



Delhi Electricity Regulatory Commission

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

F.11 (1620)/DERC/2018-19

Petition No. 25/2020

Under section 142 of the Electricity Act, 2003

In the matter of:

Tata Power Delhi Distribution Ltd.

Through its: M.D

..... Petitioner

VERSUS

Delhi Transco Limited

.....Respondent

Coram:

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

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

Appearance:

1. Shri Buddy K. Ranganadhan, Advocate for the Petitioner
2. Ms. Swapna Seshadri, Advocate for the Respondent

ORDER

(Date of Order: 05.05.2022)

1. TPDDL has filed the instant Petition against DTL seeking issuance of appropriate directions under Section 142 of the Electricity Act, 2003 by this Commission to DTL for its non-compliance with the directions as prescribed by this Commission vide Order dated 31.07.2019 in Petition No. 13 of 2019 (DTL's Tariff Order). The Commission vide the DTLs Tariff Order categorically directed DTL to pay Short Term Open Access (STOA) charges to the Delhi Distribution companies including the Petitioner herein within 7 working days.
2. The Petitioner has made the following prayers in the Petition:
 - a) Issue appropriate directions to the respondent to disburse STOA charges amounting to Rs. 100.44 Crores along with interest / carrying cost since 08.08.2019 till date of payment to the petitioner without any further delay or demour;

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- b) Direct the Respondent to pay penalty as per the provision of the Electricity Act, 2003 for delay in making the payment as per the direction of the Hon'ble commission;
- c) Initiate appropriate proceeding against the respondent for deliberate non-compliance of the directions of this Hon'ble commission;
- d) Condone any inadvertent omission / errors / shortcomings and permit the petitioner to add/ change / modify / alter this filing and make further submissions as may be required at a future date;
- e) Pass Such other orders that this Hon'ble commission deems fit in the fact of this case.

Petitioner's Submissions:

- i. The Respondent filed Petition No. 13 of 2019 ("Tariff Petition") before this Hon'ble Commission for truing up of Aggregate Revenue Requirement ("ARR") for FY 2017-18 and ARR for FY 2019-20. The Tariff Petition was admitted by this Hon'ble Commission on 21.02.2019. Subsequently, this Hon'ble Commission passed the DTL's Tariff Order on 31.07.2019 directing the Respondent herein to take immediate steps for its implementation, so that the tariff as determined under DTL's Tariff Order becomes applicable by 01.08.2019. It is pertinent that DTL in the Tariff Petition categorically admitted STOA charge as non-tariff income and thereby acknowledged its liability to refund STOA charges to Delhi Discoms.
- ii. The Respondent, as per DTL's Tariff Order issued by the Hon'ble Commission, was given categorical directions under **paragraph 6.4 to** refund STOA charges to Delhi Distribution Companies ("Delhi Discoms"). The relevant directive of DTL's Tariff Order has been culled out and reproduced here below:

"4.33 The Commission has not considered the income from short term Open access under Non-Tariff Income. The Commission directs the Petitioner to disburse the charges to DISCOMs on account of short term open access charges as per applicable rules and regulations."

6.4 The Commission directs the petitioner to disburse short terms open access charges to Discoms within 7 working days as per applicable rules and regulations."

The aforementioned positions that the debt of DTL towards the Delhi Discoms has been duly adjudicated by fiat of this Hon'ble Commission vide DTL's Tariff Order and such order has also attained finality. Accordingly, it is submitted that DTL's debt towards the Delhi Discoms is due since 08.08.2019 by fiat of this Hon'ble Commission and the same has been wrongfully held by DTL to gain unjust enrichment, to the detriment of the consumers in the State of Delhi.

- iii. Pursuant to issuance of DTL's Tariff Order, the Petitioner vide its letter no. TPDDL/REGULATORY12019-201PMG/269 dated 31.10.2019 ("1st Letter to DERC") sought clarification from this Hon'ble Commission regarding the methodology of adjustment/refund of STOA charges to Delhi Discoms. The Petitioner under its 1st Letter to DERC pointed out that this Hon'ble Commission vide its letter dated 09.02.2018 indicated that the STOA charges received by the Respondent shall be adjusted in its ARR at the time of truing up. However, under the DTL's Tariff Order this Hon'ble Commission, mandated a different mechanism for treatment of STOA charges and issued a fiat, directing the Respondent to refund the STOA charges for the relevant period to the Delhi Discoms within 7 working days as per the DTL Tariff Order (i.e. due date of payment of debt, as determined by this Hon'ble Commission was 08.08.2019). Accordingly, through the 1st Letter to DERC, the Petitioner sought directions to be issued to the Respondent in order to refund the STOA charges wrongfully withheld by DTL, along-with interest/carrying cost since the due date of payment.
- iv. The Petitioner thereafter raised the issue of non-disbursement of STOA charges with the Respondent vide its Letter No. Tata Power-DDL/PMG/19-20/25112019 dated 25.11.2019 (1st Letter to DTL"). The Petitioner in the 1st Letter to DTL sought reimbursement of short term open access charges for the period 2018-19 and 2019-20, along with the applicable interest/carrying cost in line with the extent statutory framework. It was also brought to the attention of the Respondent that STOA charges had become due by the fiat of this Hon'ble Commission and DTL ought to have disbursed such amount within 7 working days

from the date of DTL's Tariff Order, however, the Petitioner has not received any amount to that extent till date.

- v. Subsequently, this Hon'ble Commission vide its letter dated 20.12.2019 ("DERC's Letter to DTL") observed that upon the examination vis-à-vis the issue of disbursement of STOA charges, and this Hon'ble Commission categorically decided/reiterated that the Respondent ought to comply with the directive 6.4 of the DTL's Tariff Order.
- vi. The Respondent, even after issuance of this Hon'ble Commission's categoric re-iteration vide DERC's Letter to DTL, directing that the Respondent has to necessarily comply with directive 6.4 of the DTL's Tariff Order, the Respondent did not disburse any STOA amount to the Petitioner and continued to wrongfully withhold the refund of STOA charges, with the clear intent to gain unjust enrichment to the detriment of the consumers in Delhi. It is submitted that the conduct of the Respondent posits that it intends to continue to gain unjust enrichment and utter disregard to the order of this Hon'ble Commission. It is submitted that for such conduct of the Respondent this Hon'ble Commission should not only mandate the recovery of the STOA charges with interest/carrying cost but must also impose penal interest/carrying cost along with repercussions as provided under Section 142 and 146 of the Act.
- vii. The Petitioner, in its bona-fide and with the intent to ensure interest /carrying cost of consumers in its license area, continued its persistent follow up with the Respondent for disbursement of STOA charges for FY 2018-19 and FY 2019-20. The Petitioner once again wrote to the Respondent vide its letter no. TATA Power-DDL/Delhi SLDC/14022020 dated 14.02.2020 ("2nd Letter to DTL") requesting it to comply with the directions issued by this Hon'ble Commission and refund the STOA charges pertaining to FY 2018-19 & FY 2019-20 to the Petitioner along with applicable interest/carrying cost charges since due date at the earliest.

- viii. Liability to refund STOA charges by fiat of this Hon'ble Commission has also been acknowledged by the Respondent against which an ad-hoc payment has also been released. However, pursuant to such ad-hoc disbursement the DTL again reverted back to its non-responsive act and continued showing disregard to the fiat of this Hon'ble Commission, wherein this Hon'ble Commission determined that the debt in terms of the STOA charges collected by DTL is due towards Delhi Discoms and due from 08.08.2019. This Hon'ble Commission may take strong note of such actions of the Respondent and appropriately penalize the Respondent in terms of the section 142 and 146 of the Act and also direct the Respondent to refund the STOA charges with immediate effect along-with the interest/carrying cost accrued since the due date as per the DTL's Tariff Order.
- ix. The Petitioner again vide its letter dated 17.03.2020 sought appropriate directions in order to safeguard the interest/carrying cost of the consumers in the State of Delhi. The Petitioner also submitted that had the Respondent would have complied with the directions of this Hon'ble Commission, the Power Purchase Cost Adjustment Charges ("PPAC") for Q3 would have restricted to 27.08% as against 39.55%. Accordingly, it is clearly established that the disregard to this Hon'ble Commissions directions by the DTL with the intent to gain unjust enrichment is resulting in substantial implication for the consumers in the State of Delhi and severely affecting the cash-flow of the Petitioner, especially considering the challenging times being faced by the distribution utilities due to covid-19

Respondent's Submissions:

- i. It is submitted that there has not been any non-compliance of the Order dated 31/07/2019 by DTL as is being made to appear by the Petitioner. As on date of filing of the present reply, DTL has made a combine payment of Rs. 100.44 Crore including TDS approximately towards the disbursement of STOA charges to the Petitioner.

- ii. In view thereof, as on date entire payment corresponding to pending STOA charges stands paid by DTL to the Petitioner. Therefore, the entire payment as arising from the Order dated 31/07/2019 stands paid and further monthly payment of STOA charges is being released timely.
- iii. It is submitted that the present Petition ought to be dismissed on account of the due compliance of the Order dated 31/07/2019 having being done by DTL. The Compliance of the Order dated 31/07/2019 can be substantiated from the following sequence of events.
- iv. The Order dated 31/07/2019, inter-alia, directed as under-

6.4 the Commission directs the Petitioner to disburse short term open access charge to DISCOMS within 7 working days as per applicable rules and regulations.
- v. Upon perusal of the Order dated 31.07.2019 on the issue of STOA Charges and internal consolations, DTL wrote to the Hon'ble Commission on 25/09/2019 seeking certain clarification on the time line within which the STOA charges were to be released by DTL to the Petitioner. Citing practical difficulties in disbursing payment towards STOA charges within 7 working days, DTL had sought permission to the allowed to disburse the said payment on a monthly basis.
- vi. The clarification from the Hon'ble Commission came on 20.12.2019 stating that the DTL has to comply with the directive 6.4 of the Order dated 31/07/2019.
- vii. In the subsequent tariff order dated 28/08/2020 for FY 2020-21, on the time line for disbursement of STOA charges, held the following:

*The Commission directs the Petitioner to disburse Short Term Open Access Charges to DISCOMS as per applicable rules and regulations, **on monthly basis** on the date of raising Transmission charge bills. Further, no adjustment of STOA charges shall be made towards any past dues/or adjustment in transmission bills of utilities. (emphasis supplied)*

It is respectfully submitted that the Hon'ble Commission, considering practical difficulties, has now directed that the disbursements of payments towards STOA charges be made on a monthly basis.

- viii. It is submitted that since the payment to be disbursed towards the STOA charges spanned over a long period of time, DTL had engaged the services of an auditor to audit the details of the total STOA charges received by it during the financial year 2018-19 and 2019-20. It is submitted that DTL being a public entity is burdened with a higher onus to make sure that the payments to be disbursed tally with the books of accounts.
- ix. On 20/03/2020 the DTL made a payment of Rs. 144 crore including TDS approximately to the Petitioner towards the pending amount due on account of the STOA charges.
- x. It is submitted that starting the very next day, the entire nation was engulfed in an unprecedented pandemic situation where things as we know came to a complete standstill. Nation wise lockdown was declared by the Government of India.
- xi. The process of payment too, as a result of the pandemic situation, was severely affected as the office of the DTL were firstly under complete shut down and then functioning on a very limited basis. Being a public entity, releasing of payment requires inter departmental intervention and various approvals.
- xii. Beginning March 2020, the Petitioner started unilaterally adjusting the wheeling charges payable to DTL against the balance STOA charges of Rs. 100.44 Crore including TDS the wheeling charges were billed by DTL for the months of March, April, May and June and the due dates for the same were on 08 May 2020 and 07 August 2020 respectively. The total wheeling charges as payable by the Petitioner to DTL was Rs. 90 Crore approximately. As against the same, the Petitioner adjusted an amount of approximately Rs. 90 Crore during the course from May 2020 to August 2020, unilaterally from the amount payable by it towards

wheeling charges against the STOA charges. Thus, the Petitioner adjusted a monthly amount of approximately Rs. 22.50 crore (Wheeling charges) against the balance pending Rs. 100.44 crore approximately (STOA charges).

- xiii. In view thereof, the entire STOA which had to be paid by DTL to the petitioner stands adjusted by the Petitioner against the wheeling charges as on 11.08.2020 and any allegation of non-compliance of the Order dated 31/07/2019 by the Petitioner is wrong and denied as incorrect.
- xiv. Petitioner having already unilaterally adjusted the amount payable by it towards wheeling charges against the STOA charges, it is not open to the Petitioner to allege non-compliance by way of the present petition. Rather, the Petitioner has made a serious violation of Bulk Power Transmission Agreement (BPTA) by not paying the monthly Wheeling charges of DTL for 4 months and unilaterally and wrongfully adjusting the same against STOA charges.
- xv. It is submitted that the Petitioner is now seeking carrying cost on the component of the pending STOA charges. It is stated that the claim of carrying cost on the component of STOA charges is incorrect and denied.
- xvi. It is pertinent to mention that the Hon'ble Commission in a petition involving the same parties in Petition No. 77 of 2015 vide order dated 13/05/2019 had held that no interest is to be paid on the delayed payment of STOA charges. Relevant extract of the order dated 13/05/2019 is as under:

14. The Commission has jurisdiction to adjudicate as per the provisions of the Electricity Act, 2003, extant Regulations or to declare the terms of bilateral agreements approved by it. Whereas, in the instant case neither Regulations nor PPA provides for payment of interest on delayed payment of STOA charges.

- xvii. The Petitioner completely adjusted the money receivable by it towards STOA charges against the amount it had to pay towards wheeling charges only on 11.08.2020. The wheeling charges remained unpaid to the extent with a cumulatively delay of 198 days. Needless to say, that the delayed payment towards wheeling charges attracts Late Payment Surcharges (hereinafter being referred to as the "LPSC"). The Hon'ble Commission in various orders has held that the LPSC is a deterrent component intended to deter a party to the contract from not making timely payments. The LPSC as ought to be paid by the Petitioner on account of non-payment of wheeling charges comes to Rs. 2.10 Crore.
- xviii. Also, even on equity when DTL is not making its rightful claim towards the pending LPSC then there arises no occasion for the Petitioner to claim carrying cost.
- xix. In view of the above facts and circumstances, it is reiterated that DTL has on date fully complied with the Order dated 31/07/2019 as passed by the Hon'ble Commission and the present petition ought to be dismissed. This fact has also been confirmed by the Respondent in its additional reply filed on 16.02.2022.
3. In its additional reply dated 16.02.2022 the Respondent has again reiterated its contentions raised in its initial reply. It has been further averred as under:

Para 2- The matter stands settled between the parties by

a. Delhi Transco Ltd. Paying an amount of Rs. 44 Crores to the Petitioner – Tata Power Delhi distribution Ltd. On 28/03.2020 and

b. TPDDL unilaterally adjusting the wheeling charges payable by it to DTL against the balance STOA charges of Rs. 100.44 crores including the TDS beginning form March, 2020.

The wheeling charges which were billed by DTL to TPDDL for the month of March, April, May and June were due on 08/05/2020, 06/06/2020, 08/07/2020 and 07/08/2020 respectively. The total wheeling charges Rs. 90 crores were completely adjusted by TPDDL to recover the STOA charges. This process continued and as on 11/08/2020, the entire STOA charges which the TPDDL has claimed under the present Petition stood adjusted without waiting on any final decision in the present Petition. Thus, the principal amount towards STOA charges which were to be recovered by TPDDL has already been done by unilateral action of setting off the wheeling charges which were owed by TPDDL to DTL.

4. Thus, there is no question of any adjudication either under Section 86 (1)(f) or Sections 142 and 146 of the Act.

5. In the circumstances, the only question remaining is with regard to the carrying cost/interest, the computation of which has been made by TPDDL. TPDDL has claimed an amount of Rs. 8.18 crores. It is respectfully

submitted that the claim for interest is not maintainable. The Order dated 31/07/2019 which required DTL to pass on the STOA credit within seven (7) days did not provide for any payment of interest in case of delay. Even the DERC Tariff Regulations which requires the STOA credit to be disbursed to the DISCOMs does not provide for interest liability, above all the conduct of TPDDL disentitles it to maintain any claim of interest on a board plea of equity, good conscience etc.

Commission's analysis:

4. From pleadings of the parties at this stage the only question remaining for adjudication before this Commission is in regard to the payment towards interest/carrying cost to the Petitioner.
5. Initially, the DTL filed a Tariff Petition before the Commission for truing up of Aggregate Revenue Requirement (AAR) for FY 2017-18 and FY 2019-20, which was admitted by the Commission on 21.02.2019. Subsequently Tariff order was passed on 31.07.2019 directing DTL to take immediate steps for its implementation so that the tariff determined by the Tariff order becomes applicable by 01.08.2019. The DTL in its Tariff petition has admitted STOA charges as non-tariff income and therefore acknowledged its liability to refund STOA charges to Delhi Discoms.
6. The DTL was given categoric direction under paragraph 6.4 of the Tariff Order to refund STOA charges to Delhi Distribution Companies within seven working days as per applicable rules and regulations. As per the same the STOA charges to the Discoms became due 08.08.2019 onwards.
7. As per the petitioner herein despite the above said directions no STOA charges were disbursed to the Petitioner. Hence the Petitioner raised the issue of non-disbursement vide letter dated 25.11.2019 seeking reimbursement of STOA charges for the period of 2018-19 and 2019-20 along with interest.
8. Subsequently, the Commission also vide its letter dated 20.12.2019 observed that upon the examination vis-à-vis the issue of disbursement of STOA charges reiterated that the Respondent ought to comply with the directive 6.4 of the DTL Tariff Order. However, no amount was disbursed even after that.

9. The Petitioner again wrote to the Respondent vide its letter dated 14.02.2020 requesting it to comply with the directions issued by the Commission. Thereafter acknowledging the refund of STOA charges the Respondent made some ad-hoc payment. However, thereafter it again reverted back to its non-responsive behavior and did not make any payments.
10. During the pendency of the matter it has come up that the DTL made a part payment of Rs. 44 crores to the Petitioner TPDDL on 28.03.2020. Thereafter, the Petitioner TPDDL adjusted the wheeling charges payable by it to DTL against the balance STOA charges of Rs. 100.44 crores including the TDS beginning from March, 2020. In view of the same the DTL has pleaded that the entire principal amount towards STOA charges stands set off. Hence, no question of interest arises.
11. The objections raised by the Respondent to the payment of interest are that the claim for interest is not maintainable as the Order dated 31.07.2019 passed by the Commission does not provide for any payment of interest in case of delay. Even the DERC Tariff Regulations does not provide for interest liability and also the conduct of the TPDDL disentitled it to maintain any claim of interest. The DTL has also relied upon an earlier order passed by the Commission in Petition No. 77/2015 dated 13.05.2019 in support of its contentions.
12. It has been noted that during the pendency of this matter in Petition No. 06/2020, this Commission has passed the Tariff Order on petition filed on behalf of the DTL. In the said Tariff Order dated 28.08.2020, the Commission has observed as under:
- 3.49 The Commission in its Tariff Order dated 28/03/2018 did not consider the Short Term Open Access charges under Non-Tariff Income of the Petitioner.*
- 3.50 The Commission in its Tariff Order dated 31/07/2019 directed the Petitioner to disburse the Short Term Open Access charges as per the applicable rules and regulations within 7 working days.*
- 3.51 The Commission was in receipts of various correspondences from DISCOMs wherein it was requested to the Commission to direct the Petitioner to refund the Short Term Open Access charges pertaining to FY 2018-19 and FY 2019-20. Further, the Petitioner vide its letter dated*

25/09/2019 requested the Commission for relaxation of the directive to disburse STOA charges within 7 working days to beneficiaries.

3.52 The Commission after analysing the submissions made by the Petitioner and DISCOMs noticed that the Petitioner did not disburse the STOA charges to DISCOMs even for FY 2018-19 and was also delaying/defaulting in disbursing STOA charges for FY 2019-20, even after issuance of specific direction of the Commission in its Order dated 31/07/2019. Accordingly, the Commission vide its letter dated 20/12/2019 did not consider the request of the Petitioner and again directed to disburse STOA charges as per its above stated directive.

3.53 As per the Annual Audited Accounts for 2018-19, it was observed that a sum of Rs. 247.15 Cr. on account of STOA charges for FY 2018-19 has been withheld by the Petitioner. During the prudence check session, it was observed that the petitioner has still not disbursed the STOA charges pertaining to FY 2018-19 to DISCOMs.

3.54 However, subsequently the Petitioner has submitted that vide its advice dated 31/03/2020, it has disbursed withheld STOA charges of Rs. 247.15 Cr. for FY 2018-19 to the beneficiaries/ DISCOMs.

3.55 It is noticed that there has been consistent default in disbursing STOA charges by the Petitioner in spite of the direction of the Commission.

3.56 As the petitioner has failed to comply with the Commission's directives to disburse the STOA charges within seven working days and the Petitioner has retained this amount during FY 2019-20 also, a carrying cost of Rs. 15.77 Cr. on STOA charges pertaining to FY 2018-19 for eight months from Aug'19 to Mar'20, is considered as Non-Tariff Income of the licensee, computed as below –

Table 3.20: Commission Approved: Carrying Cost on STOA charges for FY 2018-19 (Rs. Cr.)

Sr. No.	Parameters	2018-19	Remarks
A	Closing Balance of STOA charges as on 31/03/2019	247.15	As per books of accounts
B	Rate of Interest on Debt	9.57%	Table 39 of T.O. for FY 2019-20
C	Carrying Cost rate for Eight months period (Aug'19 to March'2020)	6.38%	
D	Carrying Cost on STOA	15.77	

13. Hence from the above, the delay on the part of the Respondent for the Financial Year 2018-19 has already been taken care of by this Commission in the Tariff Order of the Respondent for the year 2020-21 and an amount of Rs. 15.77 crores on account of Carrying Cost on STOA charges for the year 2018-19 was approved.

14. Even subsequently the delay on part of the Respondent in the Financial Year 2019-2020 was also taken care of in the Tariff Order of the Respondent for the year 2021-22 while conducting the True-up for the year 2019-2020. Wherein, again an amount of Rs. 7.65 crores have been deducted from the ARR of the Respondent on account of Carrying Cost on STOA charges for the year 2019-20. The Commission has already directed for appropriate adjustment in the ARR and Tariff determination for DTL. From the Tariff Orders passed by the Commission for True-up of Financial Year 2018-19 and Financial Year 2019-20, the prayer made on behalf of the Petitioner herein already stands satisfied as the entire period for which the Petitioner has claimed interest on STOA charges has been dealt with. Hence, nothing remains in the present petition as far as the interest part is concerned.

15. The Petition accordingly stands disposed of.

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

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