

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Petition No: OA 11/2017 (remand)

In the matter of : Truing up of Accounts of M/s. Rubber Park India (P) Ltd for the year 2015-16 filed by Rubber Park (I)Pvt. Ltd. as per the Order dated 18.06.2020 of Hon'ble APTEL in Appeal No114 of 2018.

Petitioner : Rubber Park India (P) Ltd.(RPIL)
Represented by Shri. J Krishnakumar, Managing Director and Shri. Anees T.M., Resident Engineer.

Respondent : Kerala State Electricity Board Limited
Represented by Shri. Manoj G., AEE, TRAC, KSEB

Present : Shri. R. Preman Dinaraj, Chairman

ORDER dated: 19/10/2020

1. The instant case has been initiated based on the directions in the Order of the Hon. APTEL dated 18.06.2020 in Appeal No.114 of 2018 filed by M/s Rubber Park India (P) Ltd. (*hereinafter referred to as RPIL or licensee or the petitioner*) against the Orders dated 26.07.2017 and 13.12.2017 of the Commission in the matter of Truing up of Accounts for the year 2015-16 and the Review thereof. In the said appeal, the appellant, RPIL raised as the first issue the disallowance of interest on normative loan for the existing assets for the year 2015-16 and the second issue as the disallowance of Return on Equity for the addition of assets during 2015-16, in connection with the truing up of accounts of the licensee for the year 2015-16.
2. The Hon. APTEL in its remand Order dated 18.06.2020 directed remission of the issues to the State Commission for re-consideration and fresh adjudication in accordance with law and also directed the petitioner to appear before the State Commission on 13.07.2020 for further proceedings. Hon. APTEL had arrived at the decision based on the following premise mentioned in para 11 & 12 of the Judgment:

“11. At the hearing a suggestion came up to the effect that the matter may require revisit by the State Commission in as much as the full import of the effect of the 2014 Regulations read conjointly with 2006 Regulations does not seem to have been comprehensively examined by it (KSERC) and further because (on the second issue) there is prima-facie material available on record which does not find reflected in the impugned decision

.....
.....
12..... Thus with the consent of all sides, we dispose of the appeal by directing remit of the above mentioned two issues to the State Commission for reconsideration and fresh adjudication after hearing all sides in accordance with law. Needless to add that the consent given for remit or the direction for remit by us, will not be construed as concession given by the parties or expression of opinion rendered by us”.

3. In the said remand Order, Hon. APTEL mentioned that in the first issue of interest on normative loan, the licensee is primarily arguing that the omission on its part to claim the interest on normative loan in the previous year(s) ought not to be a reason for it being denied of such benefit as would otherwise be available in terms of the provisions of the KSERC (Terms and conditions for determination of Tariff) Regulations, 2014 (*hereinafter referred to as the Tariff Regulations, 2014*) read with KSERC (Terms and conditions of Tariff for Distribution and Retail sale of Electricity under MYT framework) Regulations, 2006 (*hereinafter referred to as Tariff Regulations, 2006*). Regarding the second issue, Return on Equity, the focus of the argument of the licensee is on the second proviso to clause (1) of Regulation 29 of the Tariff Regulations 2014, which provides that at the time of truing up for the licensee, return on equity shall be allowed on pro-rata basis taking into consideration the documentary evidence provided for the assets put to use during the financial year. The case being that the licensee had demonstrated with relevant data and information regarding certain assets having been put to use during FY 2015-16, but the State commission decided not to provide RoE for the said addition of assets.
4. Based on the APTEL’s direction, a hearing was conducted by the Commission on 13.07.2020. After hearing the arguments of the petitioner and respondent KSEB Ltd, the Commission vide Daily Order dated 14.07.2020 directed the petitioner to furnish a detailed write-up specifying the issues and prayers to be considered, in the light of the Order of Hon. APTEL.
5. In compliance to the Daily Order, the petitioner submitted a write-up dated 17.08.2020 with the following prayers.
 - a. *Approve the interest on normative loan amounting to Rs.60 lakhs for the year 2015-16 in terms of Regulation 27 and 30 of Tariff Regulations 2014.*
 - b. *Approve the ROE of Rs.39.74 lakh in place of Rs. 37.80 lakh approved in the Truing up order for 2015-16 dated 26.07.2017 by considering the assets capitalised during 2015-16 on pro-rata basis.*
6. The Commission took note of the write up and thereafter a second hearing was conducted on 16.09.2020. During the hearing the petitioner argued that the entire assets of the distribution business was funded out of equity and hence

they have requested to allow the interest on normative loan for 2015-16 by treating 70% of the total investment as on 31.03.2015 as normative loan. Further, the petitioner also requested to allow the Return on Equity on pro-rata basis for the capital additions of Rs.66.49 lakh made during 2015-16 considering the provisions in Tariff Regulations 2014.

7. KSEB Ltd., as a respondent submitted that there is no merit in the arguments of the petitioner, which are not tenable as per the provisions of Regulations and hence the claims of the petitioner should not be allowed. KSEB Ltd in their remarks vide letter dated 15.09.2020 stated that the Rubber park is set up by the Government with a specific purpose and the funding by the Government for promotion of a specific industry. KSEB Ltd also stated that claiming return on the funding by Government either as return on equity or as interest on normative loan is a violation from the basic purpose of the investment.

Contentions of the petitioner

8. Regarding the first issue, i.e., claim of interest on normative loan, the petitioner stated that the Commission had notified Tariff Regulations 2014 on 14.11.2014 and relied on Regulation 27(4) of the said Regulation for disallowing the interest on normative loan on the ground that interest normative loan was neither booked nor allowed in the Truing up Order for 2014-15 and hence concluded that interest on normative loan cannot be admissible for the assets created before 01.04.2015.
9. The petitioner further stated that, the provisions of Regulation 27(4) of the Tariff Regulations 2014 or provisions of Tariff Regulation 2006 do not deny interest on normative loan for the assets created before 01.04.2015, if such interest charges were not claimed or approved till the Truing up Order 2014-15. According to the petitioner, the Regulation 27(4) of the Tariff Regulations, 2014 states only about the Debt-Equity Ratio to be followed in the case of assets capitalised prior to 01.04.2015 and that the Regulation only considers the legal position up to 31.03.2015, namely the debt-equity shall be in terms of the Tariff Regulation 2006. According to the petitioner, the Commission should have considered 70% of the total equity deployed for the assets capitalised prior to 01.04.2015 as normative loan since the Commission had calculated the normative equity portion as 30% of the total equity deployed for the assets capitalised prior to 01.04.2015 as per Regulation 27 of the Tariff Regulations 2014 for allowing RoE for the year 2015-16.
10. Another contention of the petitioner is that the question of approval/ disapproval of interest and finance charges is different from booking of interest charges in the books of accounts. The submissions of the petitioner in the letter dated 17.08.2020 are reproduced below:

“4.3It is not in dispute that the entire funding is only by means of equity. Therefore, actual interest does not arise. However, the Regulation limit the equity to only 30% and requires the balance to be treated as normative loan, the interest on normative loan is to be allowed. The capital cost of any asset is divided into equity and loan. It cannot be that the capital cost is neither funded by equity nor by loan. The provisions enumerated that in the MYT Regulations 2014 as well as the Tariff Regulations 2006 (applicable for the period prior to FY 2014-15) were pari-materia, namely that the Debt-equity ratio shall be considered at 70:30, subject to the condition that if the actual equity is less than 30%, then the actual equity shall be considered”.

4.4. Moreover, the Hon. Commission has also in the tariff order dated 03.09.2015 (ARR & ERC for the years 2015-16 to 2017-18) has specifically held that the Appellant has shown the proper entries for accounting of fixed assets and based on above allowed the interest on normative loan.

.....

The Hon. Commission has however by the impugned Truing-up order 2015-16 proceeded completely contrary to the above position accepted vide the tariff order dated 03.09.2015 and erroneously disallowed the entire normative loan to the Company.

4.5 The Hon. Commission had approved Return on Equity at the rate of 14% on normative equity portion (i.e., 30% of the total equity) as per the Regulation 27(4) of the MYT tariff Regulations in the Truing-up order 2015-16 dated 26.07.2017. As such, the company is eligible for interest on normative loan for the normative debt portion of the equity, i.e., 70% of total equity”

11. Based on the above, RPIL has claimed the interest and finance charges of Rs.60.00 lakh for the year 2015-16 in the submission dated 17.08.2020 as shown below :

TABLE-I		
Total Equity Approved in Truing up 2015-16 (Rs. In Lakhs)	Normative Equity taken by Hon. Commission for Truing up 2015-16 (30% of the total equity)	Normative Debt portion (70% of the Equity)
900	270	630

TABLE-2				
Normative loan outstanding as per Regulation 30	Additions during the year	Addition on pro rata basis	Debt portion of addition during the year	Total Normative loan
1	2	3 = 2*253/365	4=3*0.7	5=1+4
630	66.49	46	32	662
	Capitalised on 22.07.2015			

Depreciation approved during the year (As repayment of principal amount)	Normative Loan Outstanding	RBI Interest Rate	Interest on normative loan (Rs. In Lakhs)
6	7 = 5-6	8	9=7*8%
45.69	617	9.7	60

12. Thus as shown above, the petitioner has claimed interest charges of Rs.60 lakh which comprises of interest charges at the rate of 9.7% for the '70% of normative debt portion' (70% of Rs.900 lakh=Rs.630 lakh) outstanding as on 01.04.2015 and 70% of the value of the assets added during the year 2015-16 (70% of Rs.66.49 lakh) on a prorata basis, after deducting the depreciation/repayment of Rs.45.69 lakh allowed for the year 2015-16.
13. KSEB Ltd, the lone respondent in the matter mentioned that the claim of the petitioner on interest on normative loan is not correct and the depreciation so far allowed is to be deducted from the principal amount to calculate the interest on normative loan.
14. The submissions of the petitioner on the second issue ie., Return on Equity are as follows:

"5.1. The Company had carried out asset addition of Rs.66.49 lakhs towards the ABT Meter and related modification of 110/11 KV EHT substation. The Hon. Commission had accorded the approval of the investment in respect of the expenditure in connection with the relocation of the metering equipment. The Company had capitalized the equipment on 22.07.2015. The Hon. Commission had approved depreciation for the said asset addition in the Truing-up order 2015-16. The relevant statement in the Truing-up order 2015-16 is extracted below.

Depreciation:

25. The Commission approved a depreciation of Rs.50.05 lakh in the ARR for the year 2015-16. In the application for truing-up, the licensee has claimed Rs.47.03 lakh. The licensee has claimed depreciation for the asset addition of Rs.66.49 lakh for the ABT meter and related modification of 110/11 KV EHT

substation. The Commission had accorded the approval of the investment in respect of the expenditure in connection with the relocation of the metering equipment. Accordingly, the company has capitalised the expenditure on 22.07.2015

5.2. The MYT Regulations 2014 provide that the assets added during the year shall be considered for return on equity on the basis of the date of decommissioning of the assets and them being put to use.....

.....

5.3. The Hon. Commission had not approved the Return on Equity on Pro-rata basis for the asset addition capitalized during the year. The Return on Equity eligible for the company as Regulation 29 of the MYT Regulations 2014 is detailed below.

Year	Equity Opening (Rs. In Lakhs)	Addition during the year (Rs. In Lakhs)	Addition on Pro-rata basis	Total Equity on pro-rata basis	RoE @ 14% on 30 % of total equity	RoE already approved	Balance ROE (Rs. In Lakhs)
2015-16	900.00	66.49	46.09	946.09	39.74	37.80	1.94
			Capitalised on 22.07.2015				

15. As shown above, the petitioner has claimed the total RoE as Rs.39.74 lakh including RoE for the 30% of the value of asset additions made during the year 2015-16 on a prorata basis. The contention of the petitioner is that the Commission has allowed depreciation for the assets added during the year and hence fulfilling the condition under second proviso to Regulation 29(1).

Analysis and decision of the Commission

16. As per the directions in the Order of Remand issued by the Hon. APTEL, the Commission has examined the issues raised in the present matter. Hon. APTEL had mentioned two issues to be examined as contented before it by the petitioner viz., interest on normative loan and RoE for the addition to the assets during 2015-16 based on the following premises raised by the petitioner:

- a. The entire assets of the petitioner are funded through equity and as per the provisions of Regulation 27 and Regulation 30 of the Tariff Regulation 2014; the petitioner is eligible for interest on normative loan for the assets created.
- b. It is not correct to disallow, based on Regulation 27(4), the interest on normative loan for the assets created on or before 01.04.2015 on the reason that interest on normative loan is not claimed or approved in Truing Up Orders up to 2014-15.

- c. The provisions enumerated in Tariff Regulations 2014 and Tariff Regulation 2006 were *pari-materia*.
 - d. The Regulation 27(4) of Tariff Regulation 2014 states only about the debt-equity ratio to be followed in the case of assets capitalised prior to 01.04.2015. The Commission has calculated 30% of the total equity deployed for the assets capitalised prior to 01.04.2015 as per Regulation 27 in the Truing up Order for 2015-16 for allowing RoE. Hence, balance 70% is to be treated as normative debt as per Regulation 27.
 - e. The Commission in its ARR&ERC Order dated 03.09.2015 for the petitioner for 2015-16 to 2017-18 has noted that the licensee has shown proper entries for accounting of fixed assets and based on the same allowed interest on normative loan of Rs.66.94 lakhs for 2015-16, Rs.77.29 lakh for 2016-17 and Rs.80.44 lakh for 2017-18. However, in the Truing up order the said benefit was not allowed.
 - f. Regarding return on equity, the petitioner contented that as per the second proviso to Regulation 29, ROE is applicable on a pro-rata basis taking into consideration the documentary evidence for the assets put into use during the financial year. While allowing depreciation, the Commission has recognised the addition of assets to the tune of Rs.66.49 lakhs towards the ABT meter related modification of 110/11kV substation. Hence, RoE of Rs.1.94 lakh on a prorata basis of assets addition of Rs.66.49 lakhs is to be allowed for the year 2015-16.
17. The Commission has carefully examined each of these issues separately taking into consideration the arguments made before the Hon. APTEL and the contentions of the petitioner raised the letter dated 17.08.2020 and during the hearing held on 13.07.2020 and 06.09.2020 in the light of the provisions of the Tariff Regulations 2006 and 2014 in the following sections.

Interest on normative loan

18. The petitioner RPIL claims interest on normative loan for the existing assets as on 01.04.2015 i.e., Rs.900 lakh and for the asset additions to the tune of Rs.66.49 lakh made during the year 2015-16 on a pro rata basis. According to the petitioner, the Commission has denied the same, even when the provisions of the Regulations do not deny it. In order to examine the matter afresh, full import of the effect of the Tariff Regulations 2014, read conjointly with the Tariff Regulations 2006 is necessary. Accordingly, the relevant provisions of the Tariff Regulations 2006 on the issue are reproduced below:

Tariff Regulations 2006

17. Debt-Equity Ratio.- (1) *For financing of future capital cost of projects, a Debt : Equity ratio of 70:30 should be adopted. The Distribution Licensee would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.*

(2) *Debt including its tenure shall be structured with a view to reduce the tariff. Savings in cost on account of subsequent restructuring of debt shall be allowed to be shared between the Licensee and the Consumers in the ratio of 70:30 during the first Control Period and in such proportion as may be decided by the Commission in the subsequent Control periods.*

18. Interest on loan Capital. (1) *Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in sub clause 17(1) above.*

(2) *The loan outstanding as on 1.4.2007 shall be worked out as the gross loan minus cumulative repayment as admitted by the Commission up to 31.3.2007. The repayment for the period FY08 to FY10 shall be worked out on normative basis*

(3) *In case any moratorium period is availed of by the Distribution Licensee, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.*

(4) *Foreign exchange variation risk, if any, shall not be a pass through. In the case of projects where tariff has not been determined on the basis of competitive bids, appropriate costs of hedging and swapping to take care of foreign exchange variation will be allowed for debt obtained in foreign currencies. **(Emphasis added)***

19. Tariff Regulations, 2006 provide for *separate treatment* in the case of loans outstanding as on 01.04.2007 and future loans after 01.04.2007. In the case of any existing loans, the loan outstanding as on 01.04.2007 is to be worked by deducting the cumulative repayment as admitted by the Commission. However, in the case of future asset additions, normative debt equity of 70:30 is to be considered.

20. Hence, the said Regulation distinctively treats financing of existing assets and future assets separately. As per Regulation 17, funding for the future assets additions are considered on normative basis of 70:30 Debt-equity, whereas the

funding of loans for the existing assets up to 01.04.2007 as per Regulation 18 are treated in the same manner as it was treated before or as approved by the Commission. However, for existing loans also repayment for future period is to be treated on normative basis. Accordingly, any loan outstanding is to be worked out by deducting the cumulative repayment upto 31.03.2007 from the gross existing loans. In the case of the petitioner, there were no loans outstanding as on 31.03.2007. It was also an admitted fact that there was no claim on interest and financing charges by the petitioner not just 2006-07 but till 2014-15.

21. Thus there were no provisions for treatment of funding of existing assets as on 01.04.2007 in a normative manner, and the only treatment mentioned in the Regulation is on allowing actual basis or as approved by the Commission in case there is any loans. In other words, in the case of existing assets, whatever is approved in the previous occasions are to be taken as a base. On the other hand the future addition of assets that is assets added after 01.04.2007 can be treated with normative debt -equity ratio of 70:30. Hence, normative treatment is possible for the addition of assets from 01.04.2007 to 31.03.2014 as per Regulations and interest charges on the said loan is allowable.

22. Now let us examine the provisions of the Tariff Regulations 2014.

Tariff Regulations 2014

27. Debt-equity ratio. – (1) For the purpose of determination of tariff, debt equity ratio as on date of commercial operation in the case of a new generating station, transmission line and distribution line or substation commissioned or capacity expanded on or after the First day of April 2015, shall be 70:30 of the capital cost approved by the Commission:

Provided that the debt-equity ratio shall be applied only to the balance of such approved capital cost after deducting the financial support provided through consumer contribution, deposit work, capital subsidy or grant, if any.

(2) Where equity employed is more than thirty percent of the approved capital cost, the amount of equity for the purpose of tariff shall be limited to thirty percent and the balance amount shall be considered as normative loan and interest on the same may be allowed at the weighted average rate of interest of the actual loan portfolio.

(3) Where actual equity employed is less than thirty percent of the approved capital cost, the actual equity shall be considered.

(4) If any fixed asset is capitalised on account of capital expenditure incurred prior to the First day of April, 2015, debt-equity ratio allowed by the Commission for determination of tariff for the period ending the Thirty First day of March, 2015 shall be considered.

(5) *The equity invested in foreign currency shall be designated in equivalent Indian rupees as on the date of each investment.*

(6) *In the case of retirement or replacement of assets, the equity capital approved as mentioned above, shall be reduced to the extent of thirty percent or actual equity component based on documentary evidence, if it is lower than thirty percent of the original cost of the retired or replaced asset.*

(7) (a) *Swapping of foreign currency loans shall be permitted provided it does not have the effect of increasing the tariff;*

(b) *Cost of swapping and interest expenses thereon, shall be allowed by the Commission only after prudence check;*

(c) *The generating business/company or transmission business/licensee or distribution business/licensee shall provide full particulars of the swapped loans.*

(8) (a) *Restructuring of capital in terms of relative share of equity and loan shall be permitted during the life of the project provided it does not have the effect of increasing the tariff.*

(b) *Any benefit from such restructuring shall be shared in the ratio 1:1 among,-*

(i) the generating business/company and the persons sharing the capacity charge; or

(ii) transmission business/licensee and long-term intra-State open access customers including distribution business/licensee; or

(iii) distribution business/licensee and consumers.

30. Interest and finance charges. – (1) (a) *The loans arrived at in the manner indicated in Regulation 27 shall be considered as gross normative loan for calculation of interest on loan.*

(b) *The interest and finance charges on capital works in progress shall be excluded from such consideration.*

(c) *In the case of retirement or replacement of assets, the loan amount approved by the Commission shall be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.*

(2) *The normative loan outstanding as on the First day of April, 2015, shall be worked out by deducting the amount of cumulative repayment as approved by the Commission up to the Thirty First day of March, 2015, from the normative loan.*

.....
.....

23. As shown above, Regulation 27 (1) to (3) provides for treatment of new assets for which the date of commercial operation is after 01.04.2015 whereas Regulation 27(4) provides for treatment of assets capitalised prior to 01.04.2015. In the case of new assets, the debt-equity ratio is to be considered in the normative manner of 70:30, whereas for the existing assets, the treatment is on the basis of what is approved by the Commission up to 31.03.2015.
24. ***Thus, it can be seen that in both Regulations, treatment of existing assets as on the first day of the control period and additions during the control period are treated distinctively and separately. The funding of existing assets as on the date of effect of the control period is to be treated in the same manner as the day prior to beginning of the control period as approved by the Commission. The normative treatment of funding of asset is with respect to future asset additions during the control period only.***
25. Now let us examine the status of funding of assets of the petitioner as on the first day of control period of the Tariff Regulations 2006 as well as Tariff Regulations 2014.
26. Regulation 17 of the Tariff Regulations 2006 provides for treatment of funding of future assets or assets created from 01.04.2007 as with a debt equity ratio of 70:30. Regulation 18 provides for interest charges on loan capital. As per Regulation 18(1), interest charges for the assets created from 01.04.2007 is to be treated in the manner mentioned in Regulation 17(1) i.e., normative debt-equity ratio of 70:30, whereas the Regulation 18(2) provides for treatment of loan outstanding as on 01.04.2007. Since the petitioner had no actual loan outstanding, there is no provision for allowing interest charges. It is pertinent to mention that as per the said Regulations, there is no provision for the normative treatment for funding of existing assets (assets as on 31.03.2007). Since there is no provision in the Regulations for normative treatment for funding of existing assets, normative treatment as contented by the petitioner is not possible. It is also a settled position of law that what is not provided directly cannot be allowed in the indirect manner also.
27. Regarding assets added from 01.04.2007 to 31.03.2014, the licensee has not claimed any interest charges till 2014-15 on normative basis and no interest charges was allowed. Thus, the status as on 01.04.2015 is that there was no normative loan outstanding for the licensee in terms of Regulation 30(2). Considering the fact that there was neither normative loan nor actual loan outstanding as on 01.04.2015, interest charges for the assets as on 01.04.2015 were not allowed.
28. ***It is also pertinent to add that based on the above Regulations, the licensee was filing the ARR&ERC petitions and Truing up of Accounts.***

Though the petitioner is eligible for interest on loan as per Tariff Regulations 2006 for the addition of assets from 01.04.2007 to 31.03.2014, there was no claim for interest charges till 2014-15 for the existing assets i.e., the assets as on 01.04.2007 and additions from 01.04.2007 to 31.03.2014. Further, there were no challenges so far neither on the provisions of the said Regulations nor the Orders of the Commission on truing up of accounts. Hence the said treatment has become final.

Approved capital cost as on 01.04.2015

29. According to Regulation 27(4) of Tariff Regulations 2014, if any fixed asset is capitalised on account of capital expenditure incurred prior to the First day of April, 2015, debt-equity ratio allowed by the Commission for determination of tariff for the period ending the Thirty First day of March, 2015 shall be considered. As per Regulation 30(1)(a) of Tariff Regulations 2014, the loans arrived at in the manner indicated in Regulation 27 shall be considered as gross normative loan for calculation of interest on loan.
30. Further, Regulation 30 (2) of Tariff Regulations 2014 provides that the normative loan outstanding as on the First day of April, 2015, shall be worked out by deducting the amount of cumulative repayment as approved by the Commission up to the Thirty First day of March, 2015, from the normative loan.
31. The capital expenditure incurred and capitalised prior to the first day of the control period (01.04.2015), the debt equity ratio allowed by the Commission for the determination of tariff for the previous control period shall be considered and accordingly, the position as on the last day of the previous control period shall be considered to arrive at the amount of debt and equity as on first day of the Control Period. from the provisions of Regulation 30(2) of Tariff Regulations 2014 and Regulation 18(2) of Tariff Regulations 2006, it can be construed that the loan outstanding as on the first day of the control period shall be worked out by deducting the cumulative repayment up to the last day of the previous control period from the Gross loan admitted by the Commission as on the last day of the previous control period.
32. Thus, as per the provisions of both the Regulations, treatment of the funding of existing assets as on the first day of the control period and future assets are distinctly and separately dealt with. As can be seen from the truing up orders for 2014-15, there is no opening balance of loan outstanding as on 01.04.2015 as there was no Gross normative loan admitted by the Commission as on 31.03.2014, as **has been mentioned in para 27 above**. There is no provision for the normative treatment of the funding of assets existing assets as on 01.04.2015 on 70:30 basis as contented by the petitioner. As per the Regulations, the funding of existing assets is to be treated in the same manner

as approved by the Commission as on 01.04.2015. Hence, the petitioner is not eligible for interest on loan for the approved capital cost as on 31.03.2015.

33. The petitioner contended that, omission on the part of the petitioner to claim the interest on normative loan for the previous years ought not to be the reason for it being denied such benefit as would otherwise be available as per Tariff Regulations 2014 read alongside 2006 Regulations. The petitioner was not allowed the interest on normative loan since the petitioner is not eligible for interest on normative basis for the assets created till 01.04.2007 as per the provisions of the Tariff Regulation 2006 and not on the reason that the same was not claimed till 2014-15. The petitioner is clearly not eligible for normative loan for the existing assets as per the provisions of Tariff Regulation 2006 and 2014.
34. Now other contentions of the petitioner regarding interest on normative loan can be examined. The petitioner has contended that the Commission has considered 30% of the total equity deployed for the assets capitalised prior to 01.04.2015 as per Regulation 27 in the Truing up Order for 2015-16 for allowing RoE. Hence, balance 70% to be treated as normative debt as per Regulation 27. It is to be noted that RoE was allowed based on the provisions of Regulation 29 whereas the treatment of normative loan up to the period 01-04-2015 has to be as per Regulation 27 and Regulation 30(2), which have been examined previously. There cannot be a normative treatment as has been contented by the petitioner.
35. The contention of the petitioner that Regulation 27(4) mentions only the debt-equity ratio to be followed in the case of assets capitalised prior to 01.04.2015 is also not correct. The said provision has to be conjointly read with Regulation 30(2).
36. It is also pertinent to mention that the Commission in its ARR&ERC Order dated 03.09.2015 for the petitioner for 2015-16 to 2017-18 has allowed interest on normative loan of Rs.66.94 lakhs for 2015-16, Rs.77.29 lakh for 2016-17 and Rs.80.44 lakh for 2017-18, overlooking the provisions of the Tariff Regulation 2006 and 2014. The same was corrected in the Truing up Order for 2015-16. Claiming the said benefit on the reason that it was allowed in the ARR&ERC Order is not sustainable, since the licensee should become eligible for such benefit in the first place.
37. Thus, the above discussion leads us to the conclusion that the licensee is not eligible for the interest on normative loan for the assets created prior to 01.04.2015, subject to the observations in Para 21.

Capital additions during the year 2015-16

38. Let us examine whether the licensee is eligible for interest on normative loan for the assets added during the year 2015-16. The licensee claimed that asset addition to the tune of Rs.66.49 lakh pertains to metering equipment has been made during the year 2015-16. According to the Regulation 27 (1) of tariff Regulations 2014, for the purpose of determination of tariff, debt equity ratio as on date of commercial operation in the case of a new generating station, transmission line and distribution line or substation commissioned or capacity expanded on or after the first day of April 2015, shall be 70:30 of the capital cost approved by the Commission. As per Regulation 27 (2) where equity employed is more than thirty percent of the approved capital cost, the amount of equity for the purpose of tariff shall be limited to thirty percent and the balance amount shall be considered as normative loan and interest on the same may be allowed at the weighted average rate of interest of the actual loan portfolio.
39. In the instant case, the petitioner has claimed that the entire assets of the licensee are funded through equity and there is no loan component. However, as discussed in the subsequent sections, the licensee has not conclusively established that the same was funded out of equity. The licensee has also stated that there is no grant or any other funding received during the year. Since, the said assets addition was made with the approval of the Commission and that was capitalised on 22.07.2015, the Commission is of the view that the entire amount can be treated as normative loan for allowing interest charges on a pro rata basis. It may be noted that the Commission in the Order dated 26.07.2017 on the truing up of accounts for 2015-16 has not considered the interest on the assets added for the year 2015-16, since in the truing up petition there was no claim for such interest. Further the claim of funding of addition of assets for the year 2015-16 out of equity capital is also not fully established based on the figures provided in the petition for truing up for 2015-16. In deviation to the said decision, the Commission has decided to consider allowing interest charges as mentioned above for the assets added for the year 2015-16.
40. As per Second Proviso to Regulation 30(4) of the Tariff Regulation 2014, if the Regulated business of the distribution licensee does not have actual loan, the interest shall be allowed at base rate. The base rate as per Regulation 2(10) is the base rate of interest declared by the State Bank of India from time to time. The base rate applicable for the period is 9.7%. Accordingly, the allowable interest charge is worked out as shown below:

	Description	Rs.lakh
1	Value of asset capitalised in 2015-16	66.49
2	Date of capitaliation	22-07-2015
3	Opening level of normative loan (22-7-2015)	66.49

4	Proportionate depreciation on the Assets (@5.28%)	2.43
5=3-4	Closing level of normative loan	64.06
6=(3+5)/2	Average loan	65.27
7	Rate of Interest (Base rate)	9.70%
8	Proportionate interest charges	4.39

Return on Equity:

41. The Second issue regarding RoE, the submissions of the petitioner is that the licensee has added assets of Rs.66.49 lakh during the year with the approval of the Commission. The asset was capitalised on 22.07.2015, which was taken into consideration for allowing depreciation for the year 2015-16. The licensee claims that the said asset was funded entirely through equity. The Commission had not approved the Return on Equity on Pro-rata basis for the asset addition capitalized during the year in the Truing up of accounts for 2015-16. According to the petitioner, the Return on Equity is eligible for the company as per Regulation 29 of the Tariff Regulations 2014 is Rs.1.94 lakh.

42. The Commission has examined the contentions of the petitioner in terms of the provisions of the Tariff Regulation 2014. Regulation 29 of the Tariff Regulations 2014 states about return on investment. The relevant extract of the said regulation is given below:

29. Return on investment. – (1) *Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with the regulation 27 and shall be allowed at the rate of fourteen percent for generating business/companies, transmission business/licensee, distribution business/licensee and state load despatch centre:*

Provided that, return on equity for generating business/company, transmission business/licensee, distribution business/licensee and state load despatch centre, shall be allowed on the amount of equity capital approved by the Commission for the assets put to use at the commencement of the financial year and on fifty percent of equity capital portion of the approved capital cost for the investment put to use during the financial year:

Provided further that at the time of truing up for the generating business/company, transmission business/licensee, distribution business/licensee and state load despatch centre, return on equity shall be allowed on pro-rata basis, taking into consideration the documentary evidence provided for the assets put to use during the financial year. (emphasis added)

43. Sub regulation (1) of Tariff Regulation 2014 provides that the return on equity shall be computed on the basis of **paid up equity capital** determined in

accordance with the Regulation 27 and shall be allowed at the rate of fourteen percent on the amount of equity capital approved by the Commission for the assets put to use at the commencement of the financial year and 50% of the portion of equity based on the additions admitted during the financial year. Hence, RoE is allowable only for the paid up equity capital of the licensee.

44. The licensee claims that the entire assets addition was made out of equity and there is no actual loan taken by the licensee company so far. The petitioner RPIL is a company operating under the provisions of the Companies Act 2013 having licensed business of distribution of electricity in the Park and also undertakes the management of park. The total authorised and paid up equity capital of RPIL is Rs.20 crore since inception. The licensee has segregated the licensed business of distribution of electricity and assigned a paid up equity capital of Rs.900 lakh as on 01.04.2015 and 31.03.2016 as per the accounts furnished as part of the truing up of accounts.
45. It is to be noted that there is no actual addition of paid up equity capital in the books of accounts of the petitioner. As per the books of accounts of the distribution business the paid up equity capital of the licensee stood at the same level as that of previous year i.e., Rs.900 lakhs despite of the claim by the petitioner that the additions are financed through equity. Further, there is no change in the actual paid up equity capital for the company as a whole for the year, which also remains the same level of Rs.20 crore as in the previous year.

	At the end of the year	
	2014-15 Rs.lakh	2015-16 Rs.lakh
Distribution business*		
Share capital	900	900
RPIL (Consolidated business)**		
Authorised Share capital	2000	2000
Issued share capital	2000	2000
Subscribed and paid up	2000	2000

*As per the petition for Truing up of accounts for the year 2014-15 and 2015-16 for the distribution business of RPIL

**Financial statements for the year ended 31st March 2016 for RPIL

46. The licensee could also not produce any documentary evidence to the effect that the Board had approved earmarking the enhanced paid up equity capital for the distribution business to the tune of increase in assets. In the above circumstances, and based on the details furnished by the licensee, it is not established that the licensee has infused the paid up equity capital for the asset addition of Rs.66.49 lakhs during 2015-16. **However, considering the fact that the said asset addition has been approved by the Commission and there is**

no grants or contribution received by the licensee, the said amount is treated as normative loan and allowed interest on pro rata basis, as mentioned in the previous sections.

47. Hence, the petitioner is eligible for the return on equity on 30% of Rs.900 lakhs only and not on any additions unless there is an increase in the paid up equity capital corresponding to the GFA additions claimed. The Commission had therefore approved an amount of Rs. 37.80 lakh towards Return on Equity for 2015-16 at the time of truing up considering Rs.900 lakhs as the share of total paid up capital for the distribution business.

Orders of the Commission:

48. After examining the matter in detail in the light of directions by Hon. APTEL vide its Order dated 18.06.2020 and the material placed before the Commission and the provisions of the Tariff Regulation 2006 and 2014, the Commission came to the conclusion;

- (i) that the interest charges for the assets created during the year 2015-16 alone can be allowed, considering the fact that the licensee could not produce any material evidence for funding of the said assets using paid up equity capital.
- (ii) Asset addition of Rs.66.49 lakh during 2015-16 is hereby treated as normative loan and interest is allowed on pro rata basis as mentioned in Para 40 *ibid*.
- (iii) Regarding the contention of interest on normative loan for the existing assets as on 01.04.2015, considering the provisions of Tariff Regulation 2006 & Tariff Regulations 2014 and other facts as explained in para 29 to 37, interest charges on normative basis is not allowed. However, the same is subject to the observations mentioned in para 21 above.

49. The petition disposed of accordingly.

Preman Dinaraj,

**Sd/-
Chairman.**

Approved for issue

Secretary (i/c)