

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
RANCHI**

Case No. 24 of 2010

Shri MUKHTIAR SINGH, Chairperson
Shri T. Munikrishnaiah, Member (E)

Date: **28th October 2010**

ORDER

IN THE MATTER OF

M/s Jamshedpur Utilities & Services Company Limited..... Petitioner

For the Petitioner: Shri Sharad Kumar, General Manager (PB Division)
 Shri K.C. Jha, Finance Controller

M/s Jamshedpur Utilities and Service Company Limited hereinafter referred to as “the petitioner” has filed a petition dated September 23, 2010 for review of the Tariff Order dated August 24, 2010 for the financial year 2010-11. The petitioner has requested to review the said Tariff Order on three counts viz. (i) Surcharge on Electricity Duty, (ii) Calculation of Normative Tax and (iii) Disallowance of Capital expenditure.

Heard

The Commission gives its findings on each of the points herein below:

Surcharge on Electricity Duty

Petitioner’s Submission

- 1.1 The petitioner has submitted that the Government of Jharkhand has adopted the Bihar State Electricity Duty Act, 1948 after the State separated from Bihar vide Notification dated 22nd December, 2000 in exercise of power conferred by section 85 of the Bihar Reorganization Act, 2000. Since then all provisions of the Act are in force without any amendment being made by the Government of Jharkhand.
- 1.2 As per sub-section 1 of 3 (A) of Bihar Electricity Duty Act, 1948, every licensee has to pay surcharge at the rate of two paise per unit of energy consumed and sold, in addition to the duty payable under sub-section (1) of section 3. On the other hand, sub-section 2 of 3 (A) prohibits the licensee, who is liable to pay surcharge to recover the same from the consumer.

- 1.3 As such, this prohibits the petitioner to levy surcharge on the consumers.
- 1.4 Also, under entry 53 of List II of the Seventh Schedule that power has been given to the State to enact in law on “Tax on Sale and Consumption of Electricity” and accordingly the Bihar (now Jharkhand) has enacted the above Act. Thus, electricity surcharge is a Statutory Levies and Taxes and the same was being recovered vide Schedule VI of the repealed ES Act of 1948.
- 1.5 The petitioner has, thus, submitted that Surcharge on Electricity Duty be treated as an expense in calculation of ARR.

Views of the Commission

- 1.6 As submitted by the petitioner, sub-section 1 of 3 (A) of Bihar Electricity Duty Act, 1948, requires every licensee to pay surcharge at the rate of two paise per unit of energy consumed and sold, in addition to the duty payable under sub-section (1) of section 3.
- 1.7 The Commission had stated in the Tariff Order for FY 2010-11, and is quoted again
- “The Commission.... but did not find the information submitted by it satisfactory. Accordingly, the Commission has not allowed surcharge on electricity duty to be included in A&G expenses in this Tariff Order. However, if adequate information along with documentary evidence is furnished by the Petitioner confirming that surcharge on electricity duty is to be paid by the consumer, the Commission shall retrospectively allow the same in the next Tariff Order of FY 2011-12.”*
- 1.8 The petitioner has now submitted month wise receipts of payment of the surcharge on electricity duty to the Government. The petitioner had claimed Rs 12.26 lakhs and Rs 28.98 lakhs as surcharge on electricity duty for FY 2008-09 and FY 2009-10 respectively. However, the actual payment made to the Jamshedpur Treasury/Sub-Treasury, as per the receipts submitted by the Petitioner, is only Rs 7.09 lakhs and Rs 24.74 lakhs for FY 2008-09 and FY 2009-10 respectively.

- 1.9 Recognising the actual payment made to the Government as a genuine expense of the petitioner, the Commission shall allow the petitioner Rs 7.09 lakhs for FY 2008-09 and Rs 24.74 lakhs for FY 2009-10 in the next Tariff Order of FY 2011-12.

Calculation of Normative Income Tax

Petitioner's Submission

- 1.10 For calculation of the Normative Income Tax, entire depreciation as per IT Act has been included whereas the depreciation on consumer contribution should have been excluded.

Views of the Commission

- 1.11 For the purpose of calculation of normative Income Tax, the Commission calculated taxable income by adding gross return on equity, normative interest on loan, depreciation (net of consumer contribution) as included in the calculation of ARR and subtracted depreciation as per IT Act as submitted by the Petitioner in its tariff petition.
- 1.12 From the petitioner's submission it was not clear whether depreciation as per IT Act was calculated after removing consumer contribution from it, and if at all the same was excluded. It was not specified which assets had been created out of consumer contribution. Since the information submitted was not as per the requirement of the Commission, the Commission used the figures that were submitted by the petitioner for depreciation as per IT Act.
- 1.13 The petitioner pointed out in the review petition that the depreciation as per IT Act provided by it in the ARR and tariff petition was on account of all assets and was not net of depreciation on account of assets created out of consumer contribution.
- 1.14 While processing the review petition, the petitioner was asked to submit the detailed calculation of depreciation as per IT Act, which is provided by the petitioner now.

- 1.15 The Commission, on verification of the data submitted by the petitioner found discrepancies in the calculation of depreciation as submitted by the petitioner in the review petition and the same were communicated to the petitioner.
- 1.16 The petitioner corrected the discrepancies and reduced the additional amount claimed by it from Rs 159.28 lakhs to Rs 155.39 lakhs.
- 1.17 The Commission is satisfied by the petitioner's contention and has decided to allow the petitioner to recover the revised additional amount of Rs 155.39 Lakhs in the next Tariff Order.
- 1.18 The Table below summarises the Normative tax submitted by the petitioner in the Tariff petition of FY 2010-11, approved by the Commission in the Tariff Order of FY 2010-11, submitted by the petitioner in the Review Petition and now approved by the Commission for FY 2008-09:

Table 1: Approved Normative Income Tax for FY 2008-09 (Rs Lakhs)

Particulars	FY 2008-09			
	<i>Submitted by the petitioner in the Tariff Petition of FY 2010-11</i>	<i>Approved by the Commission in the TO of FY 2010-11</i>	<i>Submitted by petitioner in the review petition*</i>	<i>Now Approved by the Commission</i>
Return on Equity	183.00	182.90	182.90	182.90
Income Tax rate	33.99%	33.99%	33.99%	33.99%
Gross ROE	277.00	277.09	277.09	277.09
Dep as per ARR	280.00	238.90	238.90	238.90
Dep as per IT	(902.63)	(902.63)	(818.34)	(818.34)
Normative interest on Loan	366.00	366.81	366.81	366.81
Taxable Income	21.00	(19.83)	64.46	64.46
Income tax	7.00	0	21.91	21.91
Approved additional amount to be trued up in next Tariff Order				21.91

* Submitted as additional information

- 1.19 The Table below summarises the Normative tax submitted by the petitioner in the Tariff petition of FY 2010-11, approved by the Commission in the Tariff Order of FY 2010-11, submitted by the petitioner in the Review Petition and now approved by the Commission for FY 2009-10:

Table 2: Approved Normative Income Tax for FY 2009-10 (Rs Lakhs)

Particulars	FY 2009-10			
	<i>Submitted by the petitioner in the Tariff Petition of FY 2010-11</i>	<i>Approved by the Commission in the TO of FY 2010-11</i>	<i>Submitted by petitioner in the review petition*</i>	<i>Now Approved by the Commission</i>
Return on Equity	274.00	274.75	274.75	274.75
Income Tax rate	0.34	33.99%	33.99%	33.99%
Gross ROE	415.00	416.23	416.23	416.23
Dep as per ARR	497.00	376.71	376.71	376.71
Dep as per IT	(1,071.55)	(1,071.55)	(882.81)	(882.81)
Normative interest on Loan	510.00	512.73	512.73	512.73
Taxable Income	349.00	234.12	422.86	422.86
Income tax	119.00	79.58	143.73	143.73
Approved additional amount to be trued up in next Tariff Order				64.15

* Submitted as additional information

1.20 The Table below summarises the Normative tax submitted by the petitioner in the Tariff petition of FY 2010-11, approved by the Commission in the Tariff Order of FY 2010-11, submitted by the petitioner in the Review Petition and now approved by the Commission for FY 2010-11:

Table 3: Approved Normative Income Tax for FY 2010-11 (Rs Lakhs)

Particulars	FY 2010-11			
	<i>Submitted by the Petitioner in the Tariff petition of FY 2010-11</i>	<i>Approved by the Commission in the TO of FY 2010-11</i>	<i>Submitted by petitioner in the review petition*</i>	<i>Now Approved by the Commission</i>
Return on Equity	343.00	293.77	293.77	293.77
Income Tax rate	0.33	33.22%	0.33	0.33
Gross ROE	514.00	439.89	439.89	439.89
Dep as per ARR	604.00	441.92	441.92	441.92
Dep as per IT	(1,022.36)	(1,022.36)	(813.83)	(813.83)
Normative interest on Loan	496.00	483.47	483.67	483.67
Taxable Income	592.00	342.93	551.65	551.65
Income tax	197.00	113.91	183.25	183.25
Approved additional amount to be trued up in next Tariff Order				69.33

* Submitted as additional information

- 1.21 The Commission now approves the Normative Income tax of Rs 21.91 Lakhs, Rs 143.73 Lakhs, Rs 183.25 Lakhs for FY 2008-09, FY 2009-10 and FY 2010-11 respectively and accordingly approves the additional amount of Rs 155.39 Lakhs, which will be adjusted in the next Tariff Order of FY 2011-12.

Disallowance of Capital expenditure

Petitioner's Submission

- 1.22 In two schemes, (a) 33kV Overhead line from Gamharia to Saraikela and (b) 132 kV Bay at Chandil with provision of 132/33kV substation, the Commission has reduced the allowable capital expenditure.
- 1.23 The petitioner has submitted further details of the schemes along with cost details in the review petition.

Views of the Commission

- 1.24 In its discussion with the Commission, during the course of finalisation of the Tariff Order for FY 2010-11 in August 2010, the Petitioner had informed the Commission of the status of work on various schemes as follows:-
- (a) With regards to the 33kV Overhead line from Gamharia to Saraikela it had informed the Commission that the requisite forest clearances had not been obtained till August 2010;
 - (b) With respect to the 132 kV Bay at Chandil with provision of 132/33kV substation, the Commission was informed that the land for the planned substation had not been acquired till August 2010.
- 1.25 The Commission *estimated* the capital expenditure to be incurred on the two schemes based on the actual status of work on the schemes till August 2010, the details of the schemes furnished by the Petitioner at the time and cost estimates for similar works as recommended in a benchmarking study commissioned by Forum of Regulators (FOR) and PGCIL report on 'High Capacity Power Transmission Corridor'.

1.26 As already mentioned in the Tariff Order, the actual expenditure on capital works shall be trued-up in subsequent Tariff Orders after due prudence check by the Commission and, therefore, the Commission reserves its views on the issue in this review petition. The final decision shall be taken after submission of latest/actual information with the next tariff petition by the petitioner.

All other decisions and directions contained in the order dated August 24th, 2010 shall remain unaltered.

Sd/-

(T MUNIKRISHNAIAH)
MEMBER (E)

Sd/-

(MUKHTIAR SINGH)
CHAIRPERSON