



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi -110017.

No. F.11(1965)/DERC/2021-22/7332

R. Petition No.16/2022

In the matter of: Petition seeking review of True up Order for FY 2019-20 dated 30.09.2021 in case No. 07/2021 filed u/S 94(1)(f) of the Electricity Act, 2003 and Regulation 7(iv) of Conduct of Business Regulations 2001.

New Delhi Municipal Council

.... Review Petitioner

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson

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

Appearance:

Mr. Tushar Sannu, Adv., NDMC

ORDER

(Date of Order: 29.07.2022)

1. The instant Petition has been filed by NDMC seeking review of True up Order for FY 2019-20 dated 30.09.2021.
2. While considering the issues raised in this Review Petition, it is important to understand the scope and applicability of Review of an Order. Section 94 of the Electricity Act, 2003 provides the power of the Commission for reviewing its decision, directions and orders and is reproduced below:

" (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters, namely:-

- a. summoning and enforcing the attendance of any person and examining him on oath;*
- b. discovery and production of any document or other material object producible as evidence;*
- c. receiving evidence on affidavits;*
- d. requisitioning of any public record;*
- e. issuing commission for the examination of witnesses;*

- f. reviewing its decisions, directions and orders;
- g. any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it."

- 3. The right to review has been conferred by Section 114 of Civil Procedure Code, 1908. The limitation and conditions are provided under Order 47, Rule 1 of Civil Procedure Code, 1908.

The Order 47, Rule (1) of the Code is given below: "Application for review of judgment. - (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b)

(c)

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

- 4. In this regard the Hon'ble Supreme Court of India in Lily Thomas Vs Union of India & Ors on 5th April 2000 held the following:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. "

- 5. Therefore, it is very necessary to process the application with the above premise with utmost caution and to be seen whether the application is necessarily fulfilling one of the above requirements to be maintainable under law.

- 6. The Review Petitioner has sought review of the following issues:

- i. Disallowance in Power Purchase Cost.
- ii. Renewable Purchase Obligation
- iii. Operation and Maintenance Expenses FY 2019-20 and FY 2021-22
- iv. Interest on working capital.

7. 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:

7.1. Issue No. 1 Disallowance in Power Purchase Cost

Petitioner's Submissions

7.1.1 As per the Business Plan Regulations 2017, the Review Petitioner/NDMC is expected to inform the quantum of power sold through Deviation Settlement Mechanism (Unscheduled Interchange Charges).

7.1.2 The UI (Unscheduled Interchange) Sale considered by the Commission is not the same as reconciled with Delhi SLDC on 11.03.2021. The Commission has considered the total power purchase as 1430.67 MUs excluding the UI sales. As per the Power purchase details, Gross Power Purchase is 1577.97MU. The Net Power purchase after accounting for sale of 82.87 MU through IEX works out to 1495.10 MUs. If the Power Sale & Power Purchase through UI (63.23 MU & 1.18 MU respectively) is taken, the net power purchase works out to 1430.68 MU (considered by the Commission).

Commission's Analysis

7.1.3 The Commission vide its email dated 23/03/2021, had sought DISCOM-wise, month-wise sale of power through Deviation Settlement Mechanism (UI). SLDC vide its email dated 25/03/2021 had submitted the desired information of all DISCOMs. SLDC submitted that NDMC has disposed of 73.12 MU of power under UI sale as under:

“Deviation for NDMC as submitted by SLDC

Month	UI Energy in Mus
<i>Apr-19</i>	<i>-8.11</i>
<i>May-19</i>	<i>-5.46</i>
<i>Jun-19</i>	<i>-8.79</i>
<i>Jul-19</i>	<i>-6.79</i>
<i>Aug-19</i>	<i>-6.84</i>
<i>Sep-19</i>	<i>-3.87</i>
<i>Oct-19</i>	<i>-8.28</i>
<i>Nov-19</i>	<i>-5.92</i>
<i>Dec-19</i>	<i>-1.81</i>

Month	UI Energy in Mus
Jan-20	-2.21
Feb-20	-6.66
Mar-20	-8.33
Total	-73.13

7.1.4 Based on the data submitted by SLDC as above, the Commission in its Tariff Order dated 30/09/2021 had levied a penalty of Rs. 4.15 Cr. in line with Regulation 152 (c) of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Regulation 28 of DERC (Business Plan) Regulations, 2017 as follows:

“3.34 The Commission has observed that the Petitioner has disposed off more than 5% of the net Power procured for the relevant month through Deviation Settlement Mechanism (Unscheduled Interchange Charges). Accordingly, the Commission in terms of the Regulation 152 (c) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Regulation 28 of DERC (Business Plan) Regulations, 2017 has considered the net power sold more than 5% of power procured at the average rate of power purchase/ sale through exchange during same month. Accordingly, the Commission has deducted Rs. 4.15 Cr. on account of disposing off more than 5% of the Net power procured by the Petitioner of the relevant months through Deviation Settlement Mechanism. The details of sale of power in UI for more than 5% is as follows:

Month	Net Power Purchase excluding UI (MU)	UI Sale(MU)	%	UI Sale above 5% (MU)	IEX Avg. Rate (Rs./MWh)	UI Rate (Rs./MWh)	Difference in Rate	Difference Amount (Rs. Cr.)
Apr-19	118.81	8.12	6.83%	2.18	3.19367	0.22	2.97	0.69
May-19	143.93	5.47	3.80%	(1.73)	3.33302	2.82	0.52	
Jun-19	158.51	8.80	5.55%	0.87	3.31513	2.59	0.73	0.29
Jul-19	162.35	6.80	4.19%	(1.32)	3.3786	2.65	0.73	
Aug-19	150.74	6.84	4.54%	(0.69)	3.31618	1.18	2.14	
Sep-19	145.19	3.87	2.67%	(3.39)	2.90826	2.30	0.61	
Oct-19	108.14	8.28	7.66%	2.87	2.71326	2.36	0.35	0.78
Nov-19	83.92	5.93	7.07%	1.73	2.8452	-	2.85	0.49
Dec-19	97.61	1.81	1.86%	(3.07)	2.92145	6.19	(3.27)	
Jan-20	106.87	2.21	2.07%	(3.13)	2.84806	2.99	(0.14)	
Feb-20	83.89	6.66	7.94%	2.47	2.91349	2.20	0.71	0.72
Mar-20	70.71	8.34	11.79%	4.80	2.45306	-	2.45	1.18
TOTAL								4.15

7.1.5 Accordingly, the allegation made by NDMC regarding consideration of different figures for UI sale is factually not correct and Commission has considered the penalty on disposing-off more than 5% of the Net power

procured by NDMC through Deviation Settlement Mechanism (DSM) is in line with information submitted by Delhi-SLDC vide email dated 25/03/2021. Therefore, there is no error apparent on face of record and the claim made by NDMC is rejected.

7.2. Issue No. 2 Renewable Purchase Obligation

Petitioner's Submission

7.2.1 As per Regulation 27 of Business Plan Regulations, 2017

“27. TARGET FOR RENEWABLE PURCHASE OBLIGATION (1) The targets for Renewable Purchase Obligation (RPO) in terms of Regulation 124 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 of a Distribution Licensee from FY 2017-18 to FY 2019-20 shall be computed as a percentage of total sale of power to its retail consumers in its area of supply excluding procurement of hydro power. The target for Renewable Purchase Obligation shall be as follows:

Sr.No.	Distribution Licensee	2017-18	2018-19	2019-20
1	Solar Target (Minimum)	2.75%	4.75%	6.75%
	Total	11.50%	14.25%	17.00%

7.2.2 The Commission has not deducted the energy purchased from Large Hydro Projects (LHP) while calculating the RPO. In the True-up Petition, the Review Petitioner submitted that 183.93 MUs has been purchased from Large Hydro Power Project and the same has been considered by the Commission in the power purchase quantum.

7.2.3 The Renewable Power Obligation (RPO) should be calculated on 1088.12 MU and not on 1272.05 MUs. Further, the Commission has not considered power purchased from DMSWSL in Non-Solar power purchased. In view of the above, the Non-Solar power purchased has increased by 6.15 MUs and the total works out to 149.47 MUs.

7.2.4 On account of nonfulfillment of Renewable Power Purchase Obligation (RPO) for FY 2019-20, the penalty @10% of floor price is to be levied.

7.2.5 Therefore, the amount of penalty for nonfulfillment of RPO of Review Petitioner should Rs. 0.26 Cr. Instead of Rs. 0.63 Cr.

Commission's Analysis

7.2.6 With regard to the consideration of Hydro power while determining the Renewable Purchase Obligation (RPO) for FY 2019-20 and after going through the submission made by NDMC that the Bilateral Hydro to the tune 183.93 MUs in the table is Hydro Large, the same is considered along-with 6.15 MUs power from Waste to Energy plants. Accordingly, the revised RPO penalty is as follows:

Calculation of RPO for FY 2019-20

Sr.No.	Particulars	MU
1	Total Energy Sale	1272.05
2	Less: Energy from Hydro	183.93
3	Net Energy Requirement for RPO	1088.12

Calculation of Excess/(Short Fall) in RPO for FY 2019-20

Type of energy	Requirement		Purchased	Excess/(Short fall)
	%	MU	MU	
Non Solar	10.25%	111.53	149.47	37.94
Solar	6.75%	73.45	9.46	-63.99
Total	17.000%	184.98	158.93	-26.05
Average Floor Price Of REC (Rs./MWh)				1000
Energy Shortfall (MU)				-26.05

Calculation of RPO Penalty for FY 2019-20

Particulars	Units	Amount
Present Floor price of REC	Rs./MWh	1000
Energy Shortfall	MU	-26.05
Penalty @ 10% of Floor Price (@ Rs. 1/kWh)	Rs. Cr.	-0.26

7.2.7 Accordingly, the impact of the same will be provided in subsequent Tariff Order.

7.3. Issue No. 3 Operation and Maintenance Expenses (2019-20 and 2021-22)

Petitioner's Submissions

7.3.1 The Review Petitioner submitted that complete details of its network consisting of 66kV, 33kV, 11kV & LT (Low Tension) Lines and MVA (Mega Volt Ampere) capacities for individual line and transformers with its location vide letter dated 27.05.2021 to the Commission. However, the same was not considered by the Commission while calculating the O&M expenses.

- 7.3.2 There is no provision in the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 and DERC Business Plan Regulations, 2017 for considering O&M expenses as per other DISCOMs, as all the three DISCOM's have different consumer density, over all area, line length and MVA (Mega Volt Ampere) Capacity. Further, there is also no provision to allow the expenses based on previous year actual. As per Regulation 23 of DERC Business Plan Regulations, 2017 the only provision is to consider the line length at different voltage levels and MVA capacity of different transformer rating.
- 7.3.3 The Review Petitioner has not claimed any additional claims or relaxation in the O&M expenses and submitted the claims based on the actual line length and MVA (Mega Volt Ampere) capacity vide letter dated 27th May, 2021 as per Clause 23 of DERC Business Plan Regulations, 2017. The O&M expenses were claimed as per revised submissions on 27.05.2021 with details of lines and transformers as per Norms for O&M Expenses applicable for NDMC for period FY 2019-20.
- 7.3.4 The Commission has considered the line length and MVA (Mega Volt Ampere) capacity as provided by their auditor for the True Up of FY 2017-18 vide order dated 31.07.2019, where details of LT lines of Distribution North division were not considered. The submission made by the Review Petitioner in revised submission on 07.07.2020 for FY 2018-19, wherein the line length of Distribution North division was also included but the same was not considered. This has reduced the O&M expenses as per norms prescribed in the DERC Business Plan Regulations, 2017.
- 7.3.5 The Review Petitioner had perused through the draft report of Consultant of Commission available with the Review Petitioner and has observed that the network details of Distribution – North (D/N) were not considered by the Consultant in its report. Accordingly, while computing the O&M expenses for FY 2017-18, no network of D/N was factored in the computation.
- 7.3.6 That the current approach of the Commission in approving the same O&M expenses as that of FY 2018-19 are liable to be set aside. Further, the O&M expenses must be approved as per Business Plant Regulations, 2017.

7.3.7 The O&M expenses may be rightly allowed to the Review Petitioner herein as per provisions of the Regulations, which works out to Rs. 290.91 crore instead of Rs. 190.23 crore as already allowed by the Commission.

Commission's Analysis

7.3.8 As regards issue of O&M expenses for FY 2018-19, the Petitioner had filed Review Petition No 10/2021 for seeking review of the True up Order for FY 2018-19 and Tariff Order dated 28.08.2020 in Petition No 07/2020. The Commission has already disposed of the Review Petition No 10/2021 vide Order dated 22/12/2021.

7.3.9 As regards the issue of O&M expenses for FY 2019-20, it is observed from the Tariff Order dated 30/09/2021 that the Petitioner has submitted the claim of Rs 364.05 Cr for O&M expense for FY 2019-20. The Commission has approved Rs 190.25 Cr for FY 2019-20 giving the detailed justification in Tariff Order for FY 2021-22 as under:

" 3.43 The Commission in its Tariff Order dated 31/07/2019 has provisionally approved O&M Expense of Rs 190.98 Cr for FY 2019-20 based upon available network data as per True up of FY 2017-18 and rates specified in DERC (Business Plan) Regulation, 2017 for FY 2019-20 as the petitioner has not submitted the details of network sought by the Commission. The Petitioner has claimed Rs. 364.054 Cr towards O&M expenses for FY 2019-20.

3.44 The Commission has provisionally allowed the capitalisation upto FY 2019-20 as discussed in relevant section of this Tariff Order.

3.45 The Commission sought Audited Financial Statement for FY 2019-20 of the Petitioner to which the Petitioner vide email dated 14/09/2021 responded that bifurcation of Accounts for Electricity Distribution Business has not yet been fully completed. Financial Statements of the entire Council are maintained as a whole and Electricity Distribution Business is part of it. Further, the Financial Statement of the petitioner for FY 2019-20 are still under Audit.

3.46 COVID-19 pandemic and subsequent lockdown has impacted everyone in an unprecedented manner and the Commission in view to maintain balance between the stakeholders while dispensing essential commodity like electricity exercises its power to relax the provision under Regulation 172 of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Regulation 37 of DERC (Business Plan) Regulations, 2017.

3.47 The Commission has considered the O&M expenses on actual basis and has balanced to safeguard the interest of the consumers and the DISCOMs by allowing the actual O&M Expenses incurred by the Petitioner in the ARR for FY 2019-20.

3.48 In case of the Petitioner, due to non-availability of information relating to the actual O&M Expenses, the Commission has considered the ratio of average of actual O&M expenses for FY 2019-20 (net of provisions) of all the three DISCOMs (BRPL, BYPL and TPDDL) to the average normative O&M expenses of all the three DISCOMs (BRPL, BYPL and TPDDL) as approved during true up of FY 2018-

19. 3.49 Accordingly, the approved O&M Expenses for the Petitioner is Rs. 190.25 Cr. for FY 2019-20, tabulated as follows:

Table 3. 23: Commission Approved – O&M expenses for FY 2019-20 (Rs. Cr.)

Particulars	BRPL	BYPL	TPDDL	Average of 3	NDMC
As per financial statements					
Employee Exps (incl OCI)	521.36	347.85	510.86		
A&G Exps	267.22	199.62	111.26		
R&M Exps	193.49	128.81	180.79		
Sub total	982.07	676.28	802.91		
Adj on account of Provision for LSPC	(20.69)	(18.36)	(13.91)		
Adj on account of Provision for LSPC towards capitalisation	2.56	1.98			
Adjustment on O&M on account of generation business			(4.82)		
As per actual O&M expenses	963.94	659.90	784.17	802.67	190.25
As approved for FY 2018-19 (Normative O&M)	928.70	683.63	696.55		190.23
Other exps	37.68	32.87	28.29		
	966.38	716.50	724.84	802.57	190.23
Actual: Normative as approved in FY 2018-19	100%	92%	108%	100%	

7.3.10 Therefore, there is no ground made out by the petitioner for review of O&M Expenses for FY 2019-20.

7.4 Issue No. 4 Interest on Working Capital

Petitioner's Submissions

7.4.1 Interest on working capital is approved as per norms which provide consideration of 2 months of receivables (approved annual revenue requirement). Review of O&M expense in the instant case will increase the ARR of Review Petitioner herein/NDMC and accordingly the Review Petitioner has requested the Commission to approve the revised Working Capital/Return on Capital Employed (ROCE).

Commission's Analysis

7.4.2 Since no ground in the claim of the Petitioner, for revision of O&M Expenses as at issue no. 3 has been accepted, therefore, the request of the Petitioner to approve the revised working capital /return on capital employed does not arise to that extent. However, in view of the revision in the RPO Penalty

as at issue no. 2 having been accepted, will lead to change in Power Purchase Cost, the interest on Working Capital will undergo change based on the revision in Working Capital to that extent and accordingly, the same is allowed.

8. The Petition is disposed of as per directions and decisions given in para 7 cumulative of this Order.
9. Ordered accordingly.

Sd/-
(Dr. A.K. Ambasht)
Member

Sd/-
(Justice Shabihul Hasnain 'Shastri')
Chairperson