

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

Appeal Nos.135, 136, 137, 138, 139 & 140 of 2005

Dated: October 4, 2006

Present:

**Hon'ble Mr.Justice Anil Dev Singh, Chairperson
Hon'ble Mr.A.A. Khan, Technical Member**

Appeal No. 135 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.
2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.
3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.
4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hydeabad-500 049.
5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
7. Electricity Department,
Government of Goa,
Panaji, Goa

...Respondents

Appeal No. 136 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.
2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.
3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.
4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hyderabad-500 049.
5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
7. Electricity Department,
Government of Goa,
Panaji, Goa

...Respondents

Appeal No. 137 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.

2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.
3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.
4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hyderabad-500 049.
5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
7. Electricity Department,
Government of Goa,
Panaji, Goa
8. Madhya Pradesh State Electricity Board,
P.O. Box -34, Rampur,
Jabalpur- 482 002
9. Maharashtra State Electricity Board,
Prakashgad, 4th Floor,
Bandra East,
Mumbai-400 052.
10. Gujarat State Electricity Board,
Vidyut Bhawan, Race Course,
Vadodra – 390007
11. Electricity Department,
Administration of Daman & Diu,
Daman-396 210.

12. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T. Silvassa-396 230

13. Chattisgarh State Electricity Board,
Dangania,
Raipur.

...Respondents

Appeal No. 138 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.

2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.

3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.

4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hydeabad-500 049.

5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.

6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.

...Respondents

Appeal No. 139 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.
2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.
3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.
4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hydeabad-500 049.
5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
7. Electricity Department,
Government of Goa,
Panaji, Goa

...Respondents

Appeal No. 140 of 2005

Tamil Nadu Electricity Board
Rep. by its Chief Engineer/Planning,
No. 800, Anna Salai, Chennai-600 002.

..... Appellant

V/s

1. Central Electricity Regulatory Commission
6th Floor, Core-3, Scope Complex,
Lodhi Road, New Delhi-110 003.

2. Power Grid Corporation of India,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi -110 016.
3. Karnataka Power Transmission Corpn. Ltd.
Cauvery Bhawan,
Bangalore- 560 009.
4. Transmission Corpn. Of Andhra Pradesh Ltd.,
Vidyut Soudha,
Hyderabad-500 049.
5. Kerala State Electricity Board,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001.
7. Electricity Department,
Government of Goa,
Panaji, Goa
8. Bihar State Electricity Board,
Vidyut Bhawan,
Bailey Road,
Patna-800 001.
9. West Bengal State Electricity Board,
Bidhyut Bhawan,
8th Floor, (A Block),
Block DJ, Salt Lake City,
Kolkatta 700 091.
10. Damodar Valley Corporation,
DVC Tower,
V.I.P. Roa,
Kolkatta- 700 054.
11. Grid Corpn, of Orissa Ltd,
Vidyut Bhawan,
Janpath,
Bhubaneshwar -751 007.

12. Power Department,
Govt. of Sikkim,
Gangtok- 727 102.

13. Jharkand State Electricity Board,
In front of Main Secretariat,
Doranda,
Ranchi- 834 002.

...Respondents

For Appellant(s) : Mr. R. Venkatramani, Senior Advocate with
Mr. P.R. Kovilan,
Mr. V. Krisnamurthy & Mr. Ashok Panigrahi

For Respondent(s): Mr. M.G. Ramachandran with Ms. Taruna S. Baghel &
Mr. N.N. Chaturvedi for PGCIL
Mr. Ramji Srinivasan with Ms Mandakini Singh &
Mr. Anuj Aggarwal for KPTCL,
Mr. R.K. Mehta for GRIDCO of Orissa
Mr. M.T. George for KSEB.

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

In these appeals, the appellant, Tamil Nadu Electricity Board (for short 'TNEB') has challenged two orders of the Central Electricity Regulatory Commission (for short 'CERC') namely, order dated June 30, 2003, passed in Petition No. 40/2002, whereby, *interalia*, the issue relating to capitalization of Foreign Exchange Rate Variation (for short 'FERV') was determined, and order dated December 4, 2003, passed in Review Petition No. 54/2003, whereby the original order dated June 30, 2003 was affirmed. The facts lie in a narrow compass.

2. On December 21, 2000, CERC formulated terms and conditions for determination of tariff, including working out transmission charges and payment thereof by the SEBs. This also included norms relating to recovery of FERV. As a consequence of the fixing of the norms for determining tariff and transmission charges and payment of such charges by the State Electricity Boards, the CERC issued a notification dated March 26, 2001 for giving effect thereto.

3. The second respondent- Powergrid Corporation of India Ltd. filed an application before the CERC, being Petition No. 40/2002, for approval of tariff for the period April 1, 2001 to March 31, 2004 in respect of 400 KV D/C Kaiga-Sirsi transmission line. It also claimed recovery on account of FERV. By order dated June 30, 2003, tariff was determined by the CERC, including the question relating to extra rupee liability towards interest payment and loan repayment incurred directly arising from FERV, which the CERC computed by capitalization of FERV on accrual basis and apportioning the amount so arrived at between equity and loan in the ratio of 56: 44.

4. The CERC calculated the FERV on the basis of the following formula:

“Foreign Loan outstanding as on March 31, 2001 x (Exchange Rate as on March 31, 2001 – Exchange Rate as on date of commercial operation viz. December 1, 1999).”

Thus calculated FERV came to Rs. 14.18 lakh. This was added to the capital cost of the transmission system for purposes of fixation of transmission tariff.

5. As already pointed out, the cost on account of FERV was bifurcated between debt and equity in the ratio of 56:44. The appellant being aggrieved by the method employed for determining FERV, including the division of the additional capital cost in the ratio of 56:44, filed a review petition, being review petition no. 54/03. The CERC by its order dated December 4, 2003 declined to change the methodology employed for calculating the FERV and the ratio in which additional capital cost was divided between debt and equity.

6. Not satisfied with the order passed by the CERC, the appellants have filed these appeals.

7. Learned senior counsel appearing for the appellant pointed out that the loan was not repayable during the period April 1, 2001 to March 31, 2004. The repayment of loan commenced only from June 10, 2004. According to the learned counsel since the liability to repay the loan commenced after the expiry of the tariff period in question, FERV ought not to have been capitalized as on April 1, 2001 by considering the exchange rate applicable as on March 31, 2001. It was further submitted that in principle bifurcating the amount of FERV into equity and loan in the ratio of 56:44 was not correct. It was also canvassed that

clause 1.13 of the notification dated March 26, 2001 refers to actual extra rupee liability towards interest payment and loan repayment in the relevant year and the methodology applied by the Commission does not abide by this requirement in as much as FERV has been capitalized as on March 31, 2001. It has also been pointed out on behalf of the appellant that Accounting Standard 11 has undergone a change, which has not been noted by the CERC. On the other hand, learned counsel for the second respondent, the Powergrid Corporation of India Ltd. has submitted that CERC has applied the methodology for calculating the FERV in accordance with clause 1.13 read with Accounting Standard 11. Learned counsel for the second respondent also submitted that even if two interpretations of clause 1.13 of the notification dated March 26, 2001 are possible, the one adopted by the CERC can not be found fault with.

8. In the light of the submissions of the learned counsel for the parties, the following two questions arise for our determination:

- i) Whether the interpretation placed by the CERC on clause 1.13 of the notification dated March 26, 2001 suffers from any illegality?
- ii) Whether the CERC was justified in apportioning the cost of the FERV between loan and equity?

Question No. 1:

9. We have considered the submissions of the learned counsel for the parties in regard to the first question. We are of the view that the interpretation placed by CERC on clause 1.13 of the notification is a possible interpretation.

10. At this stage, it will be necessary to refer to Clause 1.13 of the Notification, which reads as under:

“1.13 Extra Rupee Liability

(a) *Extra rupee liability towards interest payment and loan repayment actually incurred, in the relevant year shall be admissible; provided it directly arises out of foreign exchange rate variation and is not attributable to Utility or its suppliers or contractors. Every utility shall follow the method as per the Accounting Standard 11 (Eleven) as issued by the Institute of Chartered Accountants of India to calculate the impact of exchange rate variation on loan repayment”.*

(emphasis supplied)

11. Clause 1.13 is in two parts. According to the first part, extra rupee liability towards interest payment and loan repayment which is actually incurred in the relevant year is admissible. As per the second part, every utility is required to follow the method for calculating the impact of exchange rate variation on loan repayment as per the Accounting Standard 11 issued by the Institute of Chartered Accountants of India.

Clauses 7 and 10 of the Accounting Standard 11 are relevant for resolving the controversy. These clauses are set out below:-

- “7. *At each balance sheet date:*
- a. *monetary items denominated in a foreign currency (e.g. foreign currency notes, balances in bank accounts denominated in a foreign currency, and receivables, payables and loans denominated in a foreign currency) should be reported using the closing rate. However, in certain circumstances, the closing rate may not reflect with reasonable accuracy the amount in reporting currency that is likely to be realized from, or required to disburse, a foreign currency monetary item at the balance sheet date, e.g., where there are restrictions on remittances or where the closing rate is unrealistic and it is not possible to effect an exchange of currencies at that rate at the balance sheet date. In such circumstances, the relevant monetary item should be reported in the reporting currency at the amount which is likely to be realized from, or required to disburse, such item at the balance sheet date;*
 - b. *non-monetary items other than fixed assets, which are carried in terms of historical cost denominated in a foreign currency, should be reported using the exchange rate at the date of the transaction;*
 - c. *non-monetary items other than fixed assets, which are carried in terms of fair value or other similar valuation, e.g. net realisable value, denominated in a foreign currency, should be reported using the exchange rates that existed when the values were determined (e.g. if the fair value is determined as on the balance sheet date, the exchange rate on the balance sheet date may be used); and*
 - d. *the carrying amount of fixed assets should be adjusted **as stated in paragraphs 10 and 11 below.***

10. *Exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which are carried in terms of historical cost, should be adjusted in the carrying amount of the respective fixed assets. The carrying amount of such fixed assets should, to the extent not already so adjusted or otherwise accounted for, also be adjusted to account for any increase or decrease in the liability of the enterprise, as expressed in the reporting currency by applying*

the closing rate, for making payment towards the whole or a part of the cost of the assets or for repayment of the whole or a part of the monies borrowed by the enterprise from any person, directly or indirectly, in foreign currency specifically for the purpose of acquiring those assets”.

12. As is apparent from above, clause-7 opens with the words ‘at each balance sheet date’. It is well known that balance sheet is prepared at the close of each year. In accordance with the aforesaid provision of the Accounting Standard 11 of the Institute of Chartered Accountants, the FERV has been determined by the CERC. The CERC has followed the Accounting Standard 11 according to which the FERV is to be capitalized every year at each balance sheet date on accrual basis.

13. It seems to us that the words ‘actually incurred’ in the relevant year occurring in the first part of clause 1.13 have been diluted by the second part of the clause. In any event, CERC has followed the method for calculating extra rupee liability by following Accounting Standard 11. Even if two interpretations of clause 1.13 are possible, the CERC undoubtedly has followed one of the interpretations. Therefore, interpretation placed by the CERC cannot be flawed.

14. By this methodology, the payment is staggered over a period of time and the entire actual liability towards interest payment and loan repayment incurred is not recovered in one go but in instalments. In case the entire liability is recovered at one point of time it will be quite

burdensome for the party, who is required to pay. The dependence of the appellant on the change brought about in Accounting Standard 11 is of no avail to it, as the amendment was carried out after the period April 1, 2001 to March 31, 2004, which is the period in question.

Question No. 2

15. As regards the apportionment of FERV liability, it should not have been apportioned between debt and equity. As per note to Explanation-2 of clause-4 of the Government of India Notification dated December 16, 1997, the equity and loan component of the transmission systems commissioned on or before April 1, 1997 shall be notionally divided in the ratio of 50:50 on the book value of the transmission system at the end of the financial year of 1996-97. The note further provides that 50 percent of the book value of the transmission system as on April 1, 1997 shall be deemed as equity for computation of tariff effective from April 1, 1997 and shall remain constant upto the technical life of the asset and the remaining 50% of the book value shall be deemed as notional loan amount and shall be progressively reduced by the corresponding depreciation provision till it becomes zero.

16. According to Explanation 1 to clause 4.4 (c), the premium raised by the Transmission Utility while issuing share capital and investment of internal resources created out of free reserve of the existing utility, if any, for the funding of the project, shall also be reckoned as paid up capital for the purpose of computing the return on equity subject to fulfillment

of certain conditions. Explanation also makes no provision for increasing the equity beyond 50% of the book value of the transmission system. Once the fixed cost has been agreed to be financed in a certain ratio of debt and equity, the equity can be affected by FERV only if the equity is in foreign exchange. The provision of FERV as a pass through has been kept to ensure that any liability or gain, if any, arising on account of any variation in foreign exchange rates (whether debt or equity) is passed on to the beneficiary. In case there is no FERV liability or gain, as the case may be, there will not be any FERV adjustment. In the instant case the additional liability arising on account of FERV shall have an impact only on the debt liability and not equity capital. In this view of the matter, we hold that FERV adjustment is to be made in respect of debt liability and not in respect of the equity. Accordingly, we hold that the CERC is only to make adjustment in respect of debt liability and not in respect of the equity.

17. In view of the aforesaid discussion, the appeal is partly allowed to the extent indicated above. The Central Electricity Regulatory Commission shall re-calculate the effect of FERV on the debt liability.

(Justice Anil Dev Singh)
Chairperson

Dated: October 4, 2006

(Mr. A.A. Khan)
Technical Member