Renewable Purchase Obligations for FY 2011-12 in the tariff order for the FY 2012-13 has erred by taking energy input as per Tariff Order for FY 2011-12 rather than considering revised approved energy input for the FY 2011-12 in ARR. The petitioner has pointed out that total power purchase of the Tata Steel Ltd includes purchase of power for their JUSCO licenced area as well. It is pointed out by the petitioner that the TSL and JUSCO have separate licenced areas and thus have separate RPO Obligations. According to the petitioner, there is duplicacy in the RPO obligations because of the methodology adopted by the Commission. The petitioner requested that the Commission should consider the net input energy for Tata Steel Ltd. by the reducing energy purchased for JUSCO.

From the Tariff Order for the petitioner for FY 2012-13, it transpires that the Commission has taken total energy requirements of the petitioner including the power sold to JUSCO. It is also clear from the JUSCO Tariff Order that on the power purchased by JUSCO from TSL, the Commission has again worked out RPO on that power. The Commission feels that there is duplication in RPO obligation calculations and to that extent the plea of the petitioner is correct.

Now the question is whether the power sold to JUSCO by Tata Steel Ltd should be reduced from the power requirement of the petitioner and then RPO obligation worked out or alternatively the power purchased by JUSCO from TSL be exempted from the RPO obligations.

Here, it would be relevant to refer to the definition of obligated entity. Regulation A2 Clause 2.1(j) of the JSERC(Renewable Purchase Obligation and its Compliance) Regulation 2010 defines obligated entity is under:

“Obligated entity” Means the distribution licensee, consumer owning the captive power plants and open access consumer in the state of Jharkhand, who have to mandatorily fulfil renewable purchase obligation under these Regulations.

It is an admitted fact that the petitioner TSL is a Distribution Licensee and as such on obligated entity.

Regulations 5.1 mandates that the minimum percentage of Renewable Purchase Obligation as specified in Clause 5.2 of these Regulations shall be applicable to all Distribution Licensees in the State.....

Regulation 5.2 of the aforesaid Regulation says that every obligated entity shall purchase electricity (in Kwh) from Renewable Energy Sources. It prescribes the minimum percentage of the total consumption of its consumers including T&D losses during a year.

A simple reading of the aforesaid Regulation 5.1 and 5.2 makes it clear that the petitioner has been mandate under these Regulations to purchase Renewable Energy on the total consumption of its consumers including T&D losses during a year. Obviously, the power sold to JUSCO by the TSL is included in the total energy requirements of the petitioner and as such Renewable Energy Obligation will apply on the total energy consumed by the petitioner. So, in view of this, simply because some power has been sold to JUSCO, the RPO Obligation of the petitioner will be reduced is not the correct interpretation of the relevant regulation. The Commission feels that the total energy consumed by the petitioner including that sold to JUSCO has been rightly taken into consideration while calculating the RPO requirements for the petitioner and as such, the plea of the petitioner on this count is rejected.

As stated earlier, the Commission agrees that there is an element of duplication in RPO obligation calculations of the TSL vis-a-vis the JUSCO and this has to be corrected. In Commission's view, the power purchased by the JUSCO from the Petitioner TSL should be exempted from the RPO obligation, because that power has already been accounted for in the energy consumption of the petitioner. So the petitioner as well as the JUSCO, while filing the next tariff petition, will keep this aspect in mind and correct their ARR accordingly.

B. ASSESSABLE INCOME FOR COMPUTATION OF INCOME TAX FOR FY 2010-11:

The petitioner has pointed out that the profit before tax of Power Business Division is negative due to uncovered revenue gap of Rs. 16.39 crores for FY 2010-11 as approved by the Commission. It has been added that if the gap had been approved in the same year to be recovered, the revenue would have been higher and would have resulted in positive PBT for its power business. The petitioner adds that computation of tax should be done on regulatory profits rather than comparing with book profits. It is also submitted that if the final revenue gap for the FY 2010-11 is allowed to be recovered in the FY 2012-13, the profits to that extent will go up and resultant tax liability will also go up. The petitioner points out that it would not be able to recover this tax component in FY 2012-13 as the tariff regulation 2010 would allow return on equity directly grossed up by tax rate for the subsequent year. In view of this, petitioner has prayed that income amounting to Rs. 5.67 crores to be allowed for the FY 2010-11.

Let us examine the averments and submissions of the petitioner. First of all, we refer to the tariff order for the petitioner for FY 2012-13 to which the petitioner has also referred too. On page 36 of the said tariff order under the income tax, the petitioner's submissions and the Commission's analysis is given which is reproduced:-

Income Tax

Petitioner's Submission

5.59 The petitioner submitted that it has calculated income tax in accordance with the methodology adopted by the Commission in its previous Tariff Orders. The corporate tax rate has been taken as 33.22% for FY 2010-11 and the income tax has been proposed at Rs.5.84 Cr.

Commission's Analysis:

5.60 During the technical validation and analysis of the Audited Accounts for FY 2010-11 for both Tata Steel and its Power Business Division for assessing the actual tax paid by the Company during FY 2010-11, the Commission observed that even though the Profit Before Tax (PBT) of Tata Steel is positive, the PBT for the Power Business Division is negative. In such a case, the Commission finds no merit in allocating the Income tax liability of Tata Steel, to the Power Business Division during FY 2010-11. Accordingly, the Commission has not allowed any income tax for FY 2010-11 to the Petitioner.

A perusal of the analysis done by the Commission at the time of preparation of the tariff order shows that the Power Business Division of the petitioner had negative PBT for the FY 2010-11 and as such no provisions was made for the income tax.

The petitioner submits that the PBT is negative for its

regulated business due to approved revenue gap by the Commission for the FY 2010-11 of Rs. 16.39 crores. It is also stated that if this gap had been allowed to be recovered during the FY 2011-12, the petitioner's Power Business Division would have a regulatory profit before tax of Rs. 11.27 crores for FY 2011-12 and accordingly the tax liability for FY 2010-11 would be Rs. 5.67 crores.

As per the tariff order of the petitioner for FY 2012-13 the revenue gap comes to Rs. 16.39 crores. The FY 2010-11 has been finally tried up after receipt of the Audited Accounts in the Tariff Order for the FY 2012-13. Only the Audited Accounts can give a true picture of accounts. Since in the Tariff Order for FY 2012-13, there is a revenue gap, in Commission's view no income tax liability arises. Moreover, the petitioner's plea is based on preemption and cannot be accepted. The Commission is guided by the regulatory accounts. And as has been analysed in 11 paragraphs of the Tariff Order, which has been reproduced earlier, the Commission feels that PBT for Power Business Division for the FY 2010-11 is negative. Therefore, the plea to allow PBT is rejected.

C. CARRYING COST OF REVENUE GAP FOR FY 2010-11.

The tariff order for the FY 2010-11 of the petitioner issued by the Commission shows a revenue surplus of Rs. 24.24 crores. The tariff order for the FY 2011-12 also shows

the surplus of Rs. 57.23 crores for the FY 2011-12. The surpluses are carried forward to the FY 2012-13 to be adjusted against likely revenue gap. Tariff was not reduced in the FY 2010-11 and 2011-12 despite the surpluses because the Commission was waiting for Audited Accounts. When Audited Accounts have come for the FY 2010-11, final true up has been done. The tariff order of the petitioner for FY 2011-12 shows a surplus of Rs. 57.23 crores for the FY 2011-12. Tariff order of the petitioner for the FY 2010-11 shows surplus of Rs. 24.24 crores. Whatever overall revenue gap was found by the Commission as per the tariff order for the FY 2012-13 has been made up through increase in tariff. No regulatory assets were created by the Commission in the FY 2010-11, 2011-12 and 2012-13 and as such the question of allowing carrying cost does arise. The plea for allowing carrying cost is also rejected.

The review petition is disposed of accordingly.

Sd/-
Member (E)

Sd/-
Chairperson