IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case No. 25 of 2020

Tata Steel Utilities and Infrastructure Services Limited (TSUISL)………….........Petitioner

CORAM: HON'BLE JUSTICE MR. AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)

For the Petitioner : Mr. A.N. Choudhary, Chief Manager-Representative of TSUISL

Date: 10th January, 2023

1. This review petition has been filed by Tata Steel Utilities & Infrastructure Services Limited (hereinafter referred to as 'TSUISL' or the 'Petitioner') under Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation A41 of the JSERC (Conduct of Business) Regulations 2016 for review of the order dated 29.09.2020 passed by the Jharkhand State Electricity Regulatory Commission (hereinafter referred to as 'JSERC' or the 'Commission') in Case(T) no. 10 of 2019 related to ***True-Up for FY 2018-19, Annual Performance Review for FY 2019-20, Aggregate Revenue Requirement and Tariff for FY 2020-21 for the Petitioner TSUISL***. The Petitioner has prayed for the following reliefs: -
   i. To review and modify the Tariff order dated 29.09.2020, on True- Up for FY 2018-19, Annual Performance Review for FY 2019-20, Aggregate Revenue Requirement and Tariff for FY 2020-21 to the extent as stated in the instant review petition.
   ii. Revise the value of approved O&M costs for the year FY 2018-19, FY 2019-20 and FY 2020-21
   iii. Revise the treatment of capital contribution capitalised amount mentioned in the petition
   iv. Revise the interest rate for calculating carrying cost of Revenue surplus amount as stated in the petition
   v. Condone any inadvertent omissions/errors/ shortcomings and permit TSUISL to add/change/modify/alter the statements as made in the petition and make further submission as may be required in future.
2. The Petitioner has sought to review on following three issues.

ISSUE I: Non-consideration of inflation in R&M Cost and non-consideration of cost related to new consumer addition (i.e., load and area growth) in A&G cost.

Submission of the Petitioner

3. It is submitted by the petitioner that the Commission in the impugned order dated 29th September 2020 has missed the point with respect to inflationary adjustment of costs incurring the Repair &

Maintenance (R&M) cost and non-consideration of additional costs in "Administrative & General (A&G) Cost for providing service to the new consumer (i.e., Load Growth).

4. It is also submitted that non-consideration of inflation in R&M cost and non-consideration of cost with respect to addition of new consumers (i.e., load and area growth) in A&G cost has resulted in approval of O&M cost which is lower than even the reasonably incurred actual audited O&M cost for providing service to the consumer which has resulted to penalising the Petitioner even though its O&M cost is amongst one of the lowest in the country. It is further submitted that if such correction is not done then the petitioner would be incurring loss to the tune of Rs. 3.88 Crore in span of 4 years as per the table given below: -

O&M Costs as per audited accounts (in Rs. Crore)					
	FY 17	FY 18	FY 19	FY 20	Total
R&M cost	3.80	5.34	6.43	7.23	22.80
A&G Cost	3.34	2.92	4.14	4.40	14.80
Employee Cost	7.57	8.08	7.59	9.02	32.26
Total Actual O&M cost	14.71	16.34	18.16	20.65	69.86
O&M as approved by the Commission (in Rs. Crore)					
	FY 17	FY 18	FY 19	FY 20	Total
R&M cost	4.19	4.57	5.08	5.66	19.50
A&G cost	2.80	2.89	3.10	3.23	12.02
Employee Cost	6.57	7.88	9.17	10.84	34.46
Total O&M Costs approved	13.57	15.34	17.35	19.73	65.98

5. The Petitioner has prayed to the Commission to consider the inflationary adjustment while allowing the R&M expenditure and Load Growth for A&G expenditure for FY 2018-19 or at least allow O&M expenses as per the audited account.

Commission Observation and findings

6. The Commission observes that the issue raised by the Petitioner has already been dealt in detail in order dated 29.09.2020 vide para 5.73 and 5.74 as follows:-

"5.73 The Commission has approved the O&M Expenses as per Regulations as reproduced below:

6.5 The O&M expenses permissible towards ARR of each year of the Control Period shall be approved based on the formula shown below:

O&Mn = (R&Mn + EMPn + A&Gn) (1-Xn) + Terminal Liabilities*

Where,

R&Mn – Repair and Maintenance Costs of the Licensee for the nth year;

EMPn – Employee Costs of the Licensee for the nth year excluding terminal liabilities;

A&Gn – Administrative and General Costs of the Licensee for the nth year;

Xn – is an efficiency factor for nth year. The value of Xn will be determined by the Commission in its first MYT order for the Control Period;

6.6 The above components shall be computed in the manner specified below:

*a) R&Mn = K*GFA*

Where,

'K' is a constant (expressed in %) governing the relationship betweenR&M costs and GrossFixed Assets (GFA) and will be calculated based onthe % of R&M to GFA of the preceding year of the Base Year;'GFA' is the opening value of the gross fixed asset of the nth year;

b) EMPn (excluding terminal liabilities) + A&Gn = (EMPn-1 + A&Gn-1)(INDXn/INDXn-1) + Gn*

Where,

INDXn – Inflation factor to be used for indexing the employee cost and A&G cost. This will be a combination of the Consumer Price Index (CPI) and the Wholesale Price Index (WPI) for immediately preceding year before the base year;

Gn – Increase in Employee Expenses in nth year due to increase in consumer base/ load growth. Value of G for each year of the Control Period shall be determined by the Commission in the MYT Tariff order based on Licensee's filing, bench marking with the efficient utilities, actualcost incurred by the licensee due to increase in consumer base/load growthin past, and any other factor considered appropriate by the Commission;

*c) INDX**n** = 0.55*CPI**n**+0.45*WPI**n**;*

Note 1: For the purpose of estimation, the same INDXn /INDXn-1value shall be usedfor all years of the control period. However, the Commission will consider the actual values in the INDXn /INDXn-1at the end of each year during the Annual Performance Review exercise and true up the employee cost and A&G expenses on account of this variation, for the Control Period;

Note 2: Any variation due to changes recommended by the Pay Commission etc. Will be considered separately by the Commission.

Note 3: Terminal Liabilities will be approved as per actual submitted by the Licenseeor be established through actuarial studies.

5.74 The Regulations has the provision for consideration of impact of load growth only in the Employee Expenses. Hence, the Commission has considered the impact of load growth only in approving the Employee Expenses."

7. It would be evident from the extracted paras of the order that the Regulations stipulates for consideration of impact of load growth only in the matter of Employee Expenses and therefore the Commission has consciously not considered the same while approving R&M and A&G expenses. Consequently issue no. I does not require any review, as a result the prayer stands rejected.

ISSUE II: Treatment of Capital contribution received by TSUISL

Submission of the Petitioner

8. The Petitioner submitted that the Commission has deducted the consumer contribution (CC) received in place of "Consumer contribution capitalised" during the year to arrive at GFA (i.e., Value of "GFA – Asset created out of Consumer Contribution") on which normative RoE, Interest

on Loan and Depreciation is allowed to the petitioner. It was further submitted that the normative RoE, Interest on Loan and Depreciation is calculated after reducing the assets created out of Consumer Contribution. The very purpose of reducing the assets created out of consumer contribution is to take out the element of GFA which has been funded by the Consumer Contribution.

9. It is contended by the petitioner that for the year FY2018-19, the Consumer Contribution received was Rs 20.90 Cr. and the Consumer Contribution Capitalised was Rs 10.78 Cr whereas the Commission has taken Consumer Contribution received in place of Consumer Contribution Capitalised which has resulted in lower allowance of normative RoE, Interest on Loan and Depreciation by Rs. 1.14 Cr. for the Year FY 2020 detailed below: -

	As claimed	**As allowed in order Dated 29.09.2020**	**Less allowed**
RoE (excl. Tax)	5.79	5.61	0.18
Interest on Loan	3.77	3.53	0.24
Depreciation	7.27	6.55	0.72
Total	16.83	15.69	1.14

10. It is argued that the Commission has deducted Rs. 20.90 Crore and Consumer contribution received from the total addition of Rs. 22.87 Cr. made during FY 2018-19 to arrive at the own capitalisation during FY 2018-19. It is submitted that by treating capital contribution received as capital contribution capitalised during FY2018-19 has impacted (lowered) the reasonable approvals of net depreciation, interest on loan and return on equity, thereby reducing the reasonable return, normative interest and depreciation claim of the petitioner.

<u>Commission's Observation and findings</u>

11. It is evident from the order dated 29.09.2022 that the Commission has ruled as follows:

> *"5.29 The Commission observed that the Petitioner in its Petition submitted the Consumer Contribution added during the FY 2018-19 as Rs. 13.42 Crore, which was not matching either with the actual Consumer Contribution received or capitalized as submitted by the Petitioner vide letter dated July 06, 2020.*
>
> *5.30 The Commission in its query dated June 18, 2020, directed the Petitioner to provide details of Consumer Contribution added during FY 2018-19 and justify the same as per the Audited Accounts. The Petitioner in its reply dated July 06, 2020, submitted that as per the Audited Accounts an amount of Rs. 20.90 Crore was received and Rs. 10.78Crore was capitalized in the FY 2018-19. The Petitioner further added that the balance amount i.e., Rs. 18.83 Crore, the work is in progress for providing power connection, but not yet completed. Hence, the Petitioner requested to consider the capitalized value while truing up for FY 2018-19.*
>
> *5.31 The Petitioner in its reply dated July 06, 2020, further re-iterated that Consumer Contribution received was Rs. 20.90 Crore and Consumer Contribution capitalized during FY 2018-19 was Rs. 10.78 Crore.*

5.32 The Commission has considered the Consumer Contribution received during FY 2018-19 as Rs. 20.90 Crore, adopting the same methodology as followed in the previous Tariff Orders while calculating the normative equity and loan addition during the FY 2018-19."

12. The Commission has consciously adopted the same methodology as followed in the previous tariff orders. Hence issue no II as raised by the petitioner does not require any interference by way of review and hence it is hereby rejected.

<u>ISSUE III: Carrying cost on opening surplus balance</u>

<u>Submission of the Petitioner</u>

13. It is contended by the Petitioner that the Commission has calculated carrying cost on opening revenue surplus on interest rate which are applicable for calculation of working capital interest as well as carrying cost on Revenue Gap. The Petitioner has also reproduced the reply dated 06.05.2019 vide letter no. PBD/232/09/59-J/2019 dated 06.03.2019 as follows:

> ***"29. It is observed that the Petitioner has not considered the carrying cost in the surplus years. The Petitioner should re-compute the calculation as per the MYT Regulations.***
>
> *.: JUSCO submits to the Hon'ble Commission that it has not considered carrying cost in the surplus years, as it plans to keep the surplus amount in the contingency reserve bank account. Interest accrued on the same shall also be maintained in the contingency reserve account and therefore showing the same shall also be maintained in the contingency reserve account and therefore showing the same during surplus years in the table 90 of the petition is not required.*
>
> *We would like to draw the attention of the Hon'ble Commission on the relevant part of JSERC (Terms and Determination Tariff) Regulations 2015 which states that*
>
> *"5.42 Funds under contingency reserve shall be kept in a separate bank account and shall be effectively invested and managed to earn returns based on market condition ensuring adequate liquidity*
>
> *"5.43 This fund shall not be utilized for speculative purposes. The use of these fund any other manner shall be only with the prior approval of the Commission…*
>
> *As the regulation provides to keep the surplus in a separate account, the same shall be maintained by JUSCO and interest accrued on the same shall also form part of the reserve and will be shown based on actuals.*
>
> *As the rates of earning on deposit will be different (Power) than the normative/loan interest rates, it is appropriate to keep it with the contingency reserve only and not show in the Table 90 of the Petition.*
>
> …..

14. It was further submitted that instead of adding the negative carrying cost in ARR in truing up of 2018-19 and APR of FY 2019-20 the Commission have an option of creating contingency reserve and parking the surplus amount in the contingency reserve. The Petitioner has urged the Commission to review the carrying cost (i.e. negative interest rate) on surplus amount and allow the same on fixed deposit rate offered by the State Bank of India as it is not practical for any Licensee

to earn the interest rate more than the fixed deposit rates; as the surplus money is required to be put into the deposits.

Commission's Observation and findings

15. The Commission observed that the rate of interest on surplus or gap amount has been consciously considered equivalent to the rate of interest on working capital and is in line with the previous tariff orders dated June 19, 2020, June 18, 2018 & February 28, 2017 passed by the Commission. Accordingly, issue no. III does not require any review or interference and hence it is hereby rejected.

O R D E R

16. The Commission is of the considered opinion that the Commission has taken a conscious decision earlier on all the issues raised by the Petitioner in this review petition hence the issues do not require any review as per clause A41 sub clause 41.1 of the JSERC (Conduct of Business) Regulation 2015.
17. Thus, the Review Petition stands dismissed in view of the discussion and observation made hereinabove.

Sd/-	Sd/-	Sd/-
Atul kumar Member (Tech)	Mahendra Prasad Member (Law)	Justice Amitav K. Gupta Chairperson