

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.42/RP/2022**

in

**Petition No. 284/GT/2020**

**Coram:**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 16<sup>th</sup> July, 2023**

**IN THE MATTER OF**

Review of Commission's order dated 18.8.2022 in Petition No. 284/GT/2020 in the matter of revision of tariff for the period 2014-19 and determination of tariff for the period 2019-24 in respect of Dhauliganga Power Station (280 MW).

**AND**

**IN THE MATTER OF**

NHPC Limited,  
NHPC Office Complex, Sector-33,  
Faridabad (Haryana)- 121003

....Petitioner

Vs

1. Punjab State Power Corporation Limited,  
The Mall, Near Kali Badi Mandir,  
Patiala - 147 001 (Punjab)
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector - 6  
Panchkula-134 109 (Haryana).
3. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110 019.
4. BSES Yamuna Power Limited,  
Shakti Kiran Building,  
Karkardooma, Delhi- 110 072
5. Tata Power Delhi Distribution Limited,  
33 kV Sub-Station Building,



Hudson Lane, Kingsway Camp,  
New Delhi-110 009.

6. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Shimla - 171 004 (Himachal Pradesh).
7. Uttar Pradesh Power Corporation Limited,  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow - 226 001 (Uttar Pradesh).
8. Ajmer Vidyut Vitaran Nigam Limited,  
Old Powerhouse, Hatthi Bhatta,  
Jaipur Road, Ajmer - 305 001 (Rajasthan)
9. Jaipur Vidyut Vitaran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur - 302 005
10. Jodhpur Vidyut Vitaran Nigam Limited,  
New Power House, Industrial area,  
Jodhpur - 342 003 (Rajasthan).
11. Uttaranchal Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun – 248 001 (Uttarakhand).
12. Engineering Department,  
1st Floor, UT Secretariat, Sector 9-D,  
Chandigarh – 160 009.
13. Power Development Department,  
New Secretariat,  
Jammu- 180 001 (J&K).

....Respondents

**Parties Present:**

Shri Ved Jain, Advocate, NHPC  
Shri Ankit Gupta, Advocate, NHPC  
Shri Ravi Kant Singh, Advocate, NHPC  
Shri Mohd. Faruque, NHPC  
Shri Piyush Kumar, NHPC  
Shri Deepak K. Dey, NHPC  
Shri Raunak Jain. Advocate, TPDDL  
Shri Sachin Dubey, Advocate, BRPL & BYPL



## **ORDER**

Petition No. 284/GT/2020 was filed by the Review Petitioner, NHPC Limited, for truing up of tariff of Dhauliganga Hydroelectric Power Station (280 MW) (in short “the generating station”) for the period 2014-19, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations') and for determination of the tariff for the generating station for the period 2019-24, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations') and the Commission vide order dated 18.8.2022 (in short the ‘impugned order’) disposed of the said petition. Aggrieved by the impugned order dated 18.8.2022, the Review Petitioner has filed this Review Petition on the ground that there is error apparent on the face of the record on the following issues:

*(A) Error in grossing up of Return on Equity with Minimum Alternate Tax (MAT) by the Commission instead of the Effective Tax Rate.*

### **Hearing dated 24.1.2023**

2. The Review Petition was heard through virtual conferencing, on 24.1.2023. During the hearing, the learned counsel for the Review Petitioner made detailed submissions in the matter. Considering the submissions of the Review Petitioner, the Review Petition was ‘admitted’ on the issues raised in paragraph 1 above vide order dated 9.2.2023 and notice was served to the Respondents, with directions to complete pleadings, in the matter. No reply has been filed by the Respondents, despite notice. The Commission directed the Review Petitioner to substantiate its claim by furnishing the working and impact of grossing up of Return on Equity. The Review Petitioner vide affidavits dated 15.2.2023, has filed the requisite information.



### **Hearing dated 31.5.2023**

3. The matter was finally heard on 31.5.2023. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter and prayed that error apparent on the face of the order dated 18.8.2022 may be rectified. The learned counsel for the Respondent, TPDDL made detailed oral submissions in the matter, objecting to the relief sought by the Review Petitioner. The learned counsel for the Respondents BRPL and BYPL submitted that the Review Petitioner cannot be permitted to rely upon new documents to claim relief in the Review Petition. The Commission, after hearing the learned counsel for the Review Petitioner and the Respondents permitted the parties to file their written submission in the matter. The Respondents UPPCL has filed its reply vide affidavit dated 3.3.2023, the Respondent BRPL has filed its replies vide affidavits dated 21.4.2023 and 30.6.2023, and Respondent TPDDL has filed its reply vide affidavits dated 18.5.2023 and 30.6.2023. The Review Petitioner vide affidavit dated 12.5.2023 has filed the rejoinder to the replies of UPPCL and BRPL.

4. Based on the submissions of the parties and the documents available on record, we proceed to examine the issue raised by the Review Petitioner in the subsequent paragraphs.

### **Error in grossing up of Return on Equity with Minimum Alternate Tax (MAT) by the Commission instead of the Effective Tax Rate;**

#### ***Submissions of the Review Petitioner***

5. The Review Petitioner, in the Review petition, has submitted the following:
- (a) The Commission has grossed up Return on Equity (ROE) with MAT rate (which was applicable tax rate for the Petitioner's company during 2014-19) and not



with effective tax rate, and the same is not in accordance with Regulation 25 (3) of the 2014 Tariff Regulations.

- (b) The concept of effective tax rate was introduced by the Commission to allow the pre-tax ROE of 15.5%/16.5% for the period 2014-19 and considering the applicable tax rate, instead of the effective tax rate, is not in line with the provisions of the 2014 Tariff Regulations. By using the applicable tax rate for grossing up of base rate of ROE, the Commission has moved back to the 2009 Tariff Regulations.
- (c) The Review Petitioner has grossed up the ROE with effective tax rate as per Regulation 25(3) of the 2014 Tariff Regulations, which is based on actual tax paid together with any additional tax demand, including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the period 2014-15 to 2018-19 on actual gross income of any financial year.
- (d) The actual tax paid is excluding the tax on other income stream and penalty, if any, arising on account of delay in deposit or short deposit of tax amount by the generating company, which is as per Regulation 25(3) of the 2014 Tariff Regulations. Although the Review Petitioner's company fall under the MAT regime, but since effective Tax Rate is calculated as per provisions of Regulation 25 (3) for grossing up of ROE for truing up purpose, the effective Tax may be higher or lower as compared to MAT rate.
- (e) By claiming the effective tax rate in place of the MAT rate, the Review Petitioner is adopting the tax neutral approach, which is the basic intention of the Tariff Regulations.
- (f) In view of above, it is clear that the Commission, while grossing up the ROE, has considered the MAT rate, in place of the effective tax rate, which is a gross error. Accordingly, the Review Petitioner has submitted that there has been an under recovery of Rs.318.35 lakh in ROE (pre- tax) for the period 2014-19 on account of the error, while grossing up of ROE in paragraph 42 of the impugned order dated 18.8.2022 and the same may be reviewed.

### **Submission of the Respondents**

#### ***Respondent UPPCL***

6. The Respondent UPPCL has submitted that as per Regulation 25 (2) of the 2014 Tariff Regulations, in case of generating company paying Minimum Alternate Tax, (MAT), 'Effective tax rate ("t")' shall be considered as MAT rate including surcharge



and cess. It has stated that the Petitioner has computed book Profit for MAT purpose and paid tax on it and therefore, the “effective tax rate” is required to be computed based on the actual tax paid on book profit and the ‘book profit’ computed for MAT purpose. In light of the above, the Commission has rightly considered ‘MAT rates’ as ‘effective tax rates’ for grossing up ROE, and as such there is no error apparent on the face of the order dated 18.8.2022.

### ***Respondent BRPL***

7. The Respondent BRPL vide affidavit dated 21.4.2023 has submitted that truing up exercise is to be carried out by the Petitioner in respect of grossing up rate of Return on Equity at the end of every financial year based on the actual tax paid including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities. It has also submitted that in the present case no such details have been furnished by the Petitioner, as to ascertain whether any under-recovery or over-recovery of the grossed-up rate of return was either claimed or refunded on year-to-year basis from/to the beneficiaries. The Respondent has submitted that the Review Petitioner had filed the balance sheet and other financial statement for the period 2014-19 at the time of truing up of the tariff and the Statement of Profit & Loss account filed by the Review Petitioner shows that the Petitioner has not paid any Income Tax and claimed tax benefits on account of the Tax Holiday for enterprises engaged in infrastructure development etc. as per Section 80 IA of the Income Tax Act, 1961 as well as the other benefits like the higher depreciation allowed in initial years under the Income Tax Act, 1961. While pointing out that the Petitioner itself has opted for the provision of Section 115 JB of the Income Tax Act, 1961 (MAT provisions), the Respondent has submitted that the Petitioner knew that the grossing



up of the tax is not permissible as the Petitioner is not paying any tax and despite that Petitioner has continued with the undue benefits of grossing up. The Respondent has further submitted that this issue was raised before the Commission and a detailed reply relying on the financial statement filed by the Review Petitioner has been furnished, but the Commission did not consider the reply filed by the Respondent on this issue and grossed up the ROE on MAT basis, without looking into the balance sheet and financial statement filed by the Review Petitioner. The Respondent has accordingly requested to gross up rate of ROE in accordance with clause 3 of Regulation 25 of the 2014 Tariff Regulations, and to examine whether the Review Petitioner has performed its statutory responsibility to undertake truing-up of the grossed-up rate of ROE at the end of every financial year, based on actual tax paid. The Respondent has also contended that the impugned order dated 18.8.2022 was passed contrary to the applicable regulations, since the Review Petitioner is not paying any tax, but still have claimed grossed up ROE and the same has been allowed by the Commission. Accordingly, the Respondent had sought direction on the Review Petitioner to refund the tax collected from the beneficiaries along with interest thereon. The Respondent vide affidavit dated 30.6.2023 has submitted that the Review Petitioner has failed to comply with the requirement of Regulation 25(3) of the 2014 Tariff Regulations, and also failed to file the relevant document/ information station wise as per the tariff filing forms of the 2014 Tariff Regulations. The Respondent has pointed out that while the Review Petitioner in para 11 of the Review Petition, has claimed that the generating company falls under MAT regime, has however, claimed grossing up of ROE, based on effective tax rate without complying the provisions of Regulation 25(3) of the 2014 Tariff Regulations.



### ***Respondent TPDDL***

8. The Respondent vide affidavit dated 18.5.2023 has submitted that para 42 of the impugned order dated 18.8.2022, clearly states that the Review Petitioner has been paying income tax on income computed under section 115JB of the Income Tax Act, 1961 ("IT Act") and the same has neither been denied nor disputed by the Review Petitioner even in the Review Petition. It has therefore submitted that in the light of the provisions of Regulation 25(2) of the 2014 Tariff Regulations, which specifies that MAT shall be considered in the calculation of rate of pre-tax ROE, if tax is paid as per MAT rate, there is no error in the impugned order dated 18.8.2022, in grossing up of equity with MAT rate. Further, the Respondent vide affidavit dated 30.6.2023 has stated that the Commission vide its orders dated 5.1.2023 and 12.1.2023 in Review Petition Nos. 19/RP/2022 and 24/RP/2022 respectively, has dealt with and decided the identical issue as sought to be canvassed in the present review petition.

### ***Rejoinder of the Review Petitioner to replies of the Respondents***

9. In response to the replies of the Respondents, the Review Petitioner has submitted that as per Regulation 25(3) of the 2014 Tariff Regulations, the generating company or the transmission licensee, as the case may be, shall true up the grossed up ROE at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. Accordingly, it has submitted that the consideration of prescribed MAT rate in place of effective tax rate calculated on the basis of actual tax paid, is against the provisions of the 2014 Tariff Regulations. Accordingly, the Review Petitioner has submitted that in view of the





above explanation, para-42 of the impugned order dated 18.8.2022 may be modified as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Equity (A)	47185.99	47188.87	47211.08	47236.20	47289.34
Additional capitalization (B)	6.45	30.86	32.31	83.69	5.43
Addition due to undischarged liability (C)	0.03	0.34	0.84	6.55	6.89
Deletions (D)	3.60	8.99	8.04	37.10	0.35
Closing Equity (E) = (A) +(B)+(C)-(D)	47188.87	47211.08	47236.20	47289.34	47301.31
Average Equity (F) =(A+E)/2	47187.43	47199.98	47223.64	47262.77	47295.33
Base Rate (%) (G)	16.500%	16.500%	16.500%	16.500%	16.500%
Effective Tax rate (%) (H)	21.76%	21.948%	21.328%	21.851%	22.157%
Effective ROE Rate (%) (I)	21.089%	21.140%	20.973%	21.114%	21.197%
ROE (J) = (F)*(I)	<b>9951.36</b>	<b>9978.08</b>	<b>9904.21</b>	<b>9979.06</b>	<b>10025.19</b>

10. According to the Review Petitioner, this has resulted in under-recovery of Rs. 318.35 lakh in ROE (pre-tax) for the period 2014-19.

### Analysis and Decision

11. We have examined the submissions and the documents on record. The difference between the ROE allowed vide impugned order dated 18.8.2022 and the ROE claimed by the Review Petitioner in the Review Petition, are tabulated below:

	<i>(Rs. In Lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Return on Equity (allowed by the Commission in order dated 18.8.2022) (a)	9850.85	9901.14	9906.10	9914.31	9947.15
Return on Equity (as claimed by the Review petitioner) (b)	9951.36	9978.08	9904.21	9979.06	10025.19
<b>Difference {(a) – (b)}</b>	<b>(-) 100.51</b>	<b>(-) 76.94</b>	<b>(+) 1.89</b>	<b>(-) 64.75</b>	<b>(-) 78.04</b>

12. Regulation 24 of the 2014 Tariff Regulations, provides as under:

*“24. Return on Equity: (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 19.*

*(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating stations, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:*



*Provided that:*

*i. in case of projects commissioned on or after 1st April, 2014, an additional return of 0.50 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:*

*ii. the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever:*

*iii. additional RoE of 0.50% may be allowed if any element of the transmission project is completed within the specified timeline and it is certified by the Regional Power Committee/National Power Committee that commissioning of the particular element will benefit the system operation in the regional/national grid:*

*iv. the rate of return of a new project shall be reduced by 1% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system:*

*v. as and when any of the above requirements are found lacking in a generating station based on the report submitted by the respective RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues:*

*vi. additional RoE shall not be admissible for transmission line having length of less than 50 kilometers.”*

13. Further, Regulation 25 of the 2014 Tariff Regulations provides as under:

*“Tax on Return on Equity: (1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax income on other income stream (i.e., income of non-generation or non-transmission business, as the case may be) shall not be considered for the calculation of “effective tax rate”*

*(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:*

*Rate of pre-tax return on equity = Base rate / (1-t)*

*Where “t” is the effective tax rate in accordance with Clause (1) of this regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess*

*(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed-up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income*



*of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long-term transmission customers/DICs as the case may be on year to year basis.”*

14. In the Statement of Objects and Reason (SOR) to the 2014 Tariff Regulations, 2014 on this issue, the Commission has observed as follows:

*“25.6 The Commission observed that various stakeholders have suggested to retain the existing pre-tax return on equity approach. On the other hand, beneficiaries have suggested that utilities should recover income tax from their profit and not separately from the beneficiaries. The Commission has analysed the suggestions and observations received from various stakeholders and observed that both the approaches have their own merits and demerits. However, the major disadvantage, which the Commission envisages in implementation of post-tax approach is the incremental effect of income tax liability, which will arise as the reimbursement of income tax shall again be considered as income in the hands of the generator/licensee and the same will defeat the entire purpose of adopting this approach. Thus, with due regard to the suggestions of the stakeholders and the complexities involved in computing income tax liability, it will be appropriate to retain the existing pre-tax rate of return approach. **In order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for grossing up purpose shall be Minimum Alternate Tax (MAT) rate, if the generating company, generating station or the transmission licensee is paying MAT, or the effective Tax Rate, if the generating company or the transmission licensee is paying income tax at corporate tax rate. Accordingly, the Commission has decided to allow pre-tax rate of return on equity which shall be grossed up with the effective tax rate of the financial year or MAT rate and the tax on other income stream will not be considered for the calculation of the effective tax rate.”***

15. It is noticed that tax on ROE, has been defined in Regulation 25 of the 2014 Tariff Regulations. It is also noticed that in case the generating station is paying MAT, the rate of ROE is required to be grossed up with the MAT rate only and the MAT rate does include surcharge and cess. Further, as per observations of the Commission in the SOR to the 2014 Tariff Regulations (as quoted above), it is evident that in order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for the purpose of grossing up shall be the MAT rate, if the generating company, generating station or the transmission licensee is paying MAT. On perusal of the documents furnished by the Review Petitioner, it was observed that the Review Petitioner is covered under MAT regime and since the Review Petitioner was paying



MAT, the grossing up of ROE is required to be done based on the MAT rate. Since the provisions of the aforesaid regulations, mandates the grossing up ROE with the MAT rate, if the generating company is paying MAT, the Commission in the impugned order dated 18.8.2022 had considered the same, while working out ROE and grossing up the ROE based on MAT rate. As the ROE had been worked out and allowed in terms of the aforesaid regulations read with the SOR to the said regulations, we find no force in the submissions of the Review Petitioner, to review the impugned order, on this ground. Accordingly, we hold that there is no error apparent on the face of the impugned order dated 18.8.2022 and review on this ground is not maintainable. It is pertinent to mention that similar issue raised by the Review Petitioner in Review Petition No.19/RP/2022, was rejected by the Commission vide its order dated 5.1.2023. In the above background, the prayer of the Review Petitioner for review of the impugned order dated 18.8.2022 is rejected.

16. Review Petition No. 42/RP/2022 is disposed of in terms of the above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I. S. Jha)**  
**Member**

