



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017.**

No. F.11(1927)/DERC/2021-22/7241

**R. Petition No. 60/ 2021**

**And**

**IA No. 5 of 2022**

**In the matter of: Petition u/s 94(1)(f) of the EA 2003 seeking review of the Tariff Order dated 30.09.2021 in Petition No. 01 of 2021 (Tariff Order of BSES Rajdhani Power Limited for True up upto 2019-20 and ARR for FY 2021-22).**

**BSES Rajdhani Power Limited**

**.... Review Petitioner**

**Coram:**

**Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson**  
**Hon'ble Dr. A.K. Ambasht, Member**

**Appearance:**

Mr. Buddy A Ranganadhan, Advocate, BRPL

**ORDER**

(Date of Order: 09.09.2022)

1. The instant Petition has been filed by BRPL for seeking review of the Tariff Order dated 30.09.2021 in Petition No. 1 of 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.....
- b. ....
- c .....
- d. ....;
- e. ....;
- f. reviewing its decisions, directions and orders;
- g. ....”

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 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. The Hon'ble Supreme Court of India vide its judgement dated 21<sup>st</sup> April 2006 In the matter of Haridas Das VS Usha Rani Bank And Ors. had referred to the decision of the Hon'ble Supreme Court in Tungabhadra Industries vs. Govt. of Andhra Pradesh (MANU/SC/0217/1963) which stipulates as follows:

*"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out but, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power*

*which may enable an appellate Court to correct all manner of error committed by the Subordinate Court an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected."*

6. Also, the Hon'ble Supreme Court of India vide its judgement dated 18.08.2022 in the matter S. Madhusudhan Reddy v. Narayana Reddy and others held as follows:

*"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram v. Neki Ram<sup>17</sup> and Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse Athanasius and Others"*

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

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

- i. Inadvertent computational error in considering Power Purchase Cost for FY 2019-20;
- ii. Erroneous non consideration of trading margin for Banking Transactions during FY 2019;
- iii. Erroneous consideration of DIAL's Solar Generation towards Petitioner's energy input for FY 2019-20;
- iv. Computation error in allowing impact of capitalization for FY 2017-18;
- v. Erroneous application of the principles of Banking Transaction.

9. The Petitioner has filed an Interim Application for seeking permission to urge an additional ground in the Review Petition. The additional ground for review is inadvertent omission of taking the pole rental income in its entirety for financial year 2019-2020 as the income of the regulated business. The Commission vide its Interim Order dated 25/08/2022 had allowed the Interim Application.
10. The submissions made by the Petitioner have been considered and analysed to arrive at the decision. The issue wise analysis and decisions are as follows:

10.1. **Issue No. 1 Inadvertent computational error in considering Power Purchase Cost for FY 2019-20**

**Petitioner's Submissions**

- 10.1.1 The present issue pertains to an inadvertent double disallowance of two elements viz., (i) penalty levied for Additional UI (Unscheduled intercharges) charges, and (ii) sustained deviation charges from the long-term power purchase costs of the Petitioner, for the true up for FY 2019-20.
- 10.1.2 In its ARR Petition, the Petitioner sought an amount of Rs. 6531.44 crore towards long term power purchase. While considering the same, the Commission allowed a sum of Rs. 6,496.30 crores thereby making a disallowance of Rs. 35.14 crore.
- 10.1.3 The aforesaid amount of Rs. 35.14 crores included within the ambit (i) Rs. 8.73 crores (on account of penalty for Additional UI); and (ii) Rs. 8.82 crores (on account of sustained deviation charges).
- 10.1.4 While the Commission made disallowance of Rs. 35.14 crore, the Commission once again deducted amounts in relation to penalty for Additional UI and on account of sustained deviation charges, which as noted above, form a part of the Rs. 35.14 crores already deducted. Therefore, these two amounts were inadvertently deducted twice over.

**Commission's Analysis**

- 10.1.5 With regard to the issue regarding double disallowance of Penalty levied for Additional UI Charges and Penalty on account of Sustained Deviation Charges in Power Purchase Cost of BRPL for FY 2019-20, BRPL had considered these penalties levied by SLDC in their Power Purchase Cost for FY 2019-20.
- 10.1.6 As indicated in Para 5(a) of the Review Petition, BRPL claimed an amount of Rs. 6531.44 Crore under Long Term Power Purchase Cost which includes Penalty levied for Additional UI Charges (Rs. 8.46 Crore) and Penalty on account of Sustained Deviation Charges (Rs. 9.06 Crore). The break-up of Gross Power Purchase Cost as claimed by BRPL in their Tariff Petition is as follows:

<b>Reconciliation of Gross Power Purchase Cost</b>		
<b>Particulars</b>	<b>Claimed by BRPL in their Petition</b>	<b>Reference</b>
<b>Break-up of Gross Power Purchase Cost</b>	<b>7,571.24</b>	<b>Table 3A 29 of Petition at Page No. 140</b>
<i>Add: Power Purchase Cost from Long-Term Sources</i>	<i>6,531.44</i>	
<i>Add: Short-Term Purchase and Banking Imports</i>	<i>1,039.80</i>	
<b>Break-up of Power Purchase Cost from Long-Term Sources</b>	<b>6,531.44</b>	
<i>Add: Gross Power Purchase Cost from Long-Term Sources</i>	<b>6,496.30</b>	
<i>Add: Other Payments</i>	<b>35.14</b>	
<b>Break-up of Other Payments</b>		
<i>Delhi Transco Ltd.Reactive energy Charges</i>	<i>7.49</i>	
<i>Indian Energy Exchange (Membership and Other Charges)</i>	<i>0.06</i>	
<i>TOWMCPL</i>	<i>(0.04)</i>	
<i>Solar Energy Net Metering</i>	<i>10.00</i>	
<i>NRPC</i>	<i>0.10</i>	
<b>DTL SLDC UI (Add. Deviation)</b>	<b>8.46</b>	
<b>DTL SLDC UI (Sustain Deviation)</b>	<b>9.06</b>	
<i>Indian Energy Exchange</i>	<i>0.004</i>	

10.1.7 As per third proviso of Regulation 152 (c) of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, these penalties are levied by SLDC to maintain the Grid discipline and Commission doesn't allow the same in the power purchase cost of Discoms. Regulation 152 (c) of DERC read as under:

*“Provided that any Additional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges other than forced scheduling of power as certified by SLDC paid by the Distribution Licensee shall not be allowed in Power Purchase Cost”*

10.1.8 The Hon'ble Appellate Tribunal for Electricity in Appeal no. 177 of 2012 vide its judgement dated 02.03.2015 has already approved the methodology of deduction of penal UI charges from gross power purchase cost. The relevant para of the said judgement is reproduced as follows :-

*“This issue has been decided by this Tribunal in judgment Appeal no. 171 of 2012 in the matter of Tata Power Delhi Distribution Ltd. Vs. DERC. In this matter the Tribunal decided as under: “We do not want to give any relaxation in decision of the State Commission not allowing the penal UI charges, as we do not want to interfere in the matter relating to security of the grid in real time operation. The Appellant has to take necessary steps required to avert over-drawl under low frequency benchmark. Accordingly, this issue is decided against the Appellant.”*

10.1.9 Since, the Petitioner BRPL had included the penalties in their Gross Power Purchase Cost itself, therefore, these penalties have been doubly subtracted. The same principle has been adopted for the true up of other DISCOMs including the Petitioner BRPL as well in the past years true-up. Accordingly, there is no error apparent on the face of record, and the issue in this regard is rejected.

## **10.2 Issue No. 2 Erroneous non-consideration of trading margin for Banking Transactions during FY 2019-20**

### **Petitioner's Submission**

10.2.1 This issue pertains to inadvertently not allowing trading margin on banking transaction as a power purchase cost despite the fact that trading margin for other short-term procurement activities has been allowed by the Commission.

10.2.2 The Commission has inadvertently omitted the amount of trading margin of Rs. 0.37 crore as an error apparent on the face of the record. The Petitioner had sought a sum of Rs. 335.59 crore towards short term procurement. This figure included the trading margin incurred for short-term transactions other than banking and the Commission has in fact allowed Rs. 335.59 crore to the Petitioner which clearly includes the trading margin for short term transactions other than banking. However, inadvertently, the Trading Margin for banking transactions has not been allowed.

### **Commission's Analysis**

10.2.3 The Commission has considered banking transactions at normative cost at weighted average rate of all long term sources considering only variable cost for the relevant year. Therefore, the Trading Margin incurred for banking transaction during FY 2019-20 will be considered in ensuing Tariff Order after prudence check.

## **10.3 Issue No. 3: Erroneous consideration of DIAL's Solar Generation towards Petitioner's energy input for FY 2019-20**

### **Petitioner's Submissions**

10.3.1 This issue pertains to an erroneous consideration of 7.94 MUs of DIAL's own solar generation as a part of the Petitioner's energy input. A similar issue had arisen in Review Petition No. 53/2020 whereby the Commission rejected the issue vide its Order dated 23.09.2021 on the ground that the Petitioner had failed to place on record a Single Line Diagram (hereinafter "SLD") certified by the SLDC.

10.3.2 The Petitioner submitted that while the SLDC certification of the SLDC is not available with it, it has already written to SLDC requesting for the same. However, the Petitioner has been orally informed by SLDC that in the absence of a direction from the Commission, it would not be in a position to certify the

same. The Petitioner is thus in the process of initiating appropriate proceedings for the purpose of obtaining appropriate directions to the SLDC to certify the same.

10.3.3 DIAL has furnished the SLD of its system, which would have formed the basis of the Electrical Inspector Certificate (Hereinafter "EIC") prior to the system having been energized in terms of the Electricity Act, 2003 read with Central Electricity Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010.

10.3.4 In any event and without prejudice, it cannot be in dispute that 7.94 MUs pertain to DIAL's own solar generation which have been included as a part of the Petitioner's energy input. This fact can be substantiated by the Meter Reading Data (hereinafter "MRD") which is available with the Petitioner. In view of the above, it is prayed that the Commission may be pleased to not consider 7.94 MUs as the Petitioner's energy input since the same belongs to DIAL's solar energy and grant consequential impact to the Petitioner including carrying cost.

### **Commission's Analysis**

10.3.5 The Commission has dealt with this issue in the impugned Tariff Order as follows:

*"3.82 Further, during prudence check of FY 2019-20, the Commission directed the Petitioner to submit SLDC verified Single Line Diagram (SLD) clearly depicting that the self-generation does not form part of the Petitioner's grid. The Petitioner vide its E-mail dated 15/03/2021 submitted as follows:*

*"Reply: SLDC certified DIAL Self Generation of 7.94 MU for FY 19-20 is enclosed herewith as Annexure 5A, SLD of DIAL own generation (5 MW Solar and 2.14 MW Solar plant) is enclosed herewith as Annexure 5B...."*

*3.83 The Commission observes that SLD submitted by the Petitioner was not SLDC verified and the Petitioner again submitted the joint signed statement only between them & SLDC. Since, the Petitioner has not been able to substantiate the connectivity of DIAL self-generation through SLDC verified SLD, therefore, the Commission deems fit appropriate to consider the same in Energy Input in line with the findings in Review Order dated 23/09/2021, mentioned above."*

10.3.6 Since the Review Petitioner, BRPL, was not able to substantiate the connectivity of DIAL self-generation through SLDC verified Single Line Diagram, accordingly, DIAL self-generation was considered in Energy Input. Accordingly, there is no error apparent on face of record and the issue does not survive.

**10.4 Issue No. 4: Computational error in allowing impact of capitalization for FY 2017-18.**

**Petitioner's Submissions**

10.4.1 This issue pertains to the erroneous computation of the impact of capitalization for FY 2017-18. The Commission had allowed provisional capitalization of Rs. 508.44 Crore for FY 2017-18 and had consequentially allowed depreciation and RoCE of Rs. 197.33 Crore and Rs. 466.86 Crore Respectively. The Capitalization for FY 2017-18 has been finally allowed at Rs. 574.28 Crore.

**Commission's Analysis**

10.4.2 For FY 2017-18, the Depreciation rates considered by the Commission in Tariff Order dated 31/07/2019 is same as claimed by DISCOMs in case of BYPL & TPDDL. BYPL & TPDDL claimed the depreciation rate as 5.23% & 4.98% respectively, which was allowed by the Commission on provisional basis.

10.4.3 However, BRPL had claimed depreciation rate of 4.76% whereas the Commission allowed 4.79% for FY 2017-18 in Tariff Order dated 31/07/2019 on provisional basis. Based on the in-house physical verification for capitalization of Assets for FY 2017-18, the Commission had determined the Average Fixed Assets for FY 2017-18 as Rs. 6250.31 Crore (i.e. Rs. 6217.39 Crore approved in Tariff Order dated 31/07/2019 plus Rs. 65.84 Crore impact of physical verification). Accordingly, the depreciation rate was recomputed for FY 2017-18. The comparison of rate of depreciation for FY 2017-18 as follows:

Sr. No.	Particulars	Claimed in Tariff Petition pertaining to True-up of FY 2017-18	Allowed in TO 31/07/2019	Allowed in TO 30/09/2021
1	Average of GFA	6255	6217.39	6250.31
2	Depreciation as per Audited Accounts	298	298	298
3	Average Depreciation rate = $(2/1)*100$	4.76%	4.79%	4.77%

10.4.4 As seen from the above table, the Commission has determined the Depreciation rate @ 4.77% and given the impact of capitalization appropriately. Accordingly, there is no error apparent on face of record hence the issue is rejected.



10.5 **Issue No. 5: Erroneous application of the principles of Banking Transactions.**

**Petitioner's Submission**

10.5.1 This issue pertains to an inadvertent erroneous application of the principles underlying banking transactions. The Commission has acknowledged the principle that banking transactions are 'revenue neutral' in nature. However, with utmost respect, the Commission has inadvertently misapplied this principle, thereby causing an adverse financial impact of Rs. 39.44 Crore which is against the principles of revenue neutrality.

10.5.2 The Petitioner, as part of its normal course of business, enters into banking transactions. By virtue of these banking transactions, the Petitioner 'banks' its excess power to State which are power deficient at that point in time. The 'banked' power is then 'returned' to the Petitioner when the Petitioner mapped each "sale" with the corresponding "purchase" to render a revenue neutral result.

10.5.3 The Commission, inadvertently, instead of considering each "banking transaction" as a separate unit (which would have rendered a revenue neutral result) considered the cumulative yearly "banking sale" vis-a-vis "banking purchase" which resulted in an erroneous disallowance of Rs. 39.44 Crore.

**Commission's Analysis**

10.5.4 The Commission had considered the normative rate of Banking Transaction as per the methodology approved by the Commission.

10.5.5 Therefore, review on the ground of erroneous application of the principles of banking transactions is not an error apparent on the face of the record and therefore review on said ground is not maintainable.

10.6 **Inadvertent Omission of taking the Pole Rental Income in its entirety for Financial Year 2019-2020 (IA No. 5/2022)**

**Petitioner's Submission**

10.6.1 As per Regulation 5(5)(a) of DERC (Treatment of Income from other Business from Transmission License and Distribution License) Regulations, 2017 the Petitioner is entitled to retain 40% of the Pole Rental Income whereas the remainder is required to be utilized for the Regulated Business. However, Commission has considered the Pole Rental Income in its entirety for financial year 2019-2020 as the income of the regulated business.

### **Commission's Analysis**

10.6.2 As per the Regulation 97 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, the licensee shall follow segment wise reporting of other business in audited financial statement. The relevant para of the Regulation 97 is 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."*

10.6.3. Since, the Respondent had not submitted segment wise reporting in Tariff Petition in terms of above Regulations, therefore, Pole Rental Income was not considered in Tariff Order dated 30.09.2021. Hence, there was no error apparent on face of record and the review on the said ground is not maintainable.

11. Accordingly, the Review Petition is disposed off as per the directions and decisions contained in the paragraph 10 cumulatively of this Order.

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

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