



DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, C-Block, Shivalik, Malviya Nagar, New Delhi – 110 017

F.3(130-A)/Law/DERC/2011-12/Part file

In the matter of: Extension of MYT Regulations (2007-08-2011)/MYT Principles for FY 2011-12 and Fixation of AT & C Loss Reduction Targets for FY 2011-12.

Coram:

**Sh. P. D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &
Sh. J. P. Singh, Member.**

Appearance:

1. Sh. Sunil Wadhwa, Managing Director, NDPL;
2. Sh. Vivek Singla, NDPL;
3. Sh. Hemant Goyal, General Manager, F&A, NDPL;
4. Sh. Anurag Bansal, Sr. Manager, Corporate Legal, NDPL;
5. Sh. Ajay Kumar, CFO, NDPL;
6. Sh. Varun Sharma, Manager, CCR, NDPL;
7. Sh. Dhiraj Bengani, Sr. Manager, NDPL;
8. Sh. Amit Kapur, Advocate for NDPL;
9. Sh. Anupam Varma, Advocate for NDPL;
10. Ms. Deepika Kalia, Advocate for NDPL;
11. Sh. S. C. Sharma, Head (Regulatory), BYPL;
12. Sh. Sanjeev Seth, Vice President, BYPL;
13. Sh. Sai Krishna, BYPL;
14. Sh. Ajeet Kumar, AM, BYPL;
15. Sh. Ramesh Narayanan, CEO, BYPL;
16. Sh. Mandan Pal, AEE, NDMC;
17. Sh. Samik, NDMC(CRISIL);
18. Sh. Vivek Agarwal, NDMC(CRISIL);
19. Sh. Gopal Saxena, CEO, BRPL;
20. Sh. Prem Kumar, VP, P&C, BRPL;
21. Sh. Raj Arya, Head-Legal, BRPL;
22. Sh. R. C. Natrajan, Consultant, BRPL;
23. Sh. Harsh Gulati, Manager, BRPL;
24. Sh. Deepak Sharma, VP, BRPL;
25. Sh. Prashant Deb, DGB, BRPL;
26. Sh. Dushyant Manocha, Advocate for BRPL;
27. Sh. V. P. Singh, Advocate for BSES;
28. Sh. H. M. Sharma, Stakeholder;
29. Sh. Arun Kumar Datta, Stakeholder;
30. Sh. D. C. Khanna, Stakeholder;
31. Sh. Ganga Datt Gupta, Stakeholder;
32. Sh. M. M. Lal Bhasin, Stakeholder;
33. Sh. Sanjay Sharma, Stakeholder;
34. Sh. S. R. Abrol, Stakeholder;
35. Sh. K. L. Katyal, Stakeholder;
36. Sh. D. C. Datta, Stakeholder;
37. Sh. Sarabjit Roy, Stakeholder;
38. Sh. Hemant Kumar, Stakeholder;
39. Sh. Satya Pal, Stakeholder;
40. Sh. Ashok Bhasin, Stakeholder;
41. Sh. Atul Goyal, Stakeholder;
42. Sh. Lakhmi Singh, Stakeholder;

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43. Sh. Ram Prashad, Stakeholder;
44. Sh. Ashish Gulabani, Stakeholder;
45. Sh. F. D. Dixit, Stakeholder;
46. Sh. Pankaj Pal, Stakeholder;
47. Sh. B. B. Tewari, Stakeholder;
48. Sh. Watwani, Stakeholder.

ORDER

(Date of Hearing: 02.05.11)

(Date of Order: 10 .05.11)

1. The Commission has issued a Public Notice for Tariff Determination for FY 2011-12 on 18.03.2011. Subsequently, the Commission has issued another Public Notice dated 12.04.2011 in which the Commission sought comments from all stakeholders for fixation of AT&C Loss Reduction Targets for each of the Distribution Licensee for FY 2011-12 .
2. Sh. H. M. Sharma, Stakeholder has submitted that as per Regulation 4.1 of DERC Tariff Regulations, 2007 the Control Period shall commence from the date of MYT Order and shall extend till 31.03.2011. As DERC did not initiate appropriate action for framing of the new Regulations for the succeeding period, the Commission cannot now undertake ad-hoc action which is contrary to the law and is impermissible. Further, without amendment of the Regulations the Commission has neither authority nor jurisdiction to make such changes even though it is a Rule making Authority. Therefore, the action of extending the DERC Tariff Regulations, 2007 is impermissible according to the law.
3. Sh. Sharma further submitted that as per the provisions of Section 181 of the Electricity Act, 2003, the State Commission may by Notification make Regulations consistent with this Act and Rules generally to carry out the provisions of this Act. Further, Section 181(3) of the Electricity Act, 2003 provides that all Regulations made by the State Commission under this Act shall be subject to the condition of previous publications. As such, it is a statutory requirement for the Commission to publish the draft Tariff Regulations for the period beginning on 01.04.011, which the Commission has not done yet, inviting comments from the stakeholders and hearing conducting to finalize the draft Regulations. As such, the Tariff Regulations, 2007 cannot be extended by the Commission beyond its expiry date of 31.03.2011.
4. Sh. Arun Kumar Datta, Stakeholder submitted that the Tariff Determination process is guided by MYT Regulations, 2007. Since, the MYT Regulations, 2007-2011 expired on 31.03.2011, therefore, no tariff can be determined without MYT

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Regulations starting from 01.04.2011. Any tariff claimed by the DISCOMs/Generation Company/Transmission Company will be without any valid authority and would be illegal and void and shall not stand the scrutiny of Court of Law.

5. Sh. Datta, further submitted that MYT Regulations beginning from 01.04.2011 are mandatorily to be in place before determination of any future tariff and not the vice versa. Therefore, the Commission may undertake exercise for determination of the MYT Regulations beyond 31.03.2011 immediately. He further submitted that the notice for Tariff Determination for FY 2011-12 is premature.
6. Sh. Datta further submitted that MYT Regulations 2007-2011 is valid for the relevant period. The Commission has no power to extend the same for any period. According to him extension of MYT Regulations 2007-2011 to FY 2011-12 by the Commission shall be construed as extra constitutional act and shall be illegal and void.
7. Sh. D. C. Khanna, Stakeholder submitted that since the Tariff Order for FY 2010-11 is not yet issued, the Tariff Determination process of FY 2011-12 cannot commence. There is no provision of leap frogging in tariff exercise. The Commission is bound to follow the Electricity Act, 2003 and the Regulations framed by the Commission.
8. Further, Sh. Khanna reiterated the issues/objections raised by Sh. H. M. Sharma and Sh. Arun Kumar Datta.
9. Sh. M. M. Lal Bhasin, Stakeholder, submitted that it is presumed that the Commission cannot go ahead with the exercise.
10. Sh. Bhasin further submitted that the Hon'ble High Court of Delhi has quashed GNCTD Order dated 03.05.2010 which debarred DERC from issuing Tariff Orders for FY 2010-11. Pending issuance of these Orders, Tariff Orders for 2011-12 cannot be issued. Besides MYT Regulations have already expired on 31.03.2011.
11. Sh. Sanjay Sharma, Stakeholder, submitted that international standard for AT&C Loss is 3% and this is maintained by countries in world, but not by DISCOMs of Delhi.

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