

DELHI ELECTRICITY REGULATORY COMMISSION

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

Statutory Advice under Section 86 (2) (iv) of the Electricity Act, 2003

EXECUTIVE SUMMARY

- A. GNCTD has forwarded the representations of three private DISCOMs and desired Statutory Advice of the Commission on issues raised by the DISCOMs as well as the issues covered under Clause 5.3(h)-4 of the National Tariff Policy. GNCTD has also directed the Commission not to issue the Tariff Orders till it thoroughly examines the advice and then gives go-ahead.
- B. The Solicitor General of India on being requested to give an opinion, advised that the Commission cannot offer advice on the matter pertaining to *quasi judicial* function of Tariff Determination but the **advice on the approach in principle to the various issues without jeopardizing the quasi judicial function of the Commission can be offered**. As regards the direction for not issuing the Order, he advised that such a direction is ultra vires and void.
- C. The Statutory Advice is being furnished on the basis of unanimous decisions of the Commission on the approach in principle for finalization of Tariff Orders for F.Y. 2010-11. The Commission Consists of two Members and one Chairman. A draft of the Statutory Advice was prepared by the Secretariat of the Commission and submitted to the Commission on 28.05.2010 but the Members of the Commission have not cleared the file even after repeated reminders. As the matter has been delayed for about two months, the advice is being sent. All such decisions on principles were finalised unanimously after extensive deliberations in the Commission and were then signed by both Members and Chairman. All deliberations are part of the record.
- D. The Tariff Orders of the three DISCOMs finalised on the basis of principles approved unanimously by the Commission were approved by Chairman on 28.04.2010 and by Sh. S. R. Sethi, Member on 29.04.2010.
- E. As is in the knowledge of the Government, power from new generation plants viz. Jhajar, Bawana, Dadri, Maithon, Mejia etc. would become available during the course of the current financial year. As a result, DISCOMs in Delhi would have substantial surplus power, mostly in 2nd half of the year. The power from the new plants would be available to DISCOMs at regulated rates, which are invariably less than market rates because of shortages of power in the country. DISCOMs will be able to sell the surplus power and earn a profit of at least Rs. 2 to 3 per unit. Keeping in view this scenario and based on approach in principles decided unanimously, the Tariff Orders for F.Y. 2010-11 were finalised in which the three private DISCOMs at Delhi have a surplus of Rs. 3577 Crores after meeting all expenses and after allowing the return on capital etc. admissible to them under

Multi Year Tariff Regulations. A major portion of this surplus was utilized for reduction in Tariff across different categories of consumers.

- F. The power availability from the new generation plants for the current financial year was for only a part of the year. For the next year i.e. F.Y. 2011-12, the power from these plants will be available for the whole year, resulting in huge power surplus with the DISCOMs. The result will be that the surplus with the DISCOMs for F.Y. 2011-12, after meeting all expenses and after providing for the return on capital etc. admissible to them, will be at least double the surplus of Rs. 3577 Crores for the year 2010-11.
- G. **On 30.04.2010 GNCTD was informed that the concerns of DISCOMs regarding purchase of power to ensure that there is no load shedding in F.Y. 2010-11 were being met by the Commission and Rs. 1775 Crores was being provided to them for bilateral purchases of power even though no such claims were made in their Tariff Petitions and an additional amount of Rs. 1200 Crores of surplus (at existing tariff) was also being left in their hands to deal with all types of uncertainties.** GNCTD was also informed that the Commission was intending to initiate the process of framing Fuel Price Adjustment Regulations after the issue of Tariff Orders whereby recovery of additional cost, if any, on account of power purchase will be quarterly.
- H. However, immediately after GNCTD was informed about the arrangements by the Commission to avoid load shedding, the three private DISCOMs represented to GNCTD on 03.05.2010, on the basis of which the direction for not issuing the Tariff Orders under Section 108 of the Electricity Act, 2003 was issued, on 04.05.2010.
- I. Since the direction under Section 108 of the Electricity Act, 2003 on tariff issues had serious legal implications, advice of the **Solicitor General** was sought, who **advised that the direction is ultra vires and void and the Tariff Orders must be issued.** Even then the Tariff Orders have not been issued because the Members in the Commission have not accepted the advice and have taken a position that as long as the direction under Section 108 is in force, the Orders cannot be released. Repeated advice to the Members in the Commission that the Solicitor General is the highest Law Officer of the country and his advice cannot be ignored, has fallen on deaf ears.
- J. The Order in the case of NDMC also has not been released so far though the direction under Section 108 does not mention NDMC and NDMC has not given any representation to GNCTD. However, Members have taken a position that the direction under Section 108 does not exclude NDMC. **The Solicitor General advised that NDMC is not covered under the direction but even this advice has not been accepted by the Members.**
- K. The Petitions were filed by the three DISCOMs in December, 2009 for True-up for F.Y. 2008-09 and Determination of ARR for F.Y. 2010-11. None of them

demanded tariff hike based on True-up for F.Y. 2009-10 as the year was not complete in December, 2009 and audited accounts were not available.

- L. **The principles adopted for True-up of F.Y. 2008-09 unanimously have resulted in a consolidated surplus of about Rs. 25 Crores though the three DISCOMs had claimed a consolidated gap of Rs. 604 Crores.** In this True-up the Appeal effect as directed by the Hon'ble Appellate Tribunal for Electricity (ATE) has been also given and the actual expenses on power purchase (net of rebate) have been allowed.
- M. The principles for Determination of ARR for F.Y. 2010-11 have been mainly to consider the latest available data for projecting the cost of power purchase. **The power availability from future stations has been projected on the basis of status given by CEA. In the case of BRPL and BYPL per unit cost of new generating stations demanded in the Petitions was Rs. 2.32 against which the Commission has allowed Rs. 3.17. Similarly, in the case of existing Central Sector Generating Stations (CSGS) also the approved per unit cost is Rs. 2.91 against Rs. 2.67 to Rs. 2.76 claimed by the DISCOMs, showing that the Commission has been quite liberal in allowing the expenses likely to be incurred in procuring power.**
- N. The issues raised by the DISCOMs in their representations before GNCTD have been examined and it was found that the **factual position was entirely different from the position as mentioned in the representations. DISCOMs have lied completely in giving incorrect financial ratios in their representations to GNCTD. If such incorrect statements would have been made by them in the Tariff Petitions before the Commission, they would have been liable to be prosecuted. The financial ratios indicating their Net worth, Fixed Assets Coverage Ratio, Debt Equity Ratio, Debt Service Coverage Ratio and cash position, as available in the audited accounts, reports of Credit Rating Agencies and loan sanction letters of Banks, show that in all cases the financial parameters of the DISCOMs are well above the lenders' covenants, and DISCOMs clearly misrepresented before GNCTD that the lenders' covenants had been breached. The position of NDPL is so excellent that it can be compared to any other financially strong company. The fact is that the lenders have been continuously sanctioning loans to them and as recently as June, 2010 substantial loans have been sanctioned to them.**
- O. **The figures of Regulatory Asset given by them are also entirely incorrect and baseless. There is no Regulatory Asset in the Tariff Orders issued by the Commission. Regulatory Asset has been defined in Clause 5.42 of MYT Regulations and has to be created by the Regulatory Commission in the Tariff Order, only if there is large variation on account of uncontrollable items, and if it is 'not feasible to recover in one year alone, the Commission may take a view to create a Regulatory Asset, as per the guidelines provided in Clause 8.2.2 of the National Tariff Policy'. The Commission has not taken any such view in the case of any DISCOM. Therefore, the statement about Regulatory Asset is entirely untrue and misleading.**

- P. As regards the apprehension of future consumers being burdened with past liabilities, the Commission has already decided to introduce Power Purchase Adjustment Regulations after the issue of Tariff Orders which would take care of the issue of a speedy recovery of additional Power Purchase Cost.
- Q. **The non-issue of the Tariff Order for F.Y. 2010-11 because of the direction under Section 108 issued by GNCTD, has resulted in non-accounting of the surplus of Rs. 3,577 Crores in Tariff for F.Y. 2010-11. This has enabled the DISCOMs to overcharge the consumers to the extent of about Rs. 300 Crores per month starting from 01.04.2010. The Tariff Orders need to be issued immediately in the interest of consumers and GNCTD is requested to withdraw the direction under Section 108.**
