



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1732)/DERC/2019-20

R. Petition No. 66/2019

In the matter of: Review Petition for seeking review of Tariff Order dated 31.07.2019.

Tata Power Delhi Distribution Ltd.

....Review Petitioner

Coram:

Hon'ble Sh. Justice S S Chauhan, Chairperson

Hon'ble Sh. A.K. Singhal, Member

Hon'ble Dr. A. K.Ambasht, Member

ORDER

(Date of Order: 07.01.2021)

1. The aforesaid Review Petition has been filed by TPDDL seeking review on certain aspects and issues of the Tariff Order dated 31.07.2019 in Petition No. 9/2019. The Review Petitioner has sought review on the following issues: -
 - (a) Inadvertent error of not considering the impact of allowed Income Tax on Net Income from Other Business Income while computing the Non-Tariff Income for FY 2017-18;
 - (b) Inadvertently considered Depreciation net of Retirement of Assets for the purpose of computation of Trued up ARR for FY 2017-18;
 - (c) Inadvertently reduced the normative O&M expenses of FY 2017-18 by Rs 1.63 Cr based on amount of disallowance of EI based capitalization instead of disallowing normative O&M expenses based on capacity;
 - (d) Inadvertently approved lower amount towards Deficit on account of Pension Trust Surcharge of 3.70% introduced in Tariff Order FY 2017-18;

(e) Lower consideration of rate of interest for FY 19-20 (Capex, Working Capital & Revenue GAP);

(f) Non allowance of unprecedented Increase in Minimum Wages vide Govt. of NCT of Delhi Notification dated 03.03.2017;

(g) Non allowance of Incremental impact of GST towards O&M Expenses;

(h) Non allowance of Expenses incurred to earn Income from Other Business

2. The submissions made by the Petitioner have been considered and analysed to arrive at the decision. The issue wise analysis and decision are as follows:

2.1 **Inadvertent error of not considering the impact of allowed Income Tax on Net Income from Other Business Income while computing the Non-Tariff Income for FY 2017-18**

Petitioner's submission

a. It is submitted that this Hon'ble Commission while approving the Non-Tariff Income for FY 2017-18 (Table 3.106) has reduced the approved share of the Review Petitioner against the total Income earned from Other Business, i.e., Rs. 32.63 crores. However, inadvertently the Commission has not reduced the approved Income Tax on the Income earned from Other Business, i.e., Rs. 3.06 crores (Table 3.102). As such the approved Net Non -Tariff Income of Rs. 110.50 crores (Table 3.106) would have further been reduced by Rs. 3.06 crores, which comes out to be Rs. 107.44 crores (110.50-3.06).

b. The Review Petitioner in its Tariff Petition has earned an amount of Rs 57.92 Cr towards Income from non-energy business/Other Business. Out of Rs. 57.92 crores, the Review Petitioner after reducing the expenses incurred for earning this Other Income as well as Income Tax, had offered Rs. 3.58 crores as consumers share as per DERC (Treatment of Income from Other businesses of Transmission licensee and Distribution Licensee) Regulations 2005 (as amended from time to time) ("Other Business Regulations").

- c. The Commission however, while approving the Other Business Income at Table 3.102 has inadvertently not considered the expenses incurred by the Review Petitioner, amounting to Rs 44.97 crores, towards the Income from Other Business and has considered entire amount of Rs. 57.92 crores Table 3.102) as Gross Income earned by the Review Petitioner from Other Business.
- d. Thereafter, the Hon'ble Commission has considered Rs. 54.86 crores Table 3.102,) as Net Income from Other Business after reducing Income Tax from Gross Income (Rs. 57.92 crores – 3.06 crores) for sharing the same between the Review Petitioner and the Consumers. As such the share of the Review Petitioner as approved by the Hon'ble Commission comes out to be Rs. 32.63 crores and for Consumer it comes out to be Rs. 22.24 crores.
- e. It is further submitted that while computing the Non-Tariff Income for FY 2017-18, the Hon'ble Commission had to reduce the share of DISCOM/Review Petitioner from Income earned from Other Business (Rs. 32.63 crores) as well as Income Tax approved on the Income earned from Other Business (Rs. 3.06 crores).
- f. While computing the Non-Tariff Income for FY 2017-18, the Commission had to reduce the share of DISCOM/ Review Petitioner from the Income earned from Other Business, i.e., Rs. 32.63 Crores as well as Income tax approved on the Income earned from Other Business (Rs. 3.06 Crores).
- g. Thus, in view of the above submissions, the Hon'ble Commission may be pleased to reduce the Non-Tariff Income for FY 2017-18 as approved in Table 3.106 i.e., Rs. 110.50 crores by Rs. 3.06 crores, i.e., Income Tax approved on the Income from Other Business which would reduce the Non-Tariff Income from Rs. 110.50 crores to Rs. 107.44 crores.

COMMISSION'S ANALYSIS

- A. The petitioner has sought that the income tax on the other business income may also be allowed to be retained by them by way of deduction from Non-Tariff Income.

As per Regulation 96 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017,

96. The net income **after tax** from Other Business shall be calculated as per "DERC Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee Regulation, 2005" as amended from time to time and shall be adjusted in the ARR.

B. It is submitted that during true up of FY 2016-17, the Petitioner had prayed that the income tax on other business income may be allowed upto the maximum of the difference between actual tax paid & tax already allowed on Return on Equity (ROE). The Commission had considered its representation and in its Review Order 32/2018 had allowed such tax on income from other business.

C. Accordingly, in lines with the Regulation 96 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and the approach followed by the Commission in its Review order 32/2018 dated 24.09.2018, the income tax as claimed by the Petitioner on the income from other business to the tune of Rs. 3.06 Cr. may be considered to be reduced from the Non-Tariff Income of the Petitioner as the actual tax paid as per the audited financials is Rs. 94.51 Cr. while the tax allowed by the Commission is Rs. 36.17 Cr.

2.2 **Inadvertently considered Depreciation net of Retirement of Assets for the purpose of computation of Trued up ARR for FY 2017-18**

Petitioner's submission

- a. It is submitted that the Commission in Table 3.108 while Truing up the Aggregate Revenue Requirement (ARR) for FY 2017-18 has inadvertently considered an amount of Rs.148.38 crores (i.e. Rs. 200.16 crores – Rs. 51.78 crores) towards depreciation allowance, based on the computation done in table 3.81. the very purpose of this table is to compute closing value of accumulated Depreciation and values for computation of Regulated Rate Base ("RRB")
- b. The Commission while truing up Depreciation claim for the purpose

of ARR for Fy 2017-18 has inadvertently reduced Rs. 51.78 Cr for accumulated depreciation assets from the approved Depreciation of Rs. 200.16 crores. The Commission has deviated from its own methodology at the time of truing up of the ARR.

COMMISSION'S ANALYSIS

A. While approving the depreciation for FY 2017-18, the Commission has considered the Fixed Assets net of assets de-capitalised. Accordingly, the depreciation of the petitioner for FY 2017-18 has been assessed as Rs. 200.16 Cr on provisional basis subject to finalisation of the Capitalisation.

B. While considering the depreciation in the final ARR table of the Tariff order, the depreciation amount of Rs. 200.16 Cr. was inadvertently reduced by the amount of depreciation of Rs. 51.78 Cr which was just a reversal of the depreciation amount in the accumulated depreciation account on account of de-capitalisation of assets.

C. Accordingly, the amount of Rs. 51.78 Cr as inadvertently reduced in the ARR of the Petitioner may be considered to be allowed in the ARR of FY 2017-18 in the subsequent Tariff Order.

2.3 **Inadvertently reduced the normative O&M expenses of FY 2017-18 by Rs 1.63 Cr based on amount of disallowance of EI based capitalization instead of disallowing normative O&M expenses based on capacity.**

Petitioner's submission

- a. It is submitted that this Hon'ble Commission in the Order under Review has provisionally deferred the Electrical Inspector ("EI") based Capitalization for an amount of Rs. 33.76 Cr. on account of receipt of Electricity Inspector Certificate ("EIC") after 31.03.2018 and Rs. 1.10 Cr. on account of Assets which were physically not found.

- b. Without prejudice to the rights and contentions and remedies available to the Review Petitioner to challenge the said deferment/disallowance, if advised, the Commission while considering the impact of the same on the normative Operational and Maintenance ("O&M") Expenses has inadvertently reduced the normative O&M Expenses by Rs. 1.63 crores instead of Rs. 0.46 crores.
- c. The Commission while disallowing O&M Expenses of Rs. 1.63 crores has inadvertently disallowed normative O&M expenses in proportion to provisionally deferred/disallowed amount of capitalization which otherwise should have been considered based on the network capacity (i.e. ckt. km and MVA) concept, i.e., based on the methodology upon which the normative O&M Expenses are to be allowed. Thus, the Hon'ble Commission has followed inconsistent methodology for computing disallowance amount of normative O&M Expenses.
- d. In line with the above methodology, it is submitted that the proportionate reduction in the normative O&M expenses on account of deferment/disallowance of capitalization of Rs. 34.86 crores of assets would come out to Rs. 0.46 crores (i.e. due to deferment of addition in network capacity for those assets for which date of EIC received was after 31.03.2018) instead of Rs. 1.63 crores.

COMMISSION'S ANALYSIS

As regards the issue of reduction in normative O&M expenses, it is submitted that the Commission in its Tariff Order dated 31.7.2019 for true up for FY 2017-18 of TPDDL has disallowed Rs.1.63 crores under O&M Expenses during FY 2017-18. This proportionate reduction in O&M Expenses was based on the amount of provisionally disallowed capitalisation instead of corresponding network capacity on which normative O&M expenses are computed.

Since the normative O&M Expenses are computed based on network capacity of distribution infrastructure. It is, therefore, proposed that the contention of TPDDL for disallowing reduction in O&M Expenses on account of network capacity instead of amount

may be considered. The impact, therefore, may be given in the subsequent Tariff Order.

2.4 **Inadvertently approved lower amount towards Deficit on account of Pension Trust Surcharge of 3.70% introduced in Tariff Order FY 2017-18**

Petitioner's submission

- a. It is submitted that the Commission has inadvertently considered the Amount Billed for approving the Deficit on account of Pension Trust Surcharge @ 3.70%, i.e. Rs. 113.78 Crores (refer Row no E in the Table 3.21) instead of the Amount Collected against Pension Trust Surcharge i.e., Rs. 109.90 Crores (Table 3.21).
- b. As a result of the above error, this Hon'ble Commission while considering Deficit to be allowed for FY 2017-18 on account of Pension Trust Surcharge has considered Rs. 46.60 crores (without carrying cost) instead of Rs. 50.48 crores (Table 3.21). This error in the methodology has resulted in a deficit of Rs. 3.88 crores.
- c. As per Directive 6.2. of Tariff order dated 31.08.2017, of this Hon'ble Commission, any under / over recovery on account of payment to the Pension Trust was to be trued up by the Hon'ble Commission at the time of True Up of ARR of FY 2017-18 as under: -

*" 6.2. A total amount of Rs. 235 Cr. has to be paid to the Pension Trust in FY 2017-18 by the Petitioner. The Petitioner shall submit reconciliation of payment which has already been made to Pension Trust during FY 2017-18 and the balance amount to be paid within one month of the issuance of this Tariff Order. Based on the reconciliation statement the Petitioner is directed to pay the balance amount out of (Rs. 235 Cr. – already paid during FY 2017-18) in 7 (seven) equal monthly instalments to pension trust. **Any under / over recovery on account of payment to the Pension Trust shall be trued up by the Commission at the time of True Up of ARR of FY 2017-18.** "*

- d. As such, it is clear that any deficit towards the Pension Trust payments has to be computed on the basis of the Amount Collected viz a' viz., payments made to Pension Trust.
- e. However, inadvertently this Hon'ble Commission while considering the amount of deficit for FY 2017-18 has computed the same based on the Amount Billed instead of Amount Collected, thus resulting into lower recognition of Deficit amount.

- f. Since difference in Deficit on account of Pension Trust Surcharge of Rs. 3.88 crores pertain to FY 2017-18, the same should be considered in the True Up of the FY 2017-18, so as to avoid any double impact since in FY 2017-18 the said amount has been inadvertently considered on Billed basis and also for FY 2018-19 the same amount would be considered on Collection basis.
- g. the Review Petitioner is only praying before this Hon'ble Commission that the difference in the amount of the Pension Trust Surcharge billed and collected i.e. Rs. 3.88 Crores (Rs. 50.48 Cores – Rs. 46.60 Crores) be allowed to the Review Petitioner along with carrying costs.

COMMISSION'S ANALYSIS

- A. The petitioner submits that in accordance with the directive 6.2 of Tariff Order dated 31st August, 2017 the payment of dues have been made within the stipulated time. The directive 6.2 of the Tariff Order stipulates, *A total amount of Rs. 235 Cr. has to be paid to the Pension Trust in FY 2017-18 by the Petitioner. The Petitioner shall submit reconciliation of payment which has already been made to Pension Trust during FY 2017-18 and the balance amount to be paid within one month of the issuance of this Tariff Order. Based on the reconciliation statement the Petitioner is directed to pay the balance amount out of (Rs. 235 Cr. – already paid during FY 2017-18) in 3 (three) equal monthly instalments to pension trust. **Any under / over recovery on account of payment to the Pension Trust shall be trued up by the Commission at the time of True Up of ARR of FY 2017-18.***
- B. The Petitioner complied with the Direction of the Commission.
- C. While computing the impact of under recovery of the Pension Trust Surcharge dues from the tariff, the Commission computed the carrying cost on the basis of billing on account of such Pension Trust Surcharge.

- D. The Petitioner submits that such under recovery of the dues may be considered in comparison to collection and not billing as the cash flow is affected on collection basis.
- E. The Commission in Table 3.21 of the Tariff Order dated 31/07/2019 has approved the deficit towards Pension Trust to be allowed for FY 2017-18 amounting to Rs.46.60 Crores instead of Rs.50.48 Crores as claimed by TPDDL. Further, the Commission also allowed carrying cost amounting to Rs.1.40 Crores on the said deficit at the rate of 10.33%. The Petitioner has submitted to allow deficit with respect to Amount Collected and not on Amount Billed. The impact of the claim of the Petitioner is around Rs.40 Lakhs (i.e. Rs.50.48 Cr. – Rs.46.60 Cr. = Rs.3.88 Cr. x 10.33%).
- F. The Commission observes that directive 6.2 provided in Tariff Order dated 31/08/2017, quoted above, indicates that any under/over recovery on account of payment to the Pension Trust shall be trued up by the Commission at the time of True Up of ARR of FY 2017-18. In the said directive, it is not indicated that true up will be done considering amount collected, as claimed by the Review Petitioner. Therefore, the claim made by the Review Petitioner is liable to be rejected.

2.5 **Lower consideration of rate of interest for FY 2019-20 (Capex, Working Capital & Revenue GAP)**

Petitioner's submission

- a. The Commission while approving the Rate of interest for loans for FY 2019-20 has inadvertently considered the rate of Interest as per the actual interest rate trued up for FY 2017-18 instead of considering SBI MCLR prevailing as on 01.04.2019 plus margin in consonance with Regulation 77 of the DERC Tariff Regulations, 2017 as under:

“77. The rate of interest on loan shall be based on weighted average rate of interest for actual loan portfolio subject to the maximum of bank rate as on 1st April of the year plus the margin as approved by the Commission in the Business Plan Regulations for a Control Period:

Provided that in no case the rate of interest on loan shall exceed approved rate of return on equity:

Provided further that if there is no actual loan for a particular year but

normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided also that if the Utility does not have actual loan then the rate of interest shall be considered at the bank rate plus margin, as specified by the Commission in the Business Plan Regulations, for the notional loan of the relevant control period:

Provided also that the loan availed through open tendering process (Competitive Bidding) among Scheduled Banks, Financial Institutions etc., shall be considered at the rate discovered through open tendering process.”

- b. It is therefore submitted that the Commission may be pleased to approve the rate of interest for FY 2019-20 as per the prevailing SBI MCLR as on 01.04.2019 i.e., 8.55% plus 1.73%/1.68% margin for Capex/ Working Capital & Revenue Gap loans respectively,

COMMISSION'S ANALYSIS

- A. Regulation 77 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 stipulates:

77. The rate of interest on loan shall be based on weighted average rate of interest for actual loan portfolio subject to the maximum of bank rate as on 1st April of the year plus the margin as approved by the Commission in the Business Plan Regulations for a Control Period:

- B. Further, Regulation 85 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 stipulates,

85. Rate of Interest On Working Capital shall be considered as the bank rate as on 1st April of the year plus margin as specified by the Commission for the Control Period and shall be true up on the basis of prevailing bank rate as on 1st April of the respective financial year:

- C. The Commission shall true up the rate of interest on loan for FY 2019-20 in accordance with the above Regulations.

2.6 **Non allowance of unprecedented Increase in Minimum Wages vide Govt. of NCT of Delhi Notification dated 03.03.2017.**

Petitioner's submission

- a. The Commission, by the Order under Review has inadvertently not considered the impact of unprecedented increase in minimum wages on the service contracts entered into by the Review Petitioner in order to operate the distribution business efficiently and

effectively as per the requirement of DERC (Supply Code and Performance Standard) Regulations, 2017.

- b. It is submitted that the Hon'ble Commission has observed that the claim of expenses related to manpower based service contract is part of the normative O&M Expenses and do not qualify for the proviso to Regulation 87 of DERC Tariff Regulations as well as for statutory pay revision under Regulation 23(4) of DERC Tariff Regulations, 2017.

COMMISSION'S ANALYSIS

- A. The petitioner in its Review petition has submitted that while determining the tariff for FY 2018-19, the Commission has considered the minimum wages of Rs. 14 Cr under O&M Expenses.
- B. In view of the consideration of the minimum wages under the O&M Expenses by the Commission in TO for FY 2018-19, following additional paragraphs of the Commission analysis may also be referred:

4.101 The Commission has notified Business Plan Regulations, 2017 wherein norms for Operation and Maintenance Expenses in terms of Regulation 4(3) has been determined for FY 2018-19.

4.102 The Commission has considered impact of any Statutory Pay revision on employee's cost i.e., Rs. 44.26 Cr. & Rs. 14 Cr. for Increase in salary on account of 7th Pay Commission & Minimum Wage revision respectively as specified in the Business Plan Regulations, 2017.

*4.103 The Petitioner has submitted that impact of GST & pay parity for Non-FRSR employees. The Commission is of the view that the Petitioner has not submitted the detailed computation of increase in tax due to GST implementation. Further, **Non-FRSR employees are not covered under statutory pay revisions** as specified by the Commission in Business Plan Regulations, 2017. Therefore, impact on account of GST & pay parity for Non-FRSR employees has not been considered over & above the normative O&M expenses for FY 2018-19. **(Emphasis)***

- C. It is observed that the Commission has mentioned that 'Non-FRSR employees' are not covered under statutory pay revision.

- D. Also, while true up it was observed that the minimum wages claimed by the DISCOM was for the works contract and not their direct employees, thus not forming part of **“their employees’ cost”**.
- E. The Commission taking cognizance of the submissions of the petitioner in the respective Tariff Order thereby determined that *“The additional claim of expenses related to manpower based contract is part of the normative O&M expenses and do not qualify for the second proviso to the Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017. The said claim also does not qualify for statutory pay revision under Regulation 23 (4) of the DERC (Business Plan) Regulations 2017 as it is not an employee’s cost of the petitioner. Accordingly, the claimed amount is not allowed by the Commission”*

As regards the issue regarding non-allowance of unprecedented impact increase in minimum wages vide GoNCTD notification dated 3.3.2017, it is submitted that the additional impact was disallowed in the Tariff Order as under:

“3.161 Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 states,

The Utilities shall be allowed Operation and Maintenance expenses on normative basis including expenses for raising the loan for funding of Working Capital and Regulatory Asset as specified by the Commission in the Business Plan Regulations for the respective Control Period:

Provided that the Normative O&M expenses for the respective Control Period shall not be trued up;

Provided further that the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M expenses.

3.162 The additional claim of expenses related to manpower based contract is part of the normative O&M expenses and do not qualify for the second proviso to the Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017. The said claim also does not qualify for statutory pay revision under

Regulation 23(4) of the DERC (Business Plan) Regulations 2017 as it is not an employee's cost of the Petitioner. Accordingly, the claimed amount is not allowed by the Commission."

The O&M expenses determined by the Commission contain both element of escalation on year to year basis and additional O&M expenses on account of increase in the network capacity. Therefore, the contention of TPDDL to allow additional impact of minimum wages under O&M Expenses may not be considered.

2.7 **Non allowance of the incremental Impact of GST towards O&M Expenses.**

Petitioner's submission

- a. It is submitted that the Commission by the aforesaid findings has inadvertently held that the Goods & Services Tax, that came into effect from 01.07.2017 subsumed the Service Tax and that, it was not a new statutory levy, and has therefore disallowed the additional claim sought by the Petitioner on account of implementation of GST.
- b. The aforesaid finding of the Commission is correct to the extent that it had subsumed the service tax, however, the same is covered under the definition of Change in law as per Regulation 2(18) of the DERC Tariff Regulations, 2017 as under:
(18) "Change In Law" means occurrence of any of the following events:
 - (a) Enactment, bringing into effect or promulgation of any new Indian law; or*
 - (b) adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or*
 - (c) change in interpretation or application of any Indian law by a Competent Court, Tribunal or Indian Governmental Instrumentality which is the final authority under law for such interpretation or application; or*
 - (d) change by any competent authority in any condition or covenant of any consent or clearances or approval or license available or obtained for the project; or*
 - (e) coming into force or change in any bilateral or multilateral agreement/treaty between the Government of India and any other Sovereign Government/s or international convention or protocol having implication for the generating station or the transmission system regulated under these Regulations;*
- c. It is further clarified that GST is Statutory Tax and hence the impact of which cannot be controlled by the review Petitioner, thus, it is covered under the proviso of Regulation 87 which provides as under:

“Provided further that the water charge, statutory levy and taxes under O&M expense if indicated separately in the audited financial statement shall not form part of normative O&M expenses.”

- d. In view of the above submissions, it is humbly prayed before the Commission to allow the incremental impact on the O&M expenses on account of introduction of GST to the tune of Rs. 10.20 crores.

COMMISSION'S ANALYSIS

A. The Petitioner has submitted the claim of additional liability in Tax on account of Service tax and GST at Rs. 10.20 Cr. on the ground that the GST is considered as a new enactment and all together a different law.

B. The Commission in the Tariff Order dated 31.07.19 held the view as follows:

“3.156 Regulation 23 of DERC (Business Plan) Regulations, 2017 stipulates the normative O&M expenses of the Petitioner. The Commission has determined the norms for O&M expenses based on the actual O&M expenses of the Petitioner during FY 2011-12 to FY 2015-16. In the actual O&M expenses, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retirement of assets have not been considered.

3.157 The actual O&M Expenses considered by the Commission already include the expenses on account of service tax. The O&M expenses determined by the Commission contain both element of escalation on year to year basis and additional O&M expenses on account of increase in the network capacity.

3.158 The Goods & Services Tax, that came into effect from 01.07.2017 subsumed the service tax and that, it was not a new statutory levy. Therefore, the additional claim sought by the Petitioner is not justified. Accordingly, the Commission disallows the claim on account of implementation of GST.”

C. Further, in view of proviso to Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M expenses.

D. While determining the O&M expenses norm for the Control Period, the service tax was not excluded from the base cost of the petitioner. The Commission therefore decided to continue the inclusion of the taxes as part of normative O&M Expenses for the Utility

As regard the issue of non-allowance of incremental GST under O&M Expenses, the Commission has already deliberated this issue in its Tariff Order dated 31.7.2019 as under:

“3.156 Regulation 23 of DERC (Business Plan) Regulations, 2017 stipulates the normative O&M expenses of the Petitioner. The Commission has determined the norms for O&M expenses based on the actual O&M expenses of the Petitioner during FY 2011-12 to FY 2015-16. In the actual O&M expenses, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retirement of assets have not been considered.

3.157 The actual O&M Expenses considered by the Commission already include the expenses on account of service tax. The O&M expenses determined by the Commission contain both element of escalation on year to year basis and additional O&M expenses on account of increase in the network capacity.

3.158 The Goods & Services Tax, that came into effect from 01.07.2017 subsumed the service tax and that, it was not a new statutory levy. Therefore, the additional claim sought by the Petitioner is not justified. Accordingly, the Commission disallows the claim on account of implementation of GST.”

The matter has already been deliberated in detail in the Tariff Order. Therefore, the contention of petitioner to allow additional impact of GST under O&M Expenses does not arise and is accordingly denied.

2.8 **Non allowance of Expenses incurred to earn Income from Other Business.**

Petitioner's submission

- a. It is submitted that the Commission has inadvertently not considered the expenses incurred by the Review Petitioner towards earning income from Other Business for the reason that these expenses already form part of normative Operation and Maintenance Expenses allowed by this Hon'ble Commission.
- b. It is noteworthy to say that the Commission vide its own letter dated

25.05.2007 has clarified that sharing has to be done on the basis of net revenue since the cost incurred has to be apportioned out of the revenue earned in the Other Business.

- c. While computing the Income Tax liability of Rs. 3.06 Crore, the Commission has considered the Income Tax on the net income earned from other Business. It appears that the Commission has allowed Income Tax on net Income (Revenue minus expenses) i.e. Rs. 3.06 crores.
- d. The above mentioned expenses of Rs. 44.97 crore are incurred to earn the income from Other Business, however, against the same the Commission had allowed Rs. 10.29 crore (considering 5.61% inflation + 2.94% Growth in Network) as a part of normative O&M expenses of Fy 2017-18 which the Commission may adjust against the total expenses of Rs. 44.97 crore as sought in the Tariff petition.

COMMISSION'S ANALYSIS

- A. The Commission during the prudence check for the Tariff order dated 31.07.2019 observed that the Petitioner has not undertaken segmental reporting in accordance with Regulation 97 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* which stipulated as follows:

"97. The Licensee shall follow segment wise reporting of other businesses in the audited financial statement and a reasonable basis for allocation of all joint and common costs between the licensed Business and the Other Business and shall submit the Allocation Statement as approved by the Board of Directors / Competent Authority to the Commission along with his application for determination of tariff:

Provided that loss on account of Other Business shall not be considered in the ARR of the Licensee"

- B. TPDDL while finalizing the Annual Audited Accounts for FY 2017-18 has not disclosed segment-wise reporting for the period and the same was not forming part of their Annual Audited accounts for FY 2017-18. Further, Commission while determining the true-up for FY 2017-18 has disallowed the expenses due to non-submission of segment-wise reporting in Annual Audited accounts. As the Annual

Audited Accounts for FY 2017-18 are finalized and cannot be changed as of now, TPDDL vide its submission dated 07/02/2020 & 07/09/2020 has submitted Additional information, the Auditor's Certificate on segment-wise statement of Profit and Loss for the year ended 31/03/2018 as mandated under Regulation 97 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

- C. The benefit explained by the Petitioner in respect of Other Business Income can be considered as per the Tariff Regulations, 2017 only when the Petitioner's eligibility was intact and complete on the date of issue of the Tariff Order. In the Tariff Order dated 31/07/2019, the Petitioner did not raise contemplated claims under Regulation 97 of the *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017*. After filing the Review Petition, the Petitioner has tried to improve upon his case by filing segment wise reporting. It is to be noted that once TPDDL has filed audited accounts without segment wise reporting, then they have to claim only on the basis of previous record based on the audited accounts which was submitted by them without segment wise reporting.
- D. If the un-segmental accounts submitted by Petitioner are to be taken into consideration, then we reach to an irresistible conclusion that the Petitioner cannot claim any benefit on the basis of improving upon his case by submitting additional documents in the form of segment wise reporting of accounts. The additional evidence document, which has been filed by improving upon by the audited accounts just to claim benefit by way of additional information, cannot be taken into consideration and neither it can come to the aid of the Petitioner to claim such benefit when the eligibility or qualification of the petitioner has to be taken into consideration on the basis of document submitted at the time of filing of Tariff Petition.
- E. Moreover, it is to be noted that the accounts which were submitted before the Commission by way of Tariff Petition were published accounts therefore, those published accounts cannot be changed neither any benefit can be claimed nor is available to the Petitioner

on the basis of the improved documents. Therefore, the claim made by the Petitioner is liable to be rejected.

3. The Petition is disposed of as per the directions and decisions contained in para 2 of this Order.

4. Ordered Accordingly

Sd/-
(A.K. Ambasht)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Justice S S Chauhan)
Chairperson