

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No.102 of 2012

Dated: 4th February, 2013

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

M/s. Beta Wind Farm (P) Limited,
4th Floor, Sigapi Achi Building,
18/3, Rukmani Lakshmipathi Road,
Egmore, Chennai-600 008
Versus

... **Appellant**

1. **Tamil Nadu Electricity Regulatory Commission,**
No. 19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai-600 008
2. **Tamil Nadu Transmission Corporation Ltd.,**
No. 144, Anna Salai,
Chennai- 600 002
3. **Tamil Nadu Generation and Distribution
Corporation Limited,**
No. 144, Anna Salai,
Chennai- 600 002

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri

Counsel for the Respondent(s) : Mr. S. Guru Krishna Kumar, AAG for
State of Tamil Nadu
Mr. G. Umapathy for R-1
Mr. S. Vallinayagam for R-2

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Beta Wind Farm Pvt. Ltd. against the order dated 30.03.2012 passed by the Tamil Nadu Electricity Regulatory Commission

(‘State Commission’) as order no. 2 of 2012 determining the intra-State transmission tariff.

2. The Appellant is a generating company engaged in the business of generation and supply of power from renewable sources of energy. The Appellant has already established 130.75 MW of Wind Power Projects and is in the process of installing about 150MW of Wind Power Projects in the State of Tamil Nadu.

3. The State Commission is the Respondent no. 1. Tamil Nadu Transmission Corporation, the intra-state transmission licensee and Tamil Nadu Generation and Distribution Corporation, the Generating and Distribution Company, are the Respondent nos. 2 and 3 respectively.

4. The brief facts of the case are as under:

4.1 The State Commission passed an order dated 15.5.2006 determining the transmission and wheeling charges in respect of the Respondent no. 2, the Transmission Company. On the same day, the State Commission passed another order dealing with power purchase and allied issues in respect of Non-Conventional Energy Sources based generating plants.

4.2 On 20.3.2009, the State Commission passed the Tariff order for Wind Energy Generators.

4.3 On 4.1.2010, the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulation, 2010, hereinafter referred to as 'REC Regulations'. On 29.9.2010, the Central Commission

amended the REC Regulations to give certain clarification regarding banking facility being provided to the Wind Energy Generators.

4.4 Since the REC Regulations notified by the Central Commission provided that the Renewable Energy Certificate will only be issued to the developers not availing any concessional or promotional tariffs, the Appellant filed being petition no. 3 of 2011 before the State Commission to clarify on the aspects of transmission tariff applicable.

4.5 On 17.11.2011, the Respondent no. 2, the Transmission Company filed an application being Tariff Petition no. 2 of 2011 before the State Commission for re-determination of transmission charges for Long Term Open Access consumers, system operation charges, reactive energy charges, preliminary true up of ARR for FY 2010-11 and

approval of ARR for the FY 2011-12 and 2012-13 under Multi Year Tariff and for tariff revision with retrospective effect.

4.6 In the meantime on 28.12.2011, the State Commission decided MP 3 of 2011, etc., in which the State Commission rejected the claim of the Wind Energy Generators for considering Plant Load Factor of wind energy generation at 25.84% for arriving at the transmission charges. This order was challenged by the Appellant in Appeal no. 45 of 2012. This Tribunal disposed of the petition on 31.1.2013 by directing the State Commission to determine the transmission charges on the basis of allotted transmission capacity to all open access customers including TANGEDCO (R-3) to be applicable after the reorganization of the Electricity Board.

4.7 On 30.3.2012, the State Commission after hearing the concerned parties, disposed of the petition no. 2 of 2011 filed by the Respondent no. 2, determining the transmission tariff for the FY 2012-13.

4.8 Aggrieved by the order dated 30.3.2012, the Appellant has filed this Appeal.

5. The Appellant is aggrieved by method of determination and recovery of the transmission charges, allowance of interest cost on loans borrowed by the Respondent no. 2 for other purposes in determining the transmission tariff and carrying forward of revenue gap pertaining to FY 2010-11 and FY 2011-12 and adding in the revenue requirement of FY 2012-13 instead of amortizing the same.

6. The Appellant has made the following submissions:

6.1 Incorrect determination of Transmission Charges:

The State Commission has computed the transmission charges by dividing the net revenue requirement of the Respondent no. 2 by available capacity of transmission system derived from the net capacity of generating stations connected to the system with adjusted Plant Load Factor. For private wind generator the total installed capacity of 6531.29 MW has been adjusted to net capacity of only 1278.17 MW by taking adjustment of the PLF at 19.57% of the installed capacity. In this manner the transmission charges of Rs. 6483 per MW per day has been computed. Accordingly, it is obvious that for recovery of transmission charges also the PLF adjusted capacity of Appellant should have been considered.

However, the State Commission has proceeded to apply the per MW per day charges of Rs. 6483 to the installed capacity of the wind energy generators of the Appellant. If the transmission charges of Rs. 6483 per MW per day are recovered by the Respondent no. 2 on the installed capacity, it would result in over recovery of revenue much in excess of the approved ARR.

6.2 Interest on loan allowed: The total gross block of assets approved by the State Commission as at the end of FY 2012-13 is Rs. 11768.49 crores. In terms of the Tariff Regulations the above quantum needs to be serviced through interest on loan and Return on Equity in the Debt Equity ratio of 70:30. As against the gross block of Rs. 11768.49 crores, the State Commission has allowed the servicing of a loan of Rs. 16079.56 crores. Thus, an excess amount of

Rs. 4311.07 crores over and above the Gross Fixed Assets has been sought to be serviced through Interest on Loan. Thus, the State Commission has acted in violation of the Tariff Regulations.

6.3 Revenue Deficit of the previous year: The State Commission ought not have included the deficit of the previous year for determination of the transmission charges applicable to Open Access Users. The transmission charges for open access users such as wind power developers can only include the charges to meet the applicable revenue requirements for the financial year in issue namely 2012-13 and cannot include the revenue gap of the previous years.

7. In reply to the above the learned counsel for the State Commission has made the following submissions:

7.1 Transmission charges are based on allotted transmission capacity as specified in Regulations 66 and 59 of the Tariff Regulations of 2005. The distribution licensee (R-3) is the major user of the transmission lines of the second Respondent (TANTRANSCO). Since the TANTRANSCO (R-2) and TANGEDCO(R-3) were a singly entity, the TANTRANSCO (R-2) did not allot any transmission capacity to TANGEDCO. Consequently, TANTRANSCO did not file ARR based on the allotted transmission capacity for the use of TANGEDCO. In the absence of allotted transmission capacity, the State Commission considered the available transmission capacity since allotted transmission capacity is always subject to available transmission capacity and hence the State Commission considered the available transmission capacity for determination of transmission charges in

the impugned order. The available transmission capacity has been decided on the basis of the system studies. This is for the first time after unbundling the second Respondent is charging transmission charges to the long term open access customers including the distribution licensees. Before, unbundling, the question of charging transmission charges on the distribution licensee does not arise since they were a single entity. In case, there is any error in procedure of applying the transmission charges, the aggrieved party can always file a petition with the State Commission as per law.

7.2 Regarding interest charges, the learned counsel for the State Commission submitted that the allowance of interest expenses as pass through in the tariff draws its force from the State Government's order no. 100 dated 19.9.2010 regarding transfer scheme of the

erstwhile Electricity Board which has a statutory force under Section 131 of the Act. The State Commission has relied upon the details contained in the Transfer Scheme for the purpose of arriving at the transmission charges and has taken a practical view while considering interest expenses. Disallowance of loans may affect the borrowing capacity of TANTRANSCO (R-2). Thus, the State Commission allowed the loans on actual basis. However, Return on Equity (ROE) has not been allowed since the actual loans borrowed by the TANTRANSCO (R-2) are more than the capital expenditure. The excess interest allowed is Rs. 186.22 crores while ROE disallowed is Rs. 230.89 crores.

7.3 The transmission tariff has not been revised since 2005-06. This tariff exercise has resulted in assessing the revenue gap of FY 2010-11 to 2012-13. The revenue gap of FY 2010-11 and 2011-12 has been

allowed in the ARR of FY 2012-13. In this way the entire revenue gap has been allowed in FY 2012-13 and no regulatory asset has been created for transmission tariff.

8. Shri Guru Krishna Kumar, Ld. AAG, representing TANTRANSCO has made the following submissions:

8.1 The principal grievance of the Appellant is that collection of transmission charges @ Rs. 6483/MW/day from the generators on their installed capacity would result in collection of charges in excess of the estimated revenue requirements. This is not correct. Any surplus if found at the end of the control period would be adjusted at the time of truing up by the State Commission.

8.2 The wind generators generate wind power upto their full installed capacity during peak season.

Therefore, the transmission system has to be designed to carry the peak power for wind generators.

8.3 The entire installed capacity of all generators cannot be taken for calculating the tariff because the generators will not generate 100% of their installed capacity throughout the year. Similarly, the PLF adjusted capacity being the yearly average transmission capacity for a generator varies from generator to generator. This will also not give the available transmission capacity or the capacity which will be required to cater the needs of the transmission customers. Accordingly, the State Commission has calculated the available capacity on the basis of system studies.

8.4 Regarding allowance of interest on loan, the State Commission in view of peculiar situation prevailing

where the borrowings exceeded the investment shown in capital expenditure has allowed the actual interest on loan while disallowing the Return on Equity. This clearly brings out the fact that capital borrowings have been diverted for revenue expenditure. The State Commission has taken a practical view in view of the abnormal situation by allowing interest on borrowing and disallowing Return on Equity. Further since the transfer of assets and liabilities has not yet been finalized after the reorganization of the Electricity Board, the applicability of 70:30 ratio of apportionment of gross assets between loan and equity is not possible at this stage and the provisional apportionment of assets and liabilities as envisaged in the transfer scheme by State Government could only be taken into account.

8.5 The State Commission has correctly carried forward the revenue gap for FY 2010-11 and 2011-12 and added to the revenue requirement for FY 2012-13 as the tariff cannot be determined on retrospective basis.

9. On the above issues the learned counsel for the parties made detailed submissions as referred to above. In view of the rival contentions of the parties, the following questions would arise for our consideration:

- i) Whether the State Commission has erred in determining the transmission charges for intra-state transmission system of the transmission licensee?
- ii) Whether the transmission charges are to be recovered on the basis of the installed capacity or the Plant Load Factor adjusted

capacity or on the basis of energy transmitted?

- iii) Whether the State Commission is erred in allowing the interest on loan on borrowings in excess of the gross fixed assets employed by the transmission licensee?
- iv) Whether the State Commission is correct to add the revenue gap for the FY 2010-11 and 2011-12 in the Annual Revenue Requirement for the FY 2012-13 of the transmission licensee?

10. The first two questions are inter-related, so we shall take them up together.

11. Let us first examine the Tariff Regulations, 2005 of the State Commission. The Tariff Regulations, 2005 defines the Allotted Transmission Capacity as under:

‘Allotted Transmission Capacity’ means the power transfer in MW between the specified point of

injection point of drawal allowed to a long-term open access customer on the intra-state transmission system under the normal circumstances and the expression “allotment of transmission capacity” shall be construed accordingly.

12. The Transmission Tariff Charges are described in Tariff Regulations 59 as under:

"59. Transmission Tariff Charges

The tariff for transmission of electricity by a transmission system shall comprise recovery of annual transmission charges consisting of the following computed as per the principles outlined in Chapter III of these Regulations.

- (i) Interest on Loan Capital;*
- (ii) Depreciation;*
- (iii) Operation and Maintenance Expenses;*
- (iv) Interest on Working Capital at normative availability; and:*
- (v) Return on equity:*

The annual transmission charges computed as per this regulation shall be total aggregate revenue

requirement of the STU/Transmission licensee. The following shall be deducted from the total revenue requirement.

(a) Transmission charges collected from the short term intra state open access consumers, captive power plant and generating stations using Non Conventional Energy Sources.

(b) Income from other business to the extent of portion to be passed on to the beneficiaries.

(c) Reactive Energy Charges and Transmission charges received from CTU for use of facilities of the licensee / STU.

Till such time a common transmission tariff is evolved to maintain consistency in transmission pricing framework in interstate and in the state transmission system the monthly transmission charges payable by the Distribution licensees and other long term intra state open access consumers shall be based on the capacity allocated to each beneficiaries as detailed below:

$$\left\{ \frac{TC - (a + b + c)}{12} \times \frac{CL}{SCL} \right\}$$

Where TC = Annual Transmission Charges

a = Total transmission charges by the short term open access consumers

b = Income from other business to the extent of portion to be passed on to the beneficiaries.

c = Reactive Energy Charges and Transmission charges received from CTU for use of facilities of the licensee / STU

CL =Allotted capacity to the long term transmission customers

SCL = Sum of allotted Transmission capacity to all the long term open access customers of the intra state transmission system.

The transmission charges shall be determined after following the procedure outlined in chapter II”.

13. Thus, the Annual Transmission charges determined by the State Commission shall be payable by the Distribution Licensees and other long term intra state open access consumers based on the transmission capacity allocated to each of the beneficiaries with respect to sum of allotted

transmission capacity to all the long term open access customers of the intra-state transmission system. The total allotted transmission capacity will include the transmission capacity allotted to the distribution licensee and other long term open access customers. The Regulations also provide for determination of transmission charges on the basis of the allotted transmission capacity in MW and not energy transmitted. In view of the above formula for transmission charges, the transmission charges in terms of Rs./MW/day have to be determined by dividing the Annual Transmission charges by the sum of allotted transmission capacity to all the long term open access customers of the intra-State transmission system including the distribution licensee.

14. Now let us examine the findings of the State Commission. The relevant extracts are reproduced below:

“4 TRANSMISSION TARIFF

4.1 AVAILABLE TRANSMISSION CAPACITY

4.1.1 TANTRANSCO has arrived at the available capacity of transmission system for FY 2010-11, FY 2011-12 and FY 2012-13 as 8279.61 MW, 10646.47 MW and 12250.02 MW, based on the normative Plant Load Factor (PLF) of the generating system including contracted supply connected to the grid.

4.1.2 TANTRANSCO has also proposed the postage stamp method so that uniform transmission charges per MW taking the entire State as one segment could be arrived at by dividing the annual transmission charges by the available capacity.

4.1.3 The CERC in Appendix IV to their CERC Tariff

Regulation, 2009 have detailed the procedures for calculation of transmission system availability and the formulae for calculation of availability of each category of transmission element have been given.

4.1.4 The transmission system in TANTRANSCO does not have split up information on different transmission line segments and other transmission elements. In the absence of required information, the procedure outlined in CERC's regulation cannot be followed.

4.1.5 The Commission has adopted the following definition for "Allotted Transmission Capacity" in Tariff Regulations based on the guidelines in CERC's Tariff Regulations.

"Allotted Transmission Capacity means the power transfer in MW between the specified point of injection and point of drawal allowed to a long-term open access customer on the intra-state transmission system under the normal circumstances and the expression

“allotment of transmission capacity” shall be construed accordingly.” Emphasis supplied.

4.1.6 As per Regulation 59 of TNERC’s Tariff Regulations, the transmission charges payable by an open access customer shall be calculated by dividing the Aggregate transmission charges by the sum of allotted transmission capacity to all the long-term open access customers of the intra-state transmission system and multiplied by the capacity allotted to that long-term open access customer.

4.1.7 However, the Commission is of the opinion that transmission capacity should be determined based on system studies and hence, the Commission raised a query on the issue, asking TANTRANSCO to submit the maximum transmission capacity of the System.

4.1.8 TANTRANSCO confirmed that total transmission capacity of TANTRANSCO is 13000 MW for FY 2012-13.

4.1.9 The Commission has considered the available transmission capacity from 13000 MW for FY 2012-13, based on the submission of TANTRANSCO on query raised by the Commission on maximum transmission capacity of the State”.

15. In the impugned order, the State Commission has noted that the Tariff Regulations provide for calculation of the transmission charges on the basis of sum of allotted transmission capacity. However, the State Commission opined that the transmission capacity should be determined on the basis of the system studies. Admittedly the State Commission determined the transmission charges on the basis of available transmission capacity of 13000MW for FY 2012-13 as furnished by TANTRANSCO (R-2).

16. Thus, admittedly the State Commission has not determined the transmission charges according to the

Tariff Regulations but on the basis of a new methodology devised in the tariff order. The Regulations provide for determination of the transmission charges on the basis of sum of allotted transmission capacity whereas the State Commission has determined the same on the basis of available transmission capacity of the system as per the system studies conducted by the transmission licensee. This is wrong. When the Regulations provide for the determination of the transmission charges in a particular manner, then the Commission has to determine the charges in that manner only. The Commission should have determined the transmission charges per MW per day on the basis of sum of transmission capacity allotted to the distribution licensee and all long term open access customers using the intra-State transmission system.

17. This Tribunal in its judgment dated 23.11.2012 in Appeal no. 91 of 2012 in the matter of Sai Regency Power Corporation Pvt. Ltd. vs. Tamil Nadu Electricity Regulatory Commission & Ors. has dealt with this issue and has remanded the matter to the State Commission for determination of the transmission charges after the re-organisation of the Electricity Board as per the directions given in the judgment as under:

“37. We are of the view that after unbundling of the Electricity Board, the annual transmission charges as of TANTRANSCO as determined by the State Commission have to be billed and recovered from TANGEDCO (R-4) and other open access customers as per the Regulations. We feel that the total Annual Transmission Charges for TANTRANSCO (R-3) as determined by the order dated 15.5.2006 have to be apportioned to TANGEDCO (R-4) and other long term open access customers including the Appellant in

proportion to their respective allotted transmission capacities as per the Regulations. In our opinion after the reorganisation of the Electricity Board, the rate of transmission charges payable by TANGEDCO and other long term open access customers should have been determined. However, this was not done and as pointed by the Respondents after the reorganisation of the Electricity Board, TANTRANSCO has been billing and recovering from TANGEDCO the total Annual Transmission Charges less the amount recovered from other open access customers at the rate determined in order No.2 dated 15.5.2006 on the allotted transmission capacity. This is not correct as the rate of transmission charges have to be determined as per the Regulations and apportioned to the allotted transmission capacity to the distribution licensee and other long term open access customers. This is also against the principle of non-discriminatory open access as emphasized in the Electricity Act, 2003 as it is resulting in different rate of transmission

charges being recovered by the transmission licensee from TANGEDCO and other long term open access customers of the intra state transmission system. According to Section 40 (C) of the Electricity Act, 2003, the transmission licensee has to provide for non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of transmission charges. Accordingly, same rate of transmission charges is to be recovered from the licensee and other open access customers.

38. *In our opinion, the allotted transmission capacity for TANGEDCO should be the summation of its own net generation capacity connected to TANTRANSCO's transmission system, share in central sector stations, other long term contracted capacity from IPPs connected to the TANTRANSCO's system, etc. Similarly the allotted transmission capacity for the Appellant and other wind energy generators should be their respective installed capacity.*

39. *Therefore, on this issue we remand the matter to the State Commission with the direction to determine the transmission charges per MW per day charged by TANTRANSCO for use of its transmission network by TANGEDCO and other long term open access customers after the reorganisation of the Board on the basis of summation of transmission capacity allotted to long term open access customers including TANGEDCO. For the wind energy generators, the allotted capacity shall be the installed capacity of the respective generators. On the other hand the transmission capacity allotted to TANGEDCO would be on the basis of sum of net capacity (Installed Capacity less auxiliary consumption) of own generating stations connected to the transmission system, capacity contracted from IPPs, share in Central Sector Stations, etc. However, the Annual Transmission Charges determined by order No. 2 dated 15.5.2006 will not be reopened”.*

The findings of the Tribunal in the above judgment will be applicable to this case also for determination of the transmission charges payable by the users of the intra-State transmission system.

18. It is important that the allotted transmission capacities used for determination of transmission charges in Rs./MW/day are also used for the recovery of transmission charges payable by each of the long term open access customers. If the charge as determined by the State Commission on the basis of available transmission capacity derived from the system studies is adopted and the recovery of transmission charges from long term open access customers is made on the basis of allotted transmission capacity taken as capacity of the generator as pleaded by the Respondents, it will result in excess recovery of the transmission charges much

more than the charges due to the transmission licensee.

19. If the long term open access users of the transmission system other than the distribution licensee, like the Appellant, are charged the transmission charges on the basis of MW capacity of the generator at the rate determined by the State Commission and the distribution licensee is charged on the basis of total transmission charges due to the transmission licensee less the charges recovered from other long term open access users of the transmission system as has been practiced by the Respondent no. 2, it will result in lesser recovery of transmission charges from the distribution licensee and higher recovery from other long term open access customers which will be contrary to the Tariff Regulations and against the

principle of non-discriminatory open access as laid down in the Electricity Act.

20. Learned counsel for the State Commission has referred to the Regulation 8 regarding computation of capacity available for open access in justification of determination of transmission charges on the basis of available transmission capacity of the transmission system. Regulation 8 only specifies the method to be used by the distribution licensee to determine the available capacity for the portion of the distribution system over which the open access is demanded by a prospective customer. These values are to be updated by the State Load Dispatch Centre ('SLDC') on monthly basis and put on the website of the SLDC for guidance of the distribution licensee and the potential open access customers for the purpose of allotment of transmission capacity. This Regulation is not relevant

for determination of transmission charges of the transmission licensee. The relevant Regulation for determination of transmission tariff charges is Regulation 59 in Chapter-VI of the Tariff Regulations. We have given the findings in the judgment on the basis of Regulation 59. Further, the MYT Regulations of 2009 notified by the State Commission under Regulation 20 stipulate that the transmission charges payable by the long term intra state open access customers like the distribution licensees and other beneficiaries for each year shall be arrived as per Regulation 59 of the Tariff Regulations and the charges for usage of transmission facilities by long term beneficiaries shall be on the capacity allotted and on MW/Day basis. Regulation 12 of the MYT Regulations also provides for the STU/transmission licensee to furnish, along with tariff application, the

capacity allotted to all long term customers on the base year and estimates for the allotted capacity for each year of the control period. We find that the State Commission has not followed these Regulations and determined the transmission charges in contravention to its Tariff Regulations and MYT Tariff Regulations.

21. We are also not convinced by the argument of the Appellant that the transmission charges should be determined on the basis of energy transmitted or PLF adjusted capacity. The Regulations clearly provide for determination of transmission charges on the basis of the allotted transmission capacity and not on energy transmitted or PLF adjusted capacity. Therefore, we reject the contention of the Appellant for determination of the transmission charges on the basis of energy transmitted or PLF adjusted capacity.

22. Accordingly, we remand the matter to the State Commission to re-determine the transmission charges payable by all the long term open access customers including the Respondent no. 3 for the intra-state transmission system as per our directions. The same rate of transmission charges in terms of Rs./MW/day will be applicable to the distribution licensee and the long term open access consumers like the Appellant.

23. The third issue is regarding recovery of interest on loan.

24. According to the Appellant, the interest on loan has been allowed by the State Commission on the borrowings exceeding the admitted Gross Fixed Assets.

25. We notice that the State Commission has given detailed reasons in the impugned order for not allowing the Return on Equity and allowing the

interest on loan taking borrowings of the licensee which are in excess of the admitted Gross Fixed Assets.

26. Let us examine the findings of the State Commission in this regard. The relevant extracts of the order are as under:

“3.5.3 The Commission has considered loan allocated in the Transfer Scheme to TANTRANSCO, for the purpose of opening loan balance for TANTRANSCO. The Commission has also considered the Gross Interest expenses as submitted by TANTRANSCO in the Petition.

3.5.4 As regards capitalisation of interest expenses, the Commission has considered the actual capitalisation of interest expenses in FY 2010-11 as submitted by TANTRANSCO. For FY 2011-12 and FY 2012-13, the Commission has considered the capitalisation of interest expenses as 10% of average of opening and closing work-in-

progress for respective years. The capitalisation of interest expenses as calculated by the Commission is tabulated below:

Table 19: Capitalisation of Interest expenses

(in Rs Crore)

Particulars	Approved					
	Opening WIP	Carpex	Capitalisation	Closing WIP	Average	Capitalization of Interest Expenses
FY 2011-12	1793.39	1285.25	834.55	2244	2019	202
FY 2012-13	2244.09	2280.83	1001.20	3524	2884	288

Table 20: Interest Expenses approved by the Commission

(in Rs Crore)

Particulars	FY 2010-11			FY 2011-12			FY 2012-13		
	Last Tariff Order	Petition	Approved	Last Tariff Order	Petition	Approved	Last Tariff Order	Petition	Approved
Interest on Loan	1023	1292	1292	1094	1482	1446	1159	1600	1477

3.5.5 The Commission has observed in many places in this Order that there is a mix up between the capital account and the revenue account. Equity as well as capital borrowings have been diverted from time to time to meet the revenue expenses. Equity being the owner's investment, the Commission has taken a view that the return on equity shall not be permitted if equity has been diverted for meeting revenue expenses. Further, borrowings are also more than the investment shown for capital expenditure. This clearly brings

out the fact that capital borrowings have also been diverted for revenue expenditure. This is also recognized by the policy paper which has been published in the Government of Tamil Nadu Website.

3.5.6 The Regulations of the Commission are for normal situations and does not cover a situation which is encountered now. Therefore, the Commission has to take a practical view on this issue. The option available to the Commission is to disallow the interest costs on the entire borrowings in excess of capital works which will be in line with the Regulation but such a move would create a lot of confusion and may also affect the borrowing ability of the TANGEDCO / TANTRANSCO. The proposal regarding revaluation of assets in the two Transfer Schemes already issued by the Government of Tamil Nadu may address the balance sheet problems but will not generate additional cash to repay the existing loans which were borrowed. Loans would be carried forward for final settlement. This issue may also be covered

by the two committees constituted by Government of India. viz., Shunglu Committee and Chaturvedi Committee. Shunglu Committee has already submitted its report which is available in the website of Planning Commission. The report of the Chaturvedi Committee is not available in public domain yet. Under these circumstances, Commission is allowing the interest on entire borrowing duly considering the loans shown in the Transfer Schemes and provisionally allows such interest, subject to final adjustment when the audited accounts are made available. This is also further subject to the actions taken by the appropriate authorities as well as the TANGEDCO / TANTRANSCO with regard to handling of the past liabilities based on the outcome of the above referred two reports and implementation thereof”.

“3.6.2 Regulation 21 of TNERC Tariff Regulations states as under:

“21. Debt-Equity Ratio

For the purpose of determination of tariff, debt-equity ratio as on the date of commercial operation

of Generating Station and transmission projects, sub-station, distribution lines or capacity expanded after the notification of these Regulations shall be 70:30. Where equity employed is more than 30% the amount of equity shall be limited to 30% and the balance amount shall be considered as loans, advanced at the weighted average rate of interest and for weighted average tenor of the long term debt component of the investment.

Provided that in case of a Generating Company or other licensees, where actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of return on equity in tariff computation.”

“3.6.4 The Commission observed that the loan borrowing is more than the capital expenditure incurred by TANTRANSCO. The Commission also observed that TANTRANSCO has submitted equity addition from FY 2010-11 to FY 2012-13. The Commission is of the view that since the loan borrowing is more than the capital expenditure incurred from FY 2010-11 to FY 2012-13; the

equity infusion shown by TANTRANSCO has been diverted to revenue accounts and has been deployed for meeting Revenue expenditure. Therefore, the Commission has not allowed any Return on Equity from FY 2010-11 to FY 2012-13”.

27. The findings of the State Commission are summarized as under:

i) There is a mix up between the capital account and revenue account and equity as well as capital borrowings have been diverted to meet the revenue expenses.

ii) Return on Equity shall not be permitted if equity has been diverted for meeting revenue expenses.

iii) Borrowings are more than the investment shown in capital expenditure which brings out the fact that the borrowings have been diverted for revenue expenditure.

iv) In view of the abnormal situation, the State Commission has to take a practical view on this issue.

v) If the Commission disallows the interest costs on the entire borrowings in excess of capital works in line with the Regulation, it would create confusion and may also affect the borrowing ability of the distribution company and the transmission licensee.

vi) The revaluation of assets in the two Transfer Schemes already issued by the State Government may address the balance sheet problems but it will not generate additional cash to repay the existing loans which were borrowed. The loans would be carried forward for final settlement. This issue may be covered by the two committees constituted by the Government of India.

vii) Under these circumstances, the Commission is allowing the interest on entire borrowing duly

considering the loans shown in the Transfer Schemes and provisionally allows such interest, subject to final adjustment when the audited accounts are made available and further subject to the actions taken by the appropriate authorities as well as the licensees with regard to handling of the past liabilities based on the outcome of the above referred reports of the committees set up by the Government of India. Thus, the State Commission has not allowed any Return on Equity but has allowed the interest on loan on the admitted borrowings which are in excess of the Gross Fixed Assets.

28. The State Commission in the written submissions has now stated that the contention of the Appellant that there is an over-charging of interest amounting to Rs. 186.22 crores is misplaced. In this connection, the State Commission has submitted following

computation regarding disallowance on account of interest on loan and Return on Equity:

For 2012-13

(Rs. in Crore)

S.No.	Particulars	As per Appellant	As per Commission Tariff Order
1.	Loan Outstanding	16079.56	16079.56
2.	GFA at the end of the year	11768.49	11768.49
3.	Excess of loan over GFA	4311.07	4311.07
4.	Excess interest @ 11% on 431	474.22	474.22
5.	Less: Interest capitalized	288.00	288.00
6.	Excess interest allowed	186.22	186.22
7.	Return on equity disallowed	-	230.89
8.	Overall Disallowance	-	44.67

29. Thus, the State Commission has disallowed Return on Equity of Rs. 230.89 crores while allowing additional interest of Rs. 186.22 crores. Thus, the overall disallowance to the transmission licensee on account of Return on Equity and interest as admissible to the transmission licensee is Rs. 44.67 crores.

30. According to learned counsel for the State Commission, the Commission has allowed the interest

expenses as pass through for the purpose of determination of Transmission Tariff as per the order of the State Government regarding unbundling of the Electricity Board. The Transfer Scheme drawn by the State Government provides that any rights or liabilities stipulated or described in the scheme shall be enforceable not only by or against the Transferor or Transferee but against all parties including third parties also. Clause (b) of sub-section (3) of Section 131 of the Electricity Act, 2003 states that a transaction of any description effected in pursuance of a transfer scheme shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

31. We find that the transmission tariff of the Tamil Nadu has not been revised since the year 2005-06 and has been revised now after a lapse of 7 years.

Similarly, the distribution tariff in the Tamil Nadu has also been revised after a long time and tariff order was issued only after the restructuring of the Electricity Board. The long gap in determination of tariff has resulted in revenue gap and excess borrowings and diversion of capital funds to revenue account. Even though the State Commission has deviated from its Regulations, the State Commission has now given a calculation, according to which, if the Regulations are followed and Return on Equity is allowed as per the Regulations, it will only result in increase in ARR and tariff and there will not be any reduction in tariff as sought by the Appellant. The State Commission has also stated that adjustment will be made after finalization of the balance sheet and the restructuring of the loans as per the recommendations of the committees appointed by the Government of India.

32. According to the learned counsel for the Appellant, the interest on loan should be allowed as per the Tariff Regulations but the Return on Equity should not be allowed as it was not pressed by the Respondent no. 2. We are unable to accept this contention. Firstly, the Respondent no. 2 had sought Return on Equity as per the Regulations. Secondly, if the interest on loan has to be allowed as per the Regulations then the Return on Equity has also to be allowed as per the Regulations. Even though we feel that the State Commission should have determined interest on loan and Return on Equity as per the Regulations, in view of the submissions made by the State Commission that allowing ROE and interest on loan as per Regulations will only result in increase in ARR and tariff and that the adjustment will be made after finalization of the balance sheet of the successor

companies of the Electricity Board viz. Respondent nos. 1 and 2 and the proposed restructuring of loan, no purpose will be served by interfering with the order of the State Commission.

33. In view of above, we do not want to interfere with the findings of the State Commission regarding the treatment given to the interest on loan in the impugned order.

34. The fourth issue is regarding carry forward of the revenue gap for the FYs 2010-11 and 2011-12 in the Annual Revenue Requirement for the year 2012-13 of the transmission licensee.

35. According to the Appellant, the State Commission ought not to have included the deficit of the previous year for determination of the transmission charges applicable for open access users such as wind power

developers as their charges have to be normative and should include the charges to meet the applicable revenue requirements for the financial year in issue namely 2012-13. In other words, the Appellant is seeking a lower transmission tariff than applicable to other long term open access customers like the Respondent no. 3. Alternatively, the Appellant is seeking that the revenue gap of the transmission licensee may be amortised.

36. According to the State Commission, the tariff exercise has resulted in assessing the revenues gap of FY 2010-11 to FY 2012-13. Since the transmission tariffs are not to be revised retrospectively, the entire revenue gap for the FYs 2010-11 and 2011-12 has been added to the revenue gap in FY 2012-13. The entire revenue gap has been allowed in FY 2012-13 and no regulatory asset has been created for

transmission tariff. We do not find any infirmity in allowing the revenue gap for the FY 2010-11 and 2011-12 in the ARR of FY 2012-13.

37. This Tribunal in O.P. no. 1 of 2011 by order dated 11.11.2011 had already given directions to all the State Commissions not to keep revenue gaps in the ARR and create regulatory assets except under the exceptional circumstances as specified in the Tariff Policy as this creates cash flow problem for the licensee. Further, creation of regulatory assets is neither in interest of the licensee nor the consumers. Thus, we do not find any substance in the contention of the Appellant that the revenue gap of the FY 2010-11 and 2011-12 may be left uncovered as it is against the directions given by this Tribunal in O.P. no. 1 of 2011.

38. We are not inclined to accept the contentions of the Appellant that the transmission tariff applicable to them should not include revenue gap of the previous years. While answering the first two questions, we have stated that the transmission charges based on the sum of allotted transmission tariff has to be applicable to the distribution licensee as well as other long term open access customers. The Appellant cannot take advantage of the principle of uniform transmission charges while determining the transmission charges and at the same time asking for differentiation with regard to treatment given to revenue gap for the previous years. The Appellant, for that matter any new long term open access customer, also gets the benefit of cheaper assets which were added in past and, therefore, it cannot claim reduction in tariff on account of carry forward of the revenue

gap of the licensee for the previous years. Accordingly, this question is answered as against the Appellant.

39. Summary of our findings:

i) According to Tariff Regulations, the transmission charges are to be determined on the basis of allotted transmission capacity to long term open access customers. However, the State Commission has not followed the Regulations and has determined the transmission charges on the basis of available capacity based on the system studies as furnished by the transmission licensee. When the Regulations provide determination of the transmission charges in a particular manner then the Commission has to determine the transmission charges in that manner only. Similar issue had been dealt with by this Tribunal in Appeal no. 91 of 2012 in the matter of Sai Regency Power

Corporation Pvt. Ltd. vs. Tamil Nadu Electricity Regulatory Commission & Ors. wherein the Tribunal gave certain directions for determination of transmission charges payable by the users of the intra-state transmission system. The findings of the Tribunal in the above judgment will also be applicable to this case also. Accordingly, we remand the matter to the State Commission to re-determine the transmission charges payable by all the long term open access customers, including Respondent no. 3, of the intra-state transmission system as per our directions.

ii) On the issue relating to interest on loan, we do not want to interfere with the findings of the State Commission regarding the treatment given to the interest on loan in the impugned order.

iii) Regarding carry forward of the revenue gap for the FYs 2010-11 and 2011-12 in the Annual Revenue Requirement and tariff for the year 2012-13 of the transmission licensee, we do not find any substance in the contentions of the Appellant. Therefore, we confirm the findings of the State Commission.

40. In view of our above findings, the Appeal is partly allowed and the impugned order is set aside to the extent as indicated above. The State Commission is directed to pass the consequential orders in terms of our judgment as early as possible. No order as to costs.

41. Pronounced in the open court on this **4th day of February, 2013.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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REPORTABLE/NON-REPORTABLE

vs