



# PETITION FOR

## True Up for FY 2018-19

**Volume – 1**

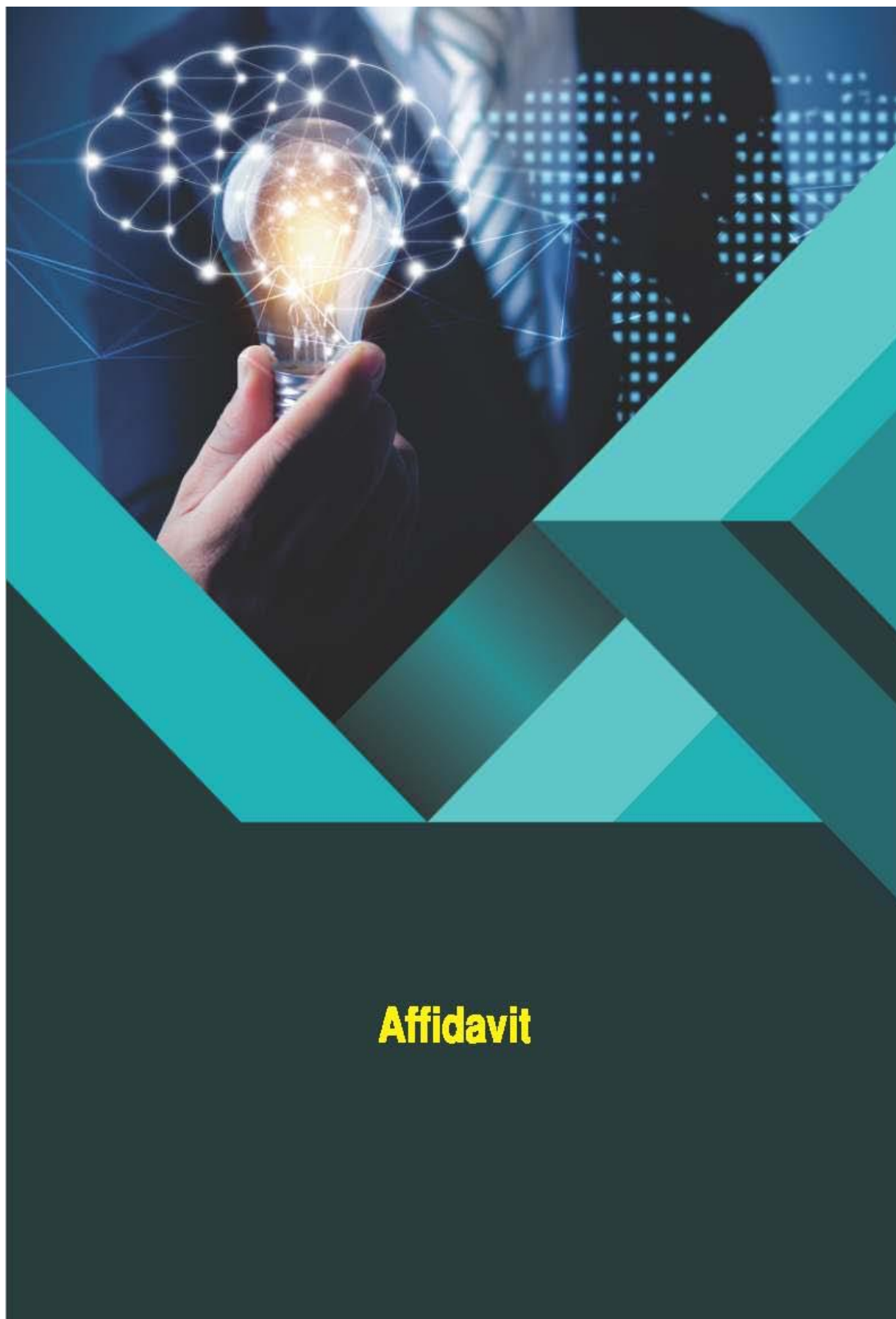
**BSES**  
BSES Rajdhani Power Limited



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**BEFORE THE DELHI ELECTRICITY REGULATORY COMMISSION  
C BLOCK, SHIVALIK, MALVIYA NAGAR, NEW DELHI**

PETITION NO. \_\_\_\_\_ OF 2019

**IN THE MATTER OF:-**

**BSES Rajdhani Power Limited**  
BSES Bhawan, Nehru Place  
New Delhi-110 019

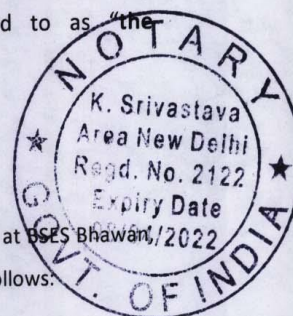
..... PETITIONER

**AND**

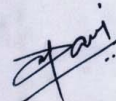
**IN THE MATTER OF:-** Truing up of expenses and revenues upto the Financial Year (hereinafter referred to as "FY") FY 2018-19, in terms of Regulation 13 read together with Regulation 139 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as "DERC Tariff Regulations, 2017") and the provisions of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as "DERC MYT Regulations, 2011") and Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007 (hereinafter referred to as "DERC MYT Regulations, 2007") read with Section 62 of the Electricity Act, 2003 and read with Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail Supply of Electricity issued by the Hon'ble Delhi Electricity Regulatory Commission (hereinafter referred to as "the Hon'ble Commission/ DERC").

**AFFIDAVIT VERIFYING THE PETITION:**

I, Ravi Shandilya, S/o Shri S.P. Singh, aged about 34 years, having my office at BSES Bhawan, Nehru Place, New Delhi – 110019, do hereby solemnly affirm and state as follows:



1. I am working with BSES Rajdhani Power Limited, the Petitioner herein, as Senior Manager (Regulatory Affairs) and am duly authorized by the said Petitioner to make the present affidavit.
2. I say that on behalf of BSES Rajdhani Power Limited, I am filing the present ARR Petition for Truing up of expenses upto FY 2018-19.
3. I further say that the statements made and data presented in the present ARR Petition are to the best of my knowledge derived from records of the Company and based on estimations arising from data and or records of the Company. Further, to my knowledge and belief, no material information has been concealed in the aforesaid Petition.

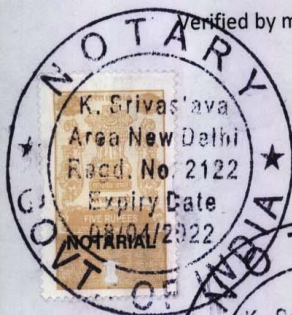
**DEPONENT**

Ravi Shandilya  
Senior Manager- Regulatory (BRPL)  
Authorized Signatory  
BSES Rajdhani Power Limited

**VERIFICATION:**

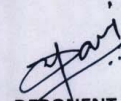
I, Ravi Shandilya, the Petitioner hereby solemnly affirms that the contents of above affidavit are true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified by me on this 3rd day of December, 2019 at New Delhi.

**ATTESTED**

NOTARY PUBLIC, DELHI

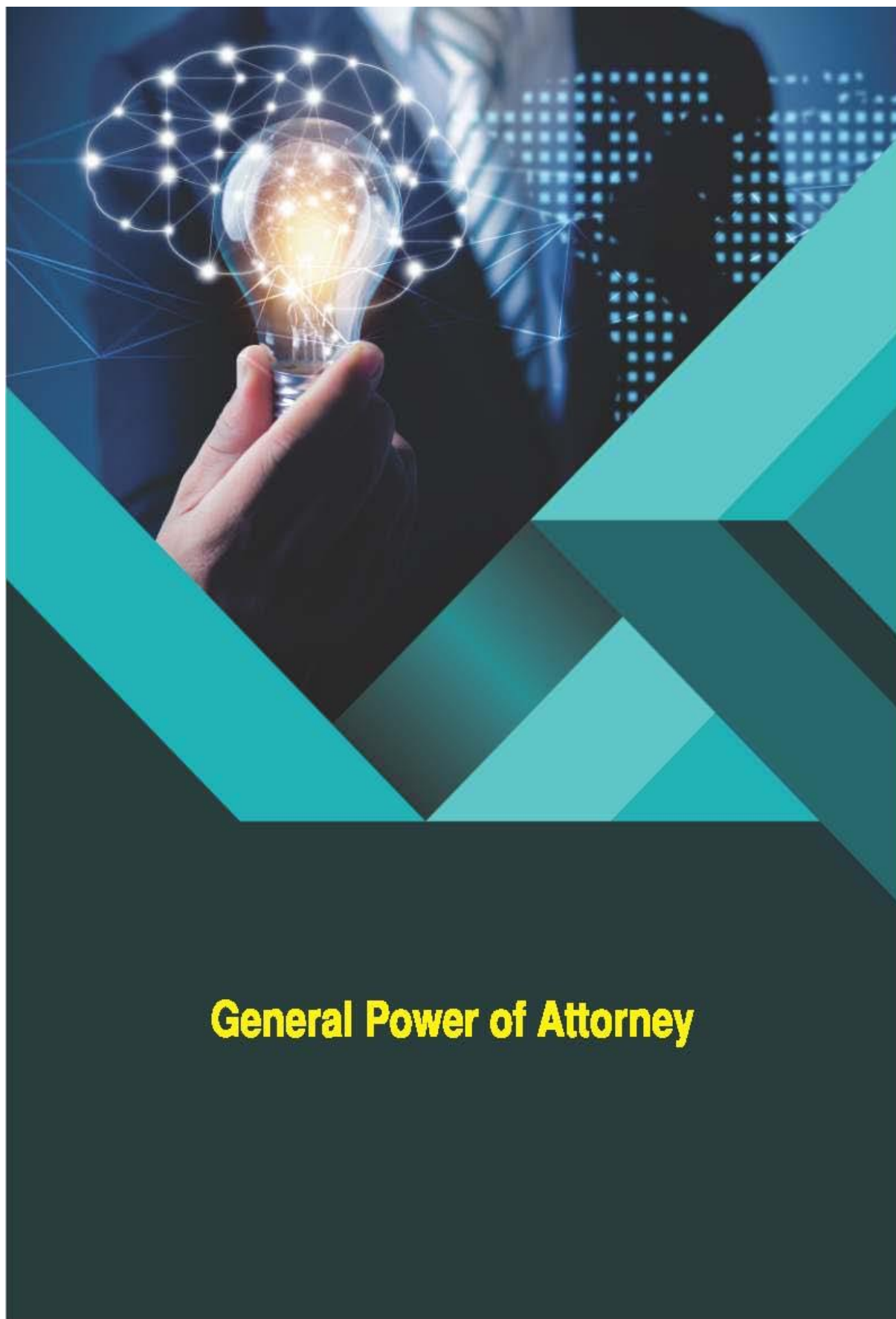
- 3 DEC 2019

**DEPONENT**

Ravi Shandilya  
Senior Manager- Regulatory (BRPL)  
Authorized Signatory  
BSES Rajdhani Power Limited

NOTED AND REGISTERED  
AT SERIAL NUMBER 5549/19






## General Power of Attorney

**INDIA NON JUDICIAL**

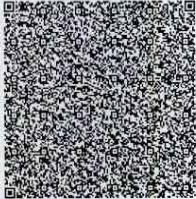
**Government of National Capital Territory of Delhi**

**e-Stamp**




सत्यमेव जयते

Certificate No.	: IN-DL013521551762570
Certificate Issued Date	: 27-Sep-2016 04:41 PM
Account Reference	: IMPACC (IV)/ dl732103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL732103025516558734960
Purchased by	: BRPL
Description of Document	: Article 48(c) Power of attorney - GPA
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BRPL
Second Party	: Not Applicable
Stamp Duty Paid By	: BRPL
Stamp Duty Amount(Rs.)	: 50 (Fifty only)



सत्यमेव जयते





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**GENERAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS THAT this power of Attorney is executed on this 4<sup>th</sup> day of October 2016 at New Delhi by:

**BSES Rajdhani Power Ltd.,** a company duly incorporated under the provisions of Companies Act 1956 having its Registered Office at BSES Bhawan Nehru Place, New Delhi (hereinafter referred to as the "Company") acting through its Chief Executive Officer (CEO) namely Sh. Amal Sinha.

**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "www.shclitestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

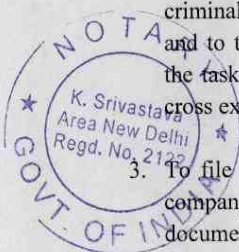


**WHEREAS** the company being the Licensee, is in the business of distribution and retail supply of Electricity in the respective area of supply within Delhi.

**WHEREAS** the company in furtherance of its business operation, in strict adherence of the law and for the enforcement of the provisions of law in this regard, time and again initiate legal proceedings and/or has to prosecute/represent/defend the legal proceedings initiated against the company before various courts, judicial and quasi-judicial authorities.

**NOW THIS DEED WITNESSETH THAT** the company through its CEO, do hereby appoint, constitute and declare **Mr. Ravi Shandilya** S/o Sh. Surendra Prasad Singh currently working as Manager (Regulatory ) with the company as duly constituted lawful attorney and to do, perform all or any of the acts, deeds on behalf of the company as specified hereinbelow:-

1. To represent, act, appear and plead on behalf of the Company before various Courts in India including Hon'ble High Courts of various states and Hon'ble Supreme Court, Consumer Forums, Commissions and/or before all other authorities/bodies whether judicial, quasi judicial or administrative authorities, Government including State Governments (hereinafter referred to as the "Authorities") and to perform such other acts as required to be performed in furtherance of the performance of the task under this instant clause.
2. To make, declare, swear, affirm, execute, seal, deliver, refer to arbitration, file complaints and record statement before police authorities, verify pleadings, applications, affidavits, claims, counter claims, caveats, deeds, assurances, instruments, documentations including but not limited to presenting/filing/drafting/signing pleadings, appeals, cross objections, petitions, arbitration claims, writs, special leave petition, bail application, supardari application and other misc. applications for initiation of legal proceedings and/or representation in ongoing litigation including Suit, execution proceedings, review, revisions, writs, appeals, SLPs, Arbitration Proceedings and to withdraw, compromise, recording of settlement, execution and filing of settlement agreement, to receive the settlement amount and to file and/or authorize to file applications for compounding/settlement the case be that it be of civil and/or criminal nature and pending before any authority/court/Quasi-Judicial Authority and to take all essential/ ancillary actions in furtherance of the performance of the task under this instant clause including but not limited to leading evidence, cross examination of the witnesses, etc.
3. To file and procure/ obtain documents/orders/notices for and on behalf of the company and to apply and/or to obtain copies including certified copies of the documents and papers for and on behalf of the company.
4. To take all actions necessary for conducting execution proceedings including initiation/ filling the execution proceedings amongst other legal proceedings.



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5. To retain, employ, and remunerate advocates, solicitors and other legal practitioners and advisors and to sign "Warrants", 'Vakalatanama' and other necessary authorities including to take/procure opinions from advocates/solicitors and/or to brief them for appearance before various courts/authorities.
6. To do all other lawful acts and deeds which are necessary to be performed for the progress and in the course of proceedings and the other prosecutions of various nature including suits, writs, arbitrations, SLP, complaints and other cases & proceedings, including ongoing litigation and the Company do hereby agree that all the acts and the things lawfully done by and performed by the above said Attorney of the company shall be construed as the acts and the things done by the company. The company do hereby undertake to ratify and confirm all the tasks lawfully performed by the said Attorney in furtherance of this instant GPA and the same cause to be done for and on behalf of the company by virtue of the powers vested herein.
7. The powers as vested vide this instant GPA in duly constituted lawful attorney are solely at the discretion of the company and the same may be varied/withdrawn at the sole discretion of the company.
8. That this power of attorney shall be deemed to be automatically revoked immediately upon cessation of employment and/or otherwise upon termination of employment of duly constituted lawful attorney, with the company.

IN WITNESS WHEREOF the Chief Executive Officer of BSES Rajdhani Power Ltd., has put his hands on this General Power of Attorney, pursuant to the authority delegated to him by a resolution passed by the Board of Directors in their meeting held on 9<sup>th</sup> day of September, 2016.

For and on behalf of/  
BSES Rajdhani Power Ltd.

*Amal Sinha*  
(Sh. Amal Sinha)

Chief Executive Officer

Attested as Identified

Notary Public Delhi (India)



WITNESSES:-

- 4 OCT 2016

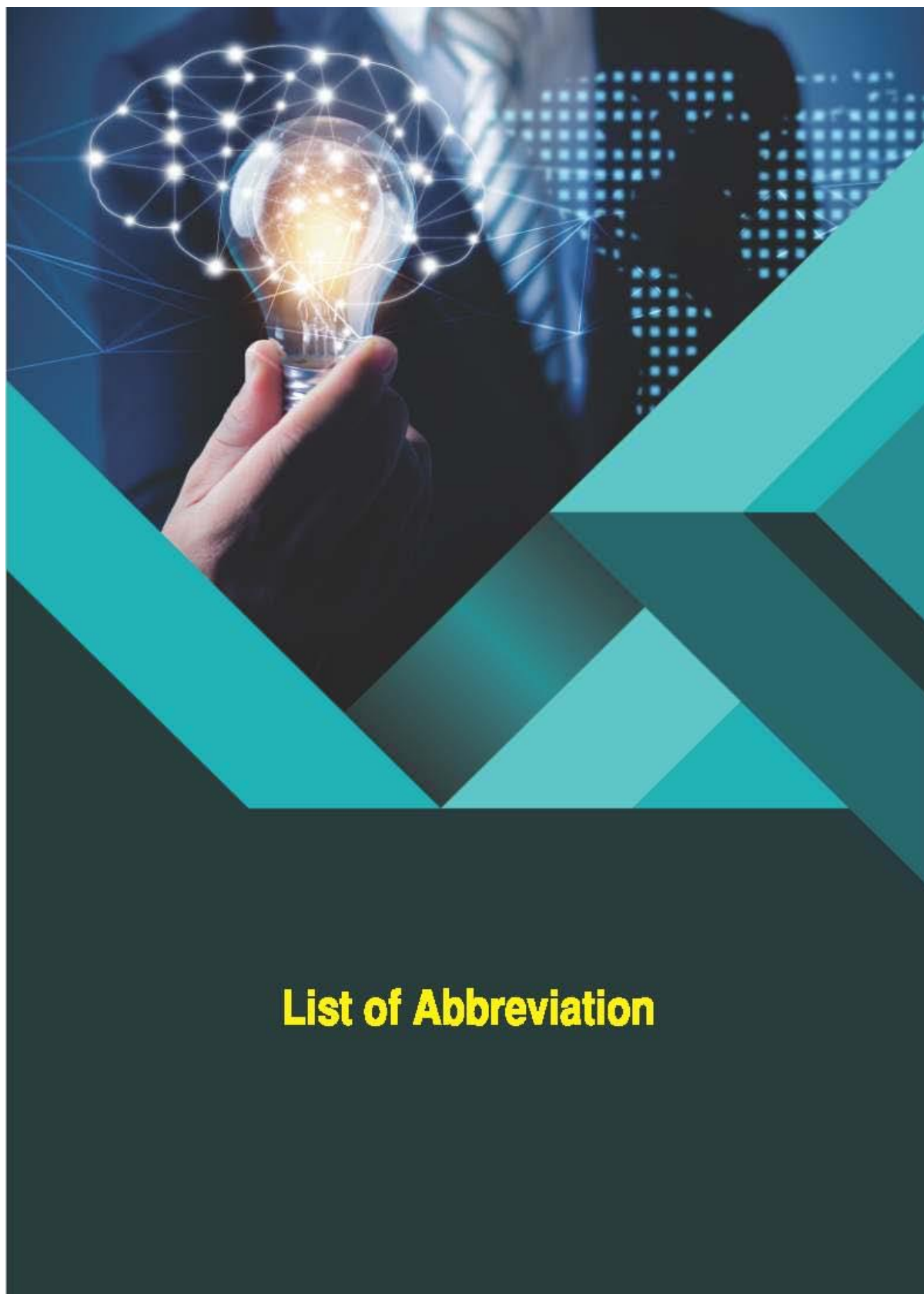
1. *P.K. Gupta* - 2F, 7746, S.F, Ram Nagar  
Pahar Ganj New Delhi - 110055

(Signature, Name & Address)

2. *Amey Mathur*, *Amey Mathur*  
D-1, Tower-7, New Motilal, New Delhi-110021

(Signature, Name & Address)





## List of Abbreviation

## List of Abbreviations

Abbreviation	Full Form
AAD	Advance Against Depreciation
ABR	Average Billing Rate
Act	Electricity Act' 2003
ADB	M/s. Asian Development Bank
AFC	Annual Fixed Charges
A & G	Administrative & General
AMR	Automated Meter Reading
APCPL	Aravali Power Company Private Limited
APTEL	Appellate Tribunal for Electricity
APDRP	Accelerated Power Development and Reform Programs
App	Application
ARR	Aggregate Revenue Requirement
AT & C	Aggregate Technical and Commercial
ATE	Appellate Tribunal for Electricity
BBMB	Bhakra Beas Management Board
BEST	M/s Brihanmumbai Electric Supply & Transportation
BRPL	M/s BSES - Rajdhani Power Limited
BST	Bulk Supply Tariff
BTPS	Badarpur Thermal Power Station
BYPL	M/s BSES - Yamuna Power Limited
CAGR	Compounded Annual Growth Rate
CC	Carrying Cost
CCO	Customer Care Officer
CEA	Central Electricity Authority
CEO	Chief Executive Officer
CERC	Central Electricity Regulatory Commission
CESC	M/s Calcutta Electricity Supply Company
CESU	M/s. Central Electricity Supply Utility
CFL	Compact Florescent Lamp
CGRF	Consumer Grievance Redressal Forum
CGS	Central Generating Stations
CIO	International Data Group
CISF	Central Industrial Security Force
CPI	Consumer Price Index
CPRI	Central Power Research Institute
CTC	Cost to the Company



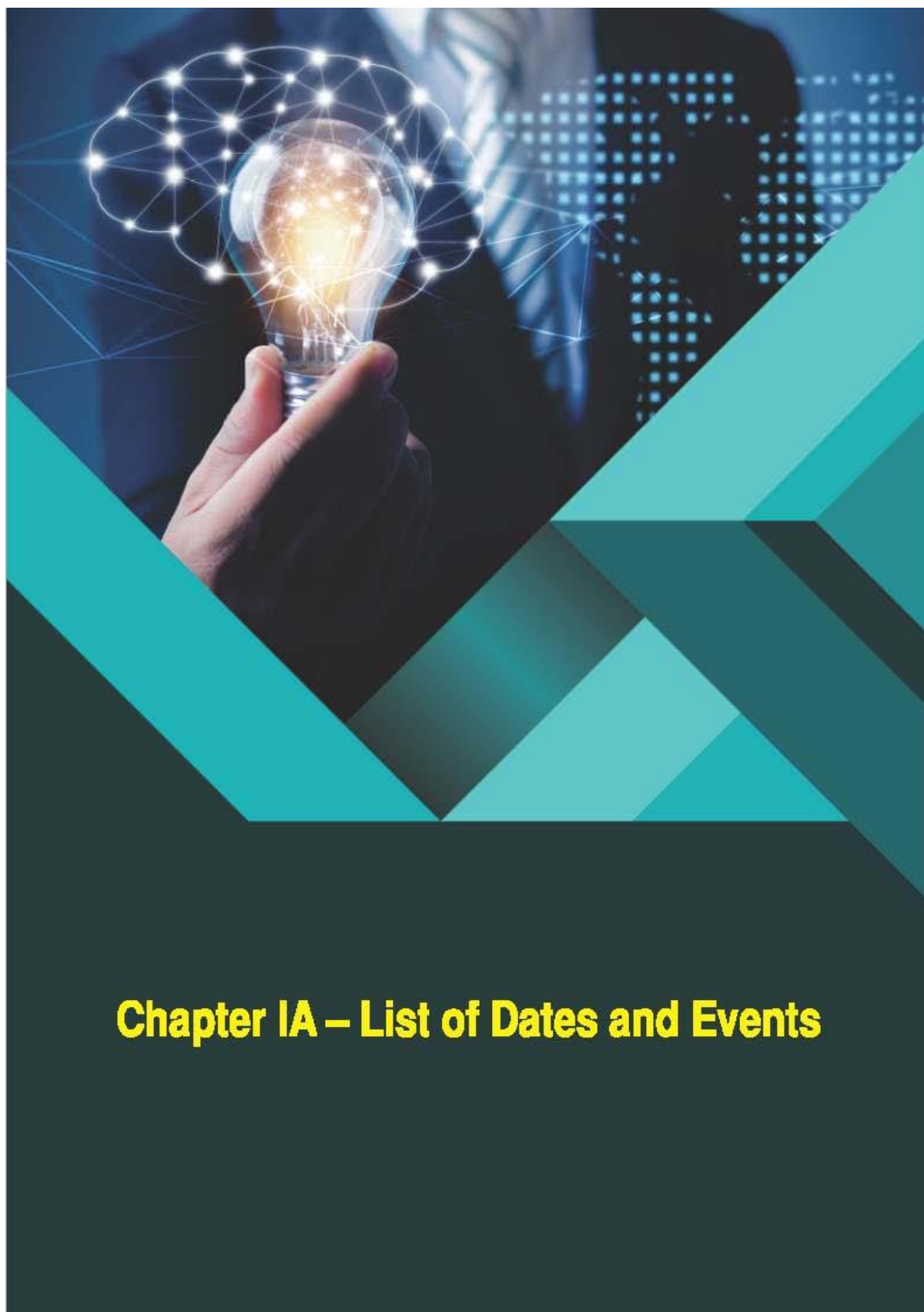
Abbreviation	Full Form
CSERC	Chhattisgarh State Electricity Regulatory Commission
CSPDCL	Chhattisgarh State Power Distribution Co. Ltd
CSR	Corporate Social Responsibility
CGS	Central Generating Stations
DA	Dearness allowance
DDA	M/s Delhi Development Authority
DERA	Delhi Electricity Reform Act 2000
DERC	Delhi Electricity Regulatory Commission
DESU	M/s Delhi Electricity Supply Undertaking
DIAL	M/s. Delhi International Airport Limited
DISCOM	Distribution Company
DJB	M/s. Delhi Jal Board
DMRC	M/s Delhi Metro Rail Corporation
DPCL	M/s Delhi Power Corporation Limited
DPPG	Delhi Power Procurement Group
DPR	Detailed Project Report
DT	Distribution Transformer
DTL	M/s Delhi Transco Limited
DSK	Digi Seva Kendra
DVB	M/s Delhi Vidyut Board
DVC	M/s Damodar Valley Corporation
EA'03	Electricity Act' 2003
EHV	Extra High Voltage
EIC	Electrical Inspector Clearance
ELR	Energy Law Reports
ERLDC	Eastern Regional Load Despatch Centre
FPA	Fuel Purchase Adjustment
FRSR	Fundamental Rules & Supplementary Rules
FY	Financial Year
GENCO	Generation Company
GERC	Gujrat Electricity Regulatory Commission
GFA	Gross Fixed Assets
GIS	Geographical Information System
Gol	Government of India
GoNCTD	Government of National Capital Territory of Delhi
GPA	Gross Per Annum
GT	Gas Turbine
HEP	Hydro Electric Project

Abbreviation	Full Form
HERC	Haryana Electricity Regulatory Commission
HR	Human Resource
HRA	House Rent Allowance
HT	High Tension
HVDS	High Voltage Distribution System
ICC	Indian Chamber of Commerce
ICWAI	Institute of Cost & Works of Accounts of India
IDBI	M/s. Industrial Development Bank of India
IDG	International Data Group
IEGC	Indian Electricity Grid Code
IEX	Indian Energy Exchange
IP	M/s Indraprastha Power Generation Co. Ltd
IPPAI	Independent Power Producers Association of India
IPGCL	M/s Indraprastha Power Generation Co. Ltd
ISGS	Inter-State Generating Stations
IT	Information Technology
IVR	Interactive Voice Response
JVVNL	M/s Jaipur Vidyut Vitaran Nigam Limited, Rajasthan
JJ	Jhuggi Jhopri
KESCO	M/s Kanpur Electric Supply Company Limited, Uttar Pradesh
Kms	Kilo Meters
kV	Kilo Volt
kVAh	Kilo Volt Ampere hour
kVArh	Kilo Volt Ampere Resistance hour
kW	Kilo Watt
kWh	Kilo Watt Hour
LC	Letter of Credit
LDC	Load Dispatch Centre
LPSC	Late Payment Surcharge
LT	Low Tension
LTAB	Low Tension Aerial Bunched
LVDS	Low Voltage Distribution System
MCD	M/s Municipal Corporation of Delhi
MDI	Maximum Demand Indicator
MERC	Maharashtra Electricity Regulatory Commission
MLHT	Medium Load High Tension
MOD	Merit Order Despatch

Abbreviation	Full Form
MoP	Ministry of Power
MRBD	Meter Reading and Bill Distribution
MSEDCL	Maharashtra State Electricity Distribution Co. Ltd
MU	Million Units
MVA	Million Volt Ampere
MW	Mega Watt
MYT	Multi Year Tariff
NABL	National Accreditation Board for Testing and Calibration
NCT	National Capital Territory
NDPL	M/s North Delhi Power Limited
NGO	Non Government Organisation
NHPC	M/s National Hydroelectric Power Corporation Ltd.
NJPC	Nathpa Jhakri Power Corporation Ltd.
No.	Number
NOIDA	New Okhla Industrial Development Authority
NPCIL	M/s Nuclear Power Corporation India Limited
NRLDC	Northern Region Load Dispatch Centre
NTI	Non-Tariff Income
NTPC	M/s National Thermal Power Company Ltd.
O&M	Operation and Maintenance
OP	Original Petition
PFC	M/s. Power Finance Corporation
PGCIL	M/s Power Grid Corporation of India Limited
Ph	Phone
PLF	Plant Load Factor
PPA	Power Purchase Agreement
PPAC	Power Purchase Cost Adjustment
PPCL	M/s Pragati Power Corporation Ltd.
PSPCL	Punjab State Power Corporation Limited
PTC	Power Trading Corporation
PXIL	Power Exchange of India Limited
RA	Regulatory Asset
R & M	Repair and Maintenance
RE	Renewable Energy
REC	Rural Electrification Corporation
REL	M/s Reliance Energy Limited
REL - D	Reliance Energy - Distribution Division
RERC	Rajasthan Electricity Regulatory Commission

Abbreviation	Full Form
RoCE	Return on Capital Employed
RPO	Renewable Purchase Obligation
RPS	Renewable Purchase Specifications
RRB	Regulated Rate Base
Rs.	Rupees
RST	Retail Supply Tariff
RWA	Resident Welfare Association
SBI - PLR	State Bank of India-Prime Lending Rate
SCADA	Supervisory Control And Data Acquisition
SERC	State Electricity Regulatory Commission
SHR	Station Heat Rate
SGS	State Generating Stations
SJVNL	M/s Satluj Jal Vidyut Nigam Limited
SLDC	State Load Despatch Centre
SMS	Short Message Service
Sq. Kms	Square Kilometers
SoP	Standard of Performance
STQC	Standardization Testing Quality Certification
SVRS	Special Voluntary Retirement Scheme
T&D	Transmission and Distribution
THDC	Tehri Hydro Development Corporation Ltd.
TNERC	Tamil Nadu Electricity Regulatory Commission
TOD	Time of Day
TPDDL	Tata Power Delhi Distribution Limited
TRANSCO	Transmission Company
TOWMCL	Timarpur-Okhla Waste Management Company Ltd.
UI	Unscheduled Interchange
VRS	Special Voluntary Retirement Scheme
WACC	Weighted Average Cost of Capital
W.P.	Writ Petition
WPI	Whole Sale Price Index
Y-o-Y	Year on Year





## Chapter IA – List of Dates and Events

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## Background

- 1A.1 BSES Rajdhani Power Limited (hereinafter referred to as “**the Petitioner/BRPL**”), a company incorporated under the Companies Act, 1956, and having its registered office at BSES Bhawan, Nehru Place, New Delhi – 110019, is a license holder for carrying on the business of Distribution and Retail Supply of electrical energy within the Area of Supply as specified in the “License for Distribution and Retail Supply of Electricity” issued by the Hon’ble Commission. The Petitioner came in existence in 1 July, 2002 post the unbundling of the erstwhile Delhi Vidyut Board (DVB). It is a joint venture between Reliance Infrastructure Limited and Government of National Capital Territory of Delhi (hereinafter referred to as “**GoNCTD**”).
- 1A.2 The present Petition is being filed for Truing up of Expenses and revenues upto FY 2018-19.
- 1A.3 The present Petition contains the following chapters:
- a) Chapter IA – List of dates and Events
  - b) Chapter IB – Executive Summary
  - c) Chapter IC – Preamble
  - d) Chapter IIA - Performance during FY 2018-19
  - e) Chapter IIB - Compliance with Directives
  - f) Chapter IIIA - True Up for FY 2018-19
  - g) Chapter IIIB – True Up of Past period upto FY 2017-18
- 1A.4 The above chapters are essentially a part and parcel of this Petition(hereinafter the “**ARR Petition**”).In accordance with the Electricity Act, 2003 (hereinafter referred to as “**the 2003 Act**”), the License Conditions, DERC Business Plan Regulations, 2017, and DERC Tariff Regulations, 2017, the Petitioner is required to file Petition for Truing up of Expenses and revenues upto FY 2018-19.

## List of Dates:

Dates	Particulars
On or about 20.11.2001	<p>GoNCTD, in exercise of the powers conferred by Section 60 read with Sections 15 and 16 of the DERA notified the Delhi Electricity Reforms (Transfer Scheme), Rules 2001 (hereinafter "<b>Transfer Scheme</b>").</p> <p>GoNCTD issued notification No. F.II (118)12001-Power containing Policy Directions under Section 12 of the DERA to enable restructuring of the Delhi Vidyut Board and sale of 51%equity shares in the 3 distribution companies to private sector through competitive bidding process.</p> <p>GoNCTD issued an Information Memorandum to the six prequalified entities which were shortlisted on the basis of the criteria specified in the RFQ.</p> <p>GoNCTD issued the Request for Proposal ("RFP") document to the six qualified bidders representing the following key factors (for privatization process. It was held out that with a view to ensure certainty and enable the bidders to bid based on clean balance sheets.</p> <p>TRANSCO and three DISCOMs filed a joint Petition No. 4 of 2001 before this Hon'ble Commission, pursuant to the Transfer Scheme and the Policy Directions.</p>
09.03.2001	The Hon'ble Commission notified DERC Comprehensive (Conduct of Business) Regulations, 2001.
22.02.2002	Prior to privatization, the Hon'ble Commission passed Bulk Supply Tariff Order.
10.04.2002	Bids were opened and successful bidders were declared.
31.05.2002	GoNCTD amended the Policy direction to increase loan amount from Rs.2,600 Cr. to over Rs.3,450 Cr., in order to bridge the gap between revenue requirement of Transco and revenue realised from DISCOMs.



Dates	Particulars
26.06.2002	GoNCTD notified Delhi Electricity Reform Transfer Scheme (Amendment) Rules, 2002.
27.06.2002	Share Acquisition Agreements and Shareholders Agreements executed between selected bidders and three DISCOMs.
01.07.2002	This is the effective date of privatization of Discoms. The Petitioner thus became Distribution Licensees in Delhi with effect from this date. Unbundling of Delhi Vidyut Board and sale of 51% shareholdings of DISCOMS came into effect.
10.06.2003	Electricity Act, 2003 notified by Ministry of Power (hereinafter referred to as " <b>MOP</b> ").
12.02.2005	MOP notified the National Electricity Policy under Section 3 of Electricity Act, 2003.
06.01.2006	MOP issued National Tariff Policy, 2006, under section 3 of the 2003 Act. In terms of Section 3 and Section 61 (i), the State Commission is required to be guided by the provisions of the Tariff Policy in discharge of its functions under the 2003 Act.
21.07.2006	The Petitioner has challenged the Tariff Order dated 09.06.2004 wherein the Hon'ble Commission, as recorded by the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as " <b>Hon'ble Tribunal</b> "), had directed the Petitioner to create a Regulatory Asset in its books. The Hon'ble Tribunal by its judgment dated 21.07.2006 in Appeal No. 155, 156 & 157 of 2005 set aside the findings of the Hon'ble Commission whereby Hon'ble Commission deferred the payments of Petitioner's legitimate dues by creating Regulatory Asset. The Hon'ble Tribunal held that the direction to create a Regulatory Asset was bad in law.
31.03.2007	The Policy Direction Period came to an end. Henceforth, the distribution licensees in Delhi were mandated arrange power for themselves which, prior to this date was being undertaken by DTL. On this date, the Hon'ble Commission also passed as detailed order assigning the existing PPAs (enter in to by the DVB / DTL) amongst the distribution licensees of Delhi.

Dates	Particulars
30.05.2007	The Hon'ble Commission notified DERC (Terms and Conditions of Tariff) Regulations, 2007. These Regulations were for the MYT Period which was to commence from the date the MYT Order would be passed and till 31.03.2011. This was subsequently extended up to 31.03.2012.
23.02.2008	The Hon'ble Commission issued Multi-year Tariff Order determining the Aggregate Revenue Requirement and retail supply tariff for the control Period i.e. FY 2002-03 to 2006-07. This order was carried in Appeal before Hon'ble Tribunal in Appeal 36 of 2008.
28.05.2009	Tariff Order issued by Hon'ble Commission for FY 2009-10 and also true up of FY 2007-08. This order was carried in Appeal before Hon'ble Tribunal in Appeal 142 / 147 of 2009. TPDDL carried this judgment before the Hon'ble Tribunal in Appeal 153 of 2009.
06.10.2009 30.10.2009	The Hon'ble Tribunal passed judgment in Appeal No. 36 & 37 of 2008 against Tariff Order dated 23.02.2008 for FY 2007-08 & FY 2008-09 holding in favour of the Petitioner on issues pertaining to-Sales projections and power purchase of, Distribution loss and AT&C losses, Capital expenditure and capitalisation, Employees expenses, Non-inclusion of Reactive Energy Charges, Disallowance of R&M, A&G expenses, Lower approval of interest rates for loans. This judgment was carried by this Hon'ble Commission to the Supreme Court in Civil Appeal No. 884 / 980 of 2010. Through there is no stay by the Supreme Court, many parts of this judgment are yet to be implemented by this Hon'ble Commission.
30.07.2010	The Hon'ble Tribunal pronounced judgment in Appeal 153 of 2009 (TPDDL Vs DERC) inter-alia holding 4 out of 5 issues in favor of TPDDL. The Commission carried this judgment in Appeal before the Supreme Court in CA no. 19428 of 2012. However, the said civil appeal was dismissed by the Supreme Court on the ground of delay.
15.10.2010	Statutory advice was issued by Hon'ble Commission under Section 86(2) (iv), stating, <i>inter-alia</i> :

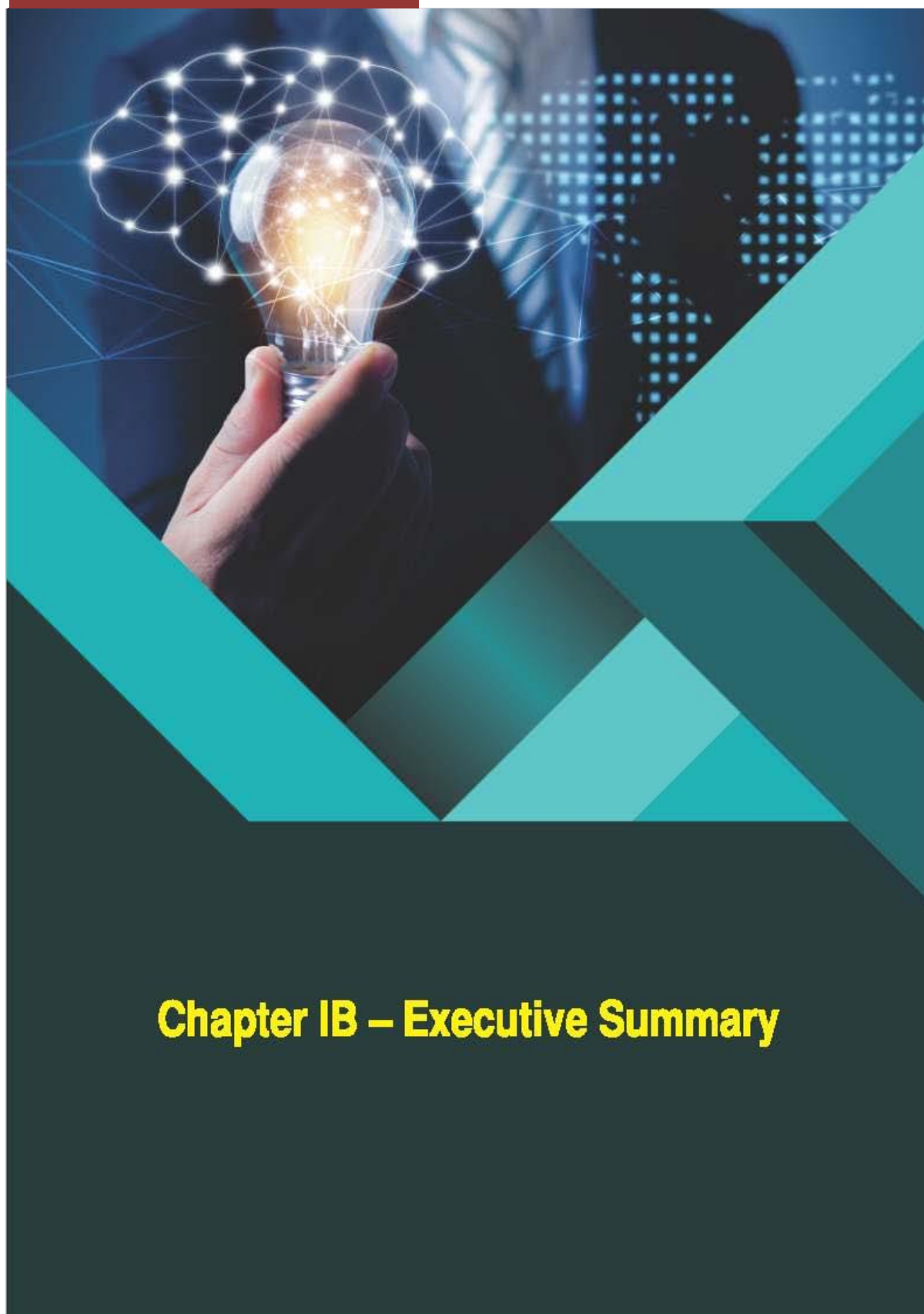
Dates	Particulars
	<p>(a) The tariff during previous years has not been cost reflective causing DISCOMs to resort to extensive borrowing.</p> <p>(b) Hon'ble Commission's past practice was to assume higher surplus for tariff fixation which did not consider rise in power procurement cost.</p> <p>(c) Revenue from sale of electricity has not been able to meet even the power purchase. Accumulation of revenue gaps are beyond sustainable levels.</p> <p>(d) There is a need for a fuel cost adjustment Mechanism.</p>
2010-11	Due to stay imposed on determination of tariff by Hon'ble Delhi High Court in PIL entitled ' <i>N.K. Garg Vs. Union of India</i> ', no tariff Order was passed for the FY 2010-11.
12.07.2011	The Hon'ble Tribunal passed judgment in Appeal No. 142 and 147 of 2009 against Tariff Order dated 28.05.2009 for FY 2009-10 holding in favor of the petitioner on issues pertaining to Late payment Surcharge-funding, Carrying cost rate, True up of first 11 months as per Policy direction period. This judgment was carried by this Commission to the Supreme Court in Civil Appeal 9003 / 9004 of 2011. Through there is no stay by the Supreme Court, many parts of this judgment are yet to be implemented by this Commission.
26.08.2011	Tariff Order issued by Hon'ble Commission for FY 2011-12. This was carried by the Petitioner in Appeal before the Hon'ble Tribunal in Appeal No. 61 / 62 of 2012.
02.12.2011	The Hon'ble Delhi Commission notified DERC (Terms and conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011. This was to be effective for the period 01.04.2012 to 31.03.2015. This was subsequently extended for a period of one year, i.e. 31.03.2016.
02.12.2011	Letter Ref.No.3/Tariff/DERC/2011-12/OPANO.3214/5215/5224 issued by Hon'ble Commission assuring a roadmap for liquidation of revenue gap.
01.02.2012	BSES Companies filed Original Petition No. 1 and 2 of 2012 under

Dates	Particulars
	Section 121 of the 2003 Act before the Hon'ble Tribunal.
05.07.2012	The Hon'ble Commission filed IA No. 1 and 2 of 2012 before Hon'ble Supreme Court, seeking stay of Judgment dated 12.07.2011 passed by the Hon'ble Tribunal in Appeal Nos. 142-147 of 2009 and also stay of the proceedings of O.P. Nos. 1-2 of 2012.
13.07.2012	The Hon'ble Commission passed Tariff Order determining ARR for FYs 2012-13 to 2014-15 and true up for FY 2010-11. This was subsequently challenged before Hon'ble Tribunal by the Petitioner in Appeal 177 / 178 of 2012.
01.10.2012	The Hon'ble Commission notified DERC (Renewable Purchase Obligation and Renewable energy Certificate Framework Implementation) in the official gazette.
28.02.2013	The Hon'ble Supreme Court passed an order in IA No. 3 and 4 of 2013 in CA No. 9003/9004 of 2011 along with IA No.5 of 2013 in CA No. 980 of 2010 directing that the Hon'ble Tribunal may pass judgment in OP 1 and 2 of 2012 however the same shall not be implemented without the leave of the Court.
31.07.2013	The Hon'ble Commission issued Tariff Order for ARR for FY 2013-14 and True up FY 2011-12. This was subsequently challenged before the Hon'ble Tribunal by the Petitioner in Appeal 265 / 266 of 2013.
14.11.2013	The Hon'ble Tribunal pronounced judgment in O.P. No. 1 and 2 of 2012.
23.07.2014	The Hon'ble Commission issued Tariff Order for ARR for FY 2014-15 and True up FY 2012-13. This was subsequently challenged before the Hon'ble Tribunal by the Petitioner in Appeal 235 / 236 of 2014.
28.11.2014	The Hon'ble Tribunal passed judgment in Appeal No. 61 and 62 of 2012 against Tariff Order dated 26.08.2011 for FY 2011-12 holding in favor of the Petitioner on 26 issues and on 10 issues, refusing to interfere with the findings of the Hon'ble Commission. The

Dates	Particulars
	Petitioner has filed an Appeal before the Supreme Court in C.A. No. 4323 and 4324 of 2015. The Hon'ble Commission has filed an Appeal against the judgment in CA no. 8660 and 8661 of 2015.
02.03.2015	The Hon'ble Tribunal passed judgment in Appeal No. 177 and 178 of 2012 for Tariff Order dated 13.07.2012 for FY 2012-13 holding in favor of the Petitioner on 27 and on 9 in favor of the Hon'ble Commission. The Petitioner has filed an Appeal before the Supreme Court in CA No. 4906 and 4933 of 2015. The Hon'ble Commission has filed an Appeal against the judgment in CA no. 6959 and 6960 of 2015.
29.09.2015	The Hon'ble Commission issued Tariff Order for ARR for FY 2015-16 and True up FY 2013-14. This was carried by the Petitioner before the Hon'ble Tribunal in Appeal No. 290 and 297 of 2015. In respect of one issue of Procurement of Power from Anta, Auraiya and Dadri, the Petitioner also filed a review being Review Petition no. 44 / 45 of 2017 before the Hon'ble Commission which came to be allowed by the order dated 22.03.2018.
28.01.2016	MOP issued revised Tariff policy, 2016.
01.02.2017	The Hon'ble Commission notified DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 in the official gazette. These Regulations were to apply prospectively with effect from 01.02.2017. However, Clause 139 of the Regulations retrospectively applied the DERC Tariff Regulations, 2011 to FY 2016-17.
31.08.2017	The Hon'ble Commission passed ARR and Tariff for FY 2017-18. The Petitioners carried the matter in Appeal before the Hon'ble Tribunal in Appeal No. 69 & 72 of 2018 and 70 & 71 of 2018. The Petitioner also preferred a review Petition being Petition No. 65 / 66 of 2017 before this Hon'ble Commission, which came to be allowed vide order dated 22.03.2018 (BRPL order date 19.02.2018).
31.08.2017	The Hon'ble Commission notified DERC Business Plan Regulations, 2017 in the official gazette. These Regulations were issued in

Dates	Particulars
	Terms of the DERC MYT Regulations, 2017.
27.03.2018	The Hon'ble Commission passed order for reallocation of power for FY 2018-19.
28.03.2018	The Hon'ble Commission passed ARR and Tariff for FY 2018-19. The Petitioner carried the matter in Appeal No. 193 of 2018 before Hon'ble Tribunal. The Petitioner has also filed a review Petition being Review Petition No. 30 of 2018 before the Hon'ble Commission.
18.09.2018	The Hon'ble Commission passed an Order in Petition No. 46 of 2018 allowing the power purchase cost from Anta, Auriaya, Dadri Gas stations for FY 2012-13 to 2015-16.
15.03.2019	The Hon'ble Commission reserved the order in Review Petition No. 30 of 2018.
31.07.2019	The Hon'ble Commission passed ARR and Tariff for FY 2019-20. The Petitioners carried the matter in Appeal before the Hon'ble Tribunal in Appeal No. 376 of 2019. The Petitioner also preferred a review Petition being Review Petition No. 63 of 2019 before this Hon'ble Commission, which came to be allowed vide order dated 21.11.2019.
30.09.2019	The Hon'ble Tribunal pronounced judgment in Appeal No. 246 of 2019 in the matter of TPDDL V/s. DERC, against tariff order dated 23.07.2014.
21.10.2019	The Petitioner submitted its Business Action Plan for FY 2020-21 to FY 2024-25 to the Hon'ble Commission
21.11.2019	The Hon'ble Commission vide its letter dated 21.11.2019 has directed the Petitioner to file its True-up Petition. The Hon'ble Commission further stated that the Business Plan Regulations for the ensuing Control Period is under process.





## Chapter IB – Executive Summary

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## Executive Summary

### Introduction

1B.1 The Petitioner has filed the Petition for approval of true up upto FY 2018-19. This Executive Summary consists of the summary of Petition filed by BRPL for true up upto FY 2018-19 (based on audited accounts). The Hon'ble Commission shall undertake the true up for FY 2018-19 in accordance with the Delhi Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2017 (referred to as "Tariff Regulations, 2017" hereinafter) and the Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2017 (referred to as "Business Plan Regulations, 2019" hereinafter), after prudence check.

### Truing Up for FY 2018-19

#### Energy Sales and Revenue

1B.2 In its Petition, the Petitioner has submitted that its actual energy sales in FY 2018-19 was 12194 MU. Since energy sales are treated as an uncontrollable factor, the Petitioner has requested the Hon'ble Commission to approve energy sales in FY 2018-19 based on actuals as shown below:

**Table 1B 1: Sales and Revenue for FY 2018-19 (MU)**

S. No.	Consumer Category	Sales (MU)	Revenue Billed (Rs. Cr.)	Revenue Collected (Rs. Cr.)
1	Domestic	7214	4205	3988
2	Non-Domestic	3161	3489	4128
3	Industrial	529	519	612
4	Agriculture & Mushroom Cultivation	19	8	9
5	Public Utilities	864	601	688
6	DIAL	204	161	191
7	Advertisement/Hoardings	1	2	3
8	Temporary	100	122	0
	E-Rikshaw/EVehicle	16	9	10
9	Others	85	52	55
10	<b>Total</b>	<b>12194</b>	<b>9168</b>	<b>9685</b>
11	Add: Deemed Collection			965



S. No.	Consumer Category	Sales (MU)	Revenue Billed (Rs. Cr.)	Revenue Collected (Rs. Cr.)
12	Less: 8% Surcharge			721
13	Less: PT Surcharge			340
14	Less: Electricity Tax			367
15	Less: LPSC Collected			30
	Total			<b>9192</b>

1B.3 The Petitioner has requested the Hon'ble Commission to approve the actual sales at 12194 MU and revenue collection as Rs. 9192 Cr in FY 2018-19.

1B.4 The total amount billed (actuals) for FY 2018-19 given in the above Table includes the revenue billed on account of regulatory surcharge at 8% of the approved Tariff, Pension Trust surcharge and Electricity Tax amounting to Rs. 721 Cr, Rs. 340 Cr. and Rs. 367 Cr. respectively.

#### AT&C Loss for FY 2018-19

1B.5 The Petitioner has submitted the actual AT&C loss of 8.02% and Distribution loss of 8.26% for FY 2018-19. The Petitioner is claiming the following incentive with respect to actual T&D Loss achieved and Collection Efficiency achieved during FY 2018-19 in terms of the DERC Tariff Regulations 2017:

**Table 1B2: Incentive Claimed for overachievement in T&D Loss target for FY 2018-19 as per Regulation 25(4) of DERC Business Plan Regulations, 2017**

S.No	Particulars	UoM	Figure
A	Energy Purchased at distribution Periphery	MU	13292.2
B	T&D Loss target for FY 2018-19	%	10.19%
C	Actual T&D Loss for FY 2018-19	%	8.26%
D	Average Power Purchase cost for FY 2018-19	Rs/KWh	5.52
E	Financial Impact on account of overachievement of T&D Loss Target	Rs Cr	141.7
F	Impact of Financial benefit to be retained by Petitioner (2/3)	Rs Cr	94.4

**Table 1B3: Incentive Claimed as per Regulations on Collection Efficiency**

S. No	Particulars	UoM	Target	Actual
1	Amount billed	Rs. Cr	9167.9	9167.9

S. No	Particulars	UoM	Target	Actual
2	Collection Efficiency	%	99.50%	100.26%
3	Amount collected	Rs. Cr	9122.1	9191.8
4	Over-achievement	Rs. Cr		69.7
5	Amount to be retained by petitioner and consumer shared 50:50 for achievement of collection efficiency Target from 99.50% to 100%	Rs. Cr		22.9
6	Entire 100% to be retained for achievement over 100%	Rs. Cr		23.8
7	Total Incentive to be retained by Discom	Rs. Cr		46.8

**Power Purchase Requirement:**

- 1B.6 The quantum of Power Purchase is decided by the expected sales of energy by the Licensee, as well as the loss levels projected/approved. Higher expected sales require a greater quantum of power to be purchased. Similarly, higher loss levels also require a proportionately greater amount of power purchase by the Licensee because it needs to meet the expected sales (in MU) after accounting for various losses in the process of supplying electricity.
- 1B.7 The energy sales for the year is grossed up by the Distribution Loss level of that year to arrive at the required quantum of power purchase for that year in the following manner:

$$\text{Quantum of Power Purchase (MU)} = \frac{\text{Energy Sales (MU)}}{1 - (\text{Distribution loss}(\%)/100)}$$

- 1B.8 The summary of actual power purchase sales, loss level and power purchase requirement for FY 2018-19 is as follows:

**Table 1B4: Power Purchase Requirement for FY 2018-19**

S. No.	Particulars	Unit	Actual
1	Sales	MU	12194.3
2	Distribution Loss	%	8.26%
3	Energy Requirement at Discom Periphery	MU	13292.2

**Power Purchase Cost:**

- 1B.9 As per the DERC Tariff Regulations 2017, the licensee shall be allowed to recover

the net cost of power it procures from sources approved by the Hon'ble Commission, viz. Intra-state and Inter-state Trading Licensees, Bilateral Purchases, Bulk Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators, generation business of the Distribution Licensee and others, assuming maximum normative rebate available from each source for payment of bills through letter of credit on presentation of bills for supply to consumers of Retail Supply Business.

- 1B.10 Provided that the Distribution Licensee shall propose the cost of power procurement taking into account the fuel adjustment formula specified for the generating stations and net revenues through bilateral exchanges and Unscheduled Interchange (UI) transactions.
- 1B.11 Provided further that where the Licensee utilises a part of the power purchase approved or bulk supply allocated or contracted for the Retail Supply Business for its Trading Business, the Distribution Licensee shall provide an Allocation Statement clearly specifying the cost of power purchase that is attributable to such trading activity.
- 1B.12 The Petitioner, in this Petition has submitted that the Petitioner purchases more than 90% of the total quantum from Government Owned utilities. The quantum purchased from these is accounted/metered by statutory bodies like NRLDC/SLDC. The price at which the power is to be purchased are governed by independent Regulatory Commissions like CERC and/or this Hon'ble Commission. The following table shows the source-wise power purchase quantum for the Petitioner for FY 2018-19:

**Table 1B5: Source-wise Power Purchase Quantum in FY 2018-19**

S. No.	Particulars	Power Purchase (MU)	Quantum (%)
1	NTPC <sup>#</sup>	8715.5	56.1%
2	NHPC	1021.3	6.6%
3	NPCIL	394.2	2.5%
4	DVC	1007.9	6.5%
5	State Gencos <sup>@</sup>	2083.7	13.4%
6	Short Term Purchase	1199.5	7.7%

S. No.	Particulars	Power Purchase (MU)	Quantum (%)
7	Other Hydro (incl. THDC, SJVNL and Tala HEP)	511.6	3.3%
8	Wind Power	49.7	0.3%
9	Sasan	499.6	3.2%
10	SECI	42.3	0.3%
11	<b>Total</b>	<b>15525.1</b>	<b>100%</b>

# Includes BTPS

@ Excludes BTPS

1B.13 The following Table shows the actual Power Purchase Cost submitted by the Petitioner for FY 2018-19:

Table 1B6: Actual Power Purchase Cost in FY 2018-19

S. No.	Plant	Power Purchase (MU)	Total Cost (Rs. Crore)	Rate (Rs/kWh)
1	NTPC#	8282.8	3683	4.45
2	NHPC	1021.3	359	3.51
3	NPCIL	394.2	144	3.65
4	DVC	1007.9	374	3.71
5	State Genco@	2516.5	1558	6.19
6	Other Hydro (incl. THDC, SJVNL and Tala HEP)	511.6	236	4.62
7	Wind Power	49.7	18	3.53
8	Sasan	499.6	71	1.43
9	SECI	42.3	23	5.50
11	<b>Long term power purchase cost</b>	<b>14325.6</b>	<b>6466</b>	<b>4.51</b>
10	Add: Other Costs	8.6	11	12.40
12	ST Purchase	1199.5	581	4.84
13	<b>Gross Power Purchase Cost</b>	<b>15533.8</b>	<b>7058</b>	<b>4.54</b>
14	Less: DTL loss/charges	467.7	553	
15	Less: PGCIL loss/charges		455	
16	Less: Other losses		96	
17	Less: short term Sale	1773.8	741	4.18
18	Add: Cost of REC		0	
19	<b>Net Power Purchase Cost</b>	<b>13292.2</b>	<b>7421</b>	<b>5.58</b>
20	Less: Rebate		75	
21	Less: Additional UI		4	
22	<b>Net Power Purchase Cost after rebate</b>	<b>13292.2</b>	<b>7341</b>	<b>5.52</b>

# Excludes BTPS

@ Includes BTPS



**Operation and Maintenance Expenses (O&M Expenses):**

1B.14 The O&M Expenses as considered by the Petitioner during FY 2018-19 are tabulated below:

**Table 1B7: O&M Expenses in FY 2018-19 (in Rs. Cr.)**

S.No.	Particulars	FY 2018-19	
		Tariff Order	Actuals as per Petition
1	11kV Line	70.9	78.4
2	33 kV Line	41.7	39.8
3	66 kV Line		
4	LT Line system	610.3	642.3
5	11/0.415 kV DT	115.1	113.8
6	33/11 kV Grid S/s	63.7	58.3
7	66/11 kV Grid S/s		
8	<b>Total</b>	<b>901.8</b>	<b>932.7</b>

**Depreciation:**

1B.15 The Petitioner has submitted that the Depreciation has been calculated in accordance with DERC Tariff Regulations. 2017.

1B.16 The average rate of Depreciation for FY 2018-19 based on the Audited Accounts of the Petitioner is tabulated below:

**Table 1B8: Depreciation for FY 2018-19 (in Rs. Cr.)**

S. No	Particulars	Actual	Remarks/ Ref.
A	Opening GFA as per audited accounts	6523.51	Note 3 of Audited Accounts
B	Closing GFA as per audited accounts	7082.65	
C	Average of GFA	6803.08	(A+B)/2
D	Depreciation as per Audited Accounts	309.47	P&L account
E	<b>Average depreciation rate</b>	<b>4.55%</b>	<b>(D/C)*100</b>

1B.17 The Petitioner has submitted the total depreciation for FY 2018-19 after implementation of ATE Judgments as under.

**Table 1B9: Depreciation for FY 2018-19 (in Rs. Cr.)**

S. No	Particulars	FY 2018-19
A	Average GFA	6841.54
B	Average Consumer Contribution and Grants	724.07
C	Average assets net of consumer contribution & Grants	6117.47
D	Average rate of depreciation	4.55%
E	<b>Depreciation</b>	<b>278.28</b>

**Return on Capital Employed:**

1B.18 The Petitioner has furnished the Return on Capital Employed during FY 2018-19 as tabulated below:

**Table 1B10: Return on Capital Employed (ROCE)(in Rs. Cr.)**

S. No	Particulars	FY 2018-19
1	Average Debt (Term Loan and Working Capital)	2273
2	Average Equity	1962
3	Total	4235
4	Cost of Debt	13.56%
5	Return on Equity	20.39%
6	WACC	16.72%
7	RRB(i)	4320
8	<b>ROCE (Return on Capital Employed)</b>	<b>722</b>

**Non-Tariff Income:**

1B.19 The Petitioner has deducted the following items for the purpose of computation of Non-Tariff Income:

- a. Interest on Consumer Security Deposit
- b. Difference on account of Service Line Development (SLD) Charges
- c. Interest on inter-company loans
- d. Interest on contingency reserve
- e. Late Payment Surcharge
- f. Write-back of Miscellaneous Provisions
- g. Short term gain
- h. Transfer from consumer contribution and capital works
- i. Income on account of bad debts recovered
- j. Penalties from contractors
- k. Commission on Electricity Duty

1B.20 The Non-Tariff Income claimed by the Petitioner in True-up of FY 2018-19 is tabulated below:

**Table 1B11: Non-Tariff Income submitted for FY 2018-19(in Rs. Cr.)**

S. No	Particulars	FY 2018-19
1	Other Operating Revenue	132
2	Other Income	117
4	Income from normative interest on security deposit	42
5	Income on SLD	11
6	<b>Total other income</b>	<b>302</b>
7	Less: Income from other business	

S. No	Particulars	FY 2018-19
A	Street Light	15
8	Less: Interest on CR	0
9	Less: LPSC	30
10	Less: Write-back of miscellaneous provisions	24
11	Less: Interest income/Short term gain	2
12	Less: Transfer from Consumer contribution for capital works	38
13	Less: Bad debts recovered	2
15	Less: Interest on inter-Petitioner loans	22
16	Less: Commission on ED	11
17	<b>Net NTI</b>	<b>158</b>

### Annual Revenue Requirement and Revenue (Gap)/ Surplus for FY 2018-19:

1B.21 The Based on the above submissions, the Annual Revenue Requirement for FY 2018-19 is tabulated below:

**Table 1B12: Aggregate Revenue Requirement during FY 2018-19 (in Rs. Cr.)**

S. No	Particulars	As per Tariff Order dtd 28.03.2018	Revised figures for Truing Up
	<b>Expenses:</b>		
1	Purchase of power including Transmission and SLDC Charges	6860	7341
2	O&M Expenses	902	933
3	Additional O&M Expenses /other expenses	58	197
4	Depreciation	190	278
5	Return on Capital Employed (RoCE) (Pre Tax)	592	722
6	<b>Sub-total</b>	<b>8601</b>	<b>9471</b>
7	Less: Non Tariff Income	155	158
8	<b>Aggregate Revenue Requirement</b>	<b>8446</b>	<b>9314</b>
9	Less: Income from Open Access		26
10	<b>Net Aggregate Revenue Requirement</b>	<b>8446</b>	<b>9288</b>
11	Add: Carrying Cost for FY 2018-19	420	Carrying Cost dealt separately
12	Add: Carrying Cost upto FY 2016-17 of past period true up subsumed in ARR of FY 2018-19	234	Carrying Cost dealt separately
A	<b>Total Expenses</b>	<b>9101</b>	<b>9288</b>

S. No	Particulars	As per Tariff Order dtd 28.03.2018	Revised figures for Truing Up
	<b>Income:</b>		
13	Total amount realised (Net of Electricity Duty and Surcharges)	8748	9192
14	Less: Amount to be retained by Petitioner on account of overachievement of T&D Loss Targets		94
15	Less: Amount to be retained by Petitioner on account of Overachievement of Collection efficiency Targets		47
16	Less: Incentive of Rate of Sale		141
17	Less: Carrying Cost		420
<b>B</b>	<b>Revenue available towards ARR</b>	<b>8748</b>	<b>8489</b>
<b>C</b>	<b>Revenue (Gap)/Surplus</b>	<b>-353</b>	<b>-799</b>



**Truing-up of past period up to FY 2017-18**

1B.22 The Petitioner's claims pertaining to true-up of expenses with respect to earlier periods have been divided into six parts as under:

**Table 1B 13: Total impact on account of past claims (in Rs. Cr.)**

S. No	Particulars	Principal	Carrying Cost	Total
1	Impact for issues where there is inconsistency in different orders	206	397	603
2	Issues which fall under statutory levies/ Change in law	59	5	63
3	Issues which tantamount to suo-motu reopening of previous orders	80	98	178
4	Impact on account of APTEL Judgments	3387	7252	10640
5	Impact of review petition	230	339	568
6	Issues which are contrary to Regulations/ previous directions	1248	1007	2255
7	<b>Total</b>	<b>5210</b>	<b>9098</b>	<b>14308</b>

**Table 1B 14: Total impact for issues where there is inconsistency in different orders**

(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Revision in Employee and A&G Expenses of FY 09 to FY 12	65	129	194
2	Revision in K factor for R&M Expenses from FY 08 to FY 12	28	55	83
3	Correction of errors in RoCE on account of corrections in Working Capital and RRB	55	108	163
4	SVRS Pension for FY 2016-17	7	2	9
5	License fees paid during FY 2016-17	3	1	3
6	Loss on account of retirement of assets	48	103	151
7	<b>Sub-total</b>	<b>206</b>	<b>397</b>	<b>603</b>

**Table 1B 15: Total Impact on account Issues which fall under statutory levies/ Change in law**

(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Minimum wages	40.21	2.81	43.02
2	GST	14.89	1.04	15.93
3	SMS Charges	1.38	0.21	1.59
4	Revision in Bonus of contractual employees	1.23	0.09	1.31
5	Cost of auditor certificates	0.87	0.59	1.46
6	DSM Charges	0.13	0.01	0.13
7	<b>Sub-total</b>	<b>58.70</b>	<b>4.75</b>	<b>63.46</b>

**Table 1B 16: Total Impact on account of Issues which tantamount to suo-motu reopening of previous orders**

(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Write-back of miscellaneous provisions	80	98	178
2	Re-opening of debt-equity ratio stipulated in transfer scheme and erroneous net-worth computations	Considered with other capex related issues		
3	<b>Sub-total</b>	<b>80</b>	<b>98</b>	<b>178</b>

Table 1B 17: Impact on account of APTEL Judgments

(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Capex related issues	2703	4107	6810
2	Impact of 11 months truing-up on account of depreciation rate for first 8 months	90	279	369
3	Computation of AT&C Loss for FY 2009-10	3	7	11
4	AT&C Loss for FY 2011-12	49	71	120
5	Revision of AT&C Loss targets from FY 2012-13 to FY 2013-14	89	92	181
6	Increase in employee expenses corresponding to increase in consumer base for FY 2007-08 to FY 2011-12	122	273	394
7	Efficiency factor for FY 2010-11	16	28	44
8	Revision of R&M Expenses by revising "K" factor for FY 2012-13 to FY 2016-17	21	13	34
9	Lower rates of carrying cost		2085	2085
10	Financing cost of LPSC based on SBI PLR-FY 08 to FY 13	26	51	77
11	Own Consumption-Reversals	114	83	197
12	Additional UI Charges above 49.5 Hz frequency	3	5	8
13	Syndication fees	152	158	310
14	<b>Sub-total</b>	<b>3387</b>	<b>7252</b>	<b>10640</b>

Table 1B 18: Impact of review petition

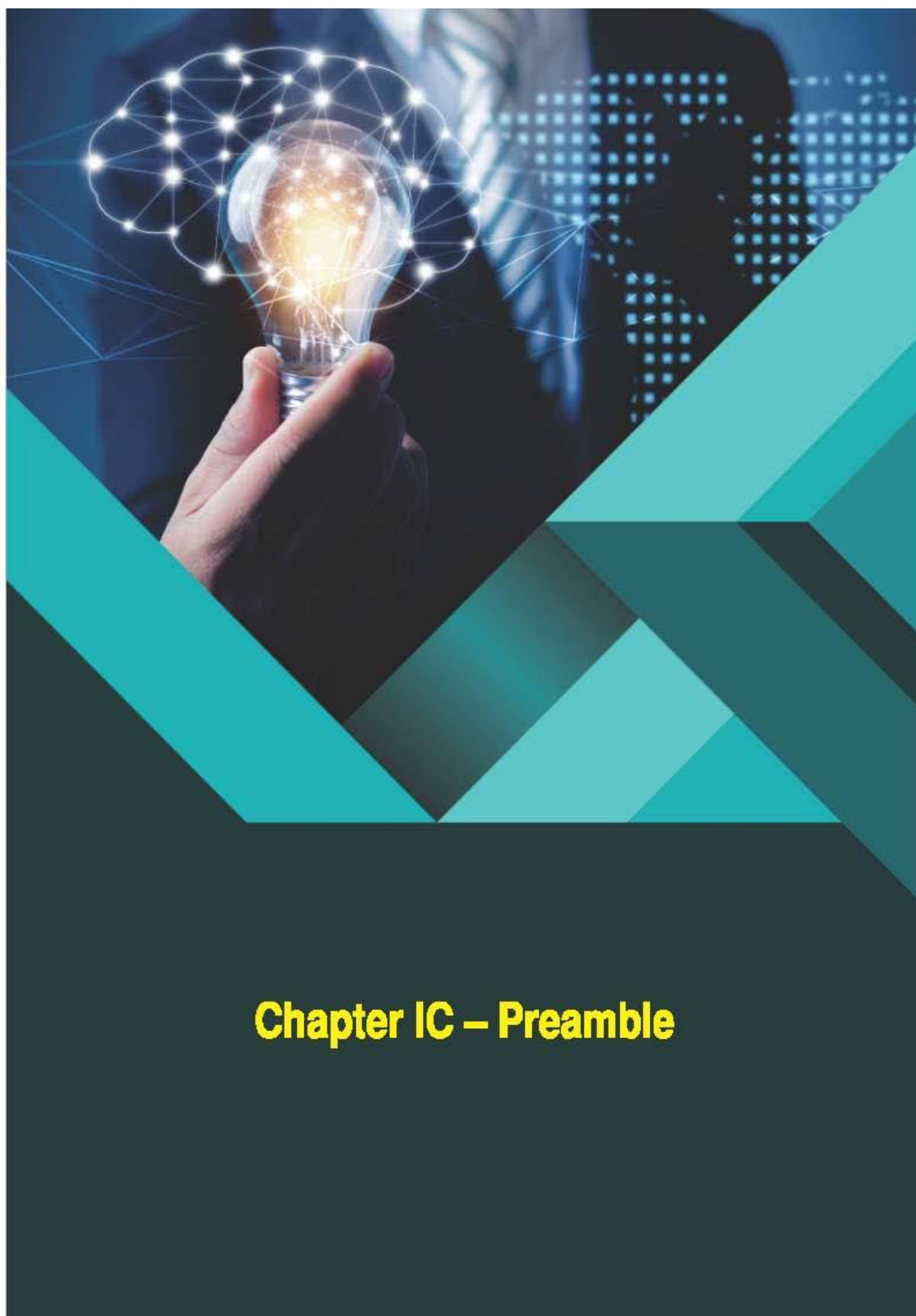
(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
<b>A</b>	<b>Review Petition No. 30 of 2018-Tariff Order dated 28.03.2018</b>			
1	Error in consideration of Rebate from DTL as NTI during FY 2013-14	15	13	28
2	Omission to deduct the amount of LPSC from Revenue for FY 2008-09	13	34	47
3	Error in consideration of impact on account of Merit Order Dispatch for FY 2013-14	104	89	194
4	Omission to withdraw / recall the Efficiency Factor for FY2015-16	23	9	32
5	Error in carrying cost on account of Anta, Auraiya and Dadri Gas Stations		17	17
6	Normative rebate considered from SECI during FY 2016-17	0.49	0.11	1
7	<b>Sub-total</b>	<b>156</b>	<b>163</b>	<b>319</b>
<b>B</b>	<b>Review Petition-Tariff Order dated 31.07.2019</b>			
8	Error in consideration of depreciation while computing ARR in Table-3.134 of Order	29	2	31
9	Property tax for FY 2016-17	16	4	20

S. No	Particulars	Principal	Carrying Cost	Total
10	Carrying cost on account of Anta, Auraiya and Dadri Gas Stations from FY 2012-13 to FY 2016-17	0	168	168
11	Erroneous computation of deemed revenue in excess of 1% cap on billing adjustments of FY 2017-18	26	2	28
12	Erroneous disallowance of water charges	2	0	2
13	Net Metering	0	0	0
14	<b>Sub-total</b>	<b>74</b>	<b>176</b>	<b>250</b>
15	<b>Total</b>	<b>230</b>	<b>339</b>	<b>569</b>

**Table 1B 19: Total impact for Issues which are contrary to Regulations/ previous directions**  
(inRs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Legal fees	13	1	14
2	Interest rates of working capital and carrying cost during FY 2017-18	Included in capex related claims		
3	Fixed charges against regulated power	255	225	481
4	Over lapping banking transactions	13	8	21
5	Cost disallowed on account of excessive trading at UI above contingency limit	7	2	9
6	Normative rebate from FY 13 to FY 18	585	297	882
7	Income from other business-SLMC	210	265	475
8	Financing cost of LPSC-FY 14 to FY 18	50	22	72
9	Monthly Rebate	83	43	126
10	Non-consideration of actual R&M and A&G Expenses of FY 05	33	143	176
11	<b>Sub-total</b>	<b>1248</b>	<b>1007</b>	<b>2255</b>



## Chapter IC – Preamble



BEFORE THE DELHI ELECTRICITY REGULATORY COMMISSION  
C BLOCK, SHIVALIK, MALVIYA NAGAR, NEW DELHI

PETITION NO. \_\_\_\_\_ OF 2019

**IN THE MATTER OF:-**

**BSES Rajdhani Power Limited**

BSES Bhawan, Nehru Place

New Delhi-110 019

..... **PETITIONER**

**AND**

**IN THE MATTER OF:-** Truing up of expenses and revenues upto the Financial Year (hereinafter referred to as “FY”) FY 2018-19, in terms of Regulation 13 read together with Regulation 139 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as “**DERC Tariff Regulations, 2017**”) and the provisions of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as “**DERC MYT Regulations, 2011**”) and Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007 (hereinafter referred to as “**DERC MYT Regulations, 2007**”) read with Section 62 of the Electricity Act, 2003 and read with Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail Supply of Electricity issued by the Hon’ble Delhi Electricity Regulatory Commission (hereinafter referred to as “**the Hon’ble Commission/ DERC**”).

**PETITION FOR TRUING UP OF EXPENSES AND REVENUES UPTO FY 2018-19****RESPECTFULLY SHEWETH:**

1. BSES Rajdhani Power Limited (hereinafter referred to as **“the Petitioner/BRPL”**), a company incorporated under the Companies Act, 1956, and having its registered office at BSES Bhawan, Nehru Place, New Delhi – 110019, is a license holder for carrying on the business of Distribution and Retail Supply of electrical energy within the Area of Supply as specified in the *“License for Distribution and Retail Supply of Electricity”* issued by the Hon’ble Commission.
2. The present petition is being filed for Truing up of Expenses and revenues upto FY 2018-19. The True-up Petition of the Petitioner comprises of various components like Power Purchase Cost, Operation and Maintenance Expenses, Capital expenditure related expenses, Income Tax, Revenue from tariff, Non-Tariff Income etc.
3. In accordance with the Electricity Act, 2003 (hereinafter referred to as **“the 2003 Act”**), the License conditions, DERC Business Plan Regulations, 2017, DERC Tariff Regulations, 2017, and DERC MYT Regulations 2011 and 2007, the Petitioner is required to file Petition for Truing up of Expenses upto FY 2018-19 (hereinafter collectively referred to as the **“True-up Petition”**). The Petitioner further submits that vide the present Petition it prays the Hon’ble Commission to allow the present petition and *inter alia* to permit the true up as sought for. Allowing truing-up on urgent basis is pivotal for the Petitioner to meet its power purchase costs and other uncontrollable costs, meet the performance standards during FY 2018-19 as well as comply with various directives specified by the Hon’ble Commission, which particularly entail expenditure.
4. The Power Purchase Cost including Transmission Charges is one of the major components of ARR which contributes to almost 80% to 85% of the total ARR of a Discom. Most of the power is being purchased from Central Generating Stations like NTPC Limited, NHPC Limited, DVC, State Gencos etc. Most of these Central/ State Generating Stations are Government bodies/ PSU for which audit is already

being carried by the CAG. Petitioner purchases power from Central Generating Stations at the rate specified by the Central Electricity Regulatory Commission (hereinafter referred to as “Hon’ble CERC”) in its various Tariff Orders. All the Power Purchase Agreements (hereinafter referred to as the “PPAs”) are approved by the Hon’ble Commission.

5. In accordance with Section 62 of the 2003 Act and Revised Tariff Policy 2016, the Hon’ble Commission has notified the DERC Tariff Regulations, 2017 which are required to be followed by the Licensees for filing the True-up Petition.
6. The Hon’ble Commission vide its letter dated 21.11.2019 has directed the Petitioner to file its True-up Petition. The Hon’ble Commission further stated that the Business Plan Regulations for the ensuing Control Period is under process.
7. The Petitioner reserves its rights to file the Annual Tariff Petition and Tariff for FY 2020-21 under Section 62 of the Electricity Act, 2003 read with applicable provisions of the Business Plan Regulations which is expected to be issued by the Hon’ble Commission soon. It is noteworthy to mention here that the Petitioner has already submitted its Business Action Plan for FY 2020-21 to FY 2024-25 to the Hon’ble Commission under cover of its letter dated 21.10.2019.
8. The Petitioner, therefore, has limited its filings to Truing up of expenses upto FY 2018-19 on the basis of Audited Accounts and norms specified by the Hon’ble Commission for controllable expenses. In this regard, Regulation 152 of the DERC Tariff Regulations, 2017 reads as follows:

*“152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:*

*(a) Variation in revenue and sales of the distribution licensee based on projected revenue and sales vis-à-vis actual revenue and sales;*

*(b) Variation in long term power purchase quantum and cost of the distribution licensee based on merit order dispatch principle of projected long term power purchase quantum and cost vis-à-vis actual long term power*

*purchase quantum and cost:*

*Provided that the distribution licensee shall submit report from State Load Despatch Centre (SLDC) for instances of forced scheduling due to the reasons not attributable to the Distribution licensee for scrutiny of dispatch of power in Delhi on merit order basis in its area of supply;*

*Provided that the cost of credit to the net metering consumer on account of net surplus unit of power injected into the grid as specified in Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014 shall be allowed to the distribution licensee in the power purchase cost of the relevant year;*

*(c) Variation in short term power purchase quantum and cost of the distribution licensee based on projected short term power purchase quantum and cost vis-a-vis actual short term power purchase quantum and cost:*

*Provided that Trading Margin, Transmission Charges and Transmission Losses incurred on Forward And Reverse transaction in the same time slot executed within three months for Forward / Reverse power procurement/sale through Banking And Bilateral shall not be allowed in the Power Purchase Cost of the Distribution Licensee;*

*Provided that Sale through Deviation Settlement Mechanism (Unscheduled Interchange) transactions other than forced scheduling of power as certified by SLDC on monthly basis shall be limited to the contingency limit as specified by the Commission in the Business Plan Regulations in order to promote Grid Discipline and optimise Power Purchase Cost;*

*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;*

*Provided that Short-term arrangement or agreement, other than traded*

*through Power Exchange, for procurement/sale of power has to be executed through a transparent process of open tendering and competitive bidding guidelines issued by Ministry of Power (MoP) as amended from time to timeless specific direction issued by the Commission;*

*Provided further that in case the Distribution Licensee does not follow Short Term Power guidelines for procurement of power/sale the rate of such power procurement shall be restricted to the average rate of power purchase/sale through exchange during same month for Delhi region.*

*(d) Any surplus or deficit on account of controllable parameters i.e., Operation and Maintenance (O&M) expenses shall be to the account of the Licensee and shall not be trued up in ARR; and*

*(e) Depreciation, Return on equity and interest on loan shall be trued up every year based on the actual capitalisation vis-à-vis capital investment plan (capitalisation) approved by the Commission:*

*Provided further that the Commission shall true up the interest rate on the basis of increase/decrease in State Bank of India Base Rate as on April 1 of the relevant financial year vis-à-vis State Bank of India Base Rate as on April 1 of the immediately preceding financial year in accordance with Regulation 77 of these Regulations;*

*(f) Interest on working capital loan shall be trued up every year based on the working capital requirement as specified in Regulation 85 of these Regulations.”*

9. Accordingly, the Petitioner is filing the present True-up Petition and requests the Hon'ble Commission to permit recovery of expenses as prayed for as well as to:
  - (a) Enable the Petitioner to comply with various directions of the Hon'ble Commission;
  - (b) Enable the Petitioner to meet performance standards and mitigate the impact of the large increase in power purchase costs and other uncontrollable costs.



This becomes imperative as:

- (c) There is a significant variation in Power Purchase Rate during FY 2018-19 like previous years primarily on account of various factors, which are beyond the control of the Petitioner. Thus, it would be incumbent on this Hon'ble Commission to address this problem since only a part of power purchase cost has been permitted through tariff that too without passing on the variation of short term purchase and sales in the power purchase price adjustment formula.
- (d) The Petitioner is faced with an imminent cash-flow crunch due to unrecovered expenses primarily on account of uncontrollable increase in the power purchase cost.
- (e) The Petitioner is aggrieved by the fact that a cost-reflective tariff has not been provided to the Petitioner ever since 2007. The Hon'ble Commission in its Statutory Advice to the Government of National Capital Territory of Delhi (hereinafter referred to as "**GoNCTD**") dated February 1, 2013 has admitted that the Petitioner is facing an adverse financial position. Even independent experts appointed by GoNCTD, such as M/s. PricewaterhouseCoopers (hereinafter referred to as "**PwC**") have corroborated the said findings of the Hon'ble Commission on various occasions.
- (f) The Petitioner has been and is in a situation where its financial health and ability to pay for power procurement (which constitutes about 85% of the Petitioner's expenses) besides statutory dues has been constrained and that too not for any reasons attributable to the Petitioner but for the legitimate costs and expenses being withheld in the form of Regulatory Assets and for not granting the allowance which are even directed by the Hon'ble Appellate Tribunal for Electricity (hereafter "**the Hon'ble Tribunal**").
- (g) The above position was admitted by the Hon'ble Commission itself in its White Paper released on along with the Hon'ble Commission's Tariff Order for FY 2011-12 wherein the Hon'ble Commission admitted that in the FY 2009-10

onwards, the power purchase cost was actually 103%-112% respectively of the ARR.

It is submitted that ARR and Tariff has been allowed by the Hon'ble Commission without a proper true-up of accounts for the previous years and even though there may have been surpluses as determined by the Hon'ble Commission in the true-up of previous years the same has not been accounted for in deciding and approving the ARR in the subsequent years.

10. It is trite law that that the principle of judicial discipline and propriety requires that the orders of the appellate authorities should be followed scrupulously and unreservedly by its subordinate authorities. The direction of the Hon'ble Tribunal are certainly binding on the Hon'ble Commission. Therefore, the judgments delivered by the Hon'ble Tribunal need to be implemented in their true letter and spirit by the Hon'ble Commission and the financial impact and regulatory effect of the principles laid down in these judgments and/ or entitlements under these judgments be granted and/or allowed to the Petitioner while deciding the present Petition. This Hon'ble Commission, therefore, is kindly requested to decide and determine the True-Up Petition in accordance with the principles contained in the various judgments passed by the Hon'ble Tribunal in:

- (a) Judgment dated November 11, 2011 passed in O.P. No. 1 of 2011;
- (b) Judgment dated July 12, 2011, October 6, 2009, November 28, 2014, March 2, 2015 and May 15, 2015 in Appeal No. 142 of 2009, Appeal No. 36 of 2008, Appeal No. 61 of 2012 and Appeal No. 177 of 2012 and RP No. 7 of 2015 respectively in the matter of BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission & Others.;
- (c) Judgment dated October 31, 2017 in I.A. No. 320 of 2015 in Appeal No. 177 of 2012, in the matter of a Clarification Application filed by this Hon'ble Commission.
- (d) Judgment dated May 15, 2017 read together with February 23, 2015 in Appeal 103 of 2017 and Appeal No. 110 of 2014 respectively in the matter of BSES

Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission pertaining to the issue of consumer contribution.

- (e) Judgment dated July 30, 2010, May 31, 2011, November 28, 2013 and September 30, 2019 in Appeal No. 153 of 2009, Appeal No. 52 of 2008, Appeal No. 14 of 2012 and Appeal 246 of 2014 respectively in the matter of North Delhi Power Limited vs. Delhi Electricity Regulatory Commission & Others., in accordance with the principle of maintaining equity and parity amongst all the Discoms;
11. In addition to the above, various issues are pending in the following Appeals and in the event the Hon'ble Commission renders relief to the Petitioner on the said issues, then to that extent the same will have twin benefits in as much as further litigation can be contained as well as the exposure of carrying costs on the consumers could also be contained.
- (a) The pending proceedings before Hon'ble Supreme Court namely Civil Appeal Nos. 8660 & 8661 of 2015, Civil Appeal Nos. 4323 & 4324 of 2015, Civil Appeal No. 4933 & 4906 of 2015, Civil Appeal No. 6959 & 6960 of 2015, Civil Appeal Nos. 1854 & 1855 of 2014, Civil Appeal Nos. 4010 & 4013 of 2014, Civil Appeal Nos. 9003 & 9004 of 2011, Civil Appeal Nos. 884 & 980 of 2010, W.P(C)No.104 & 105 of 2014 and other connected matters therein.
- (b) Appeal Nos. 376 of 2019, 193 of 2018, 69/72 of 2018, 297 of 2015, 155 of 2015, 235 of 2014, 230 of 2014 and 266 of 2013 and R.P. No. 16 of 2015 in Appeal No. 177 of 2012 pending adjudication before the Hon'ble Tribunal.
12. It is respectfully submitted that the Hon'ble Tribunal has in a catena of judgments underscored the necessity for carrying true-up of expenses for the financial viability of the licensees and utilities. The Hon'ble Tribunal has also emphasized on the requirement to carry out the exercise for true-up in a time bound manner and ensure speedy recovery of costs. Hence, allowing true-up on urgent basis is pivotal for the Petitioner to meet its power purchase costs and other uncontrollable costs, meet the performance standards as well as comply with

various directives specified by the Hon'ble Commission, which particularly entails expenditure. Timely completion of the true-up exercise allowing recovery of costs in a reasonable manner will have a positive impact on the Petitioner's ability to service the consumers/public. Hence, by way of the present petition the Petitioner seeks to set out the financial data on the basis of the actual audited numbers for consideration by the Hon'ble Commission in the present True-up Petition.

#### EFFECT OF STATUTORY DOCUMENTS:

(a) This True-up Petition is filed in accordance with the principles contained in the;

- i. Electricity Act, 2003;
- ii. DERC Tariff Regulations, 2017;
- iii. DERC Business Plan Regulations, 2017;
- iv. Tariff Policy and National Electricity Policy;
- v. Principles of law laid down by the Hon'ble Tribunal pertaining to true-up of uncontrollable factors such as power purchase costs, energy sales, new initiatives and other uncontrollable costs; and
- vi. Principles of law laid down by the Hon'ble Tribunal pertaining to recovery of accumulated Revenue Gaps and allow suitable Tariff revision to recover estimated revenue shortfall;
- vii. Principles of law laid down by the Hon'ble Tribunal pertaining to the fixing of financial and performance targets before the Tariff Year;
- viii. Principles of law laid down by the Hon'ble Tribunal that Regulations framed under the 2003 Act could not operate retrospectively;
- ix. Principles of law laid down by the Hon'ble Tribunal pertaining to approval of all expenses in the truing up while determining Aggregate Revenue Requirement without deferring any or part of the expense in the form of Regulatory Asset.
- x. Consider the energy requirement appropriately based on the exercise initiated by the Hon'ble Commission regarding reallocation of capacity.
- xi. Tariff Orders issued by Hon'ble CERC for various generating stations and Tariff Orders issued by this Hon'ble DERC for the Generating and Transmission companies from which the Petitioner draws power, while determining the power purchase and transmission costs of the Petitioner.
- xii. Business Plan/Business Plan information filed by the Petitioner.

FACTORS IMPACTING THE PETITIONER AND THE CONSUMERS:

13. A commercially sustainable and financially viable tariff is a sine qua non for the health of the electricity sector. The financial health of the Discom is in the larger interests of the consumers themselves. The entire scheme and intent of the 2003 Act is consumer interest. However, consumer interest does not lie in lower tariff alone. It lies equally, if not more, in the financial health of the utilities which are dedicated to serve their consumers. It is further submitted that the Petitioner is severely affected owing to the following factors amongst others, and therefore the Petitioner requests the Hon'ble Commission to take the same into consideration while disposing of the present True-up Petition:-
- (a) The creation and continuance of Non-cost-reflective tariff over the years for the Petitioner Licensee;
  - (b) Absence of justifiable True up of uncontrollable expenditure including but not limited to power purchase costs;
  - (c) Long Regulatory Time taken in True up of uncontrollable expenditure;
  - (d) Variation in the power purchase costs nationwide which is uncontrollable;
  - (e) The realistic rate of sale of surplus electricity is lower than the rate factored in by the Hon'ble Commission and the differential amount from the total power purchase cost creates an adverse effect on the Petitioner ;
  - (f) Progressive buildup of revenue gap and regulatory assets since FY 2006-07;
  - (g) Absence of any time bound mechanism for recovery of accumulated shortfall;
  - (h) Lower rates of carrying costs granted by the Hon'ble Commission as against the market lending rate;
  - (i) Very low rate of recovery of carrying cost of Regulatory Assets (hereinafter referred to as the "RA"), which ought to be in consonance with various judgments of the Hon'ble Tribunal thereby ensuring that the Petitioner not only recovers the carrying cost on the RA during the year but also 1/3rd of the



outstanding RA principal. In terms of the same, the surcharge ought to be revised appropriately so that the RA is recovered speedily without burdening the future consumers with the past costs. It is submitted that the prior decisions of the Hon'ble Commission to continue to retain a meagre surcharge of 8% over the revised tariff strikes at the very root of the ability of the Petitioner to be in a position to clear its outstanding dues to the generating companies and the transmission licensee who have/had issued disconnection notices.

- (j) The Petitioner finds it extremely difficult to raise funds for undertaking schemes for loss reduction from financial institutions due to the continued absence of time bound amortization schedule of the Regulatory Assets by the Hon'ble Commission which is required in line with the revised Tariff Policy, 2016 and findings of the Hon'ble Tribunal in its various judgments.
- (k) The ability of the Petitioner to liquidate the dues of the generating companies and the transmission licensee is adversely affected owing to the increase of the regulatory assets from Rs. 158.50 crore upto FY 2006-07 to Rs. 3979 Crore upto FY 2017-18 as against the mandatory requirement of being amortized within the first MYT control period ending FY 2011-12 as per the DERC Tariff Regulations, 2007 read with the Tariff Policy;
- (l) Seriously deepening the financial crisis owing to the non-cost reflective tariffs as determined under the various tariff orders as well as creation of revenue gap year after year and creation of regulatory assets as an ordinary course rather than the statutory mandate of it being required to be created only as a matter of exception;
- (m) Results in a situation where financial institutions are not willing to extend financial assistance to the Petitioner to carry on its licensed business.

14. The Hon'ble Commission is required under law to decide the present True-up Petition in a manner ensuring timely recovery of all costs so that ultimately the consumers do not have to bear the burden of avoidable carrying cost on those

amounts and costs that are not passed through in the retail tariffs on a regular basis.

15. The filing of this True-up Petition should not be treated as curtailing any right or claim of the Petitioner, which it is permitted to recover in terms of its License and Orders of the Hon'ble Commission, Hon'ble Tribunal (including the principle of parity / equality in treatment of Discoms) and or any other proceedings relevant to the entitlement of the Petitioner.
16. The present filing is to ensure prompt determination of tariff as to seek the truing up of expenses up to FY 2018-19. Though the Petitioner has made all efforts and has tried diligently to ensure the filing of a comprehensive Petition, it may be possible that some aspects/components/claims have not been dealt in detail and/or may have been inadvertently omitted. It is submitted that such inadvertent omission/deficiency, if any, would not amount to any waiver of any entitlement/claim by the Petitioner. The Petitioner craves leave of this Hon'ble Commission and reserves its rights to supplement the present Petition with additional facts, additional affidavits, additional submissions and claims, if any.
17. The filing of the present True-up Petition should not be treated as curtailing any right or claim of the Petitioner, which it is permitted to recover in terms of its License and Orders of the Hon'ble Commission, Hon'ble Tribunal (including the principle of parity / equality in treatment of Discoms) and or any other proceedings relevant to the entitlement of the Petitioner.

**PRAYERS:**

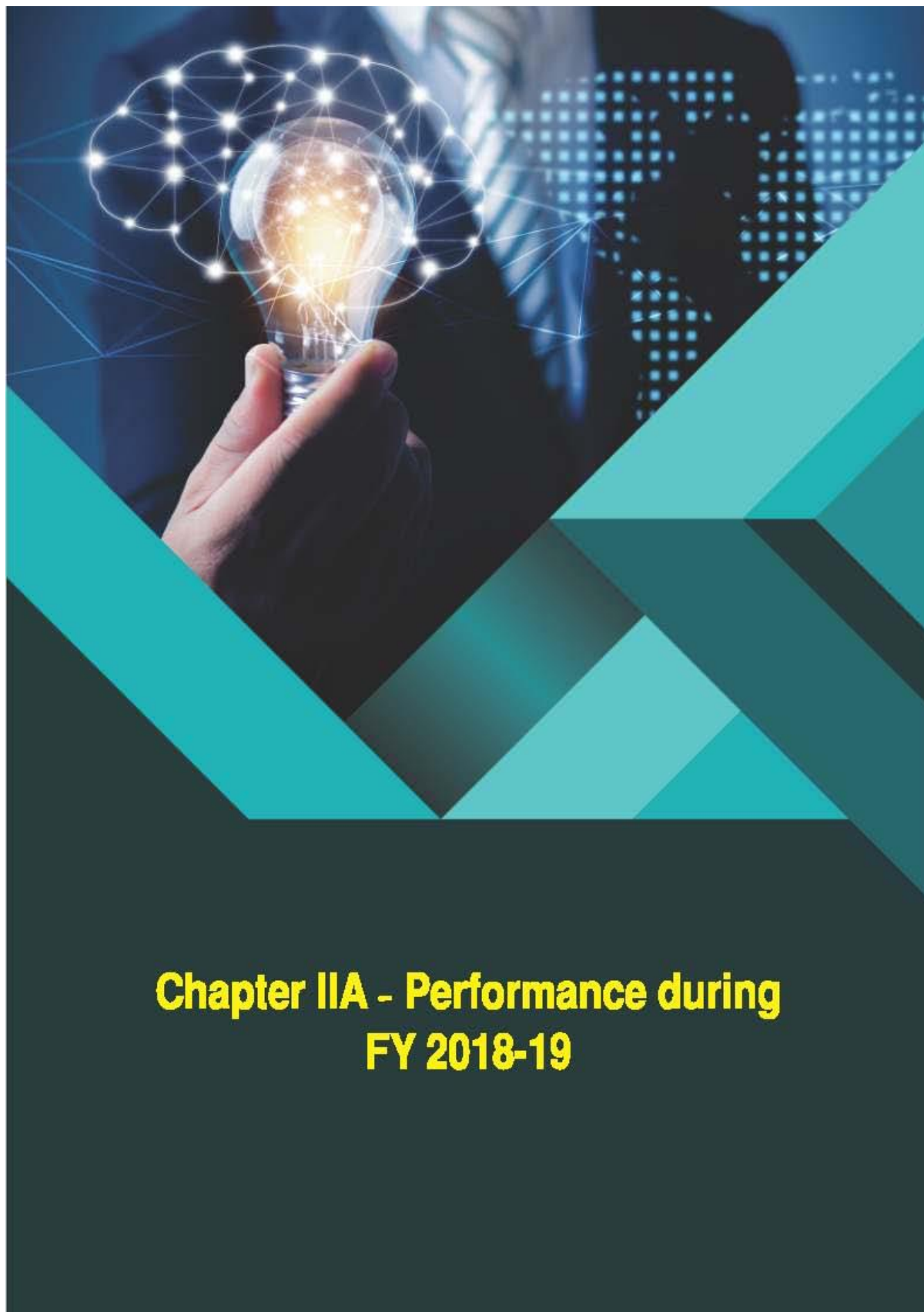
18. In view of the above, the Petitioner most respectfully prays that the Hon'ble Commission may be pleased to:
- A. Take the present True-up Petition on record and admit the same; and
  - B. Approve the true up of expenses, revenues and financial impact for past claims upto FY 2018-19 and also implement the Judgments of the Hon'ble Tribunal as detailed in Chapter 3; and
  - C. Approve amortization of the accumulated Revenue Gaps (Regulatory Asset) up to FY 2018-19 and carrying cost thereof through a surcharge as submitted in Chapter 3; and
  - D. Adjust the gap in power purchase cost by reassigning the allocation of power in terms of Regulation 121 of DERC Tariff Regulations, 2017; and
  - E. Determine carrying costs in compliance with the directions of the Hon'ble Tribunal in O.P. No. 1 of 2011 and the National Tariff Policy, i.e., in a manner so that the same covers all the levies/ amounts/interests including LPSC, being levied by Gencos; and
  - F. Give effect to any order/direction/ judgment as issued by the Hon'ble Tribunal in Appeal Nos. 376 of 2019, 193 of 2018, 69/72 of 2018, 297 of 2015, 155 of 2015, 235 of 2014, 230 of 2014 and 266 of 2013 and R.P. No. 16 of 2015 in Appeal No. 177 of 2012 pending adjudication before the Hon'ble Tribunal subsequent to the filing of and/ or during the pendency of the present Petition; and
  - G. Allow additions / alterations / changes/ modifications to the petition and permit the petitioner to place on record any developments/ facts/ documents that come to the knowledge of the Petitioner at a future date; and
  - H. Condone any inadvertent omissions/ errors/ rounding off difference/ shortcomings; and

- I. Pass any order or further order/s and grant any other relief which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Prayed accordingly

Petitioner  
Through:  
Ravi Shandilya  
Senior Manager - Regulatory  
Authorized Signatory  
BSES Rajdhani Power Limited





## Chapter IIA - Performance during FY 2018-19



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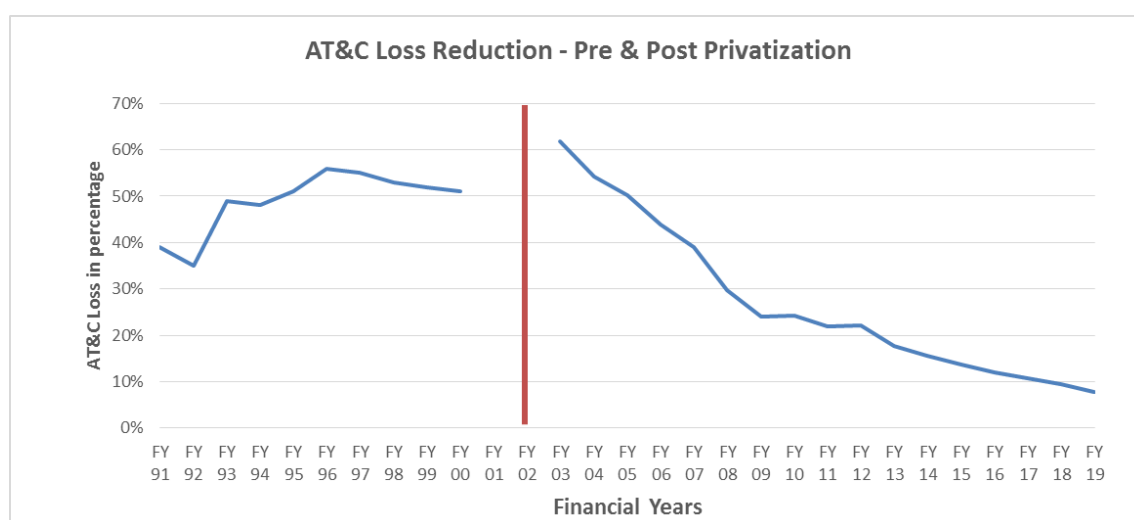
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## PERFORMANCE DURING FY 2018-19

### AT&C Loss Reduction

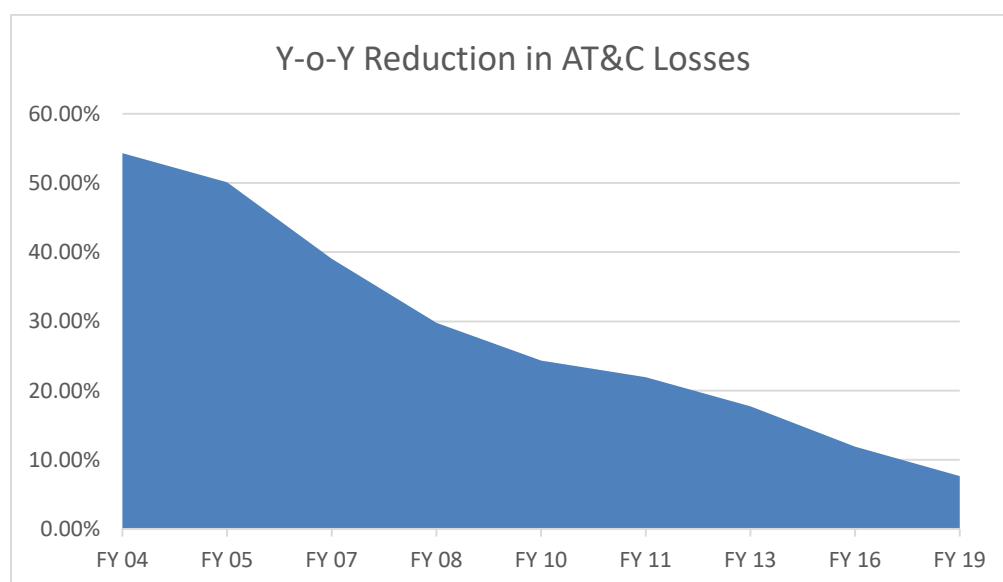
- 2A.1 During FY 2018-19, the Petitioner has reduced AT&C Loss to 8.02% over the trued-up AT&C loss level of 9.75% in FY 2017-18 (as approved by the Hon'ble Commission in Tariff Order dated 28.03.2018, thereby achieving an absolute reduction of 1.73% over the previous year.
- 2A.2 It is noteworthy that the AT&C Losses were reduced from over 51% in July'2002 to 8.02% during FY 2018-19. The graph below compares the AT&C loss levels in the last two decades:

**Figure 2A - 1: AT&C Loss levels-Pre and Post Privatisation**



- 2A.3 The average loss reduction of 3.4% per annum in absolute terms since July 2002 is amongst the highest loss reduction rate by a distribution utility in the country as shown in the figure below:

Figure 2A - 2: AT&amp;C Loss reduction



- 2A.4 The Petitioner has been consistent in delivering high performance meeting the performances standard prescribed by the Hon'ble Commission. The Standards of Performance that has been achieved by the Petitioner with respect to targets specified by the Hon'ble Commission is Tabulated below:

Table 2A - 1: Standards of Performance during FY 2018-19

Sl. No.	Standard of Performance Service area	Total FY 2018-19			
		Total Cases Rcvd (A)	Complaints Within Time	Complaints beyond time	SOP Acheived (C)
	<b>1. Power Supply Failure</b>				
(i)	Continuous power failure affecting individual consumer and group of consumer upto 100 connected at Low voltage supply, excluding the failure where distribution transformer requires replacement.	979730	979566	164	100%
(ii)	Continuous power failure affecting more than 100 consumers connected at Low voltage supply excluding the failure where distribution transformer requires replacement.	128835	128763	72	100%
(iii)	Continuous power supply failure requiring replacement of distribution transformer.	76	74	2	97%
(iv)	Continuous power failure affecting consumers connected through High Voltage Distribution System (HVDS) and not covered under (i) & (ii) above	336620	336620	0	100%
(v)	Continuous scheduled power outages	14253	14253	0	100%
(vi)	Replacement of burnt meter	41947	38479	2982	92%
	<b>Period of Scheduled Outage</b>				
2	Maximum duration in a single stretch		0	0	0
	Restoration of supply by 6:00 PM		540	0	0
3	Faults in street light maintained by the licensee	26109	26076	34	100%
	<b>Reliability Indices</b>				
4	SAIFI	1.63			
	SAIDI	1.45			
	CAIDI	10.27			

## 2A.5 Customer Oriented Initiatives:

- **Behavioural Energy Efficiency Pilot”**

The Petitioner commenced the pilot of its ambitious Behavioural Energy Efficiency program in association with Oracle Utilities and USTDA. Under the pioneering initiative, a behavioural energy efficiency program is being carried out covering 2 lakh customers in South and West Delhi. Starting from April 1, 2018, the duration of the BRPL BEE pilot is 18 months. With the roll-out, the Petitioner became the 1st discom in India to deploy India's 1st Behavioural Energy Efficiency Program.

The objective of the program is to bring-about verifiable energy savings at scale. Using their proprietary software, Oracle O' Power is studying individual lifestyle and energy consumption habits. They are providing insights on how energy is used at homes and generate customised reports. Based on these, customised reports are being generated for each of the 2 lakh customers (in the pilot project) on how to create energy efficiency actions and corresponding savings.

Based on results in comparable markets, Home Energy Reports (HERs) have the potential to save 1-2% in the Petitioner's peak power demand once the program is rolled-out across the discom.

- **‘Dial n Dig’ Dedicated Helpline Number**

There can be several reasons for outages, many of which are not in our control. But many of these are easily preventable. Often, while laying cables / pipelines, civic agencies, telecom, operators and their contractors inadvertently damage/puncture electricity cables. This not only causes outages (sometimes for long duration), but can also be a serious safety threat for the area residents /passersby, as also for the workers involved in the digging. This also causes substantial monetary loss to the discom.

These incidents are easily preventable. All a civic agency and its contractors have to do is inform (BRPL) before starting excavation / digging on any corridor. This will help the discom take necessary measures, preventing damage to electricity cables and disruption in power supply. The Petitioner's patrolling teams are on alert. Upon receiving the information, they will reach the venue at the earliest.

For the benefit of the civic agencies and RWAs, BSES has launched ‘Dial n Dig’, dedicated 24 x 7 helplines. For BRPL (South and West Delhi), the number is 1800 3000 9707. By doing so, BSES became the first discom in the city to do so.

- **AC Replacement Scheme**

As a socially responsible organisation, the Petitioner has been promoting energy conservation aggressively. The discom has been championing the cause of safer, sustainable technologies, including LED and roof top solar net metering.

Taking this commitment to the next level, the Petitioner launched a limited period 'AC Replacement Scheme' in partnership with leading air conditioner manufacturers. It enabled the consumers, residing in South and West Delhi, to exchange their old ACs with the new energy efficient rated 5-star rated ACs at a substantial discount of upto 47%.

- **No Supply' Complaints Through Whats App:**

The Petitioner has made it possible for their consumers to register a 'no supply' complaint through their favourite messaging app – Whats App. All a consumer has to do is save the BSES Whats Number in their phones 'contacts' list and send a Whats App message "#NC, along with their 9-digit CA number to 9999919123.

Their complaint number will be registered and they will be Whats Apped the complaint number. To provide a seamless resolution of the complaint, Whats App has been integrated with BSES Customer Relationship Management (CRM) tools like 'Intelligent Outage Management System'.

- **Duplicate Bill Through WhatsApp:**

Taking its digital journey forward, the Petitioner is embracing the popular messaging app WhatsApp in various innovative ways. Now apart from BSES' Mobile App and Website, a consumer can also get a duplicate bill on WhatsApp. With the launch of this service, BSES has become the first discom in Delhi to do so.

To get a duplicate bill, all a consumer has to do is save the BSES WhatsApp number in their phone's 'contacts' list and send a Whats App message "Type #Bill<space>9-digit CA No and send it to 9999919123" and the duplicate bill will be WhatApped.

- **Tatkal' Electricity Connections for Pujas, Pandals and Marriages**

Joining-in the festivities and with an eye on Delhi's pollution levels, the Petitioner provided 'Tatkal' temporary electricity connection for Pujas, Pandals, Marriages and even Construction activities. Getting them is not only hassle free. It is also cheaper, safer, noise and pollution free.

Under the innovative scheme, consumers were able to get a temporary connection the same day of applying and completing the requisite commercial formalities. Typically, it can take between three-five days to get a

temporary connection. To get a 'tatkai' temporary electricity connection, all a consumer had to do is contact the Petitioner's centre numbers 19123/39999707 (BRPL), or visit the customer care centre / Digi Seva Kendra at the division office and complete simple formalities. They could also apply and make payment for the temporary connection online on BSES' website ([www.bsesdelhi.com](http://www.bsesdelhi.com)) and from BSES' Mobile App.

- **Lok Adalats organised to amicably settle around 4000 cases**

On demand from consumers, the Petitioner had organised 'paperless' Lok Adalats in December 2018 and February 2019 in association with the Delhi State Legal Services Authority (DSLISA). These amicably settled around 4000 power-theft cases on-the-spot.

Consumers from various walks of life used this opportunity, for an amicable and on-the-spot settlement of their power theft cases, relating to both Direct Theft (DT) and Meter Tampering (DAE). Cases that are either pending in any Court of Law or are yet to be filed in any Court of Law were taken up by the Lok Adalats.

## 2A.6 Renewable Related Initiatives:

- **Roof-top solar connections cross 1300**

During FY 2018-2019, the number of roof-top solar net metering connections crossed 1300 with an installed capacity of around 44 MW. The response to roof top solar net metering has been very incredibly encouraging. Consumers across categories, including residential, educational (and schools) and commercial establishments have warmed up to roof top solar net metering in big-way.

For consumers, roof top solar net metering is an ideal method to reduce electricity bills and do their bit for the environment. It allows them to generate electricity for self consumption and sell surplus, if any, to the discom, which in-turn pays them for the surplus energy generated over and above their own consumption as per DERC guidelines (in Delhi). Domestic consumers also enjoy the benefit of Generation Based Incentive (GBI), which at present is Rs 2 per unit. Moreover, consumers opting for the RESCO model don't have to incur any upfront capital expenditure. It is borne by the vendor.

- **BRPL & EESL Partner to promote emerging technologies**

BSES Rajdhani Power Limited (BRPL) and Energy Efficiency Serviced Limited (EESL) entered into a strategic partnership to provide reliable services and offerings to the discom's consumers in South and West Delhi in the areas of



smart and emerging technologies. The scope of this association will cover developing technologies like Roof top solar, Smart Meters, Electric Vehicles (EV) / EV charging stations, Solar irrigation pumps and Energy storage solutions.

Under the MoU, BRPL and EESL will collaborate to explore the deployment of these emerging technologies to bring in energy efficiency, promote renewables and reduce the peak power demand in South and West Delhi. It will also enable BRPL to leverage EESL's strengths and benefit from their global associations and international expertise in these and related areas.

- BSES Solar City Initiative: Dwarka CGHS Energises a 100 KW Roof-Top Solar Plant**  
 By installing a 100 KW grid-connected rooftop solar plant, the Shiv Bhole Cooperative Group Housing Society in Dwarka became the first CGHS to go live as part of the Petitioner's ambitious 'Solar City Initiative - Solarise Dwarka'. By doing so, the residential society has set an example not only for the roughly 250 housing societies in this sub-city, but also for the entire national capital. The solar plant is first under the initiative. The Solarise Dwarka initiative is being implemented by the Petitioner in collaboration with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ India) under its Indo-German Solar Partnership project.

The 100kWp solar plant installed at the housing society would save roughly Rs 4500 annually for each of the 60 households in the society. The plant has been installed by Green Ripples Pvt Ltd following RESCO business model. RESCO model entails providing electricity as a service at a cost identified through the competitive bidding which in this case is 2.66Rs/kWh net of Generation based incentive and is around 2.40/kWh less than the tariff from BRPL. The bidding was administered by Indraprastha Power Generation Company Limited for 84MWp capacity.

- 500 KW of Rooftop Solar Plant inaugurated in Dwarka**  
 As part of the Petitioner's "Solar City Initiative – Solarise Dwarka", grid connected rooftop solar plants of 506 KW were energised in August 2018 in seven cooperative group housing societies (CGHS) in Dwarka and will benefit over 700 flats. Moreover, with the energisation of these solar plants, including the ones that will be energised soon, with the total installed grid-connected solar roof top capacity as part of BRPL' Solar City Initiative in Dwarka CGHS has crossed 1000 KW or 1 MW across more than 14 societies. On account of the solar plants, these housing societies will cumulatively save around 6.5 lakh units of energy and Rs 32 lakh annually. Out of the seven

solar plants, five have been installed following the RESCO business model and two through the Capex model.

- **BRPL inks agreement to procure 200 MW of wind power**

Petitioner has been championing the cause of renewable energy. In continuation of this commitment, the Petitioner has signed Power Sale Agreement (PSA) with SECI (Solar Energy Corporation of India) to procure BRPL 150 MW, BYPL 50 MW of wind power. The power is expected to be available to BRPL from the third week of November, 2019, for a period of 25 years and will be available at a very competitive tariff of Rs 2.52 per unit.

This is not only one of the lowest tariff for wind power, but is also priced substantially lower than the average cost of long-term PPAs, which are above Rs 4.5 per unit. Moreover, this agreement will help the discom to fulfil their Renewable Purchase Obligations (RPO).

Moreover, a prudent mix of wind and solar power in the discom's power portfolio will be helpful in effectively meeting Delhi's peak power demand. It is pertinent to note that Delhi experiences peak power demand twice in a 24-hour period and this wind power being sourced from the coastal area of Gujarat is expected to support the night peak demand.

## 2A.7 Corporate Social Responsibility (CSR) Initiatives :

- **BRPL and TERI Partner to Educate 90,000 Students**

BSES Rajdhani Power Limited (BRPL) and The Energy and Resources Institute (TERI) joined hands to launch an innovative educational program on energy conservation. Aimed at young minds and titled, 'Energy Wise Energy Rise', the program will educate, train and reach out to around 90,000 students in government schools. A three year Memorandum of Understanding (MoU) has been signed between the two organisations to the effect. In the first year itself of this three year program, 30,000 students from 100 government schools in South and West Delhi underwent a structured educational learning. Moreover, of these, 5233 students have been recognised as energy champions.

It provides students with a unique platform that will help them to make sustainable choices, learn new concepts and share experiences on energy efficiency, alternative/sustainable energy and newer ways to mitigate environmental hazards. The goal is for students to "learn by doing." This unique program is designed to translate 'thought' into 'action' through engaging visual instructions and hands-on applications and learning.

- **BRPL consumers saved 92 MW on account of the Earth Hour**

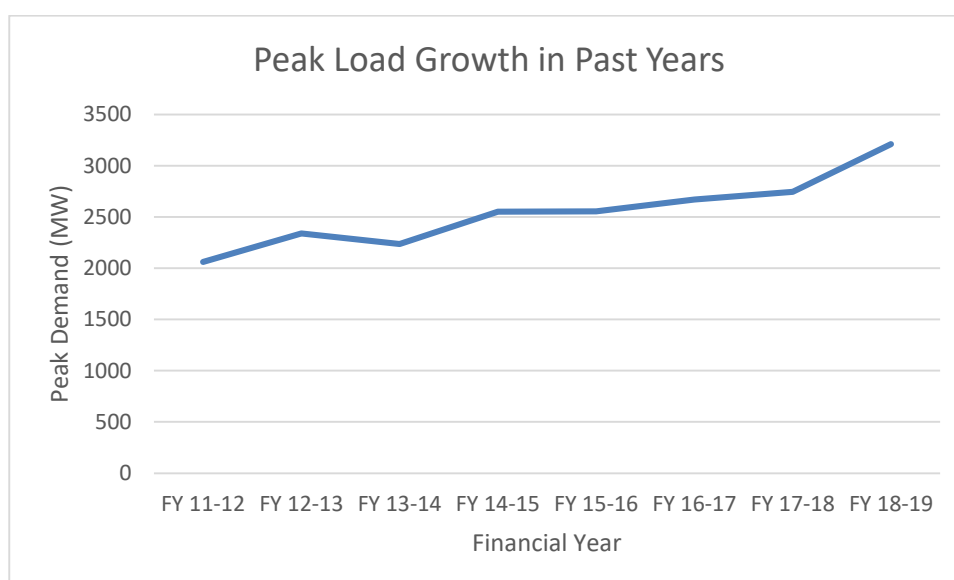
On March 30, 2019, skylines in Delhi and in over 7000 cities across the six continents around the globe once-again went dark for an hour to observe the Earth Hour. The appointed hour saw Delhiites join their over a billion counterparts in Mumbai, Los Angeles, London, Hong Kong, Sydney, Rome, Manila, Singapore, Dubai and in several other cities in over 180 countries to switch off their electrical appliances and non essential lighting fixtures for one hour starting 8: 30 pm (local time) to show their concern for the environment. Rising to the occasion, BRPL consumers saved 92 MW highest by any discom in Delhi.

## Operational Performance

**2A.8** Total number of consumers being served by the Petitioner at the end of FY 2018-19 was 25.55 lakhs as against 24.65 consumers served at the end of FY 2017-18 thus exhibiting annual growth of 3.7%. Evidently, the Petitioner's consumer base is one of the largest consumer base under a private distribution utility in the country.

During FY 18-19, the Petitioner was able to serve peak demand of 3211 MW. The growth in peak demand witnessed in the last 6 years is depicted below:

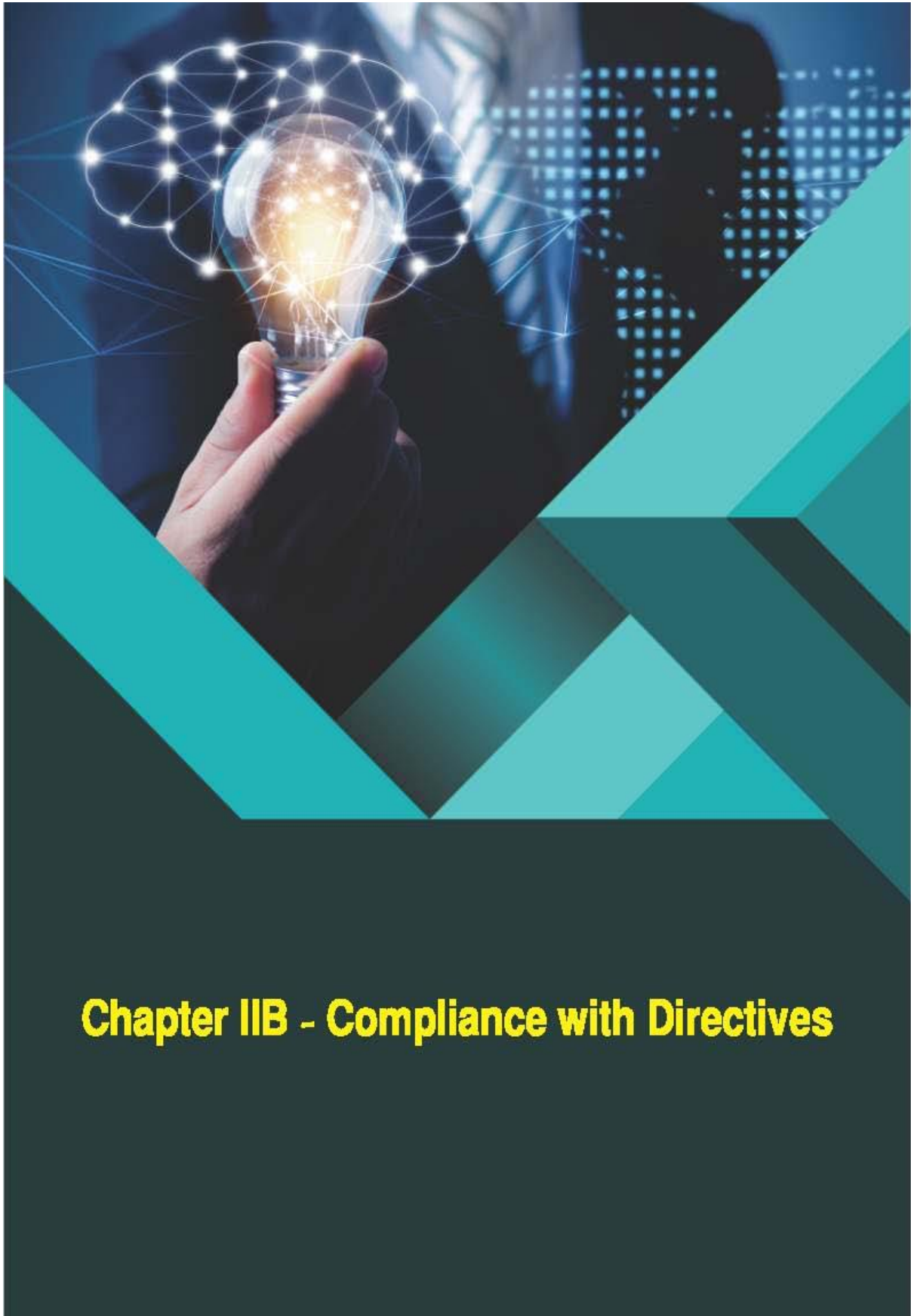
**Figure 2A - 3 : Trajectory of Peak Power demand in Delhi**



**2A.9** By touching 7016 MW, Delhi's peak power demand broke all previous records on July 10, 2019. This is an increase of over 250% over the peak power demand of 2879 MW in 2002. The peak power demand in BRPL' area of South and West

Delhi, too clocked 3211 MW this year, the highest ever recorded in the region.

- 2A.10 Such has been the increase in Delhi's power demand that the peak power demand in BSES Rajdhani Power Limited (BRPL) area of South and West Delhi at 3211 MW is substantially more than Delhi's peak power demand in 2002. Moreover, Delhi's peak power demand is more than the power demand of Mumbai and Chennai put together.
- 2A.11 The fact that the city's power demand is consistently crossing the 6500 MW (and crossing 7000 MW) shows the robustness of the capital's distribution and transmission system, which has been able to measure up.



## Chapter IIB - Compliance with Directives

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**COMPLIANCE WITH DIRECTIVES**

The Hon'ble Commission has given various directives in its Tariff Order dated 28.03.2018. The Petitioner is reporting compliance against each of the said directives as detailed below:

- 1. The Commission directs the Petitioner to make timely payment of bills to all the generating companies and transmission utilities. No Late Payment Surcharge shall be allowed as a pass through in the ARR on account of delayed payments. (Ref: Para 6.1 of the Tariff Order dated 28.03.2018)**

**Compliance:**

The Petitioner has submitted the month wise audited cash flow statement to the Hon'ble Commission. It is evident from the statements that the Petitioner has paid to the Generating / Transmission companies to the extent of revenue recovered from consumers after meeting its statutory obligations and bank repayments i.e. as per its paying capacity. Hence, the directive of the Hon'ble Commission has been complied with to the extent of the funds available with the Petitioner.

Also, the matter pertaining to payment to Generating Stations and Transmission Utilities are presently sub-judice before Hon'ble Supreme Court in the matter of W.P. 104 & 105 of 2014 and before the Hon'ble Tribunal in the matter of Appeal Nos. 27, 28 & 32 of 2014. Without prejudice to the Petitioner's submissions made in the above matters, it is humbly submitted that pursuant to Hon'ble Supreme Court's order dated 23.03.2014, the Petitioner is making payments to Central and State Gencos and Transmission Utilities against current dues to the extent possible. It would not be out of place to reiterate that these payments are being made against severe odds due to continued financial hardship and huge persisting accumulated regulatory assets.

Apart from the above, it may also be noted that subsidy granted by GoNCTD under section 65 of the Electricity Act, 2003 is being adjusted by GoNCTD directly against proportionate outstanding dues of IPGCL, PPCL and DTL.

- 2. The Petitioner shall directly deposit the amount of pension trust surcharge collected from the consumer as per the tariff schedule in the following bank account, of Pension trust (Ref: Para 6.2 of the Tariff Order dated 28.03.2018):**

1	A/C No.	10021675545
2	MICR No.	110002103
3	Bank	State Bank of India
4	IFSC Code	SBIN0004281
5	Name	DVB-ETBF-2002
6	Branch	Rajghat Power House, New Delhi - 110002

**Compliance:**

The Petitioner submits that the aforesaid Directive is being complied with. Details of month-wise amount transferred to specified Pension Trust account is tabulated below:

(Figures in Rs.Cr.)

Payment details for FY 2018-19 as per DERC tariff order dated 28/03/2018

FY 18-19						
Collection Month	Amt Due	Date of Payment	Amount Paid	Bank Details	Cumulative Payment	Balance
Apr-18	16.46	25/05/2018	10.00	Fund Transfer		
		28/05/2018	7.00	Fund Transfer	17.00	-0.54
May-18	25.43	25/06/2018	15.00	AXSK181760031420	32.00	
		26/06/2018	10.43	UTIBR52018062600354277	42.43	-0.55
Jun-18	30.58	23/07/2018	15.00	Fund Transfer	57.43	
		26/07/2018	15.03	UTIBR52018072600353260	72.46	-
Jul-18	38.23	07/08/2018	38.60	Fund Transfer	111.06	-0.37
Aug-18	36.09	07/09/2018	36.60	Fund Transfer	147.66	-0.88
Sep-18	35.68	06/10/2018	34.81	Fund Transfer	182.47	-
Oct-18	33.63	13/11/2018	10.00	UTIBR52018111300361031	192.47	
		14/11/2018	10.00	AXSK183180027913	202.47	
		16/11/2018	13.63	UTIBR52018111600352550	216.09	-
Nov-18	26.94	12/12/2018	10.00	AXSK183460022745	226.09	
		13/12/2018	7.00	AXSK183470026763	233.09	
		15/12/2018	9.94	UTIBR52018121500350449	243.03	-
Dec-18	23.30	14/01/2019	12.00	AXSK190140027053	255.03	
		15/01/2019	11.30	UTIBR52019011500357487	266.33	-
Jan-19	24.30	14/02/2019	24.30	Fund Transfer	290.63	-
Feb-19	23.26	07/03/2019	23.26	Fund Transfer	313.89	-
Mar-19	26.35	08/04/2019	26.35	Fund Transfer	340.24	-

3. The Commission directs the Pension Trust to intimate the total amount collected through Pension Trust surcharge and adjust any surplus/gap in its claim for the subsequent year (Ref: Para 6.3 of the Tariff Order dated 28.03.2018):.

**Compliance:**

Compliance with respect to Para 6.3 is directed towards Pension Trust, hence no action is anticipated from the Petitioner in this regard.

4. If the Petitioner purchases any expensive power to meet the demand during any time zone for which cheaper power has been regulated due to non-payment of

dues, in such an eventuality, the cost of such expensive power purchases shall be restricted to the variable cost of regulated cheaper power to that extent at the time of true up (Ref: Para 6.4 of the Tariff Order dated 28.03.2018):

**Compliance:**

The Petitioner submits that during FY 2018-19, there has been no regulation of power due to non-payment of dues hence the scenario contemplated in Para 6.4 does not arise.

5. In case the power is regulated by DTL/Interstate Transmission Licensee due to non-payment of their dues, in such case the transmission charges borne by the Petitioner shall also not be allowed (Ref: Para 6.5 of the Tariff Order dated 28.03.2018):

**Compliance:**

The Petitioner in this regard would like to submit that no power was regulated by DTL / Interstate Transmission Licensee during FY 2018-19.

6. The Commission directs the Petitioner to ensure availability of power supply for meeting the demand. The Petitioner shall ensure that the electricity which could not be served due to any reason what-so-ever, shall not exceed 1% of the total energy supplied in units (kWh) in any particular month except in the case of force majeure events which are beyond the control of the Petitioner (Ref: Para 6.6 of the Tariff Order dated 28.03.2018):

**Compliance:**

The Petitioner would like to submit that the aforementioned directive is being complied with. The Petitioner is also submitting month-wise outage reports with the Hon'ble Commission incorporating details of all outages during the month and energy that could not be served due to such outages.

7. It is directed that the Petitioner shall not accept payment from its consumers at its own collection centres/mobile vans in cash towards electricity bill exceeding Rs 4,000/- except from blind consumers and for court settlement cases or any other cases specifically permitted by the Commission. The limit for accepting payment through cash by the consumers at designated scheduled commercial bank branches shall be Rs. 50,000/-. Violation of this directive shall attract penalty to the level of 10% of total Cash collection exceeding these limits (Ref: Para 6.7 of the Tariff Order dated 28.03.2018):

**Compliance:**

The Petitioner would like to humbly submit that the issue pertaining to the aforementioned compliance is presently sub-judice before Hon'ble APTEL in Appeal 265 of 2013 and Appeal 235 of 2014. Till such time the matter is heard and decided by Hon'ble APTEL, the Petitioner has taken stringent measures to ensure that no cash collection exceeding Rs.4000/- is being accepted and is thus complying with the aforementioned directive.

BRPL has also tied up with scheduled banks in line with the Hon'ble Commission's directive who are accepting payments up to Rs.50,000/-

- 8. The Commission directs the Petitioner to restrict the adjustment in units billed on account of delay in meter reading, raising of long duration provisional bills etc. to a maximum of 1% of total units billed (Ref: Para 6.8 of the Tariff Order dated 28.03.2018):**

**Compliance:**

The Petitioner, with regard to the aforementioned directive would like to humbly submit that the Petitioner is required to issue bill amendments / reversals under ordinary course of business. Reversal of bills are also necessary to ensure accounting prudence and accuracy. Several reasons can be attributed for such bill reversals / amendments some of which are as follows:

- Provisional billing:** The Petitioner is allowed to raise provisional bills on certain occasions in terms of the DERC Supply Code Regulations. One of the key reasons for provisional billing is meter readers' inability to obtain meter reading as consumer's premises are either found locked or the consumer refusing to permit meter reading for any reason. There may also be other valid reasons when the Petitioner is constrained to raise a provisional bill such as any abnormality noticed during pre / post audit. The Petitioner has a robust billing process which is designed to eliminate instances of abnormal / inflated billing. Part of this process is an audit before the bill cycle is run and another audit after the bill cycles has been completed. If any abnormality is observed during either pre-audit or post-audit, a provisional bill is issued if sufficient time for a meter re-reading is not available for that month. Once a provisional bill is raised, the Petitioner has to reverse the entire provisional bill once actual meter reading is obtained in subsequent month and a fresh bill is raised after based on actual meter reading after reversing the entire provisional bill raised earlier. It may be noted that this entire process of raising a provisional bill and reversing the same is entirely within the ambit of the DERC Supply Code Regulations.

- **Order of a competent court / legal authority:** In many instances either consumers of the Petitioner or the Petitioner itself approaches a court of law for adjudication for billing and other disputes. In many such cases, bills raised earlier need to be reversed in accordance with the final verdict of such Court.
- **Other reversals:** There may be several other reasons why the Petitioner may need to reverse bills and issues amendments. Once such reason is billing for own / self-consumption. The Petitioner has been directed by the Hon'ble Commission to raise bills for own consumption with zero tariff for the entire year. At the end of the financial year, if such self-consumption exceeds the normative limit set forth by this Hon'ble Commission, the same needs to be reversed and re-billed under non-domestic category.
- **Changes / revision in tariff components, PPAC, etc.:** The Hon'ble Commission has the sole prerogative for determination of tariff including its various constituent components. There have been instances when revisions in certain components of tariff had to be implemented retrospectively. In all such cases, bills raised with the old tariff need to be reversed before new bills can be issued with the revised tariff.
- **Error due to manual punching of data:** The petitioner in this regard would like to submit meter reading data is downloaded automatically using the optical port in all cases. However, in exceptional cases, meter reading data cannot be downloaded through the optical port due to technical error of the port. In such cases meter reading is manually entered in to the meter reading device. In exceptional cases, there may be human error while entering such reading data in which cases the said bill is reversed in its entirety and a fresh bill is generated which results in reversal entries. However, it may be noted that there is no financial implication due to such reversals as in most cases the bills are reversed in the same month.  
It may also be noted that the provisions of the DERC Supply Code Regulations 2017, allows billing mistakes of up to 0.2% of total number of bills raised during the year. The Petitioner's total cumulative number of bill reversals during FY 2018-19 were significantly below this limit of 0.2%.

It is further submitted that the subject matter pertaining to the aforementioned directive is presently sub-judice before the Hon'ble APTEL in Appeal 193 of 2018.

In view of the above and pending final outcome in the Appeal 193 of 2018, it is submitted that the Petitioner is endeavoring to comply with the aforementioned directive to the extent possible and within the constraints outlined above.

9. **The Commission directs the Petitioner to survey the electricity connections of hoardings and display at malls and multiplexes and ensure the billing in the category of advertisements/hoarding category and to submit an annual compliance report by 30th April of the next year (Ref: Para 6.8 of the Tariff Order dated 28.03.2018):**

**Compliance:**

The Petitioner would like to submit that in accordance with the instant directive, the Petitioner had conducted a survey in all the malls under its license area to ensure that billing of advertisement hoardings are being billed in the correct tariff category.

In this regard, Hon'ble Commission may also kindly note that during FY 2018-19 tariff determined by the Hon'ble Commission for Non-domestic / Commercial category has been exactly the same as that for Advertisement & Hoarding category which makes such a survey somewhat redundant as the tariff is exactly the same even though the nomenclature of the category is different.

10. **The Commission further directs the Petitioner:**

a. **To provide the information to the consumer through SMS on various items such as scheduled power outages, unscheduled power outages, Bill Amount, Due date and Maximum Demand during the month, etc. as directed by the Commission from time to time.**

The Petitioner would like to submit that the aforementioned directive is being complied with. The Petitioner has submitted its report for compliance of this directive vide letter no. RA/2018-19/01/A/370 dated 7th September 2018.

b. **To maintain toll free number for registration of electricity grievances and to submit the quarterly report.**

The Petitioner would like to submit that a toll-free number has been instituted for registering complaints / requests from consumers. Hence, the instant directive is being complied with. The Petitioner has reported month-wise report on calls received on toll free numbers during FY 2018-19 vide the following letters:



- RA/2018-19/01/A/370 dated 07.09.2018.
- RA/2018-19/01/A/569 dated 22.01.2018
- RA/2019-20/01/A/89 dated 28.05.2019.

**c. To conduct a safety audit and submit a compliance report within three months.**

In line with the aforementioned directive, the Petitioner conducted safety audit and submitted its report with the Hon'ble Commission vide letter no. RA/2019-20/01/A/421 dated 14.11.2019. The Petitioner reiterates the contents of the said letter, which are not being repeated herein for the sake of brevity.

**d. To carry out preventive maintenance as per schedule.**

The Petitioner is carrying out the preventive maintenance as has been directed by the Hon'ble Commission. The efforts of the Petitioner in this regard are reflected in the low outages and the superior quality of power supply being supplied to the Petitioner's consumers.

**e. To submit the information in respect of Form 2.1 (a) as per revised format issued by the Commission to the utilities on monthly basis latest by 21st day of the following month.**

The Petitioner would like to submit that the nature of the aforementioned directive is ongoing in nature and is being complied with.

Form 2.1a has been submitted with the Hon'ble Commission on a monthly basis vide the following letters:

S. No.	Month	Letter Ref. No.	Letter Dated
1	April-2018	RA/2018-19/01/A/139	24.05.2018
2	May-2018	RA/2018-19/01/A/225	22.06.2018
3	June-2018	RA/2018-19/01/A/289	24.07.2018
4	July-2018	RA/2018-19/01/A/348	24.08.2018
5	August-2018	RA/2018-19/01/A/391	24.09.2018
6	September-2018	RA/2018-19/01/A/427	23.10.2018
7	October-2018	RA/2018-19/01/A/479	26.11.2018
8	November-2018	RA/2018-19/01/A/515	17.12.2018
9	December-2019	RA/2018-19/01/A/553	16.01.2019

S. No.	Month	Letter Ref. No.	Letter Dated
10	January-2019	RA/2018-19/01/A/624	20.02.2019
11	February-2019	RA/2018-19/01/A/666	18.03.2019
12	March & FY 2018-19	RA/2019-20/01/A/210	19.07.2019

The Petitioner reiterates the contents of the aforesaid letters, which are not being repeated herein for the sake of brevity.

**f. To submit the annual energy audit report in respect of their network at HT level and above.**

In accordance with the aforementioned directive, the Petitioner has submitted energy audit report of HT network and above and has submitted the report with the Hon'ble Commission vide letter RA/2019-20/01/A/418 dated 14.11.2019. The Petitioner reiterates the contents of the said letter, which are not being repeated herein for the sake of brevity.

**g. To submit the Auditor's certificate in respect of Form 2.1(a) on quarterly basis within the next quarter.**

The Petitioner would like to submit that the nature of the aforementioned directive is ongoing in nature and is being complied with.

Auditor's certificate in respect of Form 2.1a on quarterly basis has been submitted with the Hon'ble Commission on a monthly basis vide the following letters:

S. No.	Month	Letter Reference Number	Date of letter
1	Quarter 1 (April'18 to June'18)	RA/2018-19/01/A/374	10/09/2018
2	Quarter 2 (July'18 to Sept.'2018)	RA/2018-19/01/A/511	14/12/2018
3	Quarter 3 (Oct.'18 to Dec.'18)	RA/2018-19/01/A/631	21/02/2019
4	Quarter 4 (Jan.'19 to March'19)	RA/2019-20/01/A/211	19/07/2018

The Petitioner reiterates the contents of the aforesaid letters, which are not being repeated herein for the sake of brevity.

**h. To incorporate the following information in the annual audited financial statements:-**

- i. Category-wise Revenue billed and collected,
- ii. Category-wise breakup of 8% and 3.70% Surcharge billed and collected,

- iii. Category-wise PPAC billed and collected,
- iv. Category- wise Electricity Duty billed and collected,
- v. Category-wise subsidy passed on to the consumers during the financial year, if any,
- vi. Category-wise details of the surcharge billed on account of ToD,
- vii. Category-wise details of the rebate given on account of ToD,
- viii. Street light incentive and material charges for street light maintenance,
- ix. Direct expenses of other business,
- x. Revenue billed on account of Own Consumption,
- xi. Revenue collected on account of enforcement/theft cases,

The Petitioner would like to submit that the nature of the aforementioned directive is ongoing in nature and is being complied with. The aforementioned information has been included in the audited accounts of FY 2018-19.

**i. To submit annual auditor certificate in respect of power purchase details of the previous year by 30th July of the next financial year.**

The Petitioner has submitted auditor's certificate in respect of power purchase for the FY 2018-19 vide letter no. RA/2019-20/01/A/172 dated 01.07.2019, the contents of which are reiterated but not repeated herein for the sake of brevity.

**j. To submit the reconciliation statement in respect of power purchase cost/Transmission cost on a quarterly basis with respective Generation/Transmission companies;**

The Petitioner would like to submit that it has complied with the aforementioned directive and has submitted reconciliation statement in respect of power purchase cost and transmission cost with the Hon'ble Commission vide letter no. RA/2019-20/01/A/215 dated 23.07.2019. The Petitioner reiterates the contents of the aforesaid letter, which are not being repeated herein for the sake of brevity.

**k. To strictly adhere to the guidelines on short-term power purchase/sale of power issued by the Commission from time to time and to take necessary steps to restrict the cost of power procured through short term contracts at Rs.5 per kWh. In case the cost of power proposed to be procured exceeds the above ceiling limit, this may be brought to the notice of the Commission within 24 hours detailing the reasons or exceptional circumstances under which this has been done. In the absence of proper justification towards short term power purchase at a rate higher than the above ceiling rate (of Rs.5 per kWh), the Commission reserves the right to**

**restrict allowance of impact of such purchase on total short term power purchase not exceeding 10 Paise /kWh during the financial year.**

Compliance to the aforementioned compliance is ongoing in nature and the Petitioner would like to place on record that the same is being complied with. The Petitioner constantly endeavours to procure short term power with the defined limit of Rs.5 per kwh to the extent possible. However, whenever under exceptional circumstances, the Petitioner is constrained to procure power more than the prescribed limit of Rs.5 per kwh, the same is intimated to the Hon'ble Commission in writing.

**l. To raise the bills for their own consumption of all their installations including offices at zero tariff to the extent of the normative self-consumption approved by the Commission and exceeding the normative limit of self-consumption at Non-Domestic tariff for actual consumption recorded every month.**

The Petitioner would like to submit that the aforementioned directive is ongoing in nature and is being complied with.

**m. To submit the quarterly progress reports for the capital expenditure schemes being implemented within 15 days of the end of each quarter.**

The Petitioner would like to submit that the aforementioned directive is ongoing in nature and is being complied with. In line with the aforementioned directive, the Petitioner has submitted progress reports with respect to capital expenditure schemes with the Hon'ble Commission vide the following letters, the contents of which are reiterated but not repeated herein for the sake of brevity:

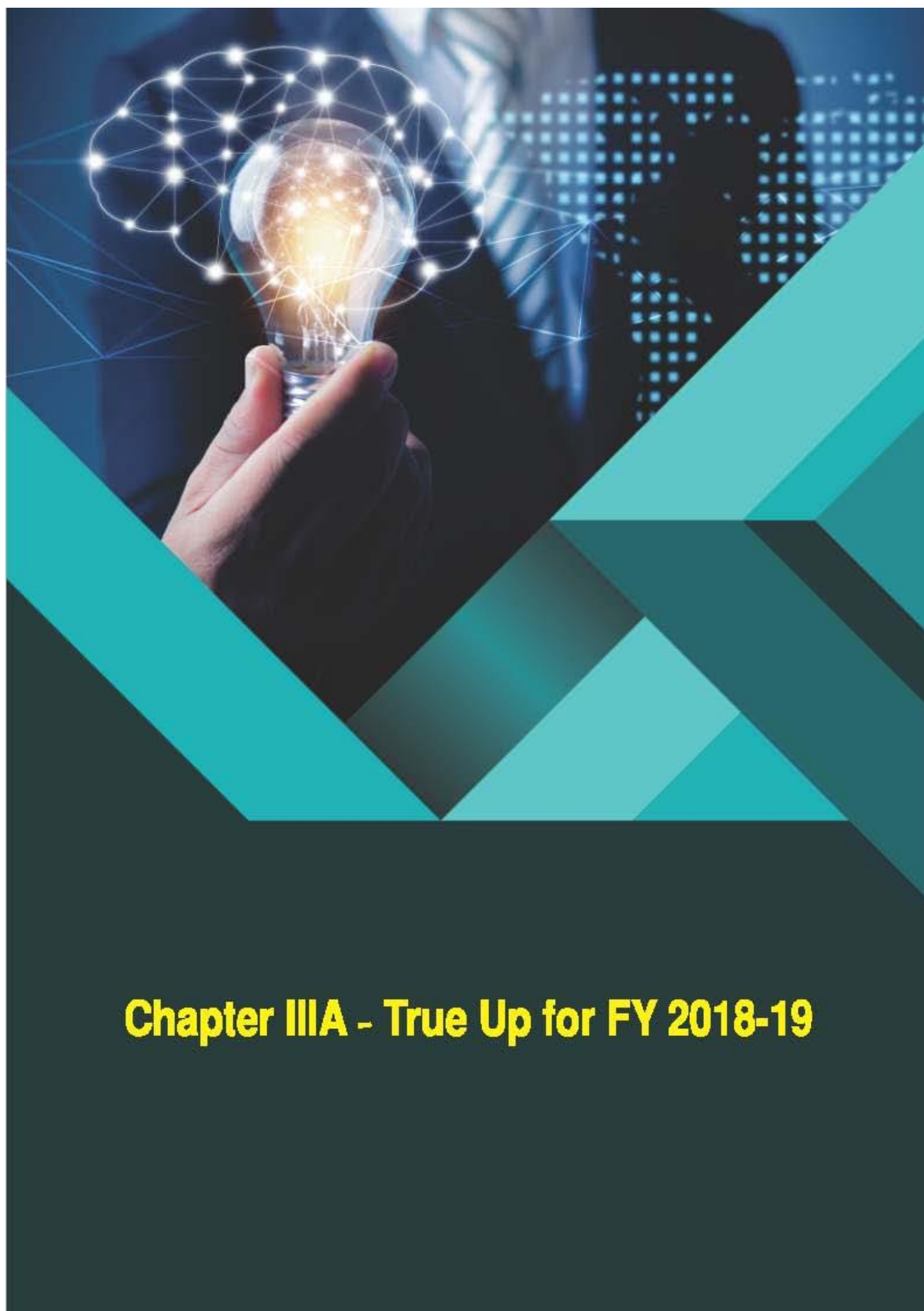
- i. FY 2018-19 Quarter I: Letter no. RA/2018-19/01/F/304 dated 31.07.2018.
- ii. FY 2018-19 Quarter II: Letter no. RA/2018-19/01/F/444 dated 31.10.2018.
- iii. FY 2018-19 Quarter III: Letter no. RA/2018-19/01/F/589 dated 31.01.2019.
- iv. FY 2018-19 Quarter IV: Letter no. RA/2019-20/01/F/230 dated 26.07.2019.

**n. To submit the actual details of capitalization for each quarter for the year within one month of the end of the quarter for consideration of the Commission. All information regarding capitalization of assets shall be furnished in the formats prescribed by the Commission, along with the requisite statutory**

**clearances/certificates of the appropriate authority/Electrical Inspector, etc. as applicable.**

The Petitioner would like to submit that the aforementioned directive is ongoing in nature and is being complied with. In line with the aforementioned directive, the Petitioner has quarterly capitalization reports with the Hon'ble Commission vide the following letters, the contents of which are reiterated but not repeated herein for the sake of brevity:

- i. FY 2018-19 Quarter I: Letter no. RA/2018-19/01/F/345 dated 24.08.2018.
- ii. FY 2018-19 Quarter II: Letter no. RA/2018-19/01/F/471 dated 19.11.2018.
- iii. FY 2018-19 Quarter III: Letter no. RA/2019-20/01/F/589 dated 11.04.2019.
- iv. FY 2018-19 Quarter IV: Letter no. RA/2019-20/01/F/240 dated 02.08.2019.



## Chapter IIIA - True Up for FY 2018-19



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## True Up for FY 2018-19

### Background

- 3A.1 The Hon'ble Commission had approved the Aggregate Revenue Requirement (ARR) of the Petitioner for FY 2018-19 vide its Tariff Order dated March 28, 2018.
- 3A.2 The Petitioner in this section seeks truing-up of expenditure and revenue for FY 2018-19.

### Legislative Provisions of Truing-up

- 3A.3 The Petitioner respectfully submits that before adverting to the issues of Truing up on merits, the Petitioner seeks to highlight the statutory provisions and judicial decisions with respect to the concept of Truing up.
- 3A.4 The Hon'ble Commission notified the DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 (referred to as "Tariff Regulations, 2017" hereinafter) vide official gazette dated January 31, 2017 which are applicable from February 1, 2017 onwards. Further, the operational norms for Distribution utilities have also been approved by the Hon'ble Commission for the Control Period FY 2017-18 to FY 2019-20 in the DERC Business Plan Regulations, 2017 notified vide gazette notification dated 31.08.2017.
- 3A.5 Regulation 13 of Tariff Regulations, 2017 states as under:

*"13. The Utility shall file a Petition for True up of ARR for previous years and determination of tariff in such form and in such manner as specified in these Regulations along with relevant formats of Generating Entity, Transmission Licensee and Distribution Licensee, as the case may be, duly supported with detailed computations."*

In accordance with the aforesaid provision of Regulation, truing-up of FY 2018-19 is required to be carried out. Further, the methodology adopted by the Petitioner for the purposes of Truing-up in the present Petition is based on the following statutory provisions contained in the Tariff Regulations, 2017.

**a) AT&C Loss:**

Regulation-8 and 9 of DERC Tariff Regulations, 2017 stipulates setting of AT&C Loss for each year as under:

*“(8) Distribution Loss & Collection Efficiency trajectory consisting of:*

*(a) Total and voltage-wise distribution losses (%) along with the basis thereof,*

*(b) Total and category-wise revenue collection,*

*(c) AT&C loss level based upon past trends, sales growth and any other factors (9) The AT&C Loss shall be the relationship between Distribution Loss and Collection Efficiency computed as per the following formula:*

*AT&C Loss= [1-(1 – Distribution Loss) \* Collection Efficiency]] \* 100  
where, AT&C Loss, Distribution Loss and Collection Efficiency are in (%) percentages.”*

Further, the Hon’ble Commission specified the Distribution Loss target for FY 2018-19 in Regulation 25(1) of Business Plan Regulations, 2017 as under:

**“25. TARGET FOR DISTRIBUTION LOSS**

*(1) The Distribution Loss target in terms of Regulation 4(9)(a) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows:*

*Table 15: Target for Distribution Loss for the Control Period*

<b>Sr. No.</b>	<b>Distribution Licensee</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
1	BSES Rajdhani Power Limited	10.93%	<b>10.19%</b>	9.50%
2	BSES Yamuna Power Limited	13.00%	11.69%	10.50%
3	Tata Power Delhi Distribution Limited	8.38%	8.19%	8.00%
4	New Delhi Municipal Council	10.30%	9.63%	9.00%

*(2) The amount for Overachievement/Underachievement on account of Distribution Loss target shall be computed as per the formula specified in the Regulation 159 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee.*



(3) Any financial impact due to Underachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be to the account of distribution licensee as specified in Regulation 161 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.”

**b) Power Purchase Cost**

Regulation-152 of Tariff Regulations, 2017 states as under:

“152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:

(a) Variation in revenue and sales of the distribution licensee based on projected revenue and sales vis-a-vis actual revenue and sales;

(b) Variation in long term power purchase quantum and cost of the distribution licensee based on merit order dispatch principle of projected long term power purchase quantum and cost vis-a-vis actual long term power purchase quantum and cost.”

Accordingly, the power purchase cost has been considered on actuals.

**c) Operation and Maintenance Expenses**

Regulation 23 of the Business Plan Regulations, 2017 states as under:

**“23. OPERATION AND MAINTENANCE EXPENSES**

(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows:

**Table 9: O&M Expenses for BRPL for the Control Period**

S. No.	Particulars	Unit	FY 2017-18	FY 2018-19	FY 2019-20
1	66 kV Line	Rs. Lakh/ ckt. Km	3.454	3.648	3.853
2	33 kV Line	Rs. Lakh/ ckt. Km	3.454	3.648	3.853
3	11 kV Line	Rs. Lakh/ ckt. Km	1.001	1.058	1.117
4	LT Line System	Rs. Lakh/ ckt. Km	5.170	5.460	5.766
5	66/11 kV Grid S/s	Rs. Lakh/ MVA	0.933	0.986	1.041
6	33/11 kV Grid S/s	Rs. Lakh/ MVA	0.933	0.986	1.041
7	11/0.415 kV DT	Rs. Lakh/ MVA	2.209	2.333	2.464

”

Accordingly, the Petitioner has considered normative O&M Expenses, details

of which have been elaborated later in this chapter.

**d) Depreciation**

Regulation 29 of the DERC Tariff Regulations 2017, states as under:

*“Any grant or contribution or facility or financial support received by the Utility from the Central and/or State Government, any statutory body, authority, consumer or any other person, whether in cash or kind, for execution of the project or scheme, which does not involve any servicing of debt or equity or otherwise carry any liability of payment or repayment or charges shall be excluded from the Capital Cost for the purpose of computation of interest on loan, return on equity and depreciation.”*

Accordingly, the Petitioner has computed depreciation for FY 2018-19 on average GFA net of Consumer Contribution.

**e) Return on Capital Employed (RoCE)**

As per Regulation 65 to 69 of Tariff Regulations 2017, RoCE shall be computed by multiplying WACC with RRB. The Petitioner has computed RRB in accordance with the methodology specified in Regulation-69 of Tariff Regulations, 2017.

As regards computation of WACC, Regulation-70 specifies as under:

*“5.11 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1 + D/E} \right] * r_d + \left[ \frac{1}{1 + D/E} \right] * r_e$$

*Where,*

....

*rd is the cost of debt and shall be determined at the beginning of the Control Period after considering Licensee’s proposals, present cost of debt already contracted by the Licensee, credit rating, benchmarking and other relevant factors (risk free returns, risk premium, prime lending rate etc.)*

*re is the Return on Equity and shall be considered at 16% post-tax:*

...”

As evident from the aforesaid Regulations, the rate of return on equity is specified as 16%.

Further, In terms of Regulation 77 of the Tariff Regulations 2017,

*“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”*

Accordingly, the Petitioner has considered the cost of debt at the rate of 13.57% based on the actual interest on capex loan and the working capital for FY 2018-19, as mentioned in **Table 3A 47**, and RoE at the rate of 16% for computation of WACC during FY 2018-19.

**f) Income-tax:**

Regulation 72 and 73 of DERC Tariff Regulations, 2017 specifies as under:

*“72. Tax on Return on Equity: The base rate of return on equity as specified by the Commission in the Business Plan Regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid vis-a-vis total income of the Utility in the relevant financial year in line with the provisions of the relevant Finance Acts Provided further that no amount shall be considered towards tax exceeding the actual amount of tax paid by the corporate entity of the Utility as an assessee.*

*73. Rate of return on equity shall be rounded off to three decimal places and shall be computed as per formula given below:*

*Rate of pre-tax return on equity=Base rate/ (1-t)*

*Where “t” is the effective tax rate in accordance with Regulation 0 and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid by the Utility on pro-rata basis by excluding the other income stream:*

*Provided that wherever the Utility pays Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess.”*

Accordingly, the Petitioner has considered Income Tax for FY 2018-19 after grossing-up ROE by MAT rate effectively paid in FY 2018-19.

**g) Non-Tariff Income:**

Regulation-94 of Tariff Regulations, 2017 states as under:

*“94. The Utility shall submit forecast of Non-Tariff Income to the Commission, in such form as may be stipulated by the Commission from time to time, whose tentative lists as follows:*

- (i) Income from rent of land or buildings;*
- (ii) Net Income from sale of de-capitalised assets;*
- (iii) Net Income from sale of scrap;*
- (iv) Income from statutory investments;*
- (v) Net Interest on delayed or deferred payment on bills;*
- (vi) Interest on advances to suppliers/contractors;*
- (vii) Rental from staff quarters;*
- (viii) Rental from contractors;*
- (ix) Income from Investment of consumer security deposit;*
- (x) Income from hire charges from contractors and others, etc.*

*95. The Non-Tariff Income shall be reduced from ARR.”*

The Petitioner has accordingly identified items to be considered for Non-Tariff Income for FY 2018-19.

3A.6 The Petitioner vide its letter ref no. RA/2019-20/01/A/450 dated December 2, 2019 submitted the Audited Financial Statement for FY 2018-19 and also submitted the Fixed Asset Register (FAR) separately. The audited accounts are attached as **Annexure 1** to this Petition.

3A.7 The Petitioner prays for true-up of the financials of the Petitioner for FY 2018-19.

## Energy Sales

3A.8 The actual energy sales during FY 2018-19 was 12194.26 MU including sales on account of enforcement as explained in subsequent paras.

3A.9 It is submitted that Regulation-152 of the Tariff Regulations, 2017 mentions that true up of ARR for Distribution (Wheeling & Retail Supply) shall be conducted on variation in revenue and sales of the distribution licensee based on projected revenue and sales vis-à-vis actual revenue and sales. The Petitioner therefore requests this Hon'ble Commission to carry out the true-up of the variation in the revenue and expenditure for FY 2018-19. The quantum of energy sales is an uncontrollable factor and therefore any variation and its impact thereto ought to be allowed by the Hon'ble Commission.

3A.10 The monthly bifurcation of energy sales during FY 2018-19 is tabulated below:

**Table 3A 1:Monthly bifurcation of energy sales during FY 2018-19 (MU)**

S.No.	Month	Energy Billed (MU)	Net Revenue Billed (Rs. Cr.)	Avg. Billing Rate (Rs./Unit)
1	April	769.2	563.1	7.32
2	May	1104.1	796.8	7.22
3	June	1360.0	978.6	7.20
4	July	1437.1	1035.8	7.21
5	August	1339.8	971.1	7.25
6	September	1247.7	910.6	7.30
7	October	1063.8	806.8	7.58
8	November	817.4	659.2	8.06
9	December	700.9	572.5	8.17
10	January	782.1	618.2	7.90
11	February	765.6	616.7	8.06
12	March	737.4	587.0	7.96
13	<b>Total</b>	<b>12125.0</b>	<b>9116.4</b>	<b>7.52</b>
14	Enforcement	62.0	47.9	7.72
15	Net Metering	7.2	3.6	5.04
15	<b>Grand Total</b>	<b>12194.3</b>	<b>9,167.9</b>	<b>7.52</b>

Table 3A 2: Category-wise Sales and Revenue Billed for FY 2018-19

S. No.	Consumer Category	Energy Billed	Net Revenue Billed	Average Revenue Rate
		(MU)	(Rs. Cr.)	(Rs/kWh)
1	Domestic	7214.2	4204.9	5.83
2	Non Domestic	3161.0	3489.0	11.04
3	Industrial	529.4	519.5	9.81
4	Agriculture & Mushroom Cultivation	19.2	8.2	4.26
5	Public Utilities (Public Lighting & DJB)	371.9	295.6	7.95
6	Delhi International Airport Limited (DIAL)	203.7	160.6	7.89
7	Railway Traction	1.1	0.2	1.52
8	Delhi Metro Rail Corporation (DMRC)	491.1	305.4	6.22
9	Temporary Supply	100.0	122.2	12.22
10	Advertisement and Hoardings	1.2	1.6	12.99
11	Charging Stations for E-Vehicle	16.3	9.2	5.63
12	Self Consumption	15.9	0.1	0.06
13	Net Metering	7.2	3.6	5.04
14	Enforcement	62.0	47.9	7.72
15	<b>Total</b>	<b>12194.3</b>	<b>9167.9</b>	<b>7.52</b>

3A.11 **Enforcement Sale:** This includes energy sold to consumers/persons booked under sections 126 and/or section 135 of the Electricity Act, 2003 for indulging in unauthorised use and/or theft of electricity respectively. In its order dated August 26, 2011 in the true-up for FY 2008-09 and FY 2009-10 and ARR for FY 2011-12 the Hon'ble Commission had reduced the MUs in relation to enforcement sale by dividing the enforcement collection by twice the average billing rate instead of single ABR. The approach adopted by the Hon'ble Commission in its said order dated August 26, 2011 was upheld by the Hon'ble ATE in Judgment dated November 28, 2014 (Appeal No. 61 and 62 of 2012) *inter-alia as under:*

*"58. In view of the above discussions the issue is decided as under:*

*...*

*2) The Commission has adopted correct approach for computing MUs on account of enforcement*



...”

3A.12 The Petitioner has preferred a Civil Appeal Nos. 4323 & 4324 of 2015 before the Hon’ble Supreme Court from the aforesaid Judgment of the Hon’ble ATE dated November 28, 2014 (Appeal 61 & 62 of 2012). Without pre-judice to its aforestated Appeal, and without admitting or waiving any of its contentions against the said Judgment dated November 28, 2014 or the Hon’ble Commission’s order dated August 26, 2011 insofar as the decision on enforcement sales are concerned, the Petitioner has computed the enforcement revenue as per the approach of the Hon’ble Commission and has considered the enforcement sales of 62.05 MU for FY 2018-19.

3A.13 **Self Consumption:** This includes energy sales towards self-consumption of the Petitioner in its establishment i.e. its offices, call centres, sub-stations, etc. There is a mandatory direction by the Hon’ble APTEL in its judgment dated March 2, 2015 to inter alia arrive at the quantum of self-consumption based on the actual figure. The Hon’ble ATE in Judgment dated March 2, 2015 (Appeal No. 178 of 2012) ruled as under:

*“25.5 This issue has also been dealt by us in Appeal no. 195 of 2013 filed by a consumer and the Tribunal decided as under:*

*“We feel that the Appellant should have installed meters for self consumption in all its offices, call centres, sub-stations, etc. The Respondent no.2 does not need specific instructions for the same. When the Respondent no.2 is including self consumption in its energy sale figures, then it was legally bound to supply electricity for gross consumption only through correct meters. We feel that the State Commission should have allowed self consumption only to the extent of actual consumption for metered installations. The formula proposed by the Respondent no. 2 for calculating own consumption in its installations is for calculating energy consumption for consumers in case of faulty meters. Accordingly, we direct the State Commission to re-determine the self consumption based on the metered data only. We also do not feel that this would result in change in procedure in true up with respect to the MYT order dated 23.02.2008. In the MYT order the consumption is based on the projections. In*

*the MYT order the State Commission has not approved that the self consumption would not be metered and would only be assessed by a formula considering the load, number of days/hours, load factor, etc.”*

3A.14 Regulation 23 (2) of DERC Business Plan regulations, 2017 specifies as follows:

*“The Distribution Licensees shall be allowed own (Auxiliary) consumption, at Zero Tariff for actual recorded consumption subject to a maximum of 0.25% of total sales to its retail consumers for the relevant financial year as part of O&M expenses for the relevant year.”*

3A.15 As per Regulation 23(2) of Business Plan Regulations, 2017, the Own Consumption of BRPL for FY 2018-19 is within the specified normative limit. Further, the Hon'ble ATE has directed the Hon'ble Commission to allow the actual self-consumption. Accordingly, the units billed in the Petitioner's own office buildings during FY 2018-19 is 15.92 MU.

**Table 3A 3: Comparison of Normative Self consumption and actual self-consumption during FY 2018-19**

S. No	Particulars	Units in MU
A	Units Billed Excluding Self consumption	12178.35
B	Self-consumption on Normative basis 0.25% of A	30.45
C	Actual Self consumption claimed by Petitioner	15.92

3A.16 Based on the above submissions, the category-wise energy sale during FY 2018-19 is tabulated below:

**Table 3A 4: Category-wise energy sales during FY 2018-19 (MU)**

S. No	Category	Projections (as per Tariff Order dated 28.03.2018)	Actuals	Remarks/ Reference
<b>A</b>	<b>Domestic</b>	<b>7197</b>	<b>7214.22</b>	<b>A=i+ii</b>
i	Domestic -other than A (ii)	-	7026.95	Form 2.1A
ii	Single Delivery Point on 11 KV CGHS	-	187.27	Form 2.1A
<b>B</b>	<b>Non Domestic</b>	<b>3152</b>	<b>3160.98</b>	<b>B=i+ii</b>
<b>C</b>	<b>Industrial</b>	<b>488</b>	<b>529.44</b>	<b>C=i+ii+iii</b>
<b>D</b>	<b>Agriculture</b>	<b>18</b>	<b>19.19</b>	Form 2.1A
<b>E</b>	<b>Mushroom Cultivation</b>			Form 2.1A
<b>F</b>	<b>Public Lighting</b>	<b>177</b>	<b>371.87</b>	<b>F=i+ii</b>
<b>G</b>	<b>Delhi Jal Board (DJB)</b>	<b>222</b>		<b>G=i+ii</b>

S. No	Category	Projections (as per Tariff Order dated 28.03.2018)	Actuals	Remarks/ Reference
H	Delhi International Airport Limited (DIAL)	332	203.72	Form 2.1A
I	Railway Traction	0	1.12	Form 2.1A
J	DMRC	351	491.06	Form 2.1A
K	Advertisement and Hoardings		1.21	Form 2.1A
L	Temporary Supply		99.96	Form 2.1A
M	Others	246	101.49	M=i+ii+iii+iv
i	Enforcement		62.05	Form 2.1A
ii	Self-consumption		15.92	Form 2.1A
iii	E-Vehicles		16.34	Form 2.1A
iv	Net metering		7.19	Form 2.1A
N	Total Energy Sales	12184	12194.26	Sum A to M

3A.17 In view of the above, it is prayed that the Hon'ble Commission may kindly approve the actual energy sales to various consumer categories as submitted in the above table while truing-up the uncontrollable parameters for FY 2018-19.

### Distribution Loss, Collection Efficiency and AT&C Loss for FY 2018-19

3A.18 For FY 2018-19, the Hon'ble Commission vide its Regulation 25(1) and 26(1) of Business Plan Regulations, 2017 had approved targets for Distribution Loss and Collection efficiency as 10.19% and 99.50% respectively.

3A.19 The Petitioner has achieved the actual Distribution Loss and Collection efficiency of 8.26% and 100.26% respectively during FY 2018-19. A comparison of Target and actual performance of the Petitioner during FY 2018-19 is tabulated below:

**Table 3A 5: T&D Loss, Collection efficiency and AT&C Loss for FY 2018-19 (%)**

S. No	Particulars	Approved in Tariff Order dtd 28.03.2018	Actual performance
	Energy Input at BRPL Periphery (MU)	13565.9	13292.2
1	Distribution Loss %	10.19%	8.26%
2	Collection Efficiency %	99.50%	100.26%
3	AT&C Loss %*	10.64%	8.02%

3.1.1 The Petitioner has billed Gross amount of Rs. 10603.78 Crore during FY 2018-19 which includes amount on account of Electricity Tax, 8% RA Surcharge, and 3.80%

Pension Surcharge. The Amount Billed considered for the purpose of computation of AT&C losses during FY 2018-19 is tabulated below:

**Table 3A 6: Revenue Billed for AT&C Loss True-up for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Amount True Up for FY 2018-19	Reference
A	Total Revenue Billed	10603.8	Note 58 of Audited Accounts
B	Less: Electricity Tax Billed	365.4	
C	Less: 8% RA surcharge Billed	726.3	
D	Less: 3.80% Pension Surcharge	344.2	
E	<b>Revenue Billed for AT&amp;C True up</b>	<b>9167.9</b>	<b>A-B-C-D</b>

3A.20 The Petitioner has collected the Gross revenue of Rs. 10650.23Crore during FY 2018-19 which includes collection on account of Electricity Tax, LPSC, 8% RA Surcharge and 3.80% Pension Surcharge. The Revenue Collected considered for the purpose of computation of AT&C losses during FY 2018-19 is tabulated below:

**Table 3A 7: Revenue Collected for AT&C Loss True-up for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Amount True Up for FY 2018-19	Reference
A	Total Revenue Collected	10650.2	Note 58 of Audited Accounts
B	Less: LPSC	30.3	
C	Less: Electricity Tax	366.6	
D	Less: 8% RA Surcharge	721.3	
E	Less: 3.80% Pension Surcharge	340.2	
F	<b>Revenue Collected for AT&amp;C True up</b>	<b>9191.8</b>	<b>A-B-C-D-E</b>

3A.21 Accordingly, the computation of Distribution Loss, Collection Efficiency and AT&C Loss for FY 2018-19 is tabulated below:

**Table 3A 8: Computation of T&D Loss, Collection Efficiency and AT&C Loss for FY 2018-19**

S. No	Particulars	UoM	Tariff Order dtd 28.03.2018	Actual claimed in Petition	Remarks/ Reference
A	Energy Input @ BRPL Periphery	MU	13565.9	13292.2	Table 3A 12
B	Energy Billed	MU	12184.0	12194.3	
C	Revenue Billed	Rs. Cr	8791.9	9167.9	Table 3A 6

S. No	Particulars	UoM	Tariff Order dtd 28.03.2018	Actual claimed in Petition	Remarks/ Reference
D	Average Billing Rate	Rs. / kWh	7.22	7.5	$D = C / B * 10$
E	Distribution Loss	%	10.19%	8.26%	$E = (A-B) / A$
F	Amount Collected	Rs. Cr	8747.9	9191.8	Table 3A 7
G	Collection efficiency	%	99.50%	100.26%	$G = F / C$
H	Units Realized	MU	12123.1	12226.0	$H = G * B$
I	AT&C Loss Level	%	10.64%	8.02%	$I = (A-H) / A$

3A.22 Based on the T&D Loss Target approved by Hon'ble Commission in Regulation 25(1) of Business Plan Regulations 2017 for FY 2018-19, the Petitioner has computed the impact of overachievement in T&D loss in line with the provisions contained in Regulation 159 of Tariff Regulations, 2017.

*"159. The Financial impact on account of over achievement or under achievement of distribution loss target shall be computed as under:*

*Incentive or penalty =  $Q1 * (L1 - L2) * P * 10^6$*

*Where,*

*Q1 = Actual Quantum of energy Purchased at Distribution periphery.*

*L1 = Distribution Loss Target in %*

*L2 = Actual Distribution Loss in %*

*P = Trued up Average Power Purchase Cost (APPC) per unit at distribution periphery in (Rs. /KWh)."*

Further, in Regulation 25(4) of Business Plan Regulations 2017, Hon'ble Commission has specified the allocation of financial impact of overachievement of distribution loss target between the petitioner and Consumers.

3A.23 Accordingly, in terms of Regulation 159 of Tariff Regulations, 2017 and Regulation 25(4) of Business Plan Regulations, 2017 the impact of overachievement of T&D Loss target is tabulated below:

**Table 3A 9 Impact of overachievement in T&D loss target for FY 2018-19**

S. No	Particulars	UoM	Figure	Remarks/ Reference
A	Energy Purchased at distribution Periphery	MU	13292.2	Table 3A 12
B	T&D Loss target for FY 2018-19	%	10.19%	
C	Actual T&D Loss for FY 2018-19	%	8.26%	

S. No	Particulars	UoM	Figure	Remarks/ Reference
D	Average Power Purchase cost for FY 2018-19	Rs/kWh	5.52	Based on Power Purchase
E	Financial Impact on account of overachievement of Distribution Loss Target	Rs. Cr.	141.7	$A*(B-C)*D*10^6$
F	Impact of Financial benefit to be retained by Petitioner (2/3)	Rs. Cr.	94.4	$2/3 * E$

3A.24 Based on the Collection efficiency Target approved by Hon'ble Commission in Regulation of 26(1) of Business Plan Regulations, 2017 for FY 2018-19, the Petitioner has computed the impact of overachievement on account of Collection Efficiency in line with the provisions contained in Regulation 163 of Tariff Regulations, 2017.

3A.25 Regulation 163 of Tariff Regulations, 2017 provides that the financial impact on account of over or under achievement of collection efficiency targets shall be computed as under:

$$\text{Incentive or penalty} = (C1 - C2) * Ab$$

Where,

C1 = Actual Collection Efficiency in %

C2 = Target Collection Efficiency in %

Ab = Actual Amount Billed excluding Electricity Duty, LPSC and any other surcharges in Rs. Crore.

Further Regulation 26(3) of DERC Business Plan Regulations, 2017 provides that the financial impact on account of over achievement in terms of Regulation 164 of the Tariff Regulations, 2017 for the distribution licensee, from 99.50% to 100% shall be shared equally between the consumer and licensee.

In line with the Regulation 163 of Tariff Regulations, 2017 and Regulation 26(3) of Business Plan Regulations, 2017 the computation of Financial impact on account of overachievement of collection efficiency targets is tabulated below:



**Table 3A 10: Impact of overachievement in Collection efficiency target for FY 2018-19**

S. No	Particulars	UoM	Target	Actual
1	Amount billed	Rs. Cr.	9167.9	9167.9
2	Collection Efficiency	%	99.50%	100.26%
3	Amount collected	Rs. Cr.	9122.1	9191.8
4	Over-achievement	Rs. Cr.		69.7
5	Amount to be retained by petitioner and consumer shared 50:50 for achievement of collection efficiency Target from 99.50% to 100%	Rs. Cr.		22.9
6	Entire 100% to be retained for achievement over 100%	Rs. Cr.		23.8
7	Total Incentive to be retained by BRPL	Rs. Cr.		46.8

### Power Purchase Quantum

3A.26 The Petitioner purchases most of the power from generating companies owned and/ or fully controlled by the Central Government and State Government by virtue of long term power purchase agreements which have been inherited from DTL (initially signed by M/s DTL) and assigned by the Hon'ble Commission as per its orders dated 31-03-2007.

3A.27 The Petitioner vide its below listed letters has already submitted to the Hon'ble Commission the details of monthly invoices of power purchase cost raised by Generating companies and Transmission companies for the period April 2018 to March 2019.

**Table 3A 11: Correspondences with DERC regarding power purchase cost**

S. No.	Month	Letter Ref. no.	Submission Date
1	Apr-18	RA/2018-19/01/A/296	26.07.2018
2	May-18	RA/2018-19/01/A/297	26.07.2018
3	Jun-18	RA/2018-19/01/A/315	06.08.2018
4	Jul-18	RA/2018-19/01/A/404	28.09.2018
5	Aug-18	RA/2018-19/01/A/519	18.12.2018
6	Sep-18	RA/2018-19/01/A/523	19.12.2018
7	Oct-18	RA/2018-19/01/A/547	11.01.2019
8	Nov-18	RA/2018-19/01/A/560	18.01.2019
9	Dec-18	RA/2018-19/01/A/596	04.02.2019

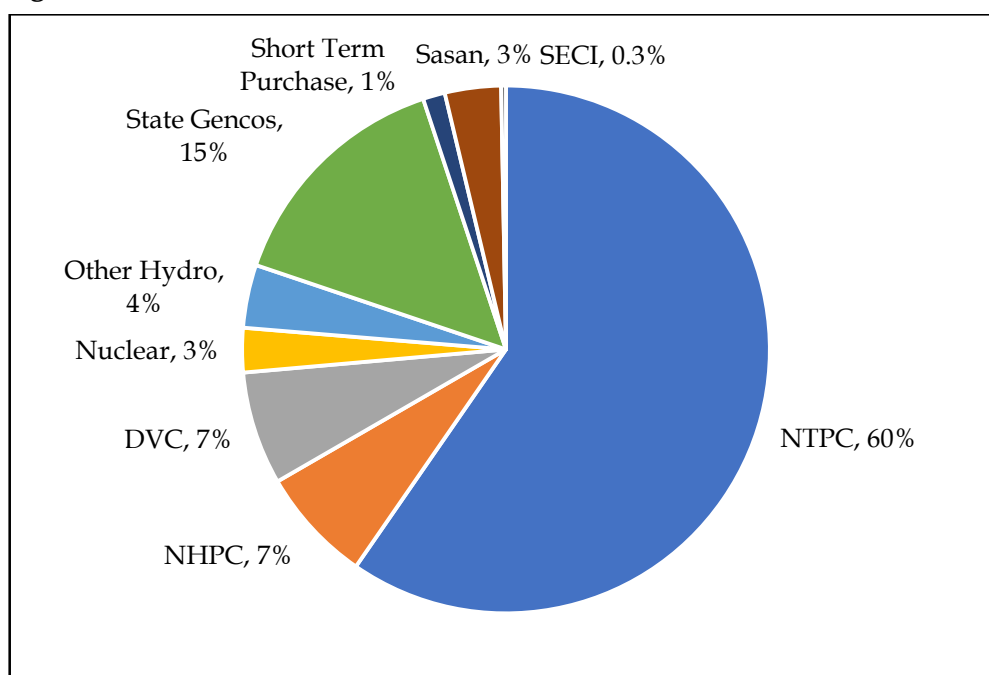
S. No.	Month	Letter Ref. no.	Submission Date
10	Jan-18	RA/2019-20/01/A/017	12.04.2019
11	Feb-18	RA/2019-20/01/A/018	12.04.2019
12	Mar-18	RA/2019-20/01/A/048	07.05.2019

3A.28 The Petitioner vide letter dated 13.06.2019 has submitted the bills for UI and Intra-State Transactions for FY 2018-19.

3A.29 The Petitioner vide its letter no RA/2019-20/01/A/172 dated 01.07.2019 has submitted the Power Purchase Cost Statement for the period April 2018 to March 2019 duly certified by the Statutory Auditor.

3A.30 The summary of source-wise actual power procurement during FY 2018-19 is pictorially depicted below:

**Figure 3A 1: Source-wise bifurcation of quantum percentage for FY 2018-19**



3A.31 The summary of actual power purchase quantum procured by the Petitioner during FY 2018-19 is as follows:

Table 3A 12: Power Purchase Quantum for FY 2018-19 (MU)

S. No	Particulars	Submission	Remarks/ Ref.
A	Power Purchase:		
i	Gross Power Purchase Quantum	14521.9	
ii	Power sold to other sources	761.9	Excluding Banking
iii	<b>Net Power Purchase</b>	<b>13760.0</b>	<b>i-ii</b>
B	Transmission Loss:		
iii	<b>Total transmission loss</b>	<b>467.7</b>	
C	<b>Net power available after Transmission Loss*</b>	<b>13292.2</b>	<b>A-B</b>

\*Excluding Open Access

3A.32 The Petitioner has arrived on the aforesaid units based on the following:

- The Petitioner has considered the energy input as given by Delhi SLDC signed on November 28, 2019.
- Further, the Petitioner has reduced the units on account of Inter-Discom Transfer. For this purpose, the Petitioner has computed the Transmission and Transformation losses on energy wheeled through its network on Inter Discom Transfer (considering import as well as export at various exchange point) by Other Utilities during FY 2018-19. The Petitioner craves leave of the Hon'ble Commission to explain the workings if and when required by the Hon'ble Commission.
- Further the Petitioner has added units on account of net-metering.
- The Petitioner has also reduced the units on account of Open Access.

3A.33 Accordingly, the net energy input considered for FY 2018-19 is tabulated below:

Table 3A 13: Energy Input at Discom Periphery (MU)

Particulars	Energy
Energy Input as per SLDC	13449.5
Add: Net Metering	9.8
Net Energy Input	13459.2
Less: Open Access	167.0
<b>Net Energy Input after OA</b>	<b>13292.2</b>

**Short term Purchase**

3A.34 During FY 2018-19, the Petitioner has procured through Bilateral/Banking/Intrastate/UI under short term purchase. The summary of source-wise details of short term power purchase is tabulated below:

**Table 3A 14: Details of Short Term Power Purchase**

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Energy	(%)	Energy	(%)	Energy	(%)
		(MU)		(MU)		(MU)	
A	Bilateral	0	0%	157	10%	367	31%
B	Banking	419	29%	1022	67%	554	46%
C	Exchange	553	38%	206	14%	184	15%
D	Intra-State	365	25%	31	2%	87	7%
E	UI	133	9%	105	7%	8	1%
F	<b>Total</b>	<b>1470</b>		<b>1520</b>		<b>1199</b>	

3A.35 As regards short term power purchase, the Hon'ble Commission in Tariff Order dated July 23, 2014 advised the Petitioner that *"in case of excess demand the Petitioner may first utilise the quantum of Banked Energy and in case of further shortage they may purchase from Bilateral/ Exchange etc. so as to keep the short term power purchase cost at minimum level."* Accordingly, the Petitioner purchased almost two-third of short term energy through Banking and Exchange. The banking transactions involve marginal cost and the prices at exchange are market discovered prices and are determined transparently.

**Short term power sales**

3A.36 During FY 2018-19, the Petitioner has sold short term sale through Bilateral/Banking/Intrastate/UI mode. The source-wise details of sale of surplus power are tabulated below:

**Table 3A 15: Details of Short Term Power Sales**

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Energy	(%)	Energy	(%)	Energy	(%)
		(MU)		(MU)		(MU)	
A	Bilateral	85	16%	18	1%	0	0%
B	Banking	248	46%	1200	78%	1012	57%

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Energy (MU)	(%)	Energy (MU)	(%)	Energy (MU)	(%)
C	Exchange	76	14%	302	20%	569	32%
D	Intra-State	44	8%	3	0%	15	1%
E	UI	87	16%	14	1%	178	10%
F	<b>Total</b>	<b>539</b>		<b>1537</b>		<b>1774</b>	

3A.37 The Hon'ble Commission in Tariff Order dated July 23, 2014 and September 29, 2015 advised that *"the Petitioner should endeavour to maximise revenue from sale of surplus power and enter into more banking, intrastate and bilateral transactions."* Accordingly, the Petitioner sold about 90% of surplus power through Banking, Bilateral and Intra-State Transactions during FY 2018-19.

3A.38 The total quantum purchased during FY 2018-19 and Plant wise Petitioner's share is tabulated below:

**Table 3A 16: Details of Power Purchase Quantum Station wise for FY 2018-19 (MU)**

S. No	Stations	Total Generation	Energy at Delhi Periphery	Petitioner Share (As per Bills)
<b>Central Sector Generating Stations (CSGS)</b>				
A	NTPC <sup>#</sup>			
i	ANTA GAS	Data not provided by SLDC	Data not provided by SLDC	6.89
ii	AURAIYA GAS			3.62
iii	DADRI GAS			37.36
iv	FARAKKA			52.06
v	KAHALGAON -I			123.44
vi	NCTPS			2446.70
vii	RIHAND – I			445.13
viii	RIHAND – II			390.26
ix	RIHAND – III			522.29
x	SINGRAULI			190.47
xi	UNCHAHAR – I			69.40
xii	UNCHAHAR -II			133.13
xiii	UNCHAHAR -III			78.87
xiv	KAHALGAON -II			426.56
xv	DADRI-2( EXTENSION )			3300.25
xvi	Aravali Power Corporation Ltd			56.37
	Sub Total			8282.78
B	NHPC			
i	BAIRA SIUL			16.49

S. No	Stations	Total Generation	Energy at Delhi Periphery	Petitioner Share (As per Bills)
ii	CHAMERA – I			84.15
iii	CHAMERA – II			85.61
iv	CHAMERA – III			56.15
v	DHAULIGANGA			61.71
vi	DULHASTI			124.23
vii	SALAL			279.55
viii	TANAKPUR			19.00
ix	URI			141.35
x	SEWA –II			28.43
xi	Parbati– III			33.72
xii	Uri – II			90.88
	Sub Total			1021.27
C	THDC			
i	Tehri HEP			136.88
ii	Koteshwar			82.28
	Sub Total			219.16
D	DVC			
i	DVC Chandrapur 7 & 8 (LT-3)			825.44
ii	Mejia Units -6 (LT-4)			182.43
	Sub Total			1007.87
E	NPCIL			
i	NAPS			209.78
ii	RAPP C Units 5&6			184.38
	Sub Total			394.16
F	SJVNL			
i	Naptha-Jhakri			259.65
	Sub Total			259.65
G	Others			
	PTC Tala			32.80
	PTC Wind			49.67
	Sasan UMPP			499.55
	Sub Total			582.03
H	Total Outside Delhi			11766.91
Delhi Generating Stations*				
i	BTPS	Data not provided by SLDC	Data not provided by SLDC	432.76
ii	Gas Turbine			342.52
iii	Pragati – I			416.47
iv	Pragati -III, BAWANA			1185.28
v	TOWMCL			85.14
vi	Thyagraj Solar			0.54
vii	DMSW			46.28
viii	East Delhi Waste			7.48
I	Total Delhi Gencos			2516.47

S. No	Stations	Total Generation	Energy at Delhi Periphery	Petitioner Share (As per Bills)
J	SECI			42.26
K	Net Metering/Other			8.63
L	<b>Grand Total</b>			<b>14334.27</b>

# Excludes BTPS

\* Includes BTPS

3A.39 In view of the above, it is prayed that the Hon'ble Commission may kindly consider the actual gross power purchase quantum during FY 2018-19 as submitted in the above table.

### Power Purchase Cost

#### a) Long Term Power Purchase

3A.40 The power purchase cost is primarily based on the Tariff determined by the appropriate Commission under section 62(1)(a) or adopted under Section 63 of the 2003 Act for the supply of electricity from generating companies to distribution licensees. Accordingly, when the generating company is owned and/or controlled by the Central Govt. or is supplying to more than one State, Hon'ble CERC determines/adopts the tariff. In all other cases, it is the Hon'ble DERC which determines/adopts the tariff of the generating companies owned and/or controlled by the GoNCT. As stated above, the Petitioner has already submitted the monthly invoices raised, to the Hon'ble Commission. The Petitioner has considered the total cost on account of long term sources during FY 2018-19 which includes fixed cost, variable cost, arrears, other charges etc. as scheduling of power is controlled by SLDC.

#### Merit Order Despatch (MOD) under the control of SLDC:

3A.41 The scheduling is being done by SLDC and DISCOMs have no control over backing-down of the costly power plants. Following points may be noted with respect to actual power purchase cost.

a) SLDC has clearly intimated that scheduling of central generating stations and



other inter-state generating stations is controlled by RLDC and hence DISCOM wise scheduling is not possible.

- b) The availability of Plants is beyond the control of Discoms and the actual availability of Plants differs from the projections. The monthly MOD submitted by the Discoms is based on past Month ECR which may not be valid on real time basis.
- c) Further, in line with the CERC (IEGC) 4th amendment 2016 Regulation, as quoted below:

*“The CGS or ISGS may be directed by concerned RLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries and it is further stated that where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be **compensated** depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be... In case of coal / lignite based generating stations, following station heat rate degradation or actual heat rate, whichever is lower, shall be considered for the purpose of compensation:*

Sr. No.	Unit loading as a % of Installed Capacity of the Unit	Increase in SHR (for supercritical units) (%)	Increase in SHR (for sub-critical units) (%)
1.	85-100	Nil	Nil
2.	75-84.99	1.25	2.25
3.	65-74.99	2	4
4.	55-64.99	3	6

*Compensation for the Station Heat Rate and Auxiliary Energy Consumption shall be worked out in terms of energy charges."*

As can be inferred from above, there are multiple buyers from each generator and this part load operation will impact the MOD schedule of the buyers.

- d) Further to the above, it is submitted that Operation of Plant is not under the control of Discoms. In significant number of plants, the allocation of Delhi Discoms is around 10%-30%. The allocation of these Plants are on shared basis and operation of the same is on the basis of aggregation of demand. Keeping into account the Grid Security, the decision of actual operation/availability of plant is not under control of the DISCOMs.
  - e) And, there are various instances where forced Scheduling is done to maintain Grid security. In this regard, the report for instances of forced scheduling from SLDC is still awaited and the Petitioner shall submit the same to the Hon'ble Commission.
- 3A.42 In view of the above submissions, it is amply clear that there are a host of reasons which are beyond the control of the Petitioner and thus, it is submitted that the Hon'ble Commission ought not to deduct any Power Purchase Cost denying the Petitioner its legitimate entitlements. As noted above, the scheduling of power is the sole prerogative of the Delhi SLDC and is beyond the control of the Petitioner. Any disallowance would be egregious since it would get compounded with carrying cost, which would naturally apply to power purchase. Power purchase is a pass through and the Hon'ble Commission is expected to grant carrying cost for delayed recoupment of expenditure arising out of the same.
- 3A.43 The Hon'ble Commission may also kindly keep in view the following aspects:
- a) The Hon'ble Commission reiterates at para 3.453 of the Tariff Order dated August 31, 2017 that the GENCOs considered in the islanding scheme of Delhi are to be excluded from the MOD for future scheduling. This is clear from para 3.453, which reads as under:

*“3.453 The Commission directs that the Petitioner to adopt Merit Order Dispatch principle as specified in DERC MYT Regulations, 2011 and directions in various Tariff Orders in totality for all plants **excluding** the plants under must run **and plants associated with islanding scheme** and submit back down requests for such targeted plants to SLDC in a timely and desired manner. (Emphasis supplied)”*

- b) It is pertinent to mention that Dadri I & II are part of Delhi islanding scheme. The same is evident from the Islanding Scheme for the State of Delhi, which was presented by DTL on October 15, 2012 (hereinafter referred to as the “Delhi Islanding Scheme”). The relevant extracts of the Delhi Islanding Scheme [Ref: Pg. ii] are as under:

“The islanding scheme envisages that fall of frequency to 47.9 Hz will be taken as indication that grid disturbance is imminent and islanding will be initiated. Ideally one island is preferred but due to peculiar network considerations of Delhi and limitation imposed by Rithala CCGT, there is no option but to create four (4) islands, capable of meeting about 3400 MW of load during peak conditions, as listed below:

- (i) Dadri- - Jajjhar- Pragati (part) Island (Peak load 2315 MW)
- (ii) Bawana CCGT Island (Peak load 600 MW)
- (iii) BTPS-Pragati (part) Island (Peak load 500 MW)
- (iv) Rithala CCGT Island (Peak load 20 MW)”

- 3A.44 Hence, it is prayed that the Hon’ble Commission, in accordance with its Order of March 28, 2018, where the Hon’ble Commission has categorically stated that the plants covered under the Delhi Islanding Scheme are exempted from the applicability of the MOD principle, may allow the costs pertaining to Dadri. Therefore, the Hon’ble Commission ought not to make any disallowance and allow the cost as legitimate expenses in Power Purchase cost of the Petitioner.

**Power Purchase Cost**

3A.45 In view of the above, the details of station-wise power purchase cost during FY 2018-19 is tabulated below:

**Table 3A 17: Details of Power Purchase Cost Station wise for FY 2018-19**

S. N o	Stations	Petitioner Share	Fixed Charge	Variable Charge	Total Charges	Average Rate
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh
Central Sector Generating Stations (CSGS)						
A	NTPC					
i	ANTA GAS	6.89	10.07	2.30	12.09	17.55
ii	AURAIYA GAS	3.62	14.74	1.50	16.23	44.86
iii	DADRI GAS	37.36	16.89	13.03	30.27	8.10
iv	FARAKKA	52.06	5.67	12.15	17.57	3.38
v	KAHALGAON -I	123.44	16.17	27.80	43.20	3.50
vi	NCTPS	2446.70	376.03	901.14	1244.22	5.09
vii	RIHAND – I	445.13	40.84	58.85	98.59	2.21
viii	RIHAND – II	390.26	27.64	51.50	78.26	2.01
ix	RIHAND – III	522.29	79.89	69.88	147.29	2.82
x	SINGRAULI	190.47	13.51	26.15	39.42	2.07
xi	UNCHAHAAR – I	69.40	7.83	20.21	26.87	3.87
xii	UNCHAHAAR -II	133.13	14.17	38.78	50.88	3.82
xiii	UNCHAHAAR -III	78.87	11.77	23.12	33.04	4.19
xiv	KAHALGAON -II	426.56	53.25	92.28	143.60	3.37
xv	DADRI-2( EXTENSION )	3300.25	556.24	1131.63	1678.45	5.09
xvi	Aravali Power Corporation Ltd	56.37	10.82	19.17	23.32	4.14
	Sub Total	8282.78	1255.55	2489.49	3683.31	4.45
B	NHPC					
i	BAIRA SIUL	16.49	1.72	1.68	3.72	2.26
ii	CHAMERA – I	84.15	7.20	8.95	17.73	2.11
iii	CHAMERA – II	85.61	9.12	8.60	20.24	2.36
iv	CHAMERA – III	56.15	13.91	11.92	25.84	4.60
v	DHAULIGANGA	61.71	8.03	7.50	22.09	3.58
vi	DULHASTI	124.23	29.05	30.85	73.85	5.94
vii	SALAL	279.55	22.81	17.22	70.36	2.52
viii	TANAKPUR	19.00	4.75	3.13	8.35	4.39
ix	URI	141.35	12.99	11.62	33.91	2.40
x	SEWA –II	28.43	8.14	6.15	14.71	5.17
xi	Parbati– III	33.72	8.07	9.23	17.32	5.14
xii	Uri – II	90.88	25.55	17.86	50.59	5.57
	Sub Total	1021.27	151.34	134.72	358.71	3.51
C	THDC					

S. N o	Stations	Petitioner Share	Fixed Charge	Variable Charge	Total Charges	Average Rate
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh
i	Tehri HEP	136.88	35.18	33.53	69.48	5.08
ii	Koteswar	82.28	18.35	18.46	89.20	10.84
	<b>Sub Total</b>	<b>219.16</b>	<b>53.53</b>	<b>51.99</b>	<b>158.68</b>	<b>7.24</b>
<b>D</b>	<b>DVC</b>					
i	DVC Chandrapur 7 & 8 (LT-3)	825.44	137.21	155.10	290.23	3.52
ii	Mejia Units -6 (LT-4)	182.43	28.88	53.26	83.91	4.60
	<b>Sub Total</b>	<b>1007.87</b>	<b>166.10</b>	<b>208.37</b>	<b>374.14</b>	<b>3.71</b>
<b>E</b>	<b>NPCIL</b>					
i	NAPS	209.78	0.00	62.40	67.80	3.23
ii	RAPP C Units 5&6	184.38	0.00	72.51	76.05	4.12
	<b>Sub Total</b>	<b>394.16</b>	<b>0.00</b>	<b>134.91</b>	<b>143.85</b>	<b>3.65</b>
<b>F</b>	<b>SJVNL</b>					
i	Naptha-Jhakri	259.65	37.92	32.28	70.67	2.72
	<b>Sub Total</b>	<b>259.65</b>	<b>37.92</b>	<b>32.28</b>	<b>70.67</b>	<b>2.72</b>
<b>G</b>	<b>Others</b>					
i	PTC Tala	32.80	0.00	7.09	7.09	2.16
ii	PTC Wind	49.67	0.00	17.53	17.53	3.53
ii	Sasan UMPP	499.55	7.41	57.44	71.28	1.43
	<b>Sub Total</b>	<b>582.03</b>	<b>7.41</b>	<b>82.05</b>	<b>95.89</b>	<b>1.65</b>
<b>H</b>	<b>Total CSGS</b>	<b>11766.91</b>	<b>1671.85</b>	<b>3133.82</b>	<b>4885.25</b>	<b>4.15</b>
<b>I. Delhi Generating Stations</b>						
i	BTPS	432.76	48.97	172.85	242.15	5.60
ii	Gas Turbine	342.52	77.24	169.36	243.44	7.11
iii	Pragati – I	416.47	47.11	206.33	254.92	6.12
iv	Pragati -III, BAWANA	1185.28	285.54	453.21	738.04	6.23
v	TOWMCL	85.14	0.00	23.86	23.87	2.80
vi	Thyagraj Solar	0.54	0.00	0.00	0.19	3.53
vii	DMSW	46.28	0.00	32.54	32.54	7.03
viii	East Delhi Waste	7.48	0.00	1.48	2.38	3.19
ix	IP Gas Arrears	0.00	0.00	0.00	20.40	0.00
	<b>Sub Total</b>	<b>2516.47</b>	<b>458.86</b>	<b>1059.62</b>	<b>1557.93</b>	<b>6.19</b>
	<b>SECI</b>	<b>42.26</b>	<b>0.00</b>	<b>23.25</b>	<b>23.25</b>	<b>5.50</b>
	<b>Net Metering/Other</b>	<b>8.63</b>	<b>0.00</b>	<b>10.43</b>	<b>10.70</b>	
	<b>Grand Total</b>	<b>14334.27</b>	<b>2130.71</b>	<b>4227.12</b>	<b>6477.14</b>	<b>4.52</b>

- 3A.46 In accordance with the above, the Petitioner prays that the Hon'ble Commission may kindly allow the aforesaid power purchase cost incurred from long term sources during FY 2018-19.
- 3A.47 The aforesaid Power Purchase Cost may vary as and when Hon'ble CERC disposes off claims made by the petitioner in regard to disputed bills of various generating companies. The petitioner will apprise the Hon'ble Commission of the change, if any, in the power purchase cost post decision of Hon'ble CERC.

**b) Short Term Power Purchase**

- 3A.48 The Hon'ble Commission in its previous Tariff Orders has noted that the load curve in Delhi is peculiar in nature with high morning and evening peaks and very low load demand during night hours. It is neither possible nor practical to tie up power procurement on long term basis/ Sources for the entire demand in the area of supply as the demand is dynamic and fluctual. Hence, long term sources are tied up only for the base load and for any exigencies such as shut down of any plant. Furthermore, there is a peculiar load curve due to the fact that a majority of the load in Delhi is of commercial establishments, office buildings, which have requirement primarily during day time. Further the Hon'ble Commission directed the Licensee to ensure that electricity which could not be served due to any reason what-so-ever (including maintenance schedule, break-downs, load shedding etc.) shall not exceed 1% of the total energy supplied by them in any particular month, except in cases of force majeure events which are beyond the control of the Licensee. Accordingly, during peak hours, the Licensee was required to procure power from short term sources to meet the demand.
- 3A.49 The Petitioner has considered the power purchase cost through short term sources during FY 2018-19 which includes the Cost on account of purchase through bilateral, banking, Exchange, intra-state and UI. The Petitioner has deducted the UI Charges paid below threshold frequency as decided by CERC for short term power purchase. The Petitioner has deducted the UI Charges paid

below threshold frequency as decided by Hon'ble CERC for short term power purchase.

**Overlapping of banking transactions:**

3A.50 During FY 2018-19, there is no overlapping of any Banking transactions of the Petitioner and the Petitioner is in concurrence with the Regulation 152 of Tariff Regulations 2017.

3A.51 The Hon'ble Commission itself has, in its Short Term Power Procurement Guidelines contained in its letter dated January 20, 2010, stated that arrangement/ disposal of power through banking transactions is preferred. This was reiterated in the various Orders, wherein the Hon'ble Commission directed the DISCOMs to optimize power purchase cost through Banking transactions.

3A.52 In accordance with the above, the Petitioner requests the Hon'ble Commission to allow all banking transactions as they are revenue neutral in nature and economical.

**Contingency Limit of 5% on UI:**

3A.53 As per Business Plan Regulations 2017, the Hon'ble Commission has defined a contingency limit on UI. Relevant extract is shown below:

**"28. CONTINGENCY LIMIT FOR SALE OF POWER THROUGH  
DEVIATION SETTLEMENT MECHANISM (UNSCHEDULED  
INTERCHANGE CHARGES)**

(1) The Contingency Limit for disposing off of Power through Deviation Settlement Mechanism in terms of the Regulation 152 (c) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2017-18 to FY 2019-20 of the Distribution Licensees shall be 5% of Net Power Procured by the Distribution Licensee for the relevant month."

3A.54 It is also submitted that Petitioner is well within the limits during the FY 2018-19 as stipulated by the Hon'ble Commission in Business Plan Regulations, 2017.



**Additional UI Charges:**

3A.55 As per clause 152 of Tariff Regulations, 2017, the additional/penal UI Charges is not pass through. Relevant extract is shown below:

*“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; **(Emphasis Added)**”*

3A.56 In this regard, the bifurcation of Force Scheduling of power which are beyond the control of Petitioner is tabulated below:

**Table 3A 18: UI V/s Force Scheduling by Delhi SLDC for FY 2018-19 (MU)**

Month	Units over-drawn	Units under-drawn	Total UI Payable	Additional UI Charges	UI Receivable
April	1.54	23.45	0.47	0.18	4.44
May	1.70	25.12	1.26	0.35	4.35
June	0.00	53.79	0.00	0.08	7.39
July	0.41	37.88	0.17	0.07	5.51
August	2.09	17.98	0.68	0.14	2.73
September	5.55	5.55	1.70	0.19	0.86
October	1.02	11.81	0.37	0.03	1.90
November	1.18	11.89	0.35	0.06	2.33
December	0.61	11.07	0.37	0.03	2.16
January	0.00	26.14	1.57	1.32	1.85
February	1.56	10.82	2.83	0.97	0.61
March	6.28	6.62	5.88	0.98	0.15
<b>Total</b>	<b>21.95</b>	<b>242.11</b>	<b>15.64</b>	<b>4.42</b>	<b>34.28</b>

3A.57 The source-wise details of short term power purchase cost during FY 2018-19 are tabulated below:

**Table 3A 19: Details of Short Term Power Purchase for the year FY 2018-19**

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
A	Bilateral	0.00	0	3.63	57	4.16	152
B	Banking	3.94	165	4.03	412	5.10	283

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
C	Exchange	4.40	243	4.16	86	4.80	88
D	Intra-State	4.40	108	3.19	10	4.77	41
E	UI	3.76	50	2.86	30	20.24	16
F	<b>Total</b>	<b>3.86</b>	<b>567</b>	<b>3.91</b>	<b>594</b>	<b>4.84</b>	<b>581</b>

3A.58 **With regard to the Banking Transactions**, Regulation 121(3) of the Tariff Regulations, 2017 states as under:

*“121. While approving the cost of power purchase, the Commission shall determine the quantum of power to be purchased considering:*

*....*

***(3) Normative cost of banking transaction at the rate of average power purchase cost of the portfolio of the distribution licensee;”***

***(Emphasis Added)***

3A.59 However, as per Hon’ble Commission vide its letter dated 16.11.2018 indicated that the normative cost of banking transactions shall be weighted average rate of all long term sources considering only variable cost for the relevant year.

3A.60 In such event of conflict between the provisions of Regulations and Hon’ble DERC Letter, the Petitioner has considered the average rate of banking transactions @Rs 5.35/kWh as per applicable Tariff Regulations, 2017, as Hon’ble Commission in its Order dated 28.12.2017 in Petition No. 39 of 2017 has itself taken the view that *“if there is some conflict between the provisions of Regulations and the provisions of the Orders made thereunder, the law is very clear on the supremacy of the Regulations over the Orders.”*

3A.61 In view of the above, we request the Hon’ble Commission to kindly allow the power purchase cost during FY 2018-19 from short term sources as submitted in the above table.

c) Sale of Surplus Energy

3A.62 The Petitioner put its all-out efforts to maximize the revenue through sale of surplus power.

3A.63 The source-wise details of revenue realized through sale of surplus energy during FY 2018-19 are tabulated below:

**Table 3A 20: Details of Short Term Power Sales for the year FY 2018-19**

S. No	Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
A	Bilateral	3.05	26	3.05	5	0.00	0
B	Banking	3.80	94	3.66	440	5.23	529
C	Exchange	1.66	13	2.74	83	3.24	184
D	Intra-State	2.34	10	2.10	1	2.55	4
E	UI	1.53	13	0.22	0	1.35	24
F	<b>Total</b>		<b>156</b>		<b>529</b>	<b>4.18</b>	<b>741</b>

3A.64 As stated in above para, the Petitioner has considered the average rate of banking transactions @Rs 5.35/kWh as per applicable Tariff Regulations, 2017.

3A.65 The Petitioner requests the Hon'ble Commission to consider the revenue on account of sale of surplus power while approving the net power purchase cost as submitted in the above table.

d) Transmission Charges:

3A.66 The Petitioner has considered the Transmission charges for FY 2018-19 as under:

**Table 3A 21: Transmission Charges (Rs. Crore) for FY 2018-19**

S. No	Particulars	Submission	Reference
i	Power Grid Corp. of India Ltd.	553.05	Accounting Statement Annexed
ii	Delhi Transco Ltd. Wheeling Charges	451.35	
iii	Other Transmission etc.	22.65	
iv	Open Access Charges	76.98	
v	<b>Total Transmission charges</b>	<b>1104.03</b>	<b>Sum I to V</b>

e) Gross Power Purchase Cost:

3A.67 Based on the above submissions, the Petitioner has considered the gross power purchase during FY 2018-19 which is tabulated below:

**Table 3A 22: Gross Power Purchase Cost before rebate during FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018- 19	Reference
A	Audited Gross Power Purchase Cost (Before Rebate)	7420.67	
i	Purchase of Energy	6453.53	Note 35 of Audited Accounts (excl. LPSC)
ii	Transmission cost	1104.03	
B	Total Gross Power Purchase Cost excluding LPSC	7557.56	i+ii

**Table 3A 23: Reconciliation with Table 3A 22(Rs. Crore)**

S. No	Particulars	FY 2018-19	Reference
A	Long Term Power Purchase	6477.14	Table 3A 17
B	Short Term Power Purchase	580.69	Table 3A 19
C	Less: Short Term Banking	528.90	Table 3A 20
i	<b>Total</b>	<b>6528.93</b>	A+B-C
ii	Transmission cost	1104.03	Table 3A 22
D	<b>Total Gross Power Purchase Cost excluding LPSC and rebate</b>	<b>7632.96</b>	i+ii
	<b>Remaining Value (Rebate)</b>	<b>75.40</b>	D-B of Table 3A 22

**Rebate on power purchase and Transmission Charges**

3A.68 The Hon'ble Commission vide letter dated June 5, 2014 specified the format for submission of details of rebate on power purchase and transmission charges. As regards the long term generating and transmission companies charges, rebate is not allowed on interest charges and other billing items which are in nature of reimbursement, such as Income Tax, Other Taxes, Cess, Duties etc. Rebate is generally allowed on all other billing items. The rebate on power purchase and Transmission Charges is tabulated below:

**Table 3A 24: Details of Rebate Claimed for FY 2018-19 (Rs. Crore)**

Sl. No.	Party/Company	Rebatable Amount	Non-Rebatable Amount	Total Bill Amt	Actual Amount claimed
1	NTPC	3,920.40	(18.26)	3,902.14	48.71

Sl. No.	Party/Company	Rebatable Amount	Non-Rebatable Amount	Total Bill Amt	Actual Amount claimed
2	NHPC	323.06	35.65	358.71	6.53
3	Nuclear	141.84	2.02	143.85	
4	SJVNL	70.67	-	70.67	1.40
5	THDC	144.14	14.54	158.68	
6	Tala HEP	7.09		7.09	0.03
6.1	PTC Wind	17.53		17.53	0.30
7	DVC	373.59	0.55	374.14	
8	Power stations in Delhi				
8.1	IP	9.63	10.77	20.40	
8.2	GAS TURBINE	243.44		243.44	
8.3	Pragati-I	254.92		254.92	
8.4	Bawana	738.04		738.04	
8.5	TOWMCL	23.87		23.87	0.49
8.6	Thyagraj Solar	0.19		0.19	
8.7	Delhi MSW	32.54		32.54	0.61
8.8	EAST DELHI WASTE PROCESSING COMPANY	2.38		2.38	0.05
9	ARAVALI	19.41	3.91	23.32	
10	SASAN	65.61	5.66	71.28	1.68
11	SECI		23.25	23.25	
12	<b>Short term Purchases</b>	152.47		152.47	3.05
12.01	Short term Power Purchase Thru Power Exchange	-	88.19	88.19	
12.03	Banking Arrangement Purchase	-	282.88	282.88	
12.03	Banking Arrangement Sale of Power		(528.90)	(528.90)	
12.04	Intra State Power Purchase	-	41.31	41.31	
12.05	Other Payments	-	10.70	10.70	
13	UI PURCHASE DTL SLDC	-	15.84	15.84	
14	<b>Transmission Charges</b>				
14.1	Power Grid Corp.of India Ltd.	617.17	(64.11)	553.05	<b>12.54</b>
14.2	Delhi Transco Ltd.	451.35	3.64	454.99	
14.3	Bhakra Beas Manegment Board		0.47	0.47	
14.4	Aravali Power Company Private Ltd	0.00		0.00	
14.5	Damodar Valley Corporation	2.20		2.20	
14.6	NTPC Ltd.	12.96		12.96	
14.7	SASAN			-	
14.8	Solar Energy Corporation of India		2.05	2.05	
15	Open Access Charges		76.98	76.98	
16	NRLDC/WRLDC/ERLDC charges billed by Power Vendors		1.33	1.33	
	<b>Total Transmission Charges</b>	<b>1083.67</b>	<b>20.36</b>	<b>1104.03</b>	<b>12.54</b>
	<b>Total Power Purchase Cost</b>	<b>7,624.50</b>	<b>8.46</b>	<b>7,632.96</b>	<b>75.40</b>

Sl. No.	Party/Company	Rebatable Amount	Non-Rebatable Amount	Total Bill Amt	Actual Amount claimed
17	Short term Sale				
	Bulk Sale of Power				
	Short term Power Sale Thru Power Exchange		184.44	184.44	
	INTRATATE SALE		3.84	3.84	
	UI SALE DTL SLDC		24.01	24.01	
	<b>Total Sale</b>		<b>212.29</b>	<b>212.29</b>	<b>0.00</b>
	<b>Net Rebate</b>				<b>75.40</b>

3A.69 As regards the normative rebate, it is respectfully submitted that the normative rebate ought not be applied at the time of truing-up due to the following reasons:

- The normative rebate cannot be considered at the stage of true-up. In any event, the deduction of a normative rebate assuming a maximum of 2% of the power purchase cost is ex-facie in contravention of Hon'ble Tribunal's Judgment in Appeal No. 153 of 2009 which expressly restricted such a deduction to 1% of the power purchase cost.
- A similar issue is pending before Hon'ble Tribunal in Appeal No. 235-236 of 2014. Further, in true-up proceedings for FY 2015-16, the Petitioner has again raised the issue before the Commission, vide its letter dated 18.08.2017
- Furthermore, the Petitioner vide letter dated April 8, 2015 submitted a number of reasons as to why the normative rebate ought not to be considered.
- The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has again confirmed the Judgment dated July 30, 2010 (Appeal 153 of 2009) and directed that normative rebate of upto 1% can be considered as per the norms specified for working capital in DERC Tariff Regulations, 2011 which means that actual rebate is to be considered and if actual rebate availed exceeds 1% then 1% is to be considered. Relevant extracts are reproduced below:

*“6.1 According to the Appellant, the State Commission has acted contrary to the findings of this Tribunal in Appeal no. 142 of 2009 wherein the Tribunal directed to consider rebate upto 1% as non-tariff income from the total rebate of 2% on power purchase.*

*6.2 According to Shri Pradeep Misra, Learned Counsel for the State Commission this issue is pending consideration in Appeal no. 14 of 2012 wherein the judgment has been reserved. The State Commission has made detailed submissions in Appeal no. 14 of 2012. The Learned Counsel reiterated the detailed submissions made in Appeal no. 14 of 2012. 6.3 The Tribunal in Appeal no. 14 of 2012 on 28.11.2013 reiterated the view taken by this Tribunal in Appeal no. 153 of 2009. This Tribunal in Appeal no. 153 of 2009. Decided as under: “The second issue relates to the deduction of rebate due to the early payment of the power purchase cost from the ARR. The Appellant, through its efficient management, has paid all the bills immediately on raising of the bills by the generating company and, therefore, it has to be allowed a rebate of 2 per cent. Therefore, there is no justifiable reason for the State Commission to reduce the power purchase cost by rebate earned by the Appellant. The normative working capital provides for power purchase cost for one month. Therefore, rebate of 1 per cent available for payment of power purchase bill within one month should be considered as non-Tariff income and to that extent benefit of 1 per cent rebate goes to reducing the ARR of the Appellant. The rebate earned on early payment of power purchase cost cannot be deducted from the power purchase cost and rebate earned only up to 1 per cent alone can be treated as par of the non-Tariff income. Therefore treating the rebate income for deduction from the power purchase cost is contrary to the MYT Regulations. As such this issue is answered in favour of the Appellant.” The Tribunal in Appeal no.142 of 2009 reiterated the above decision of the Tribunal.” **(Emphasis added)***

- e) The concept of normative rebate is based on assumptions that the system is perfect and business as usual as under:
- i. There is no creation of Regulatory Asset. However, there is an accumulated figure of Rs. 3979 Crore upto FY 2017-18 as Regulatory Asset;
  - ii. Around, seven (7) number of APTEL’s judgments are yet to be given



effect to by this Hon'ble Commission entitling cash flow to the Petitioner;

- iii. There is no major variation in power purchase cost.

In fact, to the best of the knowledge of the Petitioner, in no other state any DISCOM has been able to avail maximum normative rebate when aforesaid conditions are not met.

- f) The Hon'ble Commission has omitted to note that the Petitioner is not financially adept to open LC in case of any Generator. The 2% rebate is admissible only in the event that payment is made through LC. This is clear from the regulations of the Hon'ble Commission and of the Hon'ble CERC, extracted hereunder:
- g) CERC Tariff Regulations, 2014-19 clearly states as under:

*"Rebate. (1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation or through NEFT/RTGS within a period of 2 days of presentation of bills by the generating company or the transmission licensee, a rebate of 2% shall be allowed.*

*(2) Where payments are made on any day after 2 days and within a period of 30 days of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed."*  
**{Emphasis added}**

As set out herein above, the Petitioner cannot and is not making payment of bills to any generating company and transmission licensee through letter of credit on presentation.

- h) Without prejudice to the above, the Hon'ble Commission in the past Tariff Orders has considered rebate on entire power purchase cost incurred by the Petitioner. However, the Hon'ble Commission has made certain disallowances. Therefore, the Hon'ble Commission has considered the rebate even on disallowed power purchase cost thereby doubly penalizing the Petitioner.

- 3A.70 Additionally, the Petitioner also has to pay LPSC to the generators which is not allowed by Hon'ble Commission and where there is a difference in the rate of LPSC charges (18%) vis a vis rate of funding & carrying cost resulting in further adverse financial to the Petitioner.
- 3A.71 In view of the above submissions, the Petitioner requests the Hon'ble Commission to consider the actual rebate on power purchase and Transmission Charges during FY 2018-19.

**Late Payment Surcharge (LPSC)**

- 3A.72 The Petitioner has filed petition no 26 of 2018 regarding inconsistency between rate of Late Payment Surcharge levied by State Utilities & rate of carrying cost allowed by the Commission on the Regulatory Asset the same is pending for adjudication before the Hon'ble Commission.
- 3A.73 The petitioner further submits that LPSC charged to petitioner is to compensate the generating companies and Transmission licensees for the delay in realization of revenue on account of non-payment of bills by the petitioner. The LPSC at 1.5% is a fixed rate. However, the loss of revenue till receipt of payment from the beneficiaries against the bills is mitigated by Gencos and Transcos by availing loans at floating rates of interest. Therefore, the lacunae is that the beneficiaries are liable to pay LPSC at fixed rate whereas the Gencos and Transcos avail loans at floating rate.
- 3A.74 Therefore, the rate of late payment surcharge ought to be in sync with the current bank lending norm i.e. MCLR. The Gencos and Transcos would face a burden when the lending rates applicable to them are higher than the fixed rate of LPSC. Similarly, the Gencos and Transcos would stand to gain when the lending rate applicable to them are lower than the fixed rate of LPSC.

**For example:**

*When the additional working capital interest rate is 21% as against 18% of LPSC fixed rate the Gencos/Transcos are at loss. Similarly, when the additional working*

*capital interest rate is 8% against 18% of LPSC fixed rate the Gencos/Transcos are at gain.*

- 3A.75 The above would show that the Gencos/Transcos could recover LPSC at a rate which is more than the rate of interest payable by them for availing loans. Such excess recovery should be clawed back towards rationalization of Tariff which would benefit end consumers at large.
- 3A.76 Therefore, the Petitioner submits that there is an inconsistency between rate of Late Payment Surcharge levied by State Utilities & rate of carrying cost allowed by the Commission on the Regulatory Asset whereas both are related consequent effect to each other. The petitioner is being charged at LPSC rate of 18% pa vis a vis carrying cost is very low.
- 3A.77 Hence, in view of the above the petitioner request Hon'ble Commission as under:
- i. Reduce the LPSC rate to borrowing cost of Genco/Transco in similar approach followed for distribution licenses for rate of carrying cost or
  - ii. Increase rate of Carrying cost allowed by DERC equivalent to LPSC rate approved by commission or
  - iii. To allow LPSC recovered by State Utilities above the rate of carrying cost as Income in the ARR of the utilities so that the benefit of the same can be passed on to the consumers.

## RPO Obligation

- 3A.78 As per Regulation 27 of the Business Plan Regulations, 2017 the Hon'ble Commission has set the targets for Renewable Purchase Obligation (RPO). The relevant extract is shown below:

### **"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%
2	Total	11.50%	14.25%	17.00%

..”

3A.79 In view of the above, Petitioner target vis-à-vis actual purchase for Renewable Purchase Obligation for FY 2018-19 is shown below:

**Table 3A 25: Details of RPO for FY 2018-19**

S.No.	Particulars	Solar	Non-Solar	Total	Reference
i	Sales (MU)	12194			Actual Sales
ii	Hydro Purchases (MU)	1533			
iii	Base for RPO (MU)	10661			i-ii
iv	RPO Target (%)	4.75%	9.50%	14.25%	
v	<b>RPO target (MU)</b>	<b>506.42</b>	<b>1012.83</b>	<b>1519.25</b>	<b>iii * iv</b>
	<b>RPO met</b>				
vi	EDWPCL		7.48	7.48	
vii	DMSW		46.28	46.28	
viii	SECI	42.26		42.26	
ix	Thyraj	0.54		0.54	
x	PTC Wind		49.67	49.67	
xi	TOWMCL		85.14	85.14	
xii	Net metering-Solar roof-top	32.32		32.32	
xiii	Small Hydro		362.51	362.51	
xiv	<b>Sub-Total - RPO met</b>	<b>75.12</b>	<b>551.08</b>	<b>626.20</b>	
xv	<b>Shortfall (MU)</b>	<b>431.29</b>	<b>461.75</b>	<b>893.04</b>	<b>v-xiv</b>

3A.80 The Petitioner is making consistent efforts for the last few years to procure renewable energy to meet RPO as specified by the Hon'ble Commission. As on October 2019, the Petitioner had successfully issued net metering connections for a cumulative capacity of 56 MW solar rooftop projects developed by individual developers. The Petitioner has procured around 32 MU of Net metering-Solar roof-top in FY 2018-19 for meeting the shortfall of Solar RPO Targets.

3A.81 Although the Petitioner is looking at all possible options/solutions to avail renewable power and meet the RPO targets but as Hon'ble Commission is aware

that the Petitioner has been facing adverse financial condition since FY 2009-10 primarily on account of a non-cost reflective Tariff and absence of adequate recovery of accumulated Regulatory Asset. The same has constrained the capability of the Petitioner to purchase power from renewable sources. Further, there is shortfall in the cost allowed by Hon'ble Commission in tariff on account of non-availability of Rebate and short term power purchase cost in the ARR. Additionally, the Petitioner also has to pay LPSC @ 18% p.a. to the generators which is not allowed by Hon'ble Commission and is allowed mere 8% on regulatory assets. This contradiction and negative differential rate of interest has gravely prejudiced the Petitioner.

3A.82 It is also brought to the kind notice of the Hon'ble Commission that the Petitioner has filed appeal against the Hon'ble Commission's order dated 11.06.2018 in Petition no. 31 of 2015 and 01 of 2018 in the matter of waiver/deferment of RPO compliance. This appeal is pending for adjudication before Hon'ble APTEL.

3A.83 Further, Petitioner has signed various PPA's for fulfilments of Solar and Non-Solar obligations with the supply to be commence in near future. The details are shown hereunder:

**Table 3A 26: Details of upcoming Firm Renewable sources**

S.No.	Party	Particular/ Description	Allocation (MW)	Date of Signing of PPA	Validity/Expected COD
1	SECI	Solar- SECI ACME	400	06-Aug-18	SCOD- Oct'20
		Solar-SECI	350	17-Jun-19	SCOD – Dec'20
		Wind -SECI Alfancar	150	28-Mar-18	SCOD – Nov'19
		Wind- SECI SITEC	100	20-Dec-18	SCOD – Jul'20
		Wind -SECI Srijan	50	17-Jun-19	SCOD – Jan'21
2	PTC	Wind PTC - Inox	50	21-Jul-17	SCOD of Oct'18.
3	SDMC	Tehkhand-Okhla	10	20.11.2018	future plant- Mar'21
<b>Total</b>			<b>1110</b>		

3A.84 The above mentioned PPAs shall start operationalising from FY 2019-20 onwards and shall be meeting RPO targets in future, therefore it is requested that the Hon'ble Commission takes cognisance of the various efforts made by the

Petitioner in meeting the RPO Targets and to kindly carry forward to the next control period or waive off the shortfall in meeting the RPO for FY 2018-19 in view of supply constraints and other factors beyond the control of the licensee, as proposed in the Business Plan Petition for the next Control Period filed before Hon'ble Commission.

### Total Power Purchase Cost for the purpose of Truing-up

3A.85 Based on the above submissions, the actual power purchase cost claimed during FY 2018-19 is shown below:

**Table 3A 27: Power Purchase Cost during FY 2018-19 based on Auditor's Certificate (Rs. Crore)**

S. No.	Particulars	Submission	Reference
<b>A</b>	<b>Power Purchase Cost</b>		
i	Gross Power Purchase Cost	7058	Table 3A 23
ii	Power sold to other sources	741	Table 3A 20
iii	Less: Addnl UI Charges	4	
iv	Net Power Purchase Cost	6312	i-ii-iii
<b>B</b>	<b>Transmission Charges</b>		
i	Inter-state transmission charges	553	Table 3A 21
ii	Intra-state transmission charges	451	
iii	Other Transmission charges	100	
iv	Total Transmission charges	1104	
<b>C</b>	<b>Rebate</b>		
i	Power Purchase Rebate	63	Table 3A 24
ii	Rebate on Transmission Charges	13	
iii	Total rebate	75	
<b>D</b>	<b>Net Power Purchase Cost including Transmission charges net of rebate</b>	<b>7341</b>	<b>A+B-C</b>
E	Incentive on short term Sale	141	
F	<b>Total Power purchase including incentive</b>	<b>7482</b>	

3A.86 The Petitioner requests the Hon'ble Commission to approve the power purchase cost during FY 2018-19 as submitted in the above table.

### Operation & Maintenance Expenses

3A.87 Regulation 4(3) read with Regulation 87/ 92 of the Tariff Regulations, 2017 provides that Utilities shall be allowed O&M Expenses on normative basis as

specified by the Hon'ble Commission in its Business Plan Regulations for the respective Control Period.

- 3A.88 Regulation 23 of Business Plan Regulations, 2017 regarding the Operation and Maintenance Expenses for the period FY 2017-18 to FY 2019-20 states:

**“23. OPERATION AND MAINTENANCE EXPENSES**

(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows:

**Table 8: O&M Expenses for BRPL for the Control Period**

Particulars	Unit	2017-18	2018-19	2019-20
66 kV Line	Rs. Lakh/ckt. km	3.454	3.648	3.853
33 kV Line	Rs. Lakh/ckt. km	3.454	3.648	3.853
11kV Line	Rs. Lakh/ckt. km	1.001	1.058	1.117
LT Line system	Rs. Lakh/Ckt. km	5.170	5.460	5.766
66/11 kV Grid S/s	Rs. Lakh/MVA	0.933	0.986	1.041
33/11 kV Grid S/s	Rs. Lakh/MVA	0.933	0.986	1.041
11/0.415 kV DT	Rs. Lakh/MVA	2.209	2.333	2.464

...”

- 3A.89 As evident from the above, the normative O&M expenses for FY 2018-19 are computed by applying the approved per unit rates for FY 2018-19 on the actual line length and power transformation capacity added for FY 2018-19. The Hon'ble Commission has also conducted the quarterly audit of the Capitalisation for FY 2018-19.

- 3A.90 Accordingly, the Petitioner has computed the normative O&M expenses for FY 2018-19 as shown below:

**Table 3A 28: O&M Expenses for FY 2018-19 (Rs. Crore)**

Particulars	Capacity as on 31.03.2019	O&M expenses per unit		O&M expenses
66/33 kV Line (ckt km)	1090	Rs. Lakh/ckt. km	3.648	39.8
11kV Line (ckt km)	7411	Rs. Lakh/ckt. km	1.058	78.4
LT Line system (ckt km)	11765	Rs. Lakh/Ckt. km	5.460	642.3
66/11 & 33/11 kV Grid S/s (MVA)	5911	Rs. Lakh/MVA	0.986	58.3
11/0.415 kV DT (MVA)	4880	Rs. Lakh/MVA	2.333	113.8
<b>Total</b>				<b>932.7</b>



3A.91 The Petitioner requests the Hon'ble Commission to allow the normative O&M expenses during FY 2018-19 as submitted in the above table as per the DERC Business Plan Regulation, 2017.

### **Additional O&M Expenses**

3A.92 As regards additional expenses, Regulation-11 of DERC Tariff Regulations, 2017 states as under:

"11. The Distribution Licensee shall submit Annual Tariff Petition, at least, one hundred and fifty (150) days prior to the end of relevant financial year which shall contain:

...

(9) Actual and expected additional expenses on account of O&M beyond the control of Distribution Licensee for the ensuing & previous year respectively;

..."

3A.93 As regards projection of O&M Expenses, Regulation 87 of Tariff Regulations, 2017 states that

"87.

...

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."

3A.94 Accordingly, the Petitioner hereby claims item wise amount on account of additional O&M expenses which are uncontrollable in nature and not covered in the above-mentioned normative O&M expenses and are in line with the above regulation.

#### a) Arrears paid on account of 7th Pay Commission revision

3A.95 Further, Regulation-23 (4) of DERC Business Plan Regulations, 2017 states as under:

**"23. Operation and Maintenance Expenses**

...

*(4) Impact of any statutory pay revision on employee's cost as may be applicable on case to case basis shall be considered separately, based on actual payment made by the Distribution Licensees and shall be allowed by the Commission after prudence check at the time of true up of ARR for the relevant financial year."*

- 3A.96 A Wage Revision Committee was constituted by the GoNCTD vide office memorandum bearing No. F.11(62)/2015/Power/271 dated January 25, 2016 to examine and recommend to the Government the Pay Revision for the employees. Such recommendations become applicable on the Petitioner as per the tripartite agreement. The Committee had given recommendation vide order no DTL/108/04/2017-HR(Policy) /101 dated July 28, 2017 for payment of Interim Relief (IR) to the eligible employees at the rate of 2.57 times of Basic pay + Grade Pay w.e.f. January 01, 2016. Accordingly, the Petitioner disbursed payment of Rs. 58.63 Crore (Rs. 55.52 Crore escalated by 5.61%) for FY 2018-19.
- 3A.97 The Petitioner requests the Hon'ble Commission to allow an impact of Rs. 58.63 Crore on account of payment of interim relief of 7th Pay Commission as the expenses are uncontrollable and are already paid to the employees.

**b) Impact of Revision in Minimum Wages**

- 3A.98 GoNCTD vide Notification No. F. Addl.LC/Lab/MW/2016/4859 dated March 3, 2017 has notified the revised minimum wages effective from date of notification. Accordingly, the Petitioner has paid expenses related to manpower based contract which has an incremental effect of minimum wages.
- 3A.99 Accordingly, the Petitioner has paid Rs. 42.47 Crore (Rs. 7.79 Crore and Rs. 32.42 Crore for FY 2017-19 escalated by 5.61%) on account of impact of revision in minimum wages during FY 2018-19. The Petitioner request the Hon'ble Commission to allow the same.

**c) Property Tax**

3A.100 Hon'ble Supreme Court has passed judgement on 10.08.2016 in the case of M/s TPDDL and held that whosoever has a right to let out premises is liable to pay tax. Further, it has remanded the matter to Deputy Assessor and Collector of Municipal Corporation of Delhi, to determine the same. As the Petitioner has a right to let out premises as per the approval of Hon'ble Commission, it has been decided to resolve the issue by availing Amnesty Scheme, which allowed payment of Property Tax without interest and penalty. The Petitioner has accordingly paid the property tax amounting Rs. 2.36 Crore in FY 2018-19 and requests the Hon'ble Commission to allow the same as a part of additional O&M expenses.

d) GST Charges

3A.101 With effect from July 01, 2017, the Petitioner was required to pay GST (@18%) instead of service tax (12% to 15%). Further, as per the circular no. 34/8/2018 – GST, there are few services that are provided by the Petitioner to consumer which are now deemed as GST taxable services. However, the GST rate is 18% which is marginally higher than the service tax rate.

3A.102 It is further submitted that any addition/deletion or new enactment of statutory levy is totally uncontrollable in the hands of the Petitioner and is required to abide by the same. The said amendment has impacted the Petitioner due to introduction of GST charges.

3A.103 Accordingly, the GST charges paid by the Petitioner during FY 2018-19 is Rs. 73.18 Crore. The differential amount of Rs. 30.09 Crore on account of impact of GST as tabulated below:

**Table 3A 29: Incremental GST Charges paid (Rs. Crore)**

S. No.	Particulars	FY 2015- 16	FY 2016- 17	FY 2017-18	FY 2018-19
1	<b>Total Service Tax paid during FY 16</b>	<b>36.58</b>			
2	Escalation Factor		5.61%	5.61%	5.61%
3	Service tax		38.63	40.80	43.09
5	GST paid during FY 2018-19				73.18
6	<b>Net Impact (GST)</b>				30.09

3A.104 The Petitioner requests the Hon'ble Commission to allow the aforesaid expenses while truing up the expenses for FY 2018-19.

e) SMS Charges

3A.105 The Hon'ble Commission vide its letter ref no. F.17(47)/Engg/DERC/2014-15/C.F 4741/3682 dated 13.01.2016 issued the directives to send the SMS to consumer on various occasions. The Petitioner complied with the said directives and hence, incurred an amount of Rs. 1.09 Crore in FY 2018-19. Since, these expenses are incurred as per the directions of the Hon'ble Commission and is over and above the normative expenses, the Petitioner requests to allow the same as a part of additional expenses.

f) Loss on Sale of Retired Assets

3A.106 Regulation 45 of Tariff Regulations, 2017 states as under

*"45. Loss or Gain due to de-capitalisation of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year."*

3A.107 In view of the above and as per the methodology provided in the Tariff Regulations, 2017, the Petitioner claims Rs. 21.70 Crore for retirement of assets for the year FY 2018-19 as per audited accounts.

g) Legal Expenses

3A.108 The Hon'ble Commission has provided the treatment of Legal Expenses at Para 43 of its Explanatory Memorandum as follows:

*"(43) The Commission has not considered the expenditure incurred on account of legal fee. Further, the Commission is of the view that legal expenses incurred on cases filed against the decisions of the Commission in any of the Courts and Forums shall not be allowed as pass through in the ARR. The legal expenses incurred on cases other*

*than aforesaid, shall be claimed by the DISCOMs in Tariff petitions which may be allowed separately after prudence check in true-up order for respective year."*

3A.109 With respect to the above regulation, the Petitioner would like to mention that Distribution business is a regulated business under the aegis of this Commission and the right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) of the Constitution includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business. Moreover, the Electricity Act, 2003, allows the Petitioner the right to avail its statutory remedies under section 111 and other applicable provisions. Therefore, actual legal expenses without any distinction should be allowed as an expense in the ARR. Thus, the Petitioner requests the Hon'ble Commission to allow actual legal expenses of Rs. 17.49 Crore for FY 2018-19 over and above the normative O&M expenses.

#### h) Water Charges

3A.110 Regulation 87 of Tariff Regulations, 2017 states as under

"

87.

...

*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."*

3A.111 In accordance with the above regulation, the water charges paid by the Petitioner during FY 2018-19 are Rs. 8.67 Crore and requests the Hon'ble Commission to allow the same.

i) Legal Fees

3A.112 As per the directions of the Hon'ble Commission, the Petitioner has incurred an expenditure of Rs. 1.69 Crore for the year FY 2018-19. Accordingly, the Petitioner is claiming the same for FY 2018-19.

j) Licensee Fees Paid on Assets

3A.113 The Petitioner pays License fees to GoNCTD for land rights. The Hon'ble Commission has allowed the license fees to be paid to GoNCTD on normative basis by applying an escalation factor of 5.61% on the actual license fees paid during FY 2015-16. However, the same ought to be allowed on actual basis. Accordingly, Petitioner requests the Hon'ble Commission to allow the incremental license fees of Rs. 7.16 Crore paid to GoNCTD. The Calculation of the same is shown below:

**Table 3A 30: Incremental License Fee paid for FY 2018-19**

Particulars	FY 2015- 16	FY 2016- 17	FY 2017-18	FY 2018-19
<b>License Fee in FY 16</b>	<b>5.38</b>			
Escalation Factor		5.61%	5.61%	5.61%
License Fee Approved		5.68	6.00	6.33
License Fee Actually Paid				13.49
<b>Net Impact</b>				<b>7.16</b>

k) DSM Charges

3A.114 The Petitioner has incurred DSM charges of Rs. 1.22 Crore on account of rebate amount under AC Replacement Scheme for the year FY 2018-19 and requests the Hon'ble Commission to allow the same.

l) KYC Expenses

3A.115 The Government of National Capital Territory of Delhi vide its letter No. F.11(55)/2018/Power/1421 dated 28.05.2018, attached as **Annexure 2**, had directed the Petitioner to provide the information of K.No. /CA.No., Name of Consumer, yearly subsidy given in the last 3 years, Load in kW, Monthwise Units consumed and billed amount in last 3 years, etc. and prepare the future roadmap

to maximize the benefit of subsidy in terms of energy efficiency among Domestic Consumers of Delhi. In this regard, the Petitioner had to engage third party agency for collection of consumer information to comply with the aforesaid GoNCTD directive and had followed the process of competitive bidding for selecting the vendors at lowest cost. Till date, the Petitioner has incurred Rs. 4.28 Crore on account of KYC Expenses for the year FY 2018-19 and requests the Hon'ble Commission to allow the same.

**m) Geo-Spatial Fees**

3A.116 The Petitioner has incurred Rs. 0.30 Crore on account of Geo-Spatial Fees for the year FY 2018-19 and requests the Hon'ble Commission to allow the same.

3A.117 In view of the above submissions, the additional O&M expenses claimed as a part of truing-up requirement for FY 2018-19 are shown below:

**Table 3A 31: Additional O&M Expenses for FY 2018-19**

S. No	Particulars	Amount (Rs. Cr.)	Reference
1	Loss on Sale of Retired Assets	21.70	Note 39 of Audited Accounts
2	Arrears paid on account of 7th Pay Commission revision	58.63	Note 36 of Audited Accounts
3	Impact of Revision in Minimum Wages	42.47	Note 36 and Note 39 of Audited Accounts
4	Water Charges	8.67	Note 39 of Audited Accounts
5	Property Tax	2.36	Note 39 of Audited Accounts
6	GST Charges	30.09	Note 36 and Note 39 of Audited Accounts
7	SMS Charges	1.09	Note 39 of Audited Accounts
8	Legal Expenses	17.49	Note 39 of Audited Accounts
9	Legal Fees	1.69	Note 39 of Audited Accounts
10	DSM charges	1.22	
11	KYC Expenses	4.28	Note 39 of Audited Accounts
12	Licensee Fees paid on Assets	7.16	Note 39 of Audited Accounts
13	Geo-Spatial Fees	0.30	Note 39 of Audited Accounts
14	<b>Total</b>	<b>197.15</b>	<b>Sum(1 to 13)</b>



3A.118 The Petitioner requests the Hon'ble Commission to allow the amount as proposed in the table above while truing up the expenses for FY 2018-19.

### Non-Tariff Income

3A.119 The items which have been added apart from the income shown as per Audited Accounts are as under:

#### Interest on Consumer Security Deposit

3A.120 As the Hon'ble Commission has considered Consumer Security Deposit for funding of Revenue Gap, therefore the Petitioner has considered the rate of Carrying cost for computing the interest on Consumer Security Deposit. Hence the difference of normative interest on CSD and that booked in the Audited Accounts has been added in NTI as under:

**Table 3A 32: Interest on CSD (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Reference
A	Opening Balance of CSD	721.49	Note 21 of Audited Accounts
B	Closing Balance of CSD	786.96	
C	Average Balance	754.23	$C = (A+B)/2$
D	Interest Rate	14.00%	
E	Interest on CSD	105.59	$E = C \times D$
F	Interest booked in Audited Accounts	63.54	Note 37 of Audited Accounts
G	<b>Net Interest to be considered</b>	<b>42.05</b>	$G = E - F$

#### Difference on account of Service Line Development (SLD) Charges:

3A.121 The Hon'ble Commission in Tariff Order dated September 29, 2015 ruled as under:

*"3.373 The Commission has considered the service line charges as income for a period of three years for true-up up to FY 2011-12. The service line charges up to FY 2012-13 have been considered as part of revenue gap up to FY 2012-13 as discussed in earlier paragraphs. For FY 2013-14, service line charges of Rs. 43.37 Crore as per audited financial statement of FY 2013-14 are being considered as part of the non-tariff income of the Petitioner."*

3A.122 The Petitioner has challenged the aforesaid issue before Hon'ble ATE in Appeal 297 of 2015 which is pending. Without pre-judice to the contentions in the Appeal, the Petitioner has added the difference between the SLD Charges received during FY 2018-19 and that appearing in the Other Income in the Audited Accounts for the purpose of computation of Non-Tariff Income as under:

**Table 3A 33: Difference on account of SLD (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks
1	Received during the year	49.74	Note 24 Service Line Deposits
2	SLD Appearing in Other Income	39.10	
	<b>Difference Considered</b>	<b>10.64</b>	

3A.123 Accordingly, the Petitioner has adjusted the same as claimed above during FY 2018-19 for the purpose of computation of Non-Tariff Income.

3A.124 The explanation for each of the item not to be considered as Non-Tariff Income is as under:

#### Interest on Inter-Company Loans

3A.125 The Hon'ble Commission in its Tariff Order dated March 28, 2018 has ruled as under:

*"3.129 The Commission has considered the submission of the petitioner that the fund used for funding the loan to sister concern is not utilized for the regulated business and the petitioner is not entitled for any return or interest on these funds from ARR. Therefore, the interest on intercompany loan is allowed to be reduced from Non-Tariff Income."*

3A.126 The Petitioner offered loan to BYPL which otherwise would have been borrowed by BYPL from some other bank/financial institution. The Petitioner has not claimed the cost of such a loan in its ARR and the interest earned should not be deducted from its ARR as a non-tariff income. Such interest earned is on account of inter-company transfer and is not incidental to electricity business. Usage of the funds available to the Petitioner in the form of equity is in terms of Regulation 94 and Regulation-5.35 proviso of Tariff Regulations, 2017 and DERC MYT

Regulations, 2011 respectively is specifically excluded from Non-Tariff Income. Under those circumstances, the interest earned on the loan given by the Petitioner from its equity cannot be shared by regulated business of the Petitioner. The aforesaid principle of demarcation is well recognized by the Hon'ble Tribunal in a catena of Judgments specifically in Income Tax starting from Judgment dated April 4, 2007 in Appeal No.251 of 2006 which is carried forward all the way upto the Judgment dated November 28, 2013 in Appeal No.138 of 2012.

- 3A.127 In all these Judgments, it has been categorically stated that the licensed business must be treated as a water tight compartment and only the expenses and revenue of the business form as a business activity and statement of affairs of the licensed business. Hence, no part of an unlicensed and an unrelated activity could form either a cost component or a revenue component in the ARR.
- 3A.128 Moreover, such an interest is not non-tariff income. In case the Petitioner would not have given the loan to BYPL, the funds available with the Petitioner would have been invested elsewhere and the interest/ income earned on the same would have been retained by the Petitioner. Such an interest is akin to earning moneys on investments from shareholders' funds which are specifically exempted from deduction from ARR.
- 3A.129 Therefore, the Petitioner requests the Hon'ble Commission to allow the Petitioner to retain the interest earned of Rs. 21.72 Crore on inter-company loans.

Late Payment Surcharge:

- 3A.130 As regards LPSC, it is submitted that the Petitioner levied LPSC @ 1.5% per month on flat basis till FY 2012-13. The Hon'ble Commission was therefore allowing only financing cost of LPSC to the Petitioner by computing the principal amount (LPSC divided by 18% (12 x 1.5%) and allowing carrying cost on the principal amount.

The difference between the amount of LPSC and the interest on principal amount was passed on the consumers by way of NTI.

- 3A.131 Based on the representation of Foundation of Rubber & Polymer Manufacturers, the Hon'ble Commission vide letter dated December 13, 2012 communicated that LPSC should be charged proportional to the number of days of delay in receiving payment from the consumers by the Petitioner. The Hon'ble Commission in Tariff Order dated September 29, 2015 again directed the Petitioner to charge LPSC proportionate to the number of days of delay in receiving the payment from the consumers of the DISCOMs.
- 3A.132 The Petitioner in this Petition requests the Hon'ble Commission to allow the entire LPSC instead of financing cost of LPSC during FY 2018-19 as the Petitioner charged LPSC proportionate to the number of days of delay and not on flat basis. The methodology of charging LPSC proportionate to the number of days of delay leads to recovery of only financing cost of LPSC for the delay in payment and not on flat basis. However, the Hon'ble Commission without referring to its' direction for change in charging of LPSC continued with the earlier methodology which was utilised for computation of financing of LPSC till FY 2012-13. Such treatment has actually resulted in allowance of financing cost of LPSC at much lower rate.
- 3A.133 It is further submitted that the concept of financing cost of LPSC was introduced by the Hon'ble Commission in Tariff Order dated August 26, 2011 as LPSC was considered as a part of revenue realisation for the purpose of computation of AT&C Loss as per Clause-4.7 (c) of DERC Tariff Regulations, 2007. As per DERC Tariff Regulations, 2011, the methodology of computation of revenue realisation for the purpose of computation of AT&C Loss has been changed and LPSC is no longer being included as a part of revenue realisation for computation of AT&C Loss from FY 2012-13 onwards. Since the methodology for computation of AT&C Loss has been changed, the Petitioner ought to be allowed entire LPSC instead of financing cost of LPSC.

3A.134 It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the amount delayed through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is time taking process and therefore, in case of any default on part of consumers to pay electricity bills in time, the Petitioner has to face the following penalties:

- a) **Penalty on account of under-achievement of AT&C Loss:** In case of any under-achievement of AT&C Loss, the Hon'ble Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.
- b) **Penalty in repayment of Loans:** In present scenario, the Petitioner is not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result, the Petitioner has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.
- c) **Penalty by Generators:** Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

3A.135 It is most respectfully submitted that the Hon'ble Commission's treatment tantamount to discrimination between Gencos, Transcos and DISCOMs which is depicted in the table below:

**Table 3A 34: Treatment of LPSC to various utilities in Delhi**

S. No	Particulars	Delhi Gencos and Transcos	Delhi DISCOMs
1	Before FY 2013-14	<ul style="list-style-type: none"> <li>• LPSC @ 1.5% per month;</li> <li>• LPSC collected allowed to Gencos and Transcos</li> </ul>	<ul style="list-style-type: none"> <li>• LPSC @ 1.5% per month;</li> <li>• Only financing cost of delayed payment by computing principal</li> </ul>

S. No	Particulars	Delhi Gencos and Transcos	Delhi DISCOMs
		irrespective of actual cost of financing delay in payment; • Therefore, LPSC not considered as Non-Tariff Income.	amount, i.e., LPSC Collected/ 18% allowed to DISCOMs; • Difference between LPSC collected and financing cost of delayed payment considered as NTI.
2	From FY 2013-14	• Same treatment continued.	• LPSC @ 1.5% proportional to number of days of delay; • Same formulae for computing principal amount despite of change in treatment;

3A.136 As per the aforesaid submissions, the Petitioner requests the Hon'ble Commission to allow entire LPSC of Rs. 30.28 Crore during FY 2018-19 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

Charges Write-back of Miscellaneous Provisions:

3A.137 The Hon'ble Commission in Tariff Order dated March 28, 2018 did not consider the write-back of miscellaneous provisions and relied on the previous Tariff Orders and stated as under

*"3.369 The A&G expenses for the base year FY 2010-11 have been benchmarked for the purpose of MYT period FY 2012-13 to FY 2014-15 without adjusting provision for miscellaneous expenses. Thus, the Petitioner has been allowed O&M expenses on a normative basis without considering whether actually spent or provisioned. The Commission is of the view that the provisions written back are to be included in the Non-Tariff Income."*

3A.138 As regards above, it is submitted that the aforesaid treatment is contrary to the statement given at Para-3.305 of the same tariff order where the Hon'ble Commission has stated as under:

*"4.199 The Commission has removed abnormal expenses such as provision for retirement of fixed assets, Loss on Sale/Discarding of Assets, Provision for Doubtful debts, Inventory of stores and spares written off, bad debts written off, transfer from opening provision of*

doubtful debts and has added lease rentals transferred from R&M expenses to the total A&G expenses as per submission of the Petitioner

<b>Particulars</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
A&G Expenses as per audited accounts	136.82	157.58	108.28	144.94	109.62
Less: Provision for retirement of fixed assets	-	-	-	14.48	12.29
Less: Loss on Sale/ Discarding of Assets	1.18	2.25	2.23	0.22	2.88
Less: Provision of Doubtful Debts	76.05	91.99	41.14	-	20.24
Less: Bad Debts written off	0.00	-	-	-	199.59
Less: Inventory of stores & spares written off	-	-	-	-	-
Less: Transfer from opening provision for doubtful debts	-	-	-	78.24	(199.59)
Less: Fines and penalties incl. under Sundry Expenses				1.68	
Add: Lease rentals transferred from R&M Cost	1.57	1.55	2.42	1.54	1.55
Net A&G cost	61.16	64.89	67.33	51.86	75.76

”

3A.139 It is clear from the above extract that if the cost of the provisions were not considered by the Hon’ble Commission while projecting the A&G expenses, in any case, the revenue from any recovery under such provision cannot be added to the ARR.

3A.140 Further, the Hon’ble Commission in Tariff Order dated September 29, 2015 has also reversed the write-back of excess provisions for doubtful debts allowed



during the earlier period, i.e., FY 2007-08 to FY 2011-12. The extracts are reproduced as under:

*“3.121 As per Regulation 5.23 of MYT Regulation 2007, the miscellaneous receipts from the consumers shall constitute non-tariff income of the licensee. Write back of provision of doubtful debts related to recovery of debts forms part of miscellaneous receipts of the petitioner. The Commission is of the view that the target of AT&C loss has been fixed by considering the collection efficiency at 99.5% with a scope of 0.5% provisions for bad/doubtful debts. Therefore, any recovery on account of bad and doubtful debts shall constitute non-tariff income of the licensee to the extent of 0.5% provision on debtors. Accordingly, the income on account of any such write back of provision for doubtful/bad debts is considered as Non-tariff income.”*

3A.141 The finding that “... collection efficiency of 99.5% with a scope of 0.5% provisions for bad/ doubtful debts....” is factually inaccurate. By virtue of the billing lag which is inherent in an annual tariff re-determination, even if the collection efficiency were assumed to be 100%, even then the actual collection would still be in the range of 99% to 99.25%.

3A.142 In this regard, it is submitted that the amount of Rs. 24.12Crore appearing as Excess provisions written back in Note34 of the Audited Accounts is an accounting entry reversing the amount of excess Provisions (shown as “Provisions” in the Audited Accounts) created for Retirement of fixed Assets in previous years and was not forming part of A&G expenses considered by the Hon’ble Commission during previous financial years. Hence, the amount of Rs. 24.12 Crore ought not to be considered as part of Non-Tariff Income for FY 2018-19.

Short term gain:

3A.143 The Hon’ble Commission in Tariff Order dated August 31, 2017 has ruled as under

*“3.593 The Petitioner has submitted that short term gain is on account of interest received on fixed deposits maintained by the Petitioner as margins kept with the funding agency for loans availed. Therefore, the Commission is of the view that interest on these fixed deposits should*

*be allowed to be reduced from the Non-Tariff Income as Rs. 10.12 Cr. and Rs. 3.00 Cr. for FY 2014-15 and FY 2015-16 respectively.”*

3A.144 Accordingly, the Petitioner requests the Hon’ble Commission to allow the Petitioner to retain the income of Rs. 2.32 Crore on account of interest received on fixed deposits during FY 2018-19 and reduce the same from the Non-Tariff Income.

Transfer from Consumer Contribution and Capital works:

3A.145 The Hon’ble Commission in Tariff Order dated March 28, 2018 has allowed transfer from consumer contribution for capital works to be reduced from NTI for FY 2016-17 on the ground that the consumer contribution is not considered for calculation of depreciation and RoCE and the Petitioner is making book adjustments in compliance of accounting standards and has no impact on the cash flows. Therefore, amount transferred from Consumer contribution and capital works are allowed to be reduced from Non-Tariff Income.

3A.146 Accordingly, the Petitioner requests the Hon’ble Commission to reduce the amount of Rs. 38.10 Crore from the Non-Tariff Income during FY 2018-19.

Income on account of bad debts recovered:

3A.147 The Hon’ble Commission in Tariff Order dated August 31, 2017 has ruled as under:

*“3.601. The Petitioner has submitted that any amount recovered as bad debts is an energy income which is required to be included in the amount collected during the year as the same is received against the amount billed in the previous years. The amount billed and collected in previous years has already been considered for the purpose of AT&C Loss calculation during respective years. It is observed that the amount recovered from the bad debts written off by the Petitioner is part of total collection for the relevant year has also been indicated under the head “other income” in the audited financial statement of FY 2014-15 and FY 2015-16. Therefore, the income on account of bad debts recovered in reduced from Non-Tariff Income.”*

- 3A.148 Accordingly, the Petitioner requests the Hon'ble Commission not to consider Rs. 2.24 Crore of income recovered on account of bad debts (shown in Note 34 of Audited Accounts) as Non-Tariff Income during FY 2018-19.

Commission on Electricity Duty:

- 3A.149 The Petitioner, as an agent on behalf of Municipal Corporation of Delhi (MCD), collects and pays to the MCD the Electricity Duty. For undertaking this activity, there is incidence of use of assets and facilities of the licensed business towards collection of the Electricity Duty. As such this collection activity is a separate business and optimally utilizes the assets of the Petitioner. Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 permits the Petitioner to engage in any other business for optimal utilization of its assets.
- 3A.150 It is submitted that MCD pays commission to the Petitioner for collecting Electricity Duty on its behalf. This commission paid by MCD is purely Other Business within Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 and accordingly the same would apply to the aforesaid amount earned by the Petitioner as the commission paid by MCD. For undertaking the activity of collection of Electricity Duty, the Petitioner has expended certain expenses towards incentivizing the existing manpower, engaging additional and external collection agencies which are included in the actual employee expenses.
- 3A.151 Further, the Petitioner has to perform in-house operations also for which the Petitioner is required to incur additional O&M Expenses. Some of these in-house activities involve maintenance of records regarding Electricity Duty (Amount of Electricity Billed, Collected, Outstanding, Paid to GoNCTD etc.), cash-handling activities, interaction with GoNCTD, etc. which involves cost. The Petitioner incurs security and conveyance expenses towards transfer of money. Additionally, the

Petitioner has also engaged various collection agencies for which the Petitioner has to pay service charges for such engagement. All these expenses are not being allowed by Hon'ble Commission since O&M Expenses are allowed on a normative basis. It is further submitted that the commission of Electricity Duty is being provided as compensation in lieu of the Petitioner's efforts in collecting and accounting and other services rendered by the Petitioner to GoNCTD. It is submitted that if GoNCTD were to perform such similar activity, it would have involved costs. The Petitioner has reduced the efforts on behalf of GoNCTD, required for collection of Electricity Duty in terms of manpower and other Expenses. It is submitted that the income earned as commission on collection of Electricity Duty ought to be utilized to defray the additional expenses incurred by the Petitioner while undertaking such activities.

3A.152 The Petitioner submits that it has to incur additional O&M expenses and other in-house activities involving maintenance of records, cash handling activities, etc., which involve costs. Since these expenses incurred are not being separately allowed by the Hon'ble Commission, the entire income earned through this activity ought not to be reduced from the ARR by treating it as non-tariff income. However, the Hon'ble Commission in the Tariff Order dated August 31, 2017 (refer to Para No. 3.611) has treated the entire income earned on the aforesaid activity as part of non-tariff income and reduced the ARR of the Petitioner in contravention of its very own 2005 Regulations.

3A.153 The reason that the Hon'ble Commission has given is that the collection of electricity duty is not a separate function and the same is collected with the electricity bills. It is submitted that simply because the electricity duty is collected along with the electricity bills, that does not mean that the activity of collecting, managing and accounting for the electricity duty, do not attract the incidence of any expenses. For example, if in future, the Petitioner were to engage in another business i.e., to collect water supply bills or telephone bills or gas utility bills, it cannot be said that because the Petitioner collects these amounts along with its

electricity bills, these other businesses are distribution functions of the Petitioner or no separate expenses are required for carrying out these other businesses. It is therefore submitted that the reasons given by the Hon'ble Commission in the Tariff Order dated August 31, 2017 are, with respect, devoid of merits.

3A.154 The collection of electricity duty by the Petitioner is not a licensed activity. The responsibility for collection of electricity duty does not fall upon the licensee either under Section 12 of EA, 2003, nor under the license granted to the Petitioner by the Hon'ble Commission. It is an activity carried out by the Petitioner as a part of the legacy inherited by it from the erstwhile DVB. Even the erstwhile DVB carried out such functions, not as a part of its function of distribution of electricity, but under a statutory mandate of Section 3 of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, sale or supply of electricity) Bye laws 1962 ("Bye Laws"). Hence, the activity of collection of electricity duty has nothing whatsoever to do with the functions of a distribution licensee under EA, 2003. Since such function is carried out using the assets of the distribution business, such function is clearly attributable to an 'other business' under Section 51 of EA, 2003.

3A.155 The income/commission which is earned by the Petitioner has no connection whatsoever to the ARR of the Petitioner or to the licensed business. As such, this income/commission can never be categorised as non-tariff income. This is particularly so when Regulation 4.7(c) of the MYT Regulations, 2011 clearly provides that the collection of electricity duty will not be taken into account in computing the Collection Efficiency. If the revenue realisation from the collection of electricity duty does not add to the revenue collection for the purpose of 'Collection Efficiency', the income/commission on such collection earned by the Petitioner cannot form a part of the ARR as Non-Tariff income.

3A.156 Therefore, the commission received on account of collection of Electricity Duty i.e., Rs. 10.99 Crore ought to be deducted from Non-Tariff Income.

3A.157 Based on the above submissions, the Non-Tariff Income during FY 2018-19 is tabulated as under:

**Table 3A 35: Non-Tariff Income for FY 2018-19**

S. No	Particulars	Amount (Rs. Cr.)	Reference
A	Other Operating Income	132.17	Note 33 of Audited Accounts
B	Other Income	117.49	Note 34 of Audited Accounts
<b>I</b>	<b>Total Income as per Accounts</b>	<b>249.66</b>	<b>(A+B)</b>
C	Add: Interest on CSD	42.05	
D	Add: Income on SLD	10.64	
<b>II</b>	<b>Total Other Income</b>	<b>302.35</b>	<b>(I+C+D)</b>
E	Less: Income from other business		
a	Street Light	14.98	Note 34 of Audited Accounts
<b>III</b>	<b>Net Income to be considered</b>	<b>287.37</b>	<b>(II-E)</b>
A	Less: LPSC	30.28	Note 33 of Audited Accounts
B	Less: Write-back of misc. provisions	24.12	Note 34 of Audited Accounts
C	Less: Short term gain	2.32	Note 34 of Audited Accounts
D	Less: Transfer from Consumer contribution for capital works	38.10	Note 33 of Audited Accounts
E	Less: Bad debts recovered	2.24	Group Income Expenses of Audited Accounts
F	Less: Interest on Inter-company Loans	21.72	Note 34 of Audited Accounts
G	Less: Commission on collection of Electricity Duty	10.99	Note 33 of Audited Accounts
<b>H</b>	<b>Net Non-Tariff Income</b>	<b>157.60</b>	<b>(III-sum A to I)</b>

3A.158 The Petitioner requests the Hon'ble Commission to allow the NTI during FY 2018-19 as submitted in the above table.

## Income from Other Business

3A.159 Apart from distribution licensee's business, the Petitioner is also generating revenue from other business. These other businesses are being operated in parallel by the Petitioner along with the Distribution Business. The Petitioner is allowed under the applicable laws to carry out these unrelated businesses.

3A.160 Section 51 of the 2003 Act entitles the Distribution Licensee such as the Petitioner to engage in any other business for optimum utilization of its assets. Section 51 also requires that a certain proportion of "the revenues" derived from such

business be utilized for reducing the wheeling charges. Section 51 is an enabling provision contained in the legislation with some purpose. Disallowance of the legitimate expenses relating to other business would be ex facie contrary to Section 51 of the 2003 Act and would lead to discouraging the distribution licensee such as the Petitioner from generating income from other business, which is otherwise undertaken considering the interest of consumers at large and optimum utilization of assets of distribution business. The Petitioner has engaged in the businesses (as described in subsequent paragraphs) which are within the scope of Section 51 of the 2003 Act and has hereinafter provided reasons for this Hon'ble Commission to consider: (1) The Income by deducting the expenditure from the Revenue; and (2) Reworking of the proportion of the Revenues to be retained by the Petitioner in excess of the 20% which was stipulated in the 2005 Regulations as "a general principle" and entitling the Petitioner to "approach the Commission for change of the aforesaid sharing formula with proper justification, for approval of the Commission".

3A.161 Regulation 3(5) of DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) (First Amendment) Regulations, 2005 is as follows:

*"3(5) In addition to the sharing of costs under sub-clause (3) above, the Licensee shall account for and ensure due payment to the Licensed Business a certain proportion of revenues from the other Business as follows:*

*where the Licensee utilizes the assets and facilities of the licensed business for other business the Licensee shall retain 40% of the net revenue from such business and pass on the remaining 60% of the net revenue to the regulated business; and*

*where the Licensee does not utilize the assets and facilities of the licensed business for other business, the Licensee shall retain 60% of the net revenue from such business and pass on the remaining 40% of the net revenue to the regulated business;"*



3A.162 Accordingly, the claims on account of Street light maintenance business are discussed below:

3A.163 It is submitted that the responsibility of maintaining street light is not contained in the Distribution License of the Petitioner. The Electricity Act, 2003 does not mandate the Distribution Licensee to maintain Street Lights. Further, as per Section-42 of Delhi Municipal Corporation Act, 1957, it is the responsibility of MCD to maintain Street lighting system which is reproduced below:

*“42. Obligatory functions of the Corporation*

*....*

*(o) the lighting, watering and cleansing of public streets and other public places;*

*...*

*(w) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;”*

3A.164 With the unbundling and restructuring of Delhi Vidyut Board (DVB) into corporate entities and privatisation of Distribution Business, the past legacy of maintenance of public lighting was passed on to the Petitioner as matter of course, though as distribution licensee the maintenance of public lighting was not their function. In fact, the Petitioner vide letter dated March 24, 2004 intimated the Hon’ble Commission that maintenance of street lighting is the responsibility of MCD under DMC Act and not the Petitioner. Also the Hon’ble Commission in Order dated September 3, 2003 ruled as under:

*“10. Having heard the submission of the parties, the Commission observed that it was the prerogative of the MCD, either to get the work done themselves or through the DISCOMs, in the latter alternative, scope of works, as also the commercial terms and conditions, shall need to be proposed by MCD. Thereafter, the Commission shall determine the maintenance charges, etc. after having considered the responses of the DISCOMs.”*

- 3A.165 Therefore, it is clear that maintenance of street lighting is an activity assigned to the Petitioner by MCD under DMC Act and does not fall under Regulated Business.
- 3A.166 However, there was a dispute between the Delhi DISCOMs and MCD on scope of work of the activities and charges at which the maintenance is to be undertaken by Delhi DISCOMs. During FY 2003-04, the Hon'ble Commission received number of complaints on the poor conditions of street light prevailing in respect of Public Lighting in Delhi. Consequently in order to settle the matter, the Hon'ble Commission vide letter dated October 15, 2003, identified the scope of works as maintenance of existing streetlights, addition of new streetlights, installing of high mast lights, transformers, etc. Further, the Hon'ble Commission vide Order dated March 5, 2004 determined the rates for maintenance of street lights. These rates were further amended by the Order issued by the Hon'ble Commission on September 24, 2009.
- 3A.167 It is further submitted that the determination of rates and scope of work by the Hon'ble Commission does not mean that maintenance of streetlights fall under Licensed Activity and is a part of regulated business. The scope of work and determination of rates by the Hon'ble Commission has helped MCD and the Petitioner to reach at a consensus.
- 3A.168 Therefore, the Petitioner is maintaining Street Lights not as an obligation under Licensed Business or a part thereof but on behalf of road owning agencies, viz. MCD, NHAI, PWD in the areas comprising South and West Delhi.
- 3A.169 For carrying out the maintenance services the Petitioner optimally engages its existing manpower, Technicians, Electricians, Electric Men, Line Engineers and also outsources further manpower.
- 3A.170 Since the activity of maintenance of Street Lights is neither a licensed activity nor an activity related to licensed business so no part of the cost of such activity nor the revenue accrued therefrom should form part of the ARR of the licensed business.

3A.171 In point of fact, the cost of such activity does not form part of the O&M cost in the ARR since the O&M costs is permitted by the Hon'ble Commission on normative base which has no reference to the actual expenses of the Petitioner. For example, the R&M expenses are given as a percentage of Gross Fixed Assets.

3A.172 In view of the aforesaid discussion, the Petitioner prays that entire income on account of maintenance of Street Lights may be allowed to be retained by the Petitioner as it is neither a non-tariff income nor an income within the scope of Section 51 of the 2003 Act. The Hon'ble Commission in Tariff Order dated March 28, 2018 has stated that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner.

**Table 3A 36: Other Business Income for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Total Income	Petitioner's Share	Consumer's Share
A	Streetlight Maintenance	14.98	14.98	
B	<b>Total</b>	<b>14.98</b>	<b>14.98</b>	

### Income from Open Access Sales

3A.173 In addition to the Income derived from Other Business, the income of Rs. 25.76 Crore (Note 33 of the Audited Accounts) recovered as Open Access Charges during FY 2018-19 has been considered for offsetting the revenue (gap)/surplus for the year.

### Capital Expenditure and Capitalisation

3A.174 The Petitioner has considered the capital expenditure and capitalisation for FY 2018-18 as per the directions of Hon'ble ATE given in Judgment dated October 6, 2009 (Appeal 36 of 2008) and March 2, 2015 (Appeal 177 of 2012) which is the law as of date.

3A.175 The Petitioner has also considered de-capitalisation of assets from FY 2002-03 to FY 2018-19 provided that the Hon'ble Commission also allows the loss on assets retirement of assets as per the Petition No. 46 of 2012 filed on November 19,

2012. Accordingly, the actual capitalisation and de-capitalisation for FY 2018-19 has been considered to derive the closing balance of GFA as under:

**Table 3A 37: Gross Fixed Assets for FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening GFA	6561.96	
B	Capitalisation during the year	633.19	Note 3 of the Audited Accounts
C	De-capitalisation	74.04	Note 3 of the Audited Accounts
D	Closing GFA	7121.11	A+B-C
E	Average GFA	6841.54	(A+D)/2

#### Funding of Capitalisation

3A.176 The Petitioner has sought financing of Capitalisation (net of de-capitalisation and Consumer Contribution) through debt and equity in the ratio of 30:70 pending implementation of Hon'ble ATE Directions in various Judgments as shown below:

**Table 3A 38: Financing of Capitalisation for FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Total Capitalisation	633.19	Table 3A 37
B	De-capitalisation	74.04	Table 3A 37
C	Consumer Contribution	48.00	Note 23 of Audited Accounts
D	<b>Balance Capitalisation</b>	<b>511.15</b>	<b>A-B-C</b>
E	Debt	357.81	70% of D
F	Equity	153.35	30% of D

#### Consumer Contribution and Grants

3A.177 The average Consumer Contribution and Grants for FY 2018-19 is tabulated below:

**Table 3A 39: Consumer Contribution and Grants for FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening Balance	700.07	Closing Value from previous Petition

S. No	Particulars	FY 2018-19	Remarks/ Ref.
B	Additions during the year	48.00	Table 3A 38
C	Closing Balance	748.07	A+B
D	Average Consumer Contribution	724.07	(A+C)/2

Funding of working capital in debt-equity ratio of 70:30:

3A.178 The Hon'ble Commission has also applied the proposed formula for net-worth for the computation of means of finance for working capital which is contrary to the findings of this Hon'ble ATE in Judgment dated July 31, 2011 (Appeal 52 of 2008) which states as under:

*"43. Regulation 5.8 provides formula for calculating the Regulated Rate Base for a particular year wherein working capital is clearly one of the elements so much so that any change in the normative working capital has to be included.*

*44. Regulation 5.9 sets out the formula for computing the Return on capital employed by multiplying the weighted average cost of capital with the Regulated Rate Base. As mentioned above, Regulation 5.10 stipulates formula to compute the weighted cost of capital which precedes on a clear belief that the debt equity ratio of 70% and 30% has to be accounted for.*

*45. The Learned Counsel for the Appellant, while refuting the submission of the State Commission that the approach adopted by the State Commission was on the basis of the normal industry practice by referring to the tariff orders of the 4 State Commissions. The Appellant has cited Tariff orders of Karnataka State Commission, Himachal Pradesh State Commission, Jharkhand State Commission and the Gujarat State Commission. It is noticed from the regulations of these State Commissions have different Regulations for the interest on Working Capital and have treated Working Capital separate from the Regulated Rate Base and do not have the concept of Return on Capital Employed as provided in the Delhi Commission's Regulations. Under these circumstances, the Delhi Commission is directed to re-compute the Weighted Average Cost of Capital for each year of the Control Period along with the carrying cost and apply on the*

***respective years Regulated Rate Base for allowance of Return on Capital Employed according to its Regulations. This issue is answered in favour of the Appellant.” (Emphasis supplied)***

3A.179 As evident from above, the Hon’ble ATE directed the Hon’ble Commission to allow the funding of working capital in debt-equity ratio of 70:30 since the Tariff Regulations applicable in Delhi have the concept of RRB which includes working capital unlike the practice of separately allowing interest on working capital adopted by the Regulatory Commissions in other states. However, the Hon’ble Commission instead of implementing the directions of Hon’ble ATE has chosen to allow the funding of working capital based on the formulae of net-worth as proposed in Tariff Order dated July 31, 2013 which is contrary to the directions of the Hon’ble ATE.

3A.180 Therefore, the funding of working capital has been considered in debt-equity ratio of 70:30 based on the directions given by Hon’ble ATE in Judgment dated July 31, 2011 (Appeal 52 of 2008).

Funding of opening balance of working capital not be changed as per DERC MYT Regulations, 2011:

3A.181 The Hon’ble Commission in Tariff Order dated September 29, 2015 stated that the Petitioner has wrongly interpreted Clause-5.11 of Tariff Regulations, 2011 that only the working capital for the period and not entire working capital during second control period is required to be funded in debt-equity ratio of 70:30.

3A.182 It is submitted that the Hon’ble Commission in its Tariff Order dated September 29, 2015 did not deal with any of the reasons given by the Petitioner which are as under:

- a. Clause-5.11 read with Clause-1.2 of DERC MYT Regulations, 2011 clearly states that working capital, i.e., the change in working capital and not entire working capital during second control period is required to be funded in debt-equity ratio of 70:30. The Hon’ble Commission has not even relied on Clause-1.2 of DERC MYT Regulations, 2011 in Tariff Order dated September 29, 2015.

b. Clause-5.11 deals only with the funding of fresh investments and working capital during the period and nowhere provides for retrospective application of regulations. Clause-5.11 does not even contemplate a retrospective operation. It is settled law that an Act or Regulation has to provide expressly for retrospective application for such Act or provisions to be enforced in a retrospective manner. In fact the Tariff Regulations do not and cannot in law provide for retrospective application. It is settled law that delegated legislation cannot have retrospective application unless and until the main Statute (here the Electricity Act, 2003) contemplates that delegated legislation in the form of regulations could be made with retrospective application. The 2003 Act does not in fact provide or contemplate that regulations could be made thereunder which would have retrospective operation. In fact, a delegatee such as this Hon'ble Commission, cannot in the absence of the 2003 Act or the Delhi Reform Act 2000 specifically empowering it to do so, make Regulations with retrospective operation. Reference may be had in this regard to the following Judgments:

- Shakti Tubes Limited Vs State of Bihar : (2009) 7 SCC 673 paras 24-25;
- Binani Zinc Limited Vs Kerala State Electricity Board (2009) 11 SCC 244 para 36;
- Kusumam Hotels Private Ltd Vs Kerala State Electricity Board & Ors: (2008) 13 SCC 213 paras 23,24, 36;
- Meghalaya SEB vs Meghalaya SERC &Byrnihat Industries Association: 2010 ELR (APTEL) 0940, paras 14,35-38;
- NaniSha vs State of Arunachal Pradesh (2007) 15 SCC 406, at page 413 (Para 13);
- Union of India vs Kartick Chandra Mondal (2010) 2 SCC 422, at page 426 (para 15);
- Anil Chandra v Radha Krishna Gaur (2009) 9 SCC 454, at page 461 (para 19);
- Keshavan Madhava Menon v. State of Bombay, 1951 SCR 228;
- Dayawati v Inderjit (1966) 3 SCR 275 (para 9);
- Subodh S Salaskar v Jayaprakash M Shah (2008) 13 SCC 689 at page 700;
- Workmen v Firestone Tyre & Rubber Co. of India (P) Limited., (1973) 1 SCC 813, at page 839;



- Ahmedabad Mfg. and Calico Printing Co Ltd., v S G Mehta, ITO, 1963 Supp (2) SCR 92;
- LIC v Escorts Ltd., (1986) 1 SCC 264, at page 317;
- Zile Singh v State of Haryana (2004) 8 SCC 1, at page 9 (Paras 13, 14 and 15);

3A.183 The Hon'ble Tribunal in Judgment dated 06.01.2014 (Appeal 222 of 2012) has also ruled as under:

*"32. It is settled law that an Act or Regulation has to provide expressly for retrospective application for such Act or provisions to be enforced in a retrospective manner. **The Act and the relevant Regulations do not contain any provision which empower the Petroleum Board to retrospectively apply the tariff order. Such retrospective application cannot be read into the Act under the garb of consumer's interests...**"(Emphasis added)*

3A.184 The Hon'ble Commission by retrospective regulation of Clause-5.11 which does not even provide the same has acted contrary to all the aforesaid Judgments.

Consideration of 30% of working capital funded through depreciation during policy direction period equal to loan:

3A.185 The Hon'ble Commission in Tariff Order dated September 29, 2015 stated that Policy direction period was applicable only upto FY 2006-07. However the Hon'ble Commission has ignored the following:

- a. The funding of working capital during policy direction period, i.e., Rs. 71.85 Crore was considered to be funded through depreciation and the same therefore does not reflect in equity or debt balance upto FY 2011-12. When the funding of Rs. 71.85 Crore is not a part of equity balance upto FY 2011-12 then how the same can be deducted from the opening equity.
- b. In case the same logic is to be applied then whether the 30% of Rs. 71.85 Crore is considered as a part of equity from FY 2007-08 to FY 2011-12 as per directions given by Hon'ble ATE in Appeal 52 of 2008.

- c. Whether the Petitioner has till now received any return or interest on depreciation utilised for funding of capex or working capital during Policy Direction period?

3A.186 Accordingly, the Petitioner has considered the funding of working capital from FY 2002-03 to FY 2006-07 through depreciation and has not claimed any interest or equity on the same. The working capital from FY 2007-08 to FY 2011-12 has been considered to be funded in debt-equity ratio of 70:30. The working capital from FY 2012-13 onwards has been considered to be funded through 100% debt.

### Depreciation

3A.187 For the purpose of computing depreciation for True-up of FY 2018-19, the Petitioner has followed the same methodology as considered by the Hon'ble Commission in the past i.e. the average rate of Depreciation based on the Audited Accounts of the Petitioner has been applied on the average GFA net of Consumer Contribution and Grants.

3A.188 The average rate of Depreciation for FY 2018-19 based on the Audited Accounts of the Petitioner is tabulated below:

**Table 3A 40: Depreciation Rate for FY 2018-19**

S. No	Particulars	Actual	Remarks/ Ref.
A	Opening GFA as per audited accounts	6523.51	Note 3 of Audited
B	Closing GFA as per audited accounts	7082.65	Accounts
C	Average of GFA	6803.08	(A+B)/2
D	Depreciation as per Audited Accounts	309.47	P&L account
E	<b>Average depreciation rate</b>	<b>4.55%</b>	<b>(D/C)*100</b>

3A.189 As per Companies Act, the depreciation rate in case of a regulated entity has to be adopted as prescribed by the Regulator. The depreciation has been computed in the audited accounts based on the schedule of depreciation rates given in DERC Tariff Regulations, 2017. In audited accounts, the depreciation has been computed based on life of assets as specified in the Regulations. In case the Hon'ble Commission desires the computation in support of depreciation on assets appearing in audited accounts, the same can be provided.

3A.190 Further, the Petitioner has calculated the allowable depreciation after excluding consumer contribution and Grants from the Gross Fixed Assets as under:

**Table 3A 41: Depreciation for FY 2018-19**

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Average GFA	6841.54	Table 3A 37
B	Average Consumer Contribution and Grants	724.07	Table 3A 39
C	Average assets net of consumer contribution & Grants	6117.47	A-B
D	Average rate of depreciation	4.55%	Table 3A 40
E	<b>Depreciation</b>	<b>278.28</b>	C*D

3A.191 The cumulative depreciation on fixed assets at the end of FY 2018-19 is tabulated below:

**Table 3A 42: Cumulative Depreciation on fixed assets upto FY 2018-19(Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening balance of cumulative depreciation	2781.87	Value from previous Petition
B	Additions during the year	278.28	Table 3A 41
C	Closing balance of cumulative depreciation	3060.15	A+B

3A.192 Accordingly, the depreciation has been utilised for repayment of loan as under:

**Table 3A 43: Utilisation of Depreciation for FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref
A	Depreciation	278.28	Table 3A 41

## Working Capital

3A.193 The Petitioner has computed the Working Capital Requirement for FY 2018-19 based on the actual Power Purchase cost and revenue available towards ARR as submitted for Truing Up of FY 2018-19. Accordingly, the Working Capital Calculation for FY 2018-19 is tabulated below:

**Table 3A 44: Working Capital Requirement (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref
A	Annual Revenues from Tariff & Charges	9288.05	Table 3A 50
A1	Receivables equivalent to two months average	1548.01	A/6
B	Power Purchase Expenses	7340.86	Table 3A 27
B1	Less: 1/12th of power purchase expenses	611.74	B/12
C	Working Capital	936.27	A1-B1
D	Opening Working Capital	792.10	Value from previous Petition
E	<b>Change in Working Capital</b>	<b>144.18</b>	<b>D-E</b>

3A.194 The Working capital as shown above has been considered for calculation of Regulated Rate Base for FY 2018-19.

## Debt and Equity

3A.195 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance for calculation of average debt during the year. The average debt and equity for FY 2018-19 is tabulated below:

**Table 3A 45: Average Debt and Equity for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Debt	Equity	Remarks/ Ref
A	Opening	2128.85	1885.12	Value from previous Order
B	Additions during the year			
i	Capex	357.81	153.35	Table 3A 38
ii	Working capital	144.18		Table 3A 44
C	Less: Repayment	212.89		Table 3A 41
D	Closing	2417.95	2038.47	A+B-C
E	<b>Average</b>	<b>2273.40</b>	<b>1961.80</b>	<b>Average(A,D)</b>

3A.196 The Petitioner has considered the aforesaid debt and equity balance for the purpose of computation of RoCE.

## Regulated Rate Base (RRB)

3A.197 Based on the above submissions, the Regulated Rate Base (RRB) for FY 2018-19 has been computed as below:

**Table 3A 46: Regulated Rate Base for FY 2018-19 (Rs. Crore)**

S. No	Particulars	FY 2018-19	Remarks/ Ref
A	RRB Opening	4035.7	Value from previous Order
B	ΔAB (Change in Capital Investments)	280.1	C-D+E-F
C	Investments Capitalized	559.2	Table 3A 38
D	Depreciation	278.3	Table 3A 41
E	Add: Depreciation on De-capitalised Assets	47.2	Note 3 of Audited Accounts
F	Consumer Contribution	48.0	Table 3A 39
G	Change in WC	144.2	Table 3A 44
H	RRB Closing	4459.9	A+B+G
I	<b>RRB (i)</b>	<b>4319.9</b>	

**Rate of Interest on Loan**

3A.198 With regard the cost of debt on working capital loans, the Regulation 85 of the Tariff Regulations, 2017 states as under:

***“INTEREST ON WORKING CAPITAL***

*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 trued up on the basis of prevailing bank rate as on 1st April of the respective financial year: Provided that the rate of interest availed through open tendering process (Competitive Bidding) among Scheduled Banks, Financial Institutions etc., shall not be trued up.*

*86. Interest on working capital shall be payable on normative basis notwithstanding that the Utility has availed any loan for the working capital.”*

3A.199 Accordingly, the rate of interest on working capital loans have been considered on normative basis.

3A.200 With regard to the margin for rate of interest on loan, Regulation 22 of Business Plan Regulations, 2017 states that:

***“22. MARGIN FOR RATE OF INTEREST ON LOAN***

*(1) Margin for rate of interest for the Control Period in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee shall be allowed as the difference in weighted average rate of interest on actual loan as on 1st April 2017 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1st April 2017: Provided that the rate of interest on loan (MCLR plus Margin) shall not exceed approved base rate of return on equity for wheeling business i.e., 14.00%”*

3A.201 Accordingly, the Petitioner has considered the rate of interest on term loan and working capital loan in accordance with the Business Plan Regulations, 2017. For interest on working capital for FY 2018-19, the Petitioner has considered rate of

14%. For interest on term loan for FY 2018-19, the Petitioner has considered the rate of interest of 13.38%, which is equivalent to minimum of (i) approved base rate of RoE of 14.00%, (ii) rate of interest of 13.38% w.r.t actual loan portfolio during FY 2018-19, and (iii) Bank Rate of 8.15% as on April 1, 2018 plus margin for rate of interest on loan of 5.34% as per Business Plan Regulations, 2017.

3A.202 The Interest Rate for FY 2018-19 calculated based on the above Regulations is summarised below:

**Table 3A 47: Interest Rate on Loan (%) for FY 2018-19**

Particulars	Rate
Actual Rate of Interest for FY 2018-19	13.38%
Closing balance of Capex loan in FY 2018-19	1728.88
Rate of Interest of Working Capital	14.00%
Closing balance of Capex loan in FY 2018-19	689.07
<b>Average Interest on Loan (blended)</b>	<b>13.56%</b>

3A.203 Accordingly, the Petitioner requests the Hon'ble Commission to approve the rate of interest on loan (rd) as 13.56% for FY 2018-19.

### **Weighted Average Cost of Capital (WACC)**

3A.204 The Petitioner has considered the rate of interest of loans during 2018-19 i.e. 14% and RoE at 16%. Further, as per Regulation 4 of DERC Business Plan Regulations, 2017:

#### **"4. TAX ON RETURN ON EQUITY**

*The base rate of Return on Equity as allowed by the Commission under Regulation 3, shall be grossed up with the Minimum Alternate Tax or Effective Tax Rate of the respective financial year in terms of Regulation 72 and 73 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as per the following formula:*

$$\text{Rate of Return on Equity} = 14 / [(100 - \text{Tax Rate}) / 100]$$



where, Tax Rate is Minimum Alternate Tax (MAT) or Effective Tax Rate, as the case may be."

3A.205 In line with the above Regulation, the grossed-up return on equity is 20.39% as income tax rate on MAT basis is 21.55%. Thus, the computation of WACC is as under:

**Table 3A 48: Weighted Average Cost of Capital (WACC) (Rs. Crore)**

S. No.	Particulars	Rate
A	Average Equity	1961.80
B	Average Debt	2273.40
C	Return on Equity	16.00%
D	Income Tax Rate	<b>21.55%</b>
E	Grossed up Return on Equity	20.39%
F	Rate of Interest	13.56%
G	<b>Weighted average cost of Capital</b>	<b>16.72%</b>

### Return on Capital Employed (RoCE)

3A.206 Based on the aforesaid submissions, the RoCE for FY 2018-19 is computed as below:

**Table 3A 49: RoCE for FY 2018-19 (Rs. Crore)**

Particulars	FY 2018-19	Remarks/ Ref
Weighted Average Cost of Capital (WACC)	16.72%	Table 3A 48
RRB (i)	4319.9	Table 3A 46
<b>RoCE</b>	<b>722.5</b>	<b>A*B</b>

3A.207 The Petitioner requests the Hon'ble Commission to allow RoCE based on the above computations:

### Aggregate Revenue Requirement for Truing-up of FY 2018-19

3A.208 Based on the above submissions, the Annual Revenue Requirement for FY 2018-19 sought for True-up is tabulated below:

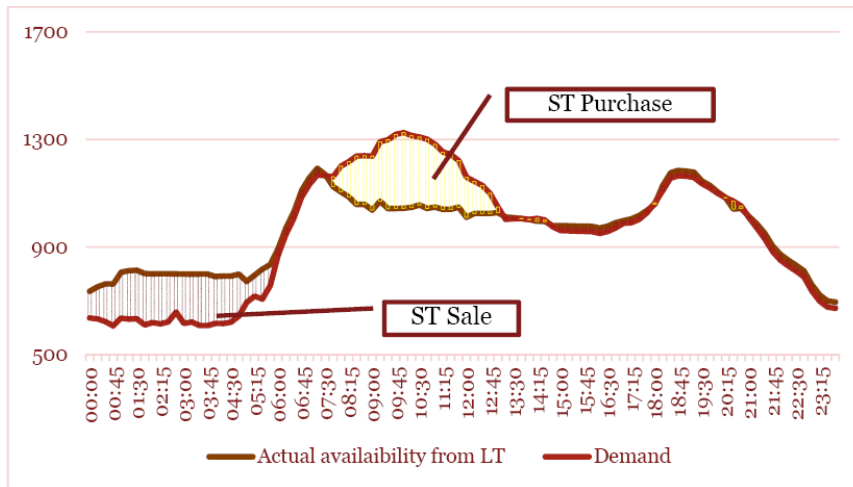
**Table 3A 50: Aggregate Revenue Requirement for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Submission	Reference Remark
A	Purchase of power including Transmission and SLDC Charges & Incentives	7340.9	Table 3A 27
B	O&M Expenses	932.7	Table 3A 28
C	Additional O&M Expenses	197.2	Table 3A 31
D	Depreciation	278.3	Table 3A 41
E	Return on Capital Employed (RoCE)	722.5	Table 3A 49
<b>F</b>	<b>Sub-total</b>	<b>9471.4</b>	<b>Sum (A to G)</b>
G	Less: Non-Tariff Income	157.6	Table 3A 35
H	Less: Income from other business	0.0	Table 3A 36
I	Less: Income from Open Access	25.8	Para 3A.173
<b>J</b>	<b>Aggregate Revenue Requirement</b>	<b>9288.1</b>	<b>F-(G+H+I)</b>

### Incentive on Sale rate of Surplus Power

3A.209 The Petitioner always tries to dispose-off its surplus power in an economic manner. Given the seasonal and within a day variations in temperatures in the state of Delhi, the demand for power varies widely between the peak and the off peak hours during a day and between the summer and winter months. As the demand varies hugely within a day, it becomes essential for the Discoms to prepare or arrange the power on slot-wise basis. The Power System Operation Corporation Limited (National Load Despatch Centre) in “Electricity Demand Pattern Analysis” report, 2016 has also acknowledged the fact that Delhi has a variation of 30% to 60% between peak demand and lean demand. Such rampant fluctuations in demand necessitate the Petitioner to arrange for buffer power so as to ensure uninterrupted supply to Delhi Consumers. In order to cater to the rising demand, the Petitioner has to arrange for power from long and short term sources.

Figure 3A2: Sample of Availability v/s Demand



Considering the importance and significance of such uneven demand pattern in Delhi, Hon'ble Commission made a specific provision in its Tariff Regulations, 2017 as shown below:

*"123. To promote economical procurement of power as well as maximizing revenue from Sale of Surplus Power the distribution licensee shall ensure the cost benefit for rate of sale of surplus power in the relevant slots through Banking, Bilateral and Power Exchange transactions other than the forced scheduling, as certified by the SLDC, in comparison with the next higher variable cost of the generating stations from which power is surplus after meeting the demand of power in its area of supply;"*

3A.210 Further, in Business Plan Regulations, 2017, Regulation 29 on **INCENTIVE SHARING MECHANISM FOR SALE RATE OF SURPLUS POWER:**

*"(1) The computation of incentive for Sale Rate of Surplus Power in terms of the Regulation 165 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2017-18 to FY 2019-20 of the Distribution Licensees shall be as follows:*

- i. The variable cost of the generating station for which power is surplus and required to be sold through Power Exchanges shall be considered as the previous month's billed variable cost of such generating station.*
- ii. The variable cost of the generating station for which power is surplus and required to be sold through Banking and*

*Bilateral arrangements shall be considered as the previous month's billed variable cost of such generating station prevalent at the date of entering into such contracts.*

*iii. The incentive shall be the product of Rate difference (Actual Sale Rate-Variable Cost) and Quantum of Power actually sold.*

*(2) The incentive computed under sub-clause (1) above shall be shared between the Consumers and the Distribution Licensees in the following prescribed manner: -*

*i. The incentive realisation upto 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 2/3rd to the Consumers and 1/3rd to the Distribution Licensees.*

*ii. The incentive realisation above 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 1/3rd to the Consumers and 2/3rd to the Distribution Licensees.*

*Illustration: -*

*a) Quantum of Sale of Surplus Power (A) = 1000 MU*

*b) Applicable Variable Cost per Unit (B) = Rs. 2.00/kWh*

*c) Actual Sale rate of Surplus Power (C) = Rs. 3.50/kWh*

*d) Incentive  $[D=A*(C-B)]$  = Rs. 150 Cr.*

*e) Approved Average Fixed Cost per unit in the Tariff Order (E)= Rs. 1.00/kWh*

*Incentive realisation upto 100% recovery of Average Fixed Cost per unit =  $(E*A)$  = Rs. 100 Cr. shall be shared in the ratio of 2/3rd (Rs. 67 Cr.) to the Consumers and 1/3rd (Rs. 33 Cr.) to the Distribution Licensees. Incentive realisation above 100% recovery of Average Fixed Cost per unit =  $[D-(E*A)]$  = Rs. 50 Cr. shall be shared in the ratio of 1/3rd (Rs. 16.67 Cr.) to the Consumers and 2/3rd (Rs. 33.33 Cr.) to the Distribution Licensees. Therefore,*

*i. Total incentive to the Distribution Licensees = Rs. 66.33 Cr. (33+33.33)*

*ii. Total incentive to the Consumers = Rs. 83.67 Cr. (67+16.67)."*

3A.211 Hon'ble Commission vide letter dated 16.11.2018 issued the clarification on the computation of the incentive. Although the Petitioner is not in consent with the computation methodology followed by Hon'ble Commission, it has followed similar methodology for claiming the incentive for FY 2018-19. Summary of incentive claimed is as under:

**Table 3A 51: Details of Total Sale Rate Incentives**

S. No	Particulars	UOM	Amount	Remarks
1	Total Incentive earned	Rs. Crore	224	Detailed Calculation in Annexure 3
2	Discom Share computed based on slot basis	Rs. Crore	141	

### Revenue available towards ARR

3A.212 The revenue available towards ARR is tabulated as under:

**Table 3A 52: Revenue for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Submission	Reference/ Remark
A	Total Revenue Collected	9192	Net of LPSC, E-tax, 3.80% Pension Surcharge and 8% RA Surcharge
B	Less: Amount to be retained by Petitioner on account of over achievement of T&D Loss Targets	94	Table 3A 9
C	Less: Amount to be retained by Petitioner on account of Over achievement of Collection Efficiency Targets	47	Table 3A 10
D	Less: Incentive on Rate of Sale	141	Table 3A 51
E	Less: Carrying Cost	420	Based on Previous Tariff Order
F	<b>Revenue available towards ARR</b>	<b>8489</b>	<b>A-B-C-D-E</b>

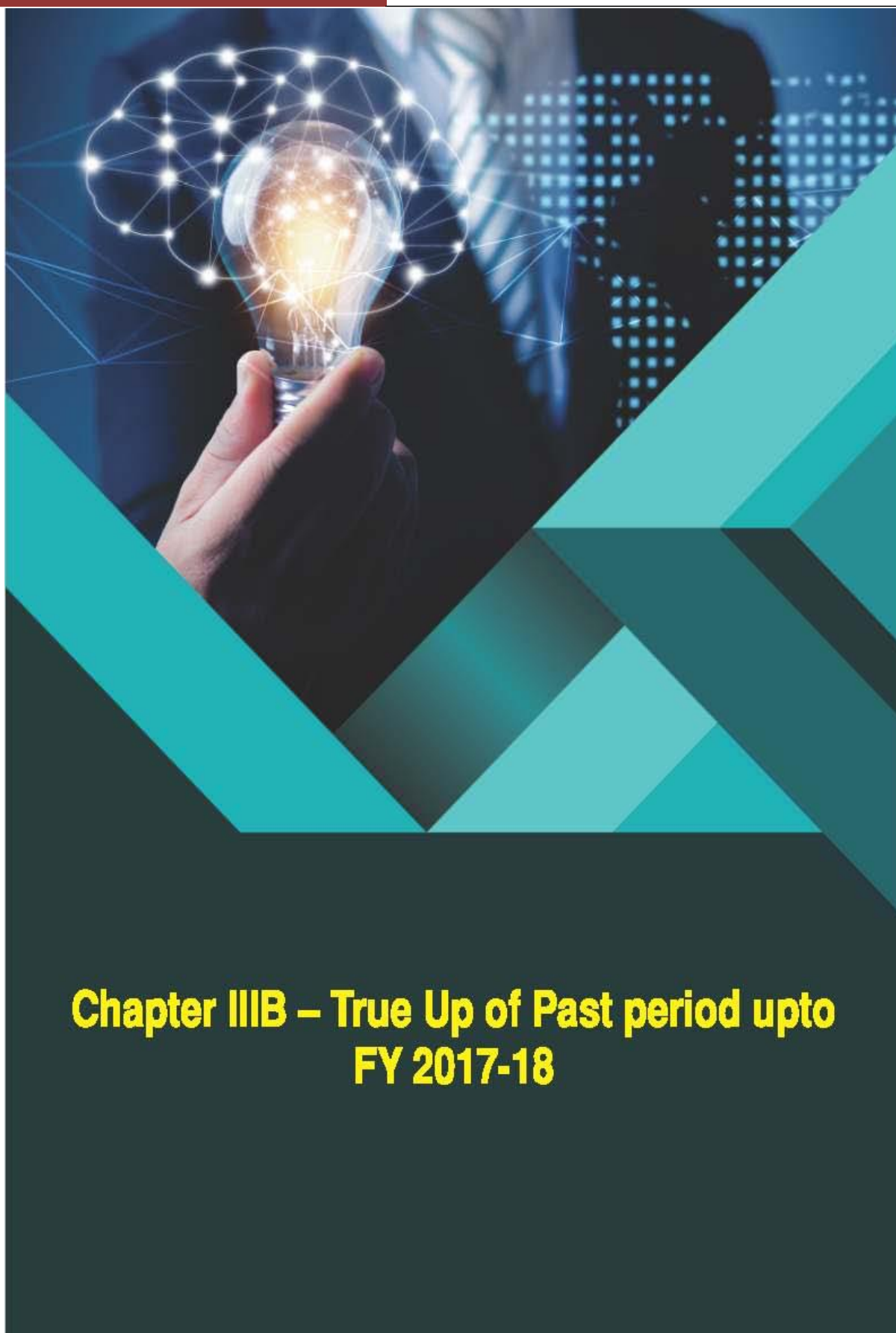
**Revenue (Gap)/ Surplus**

3A.213 The revenue gap during FY 2018-19 is tabulated as under:

**Table 3A 53: Revenue (Gap) for FY 2018-19 (Rs. Crore)**

S. No	Particulars	Submission	Reference/ Remark
A	ARR for FY 2018-19	9288	Table 3A 50
B	Revenue available towards ARR	8489	Table 3A 52
C	Revenue (Gap)/Surplus	-799	B-A

3A.214 The Petitioner requests the Hon'ble Commission to true up the expenses and revenue for FY 2018-19 as submitted above.



## Chapter IIIB – True Up of Past period upto FY 2017-18



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## Truing-up of past period upto FY 2017-18

**3B.1** The present Chapter pertains to claims which have been raised by the Petitioner in previous years but have not been allowed by this Hon'ble Commission. For the sake of convenience of this Hon'ble Commission, these claims have been categorized in the following six categories:

- a) Category-1: Issues where inconsistent treatment has been given in Past Tariff Orders;
- b) Category-2: Issues which fall under statutory levies/ change in law;
- c) Category-3: Issues which tantamount to suo-motu reopening of previous Tariff Orders;
- d) Category-4: Impact of pending review petitions filed with respect to:
  - Tariff Order dated 28.03.2018- Petition No. 30 of 2018
  - Tariff Order dated 31.07.2019- Petition No. 63 of 2019
- e) Category-5: Directions of Hon'ble Tribunal given in various Judgments:
  - Which have attained finality
  - Although challenged before Hon'ble Supreme Court, no stay has been granted by the Hon'ble Supreme Court
- f) Category-6: Previous claims which are contrary to Regulations

**3B.2** These claims have been discussed in detail in subsequent paragraphs and the impact of such claims along with carrying cost accrued till FY 2017-18 has been considered as a part of Regulatory Assets in this Petition. These claims except Category-4 are also pending in various appeals before the APTEL etc.. However, if this Hon'ble Commission were graciously be pleased to grant the relief on these items, the Petitioner would take steps in accordance with law to ensure that the same are not agitated before the Appellate Forums.

## Issues where inconsistent treatment has been given in Past Tariff Orders:

3B.3 This part deals with the issues where inconsistent treatment has been given in past Tariff Orders issued by the Hon'ble Commission.

3B.4 The Hon'ble ATE in Judgment dated 30.09.2019 (Appeal No. 246 of 2014) has observed as under:

*"12.4.1....We find force in the submissions of learned counsel for the Appellant that once a principle or methodology for determining the AT&C Loss trajectory or O&M Changes are decided, the same should be enforced for subsequent periods also taking the previous base year for which these matters stand settled. In the instant case, the base year was FY 2011-12 for which AT&C Loss trajectory as well as O&M Charges have been reworked out based on normative basis. It is not in dispute that the Appellant has been able to reduce AT&C loss for FY 2012-13 and also earned incentive towards the same. However, we are of the opinion that a methodology once finalized should not be altered in such a way that it renders ultimate disadvantage to the Distribution Licensee as in the present case."*

3B.5 As per the aforesaid findings, the Hon'ble ATE has made two important observations:

- a) Once any expense/ income is revised, the cascading impact for subsequent years is required to be allowed.
- b) Consistent methodology has to be followed for all years of the Control Period.

3B.6 In the past Tariff Petitions filed before the Hon'ble Commission, the Petitioner had raised certain issues where the Petitioner has expressed its' concern to follow the aforesaid principles. However these issues remained unaddressed in past Tariff Order. Such issues are explained in detail below:

**Issue-1: Revision in Employee and A&G Expenses from FY 2008-09 to FY 2011-12 based on revised Employee and A&G Expenses for FY 2007-08:**

3B.7 As regards aforesaid issue, it is submitted that Regulation-2.1 (g) of DERC Tariff Regulations, 2007 states as under:

*"2.1 In these Regulations, unless the context otherwise requires-*

*...*

*(g) "Control Period" means a multi-year period fixed by the Commission, from the date of issuing Multi Year Tariff order till 31<sup>st</sup> March 2011;*

*..." (Emphasis added)*

3B.8 The Hon'ble Commission issued Multi-Year Tariff Order for first control period on 23.02.2008. Accordingly Control Period was applicable from 1<sup>st</sup> March 2008 to FY 2010-11 which was further extended to FY 2011-12.

3B.9 Regulation-12.1 of DERC Tariff Regulations, 2007 provides the treatment of first 11 months of FY 2007-08 as under:

*"12.1 Performance review and adjustment of variations of the Distribution Licensees for year FY 2006-07 and period between 1<sup>st</sup> April 2007 and commencement of MYT tariff order shall be done based on the actual/audited information and prudence checks by the Commission and shall be considered during the Control Period."*

3B.10 In Tariff Order dated 23.02.2008, the Hon'ble Commission undertook truing-up of FY 2002-03 to FY 2006-07 and determined the ARR from FY 2007-08 to FY 2010-11. While doing so, the Hon'ble Commission determined the O&M Expenses from 1<sup>st</sup> April 2007 till 31<sup>st</sup> March 2011 based on actual O&M Expenses of FY 2006-07.

3B.11 In Tariff Order dated 28.05.2009, the Hon'ble Commission while undertaking truing-up of FY 2007-08 did not allow the impact of first 11 months of FY 2007-08 as per the aforesaid Regulations. The said issue was challenged before Hon'ble APTEL in Appeal 142 of 2009.

**3B.12** The Hon'ble APTEL in Judgment dated 12.07.2011 directed the Hon'ble Commission as under:

*"19.8 The eighth issue is regarding true up of the expenses for FY 2007-08 for the period between 1.04.2007 and the date of commencement of MYT Tariff Order. The MYT Regulations clearly define the control period from the date of issuing MYT Tariff Order till 31<sup>st</sup> March 2011. Regulation 12.1 also provides for performance review and adjustment of variations of the Distribution Licensees for the period between 1st April 2007 and commencement of MYT Tariff order based on actual/audited data and prudence checks by the State Commission during the Control Period. The finding of the State Commission on this issue is in contravention of the Regulations. Accordingly, the State Commission is directed to true up the financials for the period 1.4.2007 to 28.2.2008 at the earliest and allow the same with carrying cost."*

**3B.13** The Hon'ble Commission in Tariff Order dated 29.09.2015 implemented the aforesaid directions of Hon'ble APTEL. However the Hon'ble Commission revised Employee and A&G Expenses of only FY 2007-08 by considering first 11 months on actual and rest 1 month on projection basis but the Hon'ble Commission did not revise the employee and A&G Expenses of subsequent years, i.e., FY 2008-09 to FY 2011-12.

**3B.14** In this regard , it is submitted that the Hon'ble Commission despite revising the Employee and A&G Expenses during FY 2007-08 has still considered the employee and A&G Expenses from FY 2008-09 to FY 2010-11 on older/earlier base employee expenses of FY 2007-08 which is no longer in existence. Regulation-5.4 of MYT Regulations, 2007 provides the formula for computation of Employee and A&G Expenses during the control period which clearly specifies that for the purpose of computation of Employee and A&G Expenses of subsequent year, inflation factor based on CPI and WPI ought to be applied on Employee and A&G Expenses determined for the previous year. It is further submitted that as per the methodology adopted by the Hon'ble Commission, the employee expenses approved for FY 2008-09 are lesser by Rs. 25 Crore as compared to the employee

expenses approved for FY 2007-08 which means a reduction of 15% instead of inflation factor of 4.66%. Such a treatment, in respectful submission of the Petitioner, is contrary to the above Regulations.

3B.15 It is further submitted that the definition of “Base Year” and “Control Period” is clearly specified in MYT Regulations, 2007 which states as under:

*“2.1 In these Regulations, unless the context otherwise requires-*

*... ”*

*(d) “Base Year” means the **Financial Year immediately preceding first year of the Control Period** and used for purposes of these Regulations; ...” (Emphasis added)*

3B.16 As evident from the above, base year for control period starting from 1<sup>st</sup> March 2008 cannot be FY 2006-07 as first year of the control period is not FY 2007-08 but FY 2008-09.

3B.17 Accordingly, in the respectful submission of the Petitioner, the Hon’ble Commission ought to have applied the inflation factor of 4.66% as determined for the control period on the revised employee and A&G Expenses of FY 2007-08 on y-o-y basis.

3B.18 In view of the aforesaid, the additional Employee and A&G Expenses from FY 2008-09 to FY 2011-12 by applying inflation of 4.6% over the increase in O&M Expenses approved for FY 2007-08 is tabulated below:

**Table 3B 1: Employee and A&G Expenses from FY 08 to FY 12**

(in Rs. Cr.)

S. No	Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
<b>A</b>	<b>Employee Expenses</b>					
1	Employee Expenses for base year	12.91				
2	Inflation factor (%)		1.0466	1.0466	1.0466	1.0466
3	Incremental O&M Expenses		13.51	14.14	14.80	15.49
<b>B</b>	<b>A&amp;G Expenses</b>					
<b>S. No</b>	<b>Particulars</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>

S. No	Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
1	A&G Expenses for base year	1.55				
2	Inflation factor (%)		1.0466	1.0466	1.0466	1.0466
3	Incremental O&M Expenses		1.62	1.70	1.78	1.86

3B.19 The aforesaid impact along with carrying cost is tabulated below:

**Table 3B 2: Impact of revised employee and A&G Expenses with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	0	16	35	58	85	98	112	129	148	170
2	Additions	15	16	17	17						
3	Closing Balance	15	32	52	75	85	98	112	129	148	170
4	Average	8	24	43	66	85	98	112	129	148	170
5	Carrying cost rates	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	1	3	6	10	13	15	17	19	22	24
7	Grand closing balance	16	35	58	85	98	112	129	148	170	194

PRAYER(S):

3B.20 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR.

**Issue-2: Revision in "K" factor for R&M Expenses from FY 2007-08 to FY 2011-12 based on revision in R&M Expenses from FY 2004-05 to FY 2006-07:**

3B.21 Regulation-5.4 of DERC Tariff Regulations, 2007 states as under:

*"5.4 O&M expenses permissible towards ARR for each year of the Control Period shall be determined using the formula detailed below. The R&M expenses are linked to the Gross Fixed Assets, while the employee expenses and A&G expenses are linked to an Inflation Index, as shown below:*

$$(a) O\&M_n = (R\&M_n + EMP_n + A\&G_n) * (1 - X_n)$$

(i) Where,  $R\&M_n = K * GFA_{n-1}$ ;

(ii)  $EMP_n + A\&G_n = (EMP_{n-1} + A\&G_{n-1}) * (INDX_n / INDX_{n-1})$ ; and

(iii)  $INDX_n = 0.55 * CPI_n + 0.45 * WPI_n$

Where

(b) 'K' is a constant (could be expressed in %) governing the relationship between O&M costs and gross fixed assets (GFA) for the nth year. Value of K shall be determined by the Commission in the MYT Tariff order based on Licensee's filing, benchmarking, approved cost by the Commission in past and any other factor the Commission feels appropriate;

..."

**3B.22** As per above Regulations, R&M Expenses shall be equal to the product of K factor determined for the control period and the Opening GFA of respective Financial Year.

**3B.23** As regards aforesaid issue, it is submitted that the Hon'ble Commission in Tariff Order dated 23.02.2008 did not allow R&M Expenses from FY 2004-05 to FY 2006-07 on actual basis. As a result K factor for the first control period was determined on lesser R&M Expenses approved in Tariff Order dated 23.02.2008. Relevant extracts of Tariff Order dated 23.02.2008 are as under:

*"4.139 The Commission has considered the approved values of R&M expenses and opening GFA, as contained in previous Tariff Orders to calculate the respective values of 'K' for the previous years, as shown below.*

**Table 83: Determination of 'K'**

Particulars	FY03	FY04	FY05	FY06	FY07
Opening GFA (Rs Cr)	1533.00	1551.72	1658.01	1751.39	1882.93
R&M Expenses (Rs Cr)	35.84	52.57	68.99	71.75	70.98
'K' (%)	2.34%	3.39%	4.16%	4.10%	3.77%

**3B.24** The issue of non-allowance of actual R&M Expenses from FY 2004-05 to FY 2006-



07 was challenged before Hon'ble ATE in Appeal 36 of 2008. The Hon'ble ATE in Judgment dated 6.10.2009 directed the Hon'ble Commission to allow the R&M Expenses from FY 2004-05 to FY 2006-07 on actual basis subject to prudence check.

**3B.25** The Hon'ble Commission appointed Chandivala Virmani & Associates (CA Firm) to audit the R&M and A&G Expenses from FY 2004-05 to FY 2006-07. Based on the audit report, the Hon'ble Commission in Tariff Order dated 31.08.2017 allowed actual R&M and A&G Expenses from FY 2005-06 to FY 2006-07. However the Hon'ble Commission did not revise K factor for the first control period.

**3B.26** The Petitioner in its Petition for True-up of FY 2017-18, ARR and Tariff of FY 2019-20 at Para-3B.255 to Para-3B.268 had requested the Hon'ble Commission to allow the revised R&M Expenses based on revision in K factor from FY 2007-08 to FY 2011-12.

**3B.27** However the Hon'ble Commission in Tariff Order dated 31.07.2019 did not give any specific finding on the issue and observed as under:

*"3.207 The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE, no further deliberation at this juncture is required."*

**3B.28** The revised "K" factor based on approved R&M Expenses from FY 2005-06 to FY 2006-07 has been computed as under:

**Table 3B 3: Revised "K" factor from FY 2002-03 to FY 2006-07**

S. No	Particulars	UoM	FY 03	FY 04	FY 05	FY 06	FY 07	Average
1	R&M Expenses	Rs. Cr.	35.84	52.57	68.99	75.3	89.49	
2	Opening GFA	Rs. Cr.	1533	1551.72	1658.01	1751.39	1882.93	
3	k factor	%	2.34%	3.39%	4.16%	4.30%	4.75%	3.79%

**3B.29** The additional R&M Expenses based on revised "K" factor from FY 2007-08 to FY 2011-12 has been computed as under:

Table 3B 4: Revised R&amp;M Expenses based on revised "K" factor

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	Opening GFA	2012	2209	2881	3181	3464
2	k factor	3.79%	3.79%	3.79%	3.79%	3.79%
3	Revised R&M Expenses	6.35	83.67	109.13	120.49	131.21
4	R&M Expenses based on revision in GFA	6	78	102	113	123
5	Difference	0.40	5.25	6.85	7.56	8.24
6	Efficiency factor	0%	2%	3%		
7	Difference after efficiency factor	0.40	5.15	6.64	7.56	8.24

3B.30 The total impact on account of aforesaid issue along with carrying cost is tabulated below:

Table 3B 5: Impact on account of R&amp;M Expenses along with carrying cost

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0	0	6	14	24	36	42	48	55	63	72
2	Additions	0	5	7	8	8						
3	Closing balance	0	6	13	21	32	36	42	48	55	63	72
4	Average	0	3	9	18	28	36	42	48	55	63	72
5	CC Rate	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	CC	0	0	1	2	4	5	6	7	8	9	10
7	Grand closing balance	0	6	14	24	36	42	48	55	63	72	83

PRAYER(S):

3B.31 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR

### Issue-3: Revision of RoCE on account of correction of few inconsistencies in past tariff orders:

3B.32 In past Tariff Orders, there is inconsistency in the quantum of working capital on

account of the following:

- a) Revision in O&M Expenses not factored while computation of working capital from FY 2007-08 to FY 2011-12.

**3B.33** As regards first control period, Regulation-5.37 of DERC Tariff Regulations, 2007 states as under:

*“5.8 ...Working Capital for wheeling of electricity shall consist of*

- i) Receivables for two months of wheeling charges; and*
- ii) Operation and maintenance expenses for one month.*

*...*

*5.37 Working Capital for retail supply of electricity shall consist of*

- (a) Receivables for two months of revenue from sale of electricity; and*
- (b) Operation and Maintenance expenses for one month;*
- (c) Less: power purchase costs for one month.”*

**3B.34** As per DERC Tariff Regulations, 2007, the working capital from FY 2007-08 to FY 2011-12 is equivalent to two months receivables plus one month O&M Expenses less one month power purchase cost. The Hon’ble Commission in Tariff Order dated 29.09.2015 allowed the impact of truing-up of O&M Expenses for first 11 months based on actuals. However while computing the working capital for FY 2007-08, the Hon’ble Commission did not consider the revised employee and A&G Expenses allowed for FY 2007-08 and proceeded with estimated normative O&M Expenses for FY 2007-08.

**3B.35** Further as discussed in Issue Number 2, the R&M Expenses from FY 2007-08 to FY 2011-12 will undergo revision due to revision in K factor on account of revised R&M Expenses approved in Tariff Order dated 31.08.2017. Accordingly O&M Expenses for entire first control period shall undergo revision. Therefore working capital also ought to be revised in line with the same.

3B.36 The O&M Expenses considered by the Hon'ble Commission in Tariff Order dated 29.09.2015 for the purpose of computation of working capital from FY 2007-08 to FY 2011-12 and the revised O&M Expenses is tabulated below:

**Table 3B 6: O&M Expenses approved by the Commission in TO dt. 29.09.2015**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	Employee Expenses	137	141	148	203	211
2	R&M Expenses	71	78	102	113	123
3	A&G Expenses	65	68	72	75	78
4	Total O&M Expenses	273	288	322	391	413
5	Efficiency factor	0%	2%	3%	4%	4%
6	6th pay commission		8	137		
7	SVRS Pension	14	11	18	10	7
8	<b>O&amp;M Expenses</b>	<b>287</b>	<b>301</b>	<b>468</b>	<b>385</b>	<b>404</b>

**Table 3B 7: Revised O&M Expenses from FY 2007-08 to FY 2011-12**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	Employee Expenses	162	141	148	203	211
2	R&M Expenses	68	84	109	120	131
3	A&G Expenses	67	68	72	75	78
4	Total O&M Expenses	297	293	329	398	421
5	Efficiency factor	0%	2%	3%	4%	0%
6	6th Pay Commission		8	137		
7	SVRS Pension	1	11	18	10	7
8	<b>Net O&amp;M Expenses</b>	<b>299</b>	<b>306</b>	<b>474</b>	<b>392</b>	<b>428</b>

b) Receivables considered equivalent to Revenue Billed for some years and ARR for some years.

3B.37 As regards first control period, Regulation-5.8 and Regulation-5.37 of DERC Tariff Regulations, 2007 states as under:

*"5.8 ...Working Capital for wheeling of electricity shall consist of*

*iii) Receivables for two months of wheeling charges; and*

iv) *Operation and maintenance expenses for one month.*

...

5.37 Working Capital for retail supply of electricity shall consist of

(d) *Receivables for two months of revenue from sale of electricity; and*

(e) *Operation and Maintenance expenses for one month;*

(f) *Less: power purchase costs for one month."*

During first control period, the Hon'ble Commission was considering ARR for the purpose of computation of two months receivables at the time of projection and revenue billed for the purpose of computation of two months receivables at the time of truing-up of the respective year. The Petitioner raised this issue time and again that the receivables should be equivalent to the ARR trued-up and not the revenue billed for the respective year.

**3B.38** As regards second control period, Regulation-5.14 and 5.15 of DERC Tariff Regulations, 2011 states as under:

*"5.14...Working Capital for wheeling business of electricity shall consist of*

*a) Receivables for two months of wheeling charges.*

*5.15 Working Capital for retail supply of electricity shall consist of:*

*a) Receivables for two months of revenue from sale of electricity'*

*b) Less: Power Purchase costs for one month;*

*c) Less: Transmission Charges for one month;*

*d) Less: Wheeling Charges for two month*

During second control period also, the Hon'ble Commission has adopted different approach for different years.

1. For FY 2012-13 and FY 2013-14, receivables has been considered equivalent to estimated ARR at the time of tariff determination; and revenue billed at the

time of truing-up.

2. For FY 2014-15 and FY 2015-16, receivables has been considered equivalent to estimated ARR at the time of tariff determination; and revenue realised at the time of truing-up.
3. For FY 2016-17, receivables has been considered equivalent to ARR at the time of tariff determination; and trued-up ARR at the time of truing-up.

**3B.39** As regards third control period, Regulation-84 (4) of DERC Tariff Regulations, 2017 states as under:

*“84. The Commission shall calculate the working capital requirement for:*

*....*

*(4) Distribution License as follows:*

*(i) Working Capital for wheeling business of electricity shall consist of ARR for two months of wheeling charges.*

*(ii) Working Capital for Retail Supply business of electricity shall consist of:*

*(a) ARR for two months of retail supply business of electricity;*

*(b) Less: Net power purchase costs for one month;*

*(c) Less: Transmission Charges for one month.)*

The approach adopted by the Hon’ble Commission for FY 2017-18 is clearly specified in the Regulations and is in accordance with the methodology which the Petitioner has been regularly requested in past tariff petitions.

**3B.40** The Petitioner requests the Hon’ble Commission to consider the ARR for all years uniformly from FY 2007-08 onwards so as to have a uniform approach for computation of working capital requirement.

**3B.41** Accordingly the difference between the 2 months receivables considered by the Hon’ble Commission is tabulated below:

**Table 3B 8: Difference between revised receivables and receivables considered in past Tariff Orders**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	Receivables based on ARR	3011	3069	4352	5236	6109	6393
	2 Months receivables	502	512	725	873	1018	1066
2	Receivables Considered in Tariff Order	2890	3109	3594	3980	4563	5865
	2 Months receivables in Tariff Order	482	518	599	663	760	977

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Receivables based on ARR	6573	7653	7064	7743	8122
	2 Months receivables	1095	1276	1177	1291	1354
2	Receivables Considered in Tariff Order	6757	7599	8147	7743	8122
	2 Months receivables in Tariff Order	1126	1266	1358	1291	1354

**3B.42** The revised working capital based on revision in O&M Expenses from FY 2007-08 to FY 2011-12 and receivables from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 9: Revised working capital from FY 2007-08 to FY 2012-13**

(In Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	O&M Expenses	299	306	474	392	428
	1 Months O&M Expenses	25	26	40	33	36
2	ARR	3011	3069	4352	5236	6109
	2 Months receivables	502	512	725	873	1018
3	Less: Power Purchase Cost	2528	2616	3558	4506	5615
	1 Month PP Cost	211	218	297	376	468
4	Working Capital	316	319	468	530	586



S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
5	Opening Working Capital	72	316	319	468	530
6	Change in WC	244	3	149	61	56

Table 3B 10: Revised working capital from FY 2013-14 to FY 2017-18

(In Rs. Cr.)							
S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	ARR	6393	6573	7653	7064	7743	8122
	2 Months receivables	1066	1095	1276	1177	1291	1354
2	Less: Power Purchase Cost	5562	5873	6781	6177	6719	6739
	1 Month PP Cost	463	489	565	515	560	562
3	Working Capital	602	606	710	663	731	792
4	Opening Working Capital	586	602	606	710	663	731
5	Change in WC	16	4	104	-48	68	61

c) Depreciation on de-capitalisation of assets not added back in some years

**3B.43** The Hon'ble Commission in Tariff Order dated 29.09.2015 has considered impact of de-capitalisation of assets and accordingly revised GFA and RRB. While doing so, the Hon'ble Commission has added back depreciation on account of de-capitalised assets from FY 2002-03 to FY 2013-14.

**3B.44** Similar approach was adopted while undertaking truing-up of FY 2014-15 and FY 2015-16 in Tariff Order dated 31.08.2017.

**3B.45** However the Hon'ble Commission in Tariff Order dated 28.03.2018 while undertaking truing-up of FY 2016-17 has not considered depreciation on account of de-capitalisation for FY 2016-17. In subsequent Tariff Order, i.e., Tariff Order dated 31.07.2019, the Hon'ble Commission has considered depreciation on account of de-capitalisation for FY 2017-18 but the issue of FY 2016-17 has remained unaddressed.

**3B.46** Accordingly the depreciation on account of de-capitalised assets for FY 2016-17 is

required to be added back to RRB for maintaining consistency.

3B.47 Based on the above submissions, the revised RRB from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 11: RRB from FY 2007-08 to FY 2012-13**

(In Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	RRB Opening	1023	1343	1889	2196	2376	2468
2	Investments capitalized	197	672	300	283	119	301
3	Depreciation	100	85	100	109	115	117
4	Accumulated depreciation on de-capitalised assets	3	4	1	2	46	4
5	Consumer Contribution	23	49	42	57	13	69
6	Change in WC	244	3	149	61	56	16
7	RRB Closing	1343	1889	2196	2376	2468	2603
8	RRB	1305	1617	2117	2316	2450	2543

**Table 3B 12: RRB from FY 2013-14 to FY 2017-18**

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	RRB Opening	2603	2731	2955	3044	3274
2	Investments capitalized	288	308	346	371	461
3	Depreciation	125	142	152	163	227
4	Accumulated depreciation on de-capitalised assets	8	21	23	21	29
5	Consumer Contribution	47	67	81	67	72
6	Change in WC	4	104	-48	68	61
7	RRB Closing	2731	2955	3044	3274	3527
8	RRB	2669	2895	2976	3193	3431

3B.48 Based on aforesaid discussions, the revised RoCE is tabulated below:

**Table 3B 13: RoCE from FY 2007-08 to FY 2012-13**

(In Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	RRB	1305	1617	2117	2316	2450	2543
2	Equity considered for WACC	324	55	97	380	657	737
3	Debt-balancing figure	981	1562	2019	1936	1793	1807
4	Rate of Equity	16%	16%	16%	16%	16%	16%
5	Rate of Debt	9.25%	9.10%	9.24%	9.16%	11.29%	9.99%
6	WACC	10.93%	9.34%	9.55%	10.28%	12.55%	11.73%
7	RoCE	143	151	202	238	308	298

8	RoCE allowed in TO	141	152	190	219	278	290
9	Difference	2	-1	12	19	29	9

Table 3B 14: RoCE from FY 2013-14 to FY 2017-18

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	RRB	2669	2895	2976	3193	3431
2	Equity considered for WACC	809	651	689	734	784
3	Debt-balancing figure	1888	2230	2451	2444	2621
4	Rate of Equity	16%	16%	16%	16%	16%
5	Rate of Debt	10.24%	10.44%	10.47%	10.47%	13.03%
6	WACC	11.97%	11.70%	11.68%	11.84%	13.71%
7	RoCE	319	339	348	378	471
8	RoCE allowed in TO	323	337	367	376	467
9	Difference	-3	2	-19	2	4

3B.49 The total impact along with carrying cost is tabulated below:

Table 3B 15: Impact on account of revision of RoCE along with carrying cost

(In Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening	0	2	2	14	37	74	95	105	123	120	140
2	Additions	2	-1	12	19	29	9	-3	2	-19	2	4
3	Closing	2	2	13	34	66	83	91	107	104	122	144
4	Average	1	2	8	24	52	78	93	106	113	121	142
5	Carrying cost	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0	0	1	3	8	12	14	16	17	18	20
7	Grand Closing	2	2	14	37	74	95	105	123	120	140	163

PRAYER(S):

3B.50 Without prejudice to the contentions in the Pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR

**Issue-4: Impact of SVRS Pension for FY 2016-17:**

3B.51 The Hon'ble Commission in MYT Order dated 13.07.2012 allowed SVRS Pension to

be paid during the second control period from FY 2012-13 to FY 2014-15. The relevant extracts are reproduced below:

*“4.188 The Petitioner has not projected VRS/ VSS pension liability for the control period. The Commission has provisionally approved the SVRS pension at the same level as was paid by the Petitioner during FY 2011-12, as per the audited accounts submitted by the Petitioner.*

**Table 88: Approved SVRS Pension Expenses (Rs. Cr)**

Particulars	FY 2012-13	FY 2013-14	FY 2014-15
SVRS Pension	7.39	7.39	7.39

”

**3B.52** The Hon’ble Commission in Tariff Order dated 29.09.2015 while truing-up for FY 2012-13 and FY 2013-14 allowed SVRS Pension as under:

**Table 3.46: Revised O&M Expenses from FY 2007-08 to FY 2012-13 (Rs. Crore)**

Sl. No.	Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Remarks
A	Employee Expenses	136.54	141.08	148.33	203.07	211.38	270.24	
B	R&M Expenses	71.44	78.42	102.28	112.93	122.97	93.97	
C	A&G Expenses	65.31	68.35	71.54	74.88	78.37	93.29	
D	<b>Total O&amp;M Expenses</b>	<b>273.29</b>	<b>287.85</b>	<b>322.15</b>	<b>390.88</b>	<b>412.72</b>	<b>457.50</b>	<b>A+B+C</b>
E	Efficiency Factor		2.00%	3.00%	4.00%	4.00%	2.00%	
F	6 <sup>th</sup> Pay Commission Arrears		8.35	136.88				Table 3.17
G	SVRS Pension	14.17	10.88	18.28	9.97	7.39	7.39	Table 3.17
H	<b>Net O&amp;M Expenses</b>	<b>287.46</b>	<b>301.32</b>	<b>467.65</b>	<b>385.22</b>	<b>403.60</b>	<b>455.74</b>	<b>D*(1-E)+F+G</b>
I	O&M Expenses earlier allowed in T.O	289.54	305.25	458.88	386.69	407.94	445.95	
J	Difference to be (allowed)/recovered	2.08	3.93	(8.77)	1.47	4.34	(9.79)	H-I

Table 3.76: O&amp;M Expenses approved by the Commission for FY 2013-14 (Rs. Crore)

Sl. No	Particulars	Approved in Tariff Order of July 13, 2012	Petitioner's submission	Now Approved	Reference
A	Employee Expenses	286.07	379.26	291.86	As per revised trajectory
B	A&G Expenses	95.51	98.00	100.75	
C	R&M Expenses	126.39	126.39	101.87	2.62% of GFA <sub>(n-1)</sub> (i.e. Rs. 3883.50 Crore)
D	Gross O&M Expenses	507.97	603.65	494.08	A+B+C
E	Efficiency Factor	3.00%	0.00	3.00%	MYT order dated 13.07.2012
F	Less: Efficiency improvement	15.24	0.00	14.83	D*E
G	Add: SVRS Pension	7.39	7.39	7.39	MYT order dated 13.07.2012
H	Net O&M expenses	500.12	611.04	487.04	D-F+G

3B.53 The Hon'ble Commission vide Order dated 22.10.2014 extended the second control period for one more year, i.e., FY 2015-16. The Hon'ble Commission in Tariff Order dated 31.08.2017 while undertaking truing-up for FY 2014-15 FY 2015-16 was pleased to continue similar dispensation for FY 2015-16 as was given from FY 2012-13 to FY 2014-15. Relevant extracts are reproduced below:

*"3.546 Accordingly, the Commission approves O&M Expenses for FY 2014-15 and FY 2015-16 factoring efficiency factor as follows:*

Table 161: O&amp;M Expenses approved by the Commission for FY 2014-15 and FY 2015-16 (Rs. Crore)

Sr. No.	Particulars	FY 2014-15		FY 2015-16		Reference
		Petitioner's Submission	Now Approved	Petitioner's Submission	Now Approved	
A	Employee Expenses	350.00	315.21	378.00	340.43	
B	A & G Expenses	117.00	108.81	127.00	117.52	
C	R & M Expenses	143.00	109.41	152.00	117.28	
D	Gross O& M Expenses	611.00	533.43	657.00	575.22	A+B+C
E	Efficiency Factor	-	4.00%	-	4.00%	
F	Less: Efficiency Improvement	0.00	21.34	0.00	23.08	D*E
G	Add: SVRS Pension	7.00	7.39	2.00	7.39	
H	Add: Revision in salary of Head Clerk and Jr. Stenographer	11.00	10.79	9.00	8.50	
I	Net O & M Expenses	629.00	530.28	667.00	568.11	D-E+G+H „

3B.54 Regulation-139 of DERC Tariff Regulations, 2017 states as under:

*"139. Performance review and adjustment of variations in the ARR and Revenue for Utilities for FY 2016-17 shall be considered in accordance with Delhi Electricity Regulatory Commission (Terms and Conditions for determination of Transmission Tariff) Regulations, 2011 and Delhi Electricity*

*Regulatory Commission (Terms and Conditions for determination of wheeling Tariff and Retail Supply Tariff) Regulations, 2011.”*

- 3B.55 The Hon’ble Commission in Tariff Order dated 28.03.2018 undertook the truing-up of FY 2016-17. However the Hon’ble Commission did not allow SVRS pension for FY 2016-17. Relevant extracts as reproduced below:

*“3.83 Further the Commission has approved O&M Expenses for the Petitioner in Tariff Order dated 31.08.2017 for FY 2015-16 on normative basis, wherein bank charges was not approved in O&M Expenses. Therefore O&M Expenses for FY 2016-17 has also been computed based on the norms approved in Delhi Electricity Regulatory Commission (Terms and Conditions for determination of wheeling tariff and retail supply tariff) Regulations, 2011 and MYT Order dated 13/07/2012 as follows:*

**Table 131: Commission Approved - The actual O&M expenses**

Sr. No	Particulars	Petitioner Submission	Trued Up
A	Employee	391	367.66
B	A&G Expenses	200	126.58
C	R&M Expenses	161	126.92
D	Bank Charges	11	0.00
E	Total O&M Expenses	763	621.16

„

- 3B.56 It is further submitted that the Hon’ble Commission in Tariff Order dated 28.03.2018 issued for TPDDL (Order corresponding to BRPL and BYPL) allowed the said expense for FY 2016-17. Relevant extracts are reproduced below:

*“3.88 Further the Commission has approved O&M expenses for the petitioner in Tariff Order dated 31/08/2017 for FY 2015-16 on normative basis therefore, O&M expenses for FY 2016-17 has also been computed based on the norms approved in Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 and MYT order dated 13/07/2012 without considering efficiency factor as the Commission had not provided the efficiency for FY 2016-17, as follows:*

Table 34: O&amp;M Expenses trued up by the Commission for FY 2016-17 (Rs. Crore)

Sr. No.	Particulars	Petitioner Submission	Trued Up
A	Employee Cost	421.48	349.98
B	A&G Expenses	71.81	110.30
C	R&M Expenses	154.43	71.72
D	Total O&M Expenses	647.72	532.00
E	Efficiency factor (%)	1.00%	0.00%
F	Less: Efficiency Improvement	6.48	0
G	Add: SVRS Pension	2.95	2.95
H	Net O&M Expenses	644.20	534.95

3B.57 As evident from above the Hon'ble Commission has allowed the impact of SVRS Pension during FY 2016-17 for TPDDL but not for the Petitioner. The Petitioner in its Petition for Truing-up of FY 2016-17 and ARR and Tariff of FY 2018-19 at Para-3B.489 to 3B.491 requested the Hon'ble Commission to rectify the error.

3B.58 However the Hon'ble Commission in Tariff Order dated 31.07.2019 did not give any specific finding on the issue and observed as under:

*"3.207 The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE, no further deliberation at this juncture is required."*

3B.59 The impact on account of SVRS pension of FY 2016-17 along with carrying cost is tabulated below:

Table 3B 16: SVRS pension for FY 2016-17 along with carrying cost

(In Rs. Cr.)			
S. No	Particulars	FY 17	FY 18
1	Opening balance	0	8
2	Additions	7	
3	Closing balance	7	8
4	Average	4	8
5	Rate of CC	14.64%	14%
6	Carrying Cost	1	1
7	Grand Closing balance	8	9



PRAYER(S):

3B.60 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow SVRS pension for FY 2016-17 in parity to the dispensation given to other DISCOMs.

**Issue-5: License fees paid during FY 2016-17:**

3B.61 Regulation-5.3 of DERC Tariff Regulations, 2011 states as under:

*"5.3 Operation and Maintenance (O&M) expenses shall include:*

*(a) Salaries, wages, pension contribution and other employee costs;*

*(b) Administrative and General expenses which shall also include expense related to raising of loans;*

*(c) Repairs and Maintenance; and*

*(d) Other miscellaneous expenses, statutory levies and taxes (except corporate income tax)."*

3B.62 In accordance with the aforesaid Regulations, the Hon'ble Commission allowed employee, A&G and R&M Expenses on normative basis as per pre-defined targets specified at the beginning of the control period. However certain expenses which are beyond the control of Licensee and are statutory in nature were allowed on actual basis by computing the difference between actuals and normative expenses. Such expenses include License fees, taxes, ombudsman expenses etc.

3B.63 The Hon'ble Commission in Tariff Orders in which truing-up for FY 2012-13 to FY 2015-16 was carried out, allowed incremental license fees paid to DERC from FY 2012-13 to FY 2015-16. However in Tariff Order dated 28.03.2018, the Hon'ble Commission while undertaking truing-up of FY 2016-17 did not allow incremental license fees paid to DERC during FY 2016-17 on actual.

3B.64 It is further submitted that the Hon'ble Commission in Tariff Order dated 28.03.2018 issued for TPDDL (Order corresponding to BRPL and BYPL) allowed the

said expense for FY 2016-17. Relevant extracts are reproduced below:

*“3.92 The Commission is of the view that licence fee is applicable year which is uncontrollable. Accordingly, the Commission has considered the difference of normative license fee covered under A&G Expenses and actual paid Rs. 1.19 Crore on account of license fees paid to the Commission during FY 2016-17.”*

**3B.65** As evident from above the Hon’ble Commission has allowed the impact of SVRS Pension during FY 2016-17 for TPDDL but not for the Petitioner. The Petitioner in its Petition for Truing-up of FY 2016-17 and ARR and Tariff of FY 2018-19 at Para-3B.461 (d) requested the Hon’ble Commission to rectify the error.

**3B.66** However the Hon’ble Commission in Tariff Order dated 31.07.2019 did not give any specific finding on the issue and observed as under:

*“3.207 The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon’ble ATE, no further deliberation at this juncture is required.”*

**3B.67** The impact on account of incremental License fees of FY 2016-17 along with carrying cost is tabulated below:

**Table 3B 17: Incremental License fees paid to DERC during FY 2016-17**

S. No	Particulars	UoM	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	License fees included in base year	Rs. Cr.	1.20						
2	Inflation Factor	%		8%	8%	8%	8%	8%	8%
3	License fees approved	Rs. Cr.		1.30	1.40	1.51	1.63	1.76	1.91
6	License fees actually paid	Rs. Cr.							4.60
7	<b>Incremental License fees</b>	<b>Rs. Cr.</b>							<b>2.69</b>

**Table 3B 18: Incremental License fees for FY 2016-17 along with carrying cost**

(In Rs. Cr.)

S. No	Particulars	FY 17	FY 18
1	Op. balance	0	3
2	Additions	3	
3	Cl. Balance	3	3
4	Average	1	3
5	Rate of interest	14.64%	14.00%
6	Carrying cost	0.20	0.40
7	Grand Cl. Balance	3	3

PRAYER(S):

- 3B.68 Without prejudice to the contentions in the Pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow incremental License fees for FY 2016-17 in parity to the dispensation given to other DISCOMs.

**Issue-6: Loss on account of retirement of assets:**

- 3B.69 As regards de-capitalisation of assets, it is submitted that the Petition for loss on retirement of assets was submitted on October 25, 2012. Pending adjudication of the Petition, the Hon'ble Commission in Tariff Order dated September 29, 2015, instead of allowing the loss incurred on retirement of assets, decided to reduce all capex associated costs on account of retirement of assets (which was neither subject matter of the Petition nor the methodology for loss on retirement of assets as per the Tariff Order dated July 7, 2005) based on the methodology specified in letter dated November 26, 2014.

- 3B.70 The Hon'ble Commission in Order dated May 28, 2018 stated as under:

*"3. The counsel for the petitioners submitted that the written submissions have been filed, wherein it is stated that as per the terms of law settled by the Supreme Court and the APTEL, Regulations framed under the Electricity Act cannot be given retrospective application, however, in order to put quietus to the discussion, the petitioner is willing to have the aforesaid claim considered on the principles contained in Regulation 45 of the DERC (Terms and Conditions for Determination of tariff) Regulations, 2017, without prejudice to the general principle and retrospective operation and only as a*

*special case.*

4. In view of the submissions made by the petitioners the petitions are disposed of with the direction to the petitioners to file their claim regarding retirement of assets along with the relevant data to the Engineering division within four weeks, which shall be processed as per the methodology provided in the DERC (Terms and Conditions of Determination of Tariff) Regulations, 2017.”

3B.71 As regards loss on account of retirement of assets, Regulation-45 of DERC Tariff Regulations, 2017 states as under:

*“45. Loss or Gain due to de-capitalisation of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year.”*

3B.72 The Petitioner in its Petition has already provided the details of the assets retired from FY 2004-05 to FY 2011-12. Further the Petitioner vide letter dated 6.09.2016 has also submitted the details of retired assets clearly specifying the categories for the reasons given under Regulation-45 of DERC Tariff Regulations, 2017.

3B.73 The Petitioner in its Petition for Truing-up of FY 2016-17 and ARR and Tariff of FY 2018-19 at Para-3B.374 to 3B. 380 requested the Hon’ble Commission to allow the impact on this issue.

3B.74 However the Hon’ble Commission in Tariff Order dated 31.07.2019 did not give any specific finding on the issue and observed as under:

*“3.207 The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon’ble ATE, no further deliberation at this juncture is required.”*

3B.75 The impact on account of the claim on account of de-capitalisation of assets along with carrying cost is tabulated below:

**Table 3B 19: Claim for de-capitalisation of assets along with carrying cost**

(In Rs. Cr.)

S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
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S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
1	Op. balance	0	0	7	10	14	22	26	33
2	Additions	-0.46	7	2	3	6	1	3	26
3	Cl. Balance	0	7	9	13	20	23	30	59
4	Average	0	3	8	11	17	23	28	46
5	Rate of interest	9%	9%	9%	13.68%	13.75%	13.11%	13.38%	14.88%
6	Carrying cost	-0.02	0.28	0.71	1.54	2.37	2.99	3.74	6.89
7	Grand Cl. Balance	0	7	10	14	22	26	33	66

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	66	76	87	101	115	132
2	Additions						
3	Cl. Balance	66	76	87	101	115	132
4	Average	66	76	87	101	115	132
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	9.93	11.40	13.21	14.89	16.90	18.53
7	Grand Cl. Balance	76	87	101	115	132	151

**PRAYER(S):**

3B.76 Without prejudice to the contentions in the Pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

3B.77 The total impact of issues on account of category-1 is tabulated below:

**Table 3B 20: Total impact issues falling under Category-1**

(Rs. Cr.)				
S. No	Particulars	Principal	Carrying Cost	Total
1	Revision in Employee and A&G Expenses of FY 09 to FY 12	65	129	194
2	Revision in K factor for R&M Expenses from FY 08 to FY 12	28	55	83
3	Correction of errors in RoCE on account of corrections in Working Capital and RRB	55	108	163
4	SVRS Pension for FY 2016-17	7	2	9
5	License fees paid during FY 2016-17	3	1	3
6	Loss on account of retirement of assets	48	103	151
7	<b>Sub-total</b>	<b>206</b>	<b>397</b>	<b>603</b>

## Issues which fall under Statutory levies/ change in

**law:**

3B.78 This part deals with the issues which fall under Statutory levies/ change in law. Such expenses are uncontrollable and are incurred by the Petitioner generally on account of the following:

- a) Directions given by Statutory authority including but not limited to Government Ministries; Regulatory Bodies in different areas of Electricity Sector (for instance, in cases of Energy Efficiency) etc;
- b) Notifications/ Regulations/ Statutory directions/ Statutory Orders issued by any Government agency.

**Issue-1: Minimum wages:**

3B.79 On 31.01.2017, the Hon'ble Commission notified DERC Tariff Regulations, 2017. Regulation-87 of DERC Tariff Regulations, 2017 specifies as under:

*"87. 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.**" (Emphasis added)*

3B.80 On 3.03.2017, the Ministry of Labour, Government of National Capital Territory of Delhi (hereinafter "**GoNCTD**") issued a Notification bearing Ref. No. F. Addl.LC/Lab/MW/2016/4859 under 5(2) of the Minimum Wages Act, 1948 (hereinafter "**the 1948 Act**") whereby, w.e.f. 3 March 2017, the minimum wages payable, were enhanced.

3B.81 The Hon'ble Commission thereafter notified Draft Business Plan Regulations, 2017 wherein Regulation-20 (4) stated as under:

**“20. Operation and Maintenance Expenses**

...

*(4) Impact of **Seventh pay commission** on employee cost shall be considered separately, based on actual payment made by the Distribution Licensees and prudence check at the time of trueup of ARR for the relevant financial year. **(Emphasis added)***

**3B.82** On 18.07.2017, the Petitioner submitted its comments on Draft Business Plan Regulations, 2017 wherein the uncontrollable impact of enhanced Minimum Wages was highlighted and the Hon’ble Commission was requested to allow the same on actual basis. Copy of the letter is attached as **Annexure-4**.

**3B.83** On 19.07.2017, the Petitioner submitted another letter inter-alia specifying that Minimum Wages will be statutorily binding on the Petitioner as per Section-3 of Minimum Wages Act, 2008. The Petitioner also highlighted that the impact of minimum wages has not been incurred till FY 2015-16 and thus will not be reflected in financial statements till FY 2015-16 which forms the basis for projection of expenses in Draft DERC Business Plan Regulations, 2017. The Order of GoNCTD dated 11.04.2017 directing payment of wages to outsourced employees/ staff on revised rates as per minimum wages notification dated 3.03.2017 was also attached. Copy of the said letter is attached as **Annexure-5**.

**3B.84** On 31.08.2017, the Hon’ble Commission notified Business Plan Regulations, 2017 which was applicable for a period of 3 years, i.e., FY 2017-18 to FY 2019-20. Regulation-23 (4) of Business Plan Regulations, 2017 states as under:

**“23. Operation and Maintenance Expenses**

...

*(4) Impact of any **Statutory Pay revision** on employee’s cost as may be applicable on case to case basis shall be considered separately, based on actual payment made by the Distribution Licensees and shall be allowed by the Commission after prudence check at the time of true up of ARR for the*



relevant financial year. *(Emphasis added)*

As evident from the aforesaid, the Hon'ble Commission based on the comments of the stakeholders was pleased to change the clause of pay revision in final Business Plan Regulations, 2017.

3B.85 The Hon'ble Commission also issued explanatory memorandum in support of Business Plan Regulations, 2017 which states following on the issue of statutory levies:

**"N. OPERATION AND MAINTENANCE EXPENSES**

**STAKEHOLDER'S COMMENTS/ SUGGESTIONS**

...

*j. Delhi Government has revised the minimum wages of industrial workers in the capital by about 37% across various categories as per Delhi Government notification no. F. Addl. LC/ MW/2016/4859. Therefore, the Commission is requested to consider the impact of such increase in Minimum wages as uncontrollable under the head statutory levy and allow the corresponding amount over and above the normative O&M Expenses for next control period. Such an increase has an impact on the OPEX Expenses.*

...

**COMMISSION'S VIEW**

*1) It is observed that concerns raised by various stakeholders with respect to O&M Expenses are classified as follows:*

- a) Impact of 7<sup>th</sup> Pay Commission and minimum wage revision*
- b) Variation in O&M Expenses of DTL and DISCOMs*
- c) Disallowance of Legal expenses*
- d) Change in methodology of O&M Expenses.*

2) With regards to the 7<sup>th</sup> Pay Commission and minimum wage revision, the Commission has considered the submissions made by the stakeholder and **has modified the Business Plan Regulations 2017, by replacing “7<sup>th</sup> Pay Commission” of draft Regulation with “Statutory Pay” which factors in minimum wage component , as follows:**

*“(4) Impact of any statutory Pay revision on employee’s cost as may be applicable on case to case basis shall be considered separately, based on actual payment made by the Distribution Licensees and shall be allowed by the Commission after prudence check at the time of true up of ARR for the relevant financial year.”” (Emphasis added)*

**3B.86** The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR of FY 2019-20 at Para-3A.80 to 3A.84 claimed the impact on account of Minimum wages. However the Hon’ble Commission in Tariff Order dated 31.07.2019 stated as under:

*“3.354 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 for revision in minimum wages is not allowed by the Commission.”*

**3B.87** As regards above, the Petitioner would like to submit the following:

a) The Petitioner vide its letter dated 19.07.2017 forwarded copy of GoNCTD’s Order dated 11.04.2017 wherein GoNCTD has categorically directed the Petitioner to pay the wages to outsourced employees/ staff on revised rates of minimum wages. As regards fixing the rates of minimum wages, Section-3 of Minimum wages Act, 1948 state as under:

*“3. Fixing of minimum rates of wages.-*

*(1) The appropriate Government shall, in the manner hereinafter*

provided,--

*(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:*

*Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;]*

*(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary:..”*

As evident from the aforesaid, GoNCTD has the power to revise the minimum wages. The Petitioner is duty bound to obey the directions of GoNCTD regarding pay revision which are statutory in nature and cannot act in contravention of the same. Clearly, the said expense is therefore uncontrollable in nature and ought to be allowed.

b) Section-3 of Minimum wages Act, 1948 defines employer as under:

*“2. Interpretation*

*...*

*(d) “employer” means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rate of wages have been fixed under this Act and includes except in sub-section (3) of Section-26-*

*...”*

As evident from the above definition, the outsourced employees or contractual employees are also considered as employees of the Petitioner under Minimum Wages Act, 1948. Accordingly expenses arising out of revision in minimum rates of wages under the Minimum Wages Act, 1948 related to manpower based contract qualifies as statutory pay revision as it is employee's cost of the Petitioner.

Hence the expenses arising out of revision in the minimum rate of wages under 1948 Act are to be borne by the Principal employer, i.e., BRPL and all such costs will constitute costs towards operational expenses.

- c) The Petitioner in its letter dated 19.07.2017 categorically qualified that the said expenses are not covered under normative O&M Expenses as the norms specified in Business Plan Regulations, 2017 are based on O&M Expenses appearing in the audited financial statements upto FY 2015-16 whereas the notification has been issued on 11.04.2017. Also the explanatory memorandum to Business Plan Regulations, 2017 clearly specify as under:

*“(38) The Commission had sought the data from the Distribution Licensees about their distribution network capacities installed at site for last five years, as on 31st March for respective financial years, and the projections of the capacities to be installed to meet the demand in future.*

*(39) The DISCOMs have submitted the actual O&M expenses incurred during the last five years from FY 2011-12 to FY 2015-16. However, the exact allocation of these expenses in various components of network i.e. lines and grids for various capacities & voltage levels, is not available with the DISCOMs. Therefore, the Commission felt that the allocation of O&M expenses may be done on the different voltage levels as under:*

Particulars	% of O&M Expenses	Applicability
LT Voltage level	70%	N.A.
HT Voltage level	20%	8% in line and 12% in grid
EHT Voltage level	10%	4% in line and 6% in grid

*(40) Accordingly, per unit values have been computed based on the above methodology and data submitted by the Distribution licensee is as under:-*

(i) In the actual expenditure incurred by DISCOMs, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retired assets have not been considered.

(ii) The balance actual expenditure incurred by DISCOMs on Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses from FY 2011-12 to FY 2015-16 was allocated to various capacities of network at EHT, HT & LT level, in the aforesaid proportion.

(iii) Per unit expenses on various components were worked out on the basis of allocated Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses and the installed capacity of the component as on 31st March of respective financial year.

(iv) The average of these per unit factors were computed and the average values were considered to be the values for FY 2013-14 (mid-year of FY 2011-12 to FY 2015-16).

(v) In order to arrive at the values for FY 2017-18, an escalation of 5.61% (indicated in the subsequent paras on the basis of CPI & WPI), on year to year basis was provided.

(vi) Per unit values for the network for Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses have been computed for FY 2017-18, FY 2018-19 and FY 2019-20 by providing an escalation of 5.61% on year to year basis.

(vii) Per unit values for O&M expenses have been computed by adding the per unit values for Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses for FY 2017-18, FY 2018-19 and FY 2019-20."

As evident from above, the O&M Expenses from FY 2011-12 to FY 2015-16 has been taken into consideration for projection of norms for O&M Expenses from FY 2017-18 to FY 2019-20. Therefore these norms do not cover the impact of

minimum wages.

- d) The Petitioner in its Petition claimed Rs. 40.21 Cr. which includes minimum wages impact of Rs. 7.79 Crore on account of its own employees specified in note to Schedule-36 of employee expenses and Rs. 32.42 Crore on account of Contractual employees specified in note to Schedule-39 of R&M Expenses. However the Hon'ble Commission has disallowed entire Rs. 40.21 Cr. stating that the same is included in the normative expenses.
- e) Further the Hon'ble Tribunal in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality. This Tribunal in its judgment dated 10.2.2015 in Appeal no. 171 of 2012 has held that enhancement in expenses due to reasons beyond the control of the utility, such as statutory obligations are uncontrollable in nature and, therefore, ought to be allowed.*

...

*16.4.3 It is relevant to note that change in law relating to statutory levies cannot be envisaged by the Licensee or the Respondent Commission at the time of MYT Order and thus, cannot be considered as part of normative increase in expenses by the Respondent*

Commission.”

As per the above direction, the increase in employee expenses due to minimum wages falls under both categories, i.e., change in law and statutory levies.

**3B.88** The impact on account of minimum wages during FY 2017-18 along with carrying cost is tabulated below:

**Table 3B 21: Impact of minimum wages along with carrying cost**

(Amount in Rs. Cr.)

S. No	Particulars	FY 18
1	Op. balance	0
2	Additions	40
3	Cl. Balance	40
4	Average	20
5	Rate of interest	14.00%
6	Carrying cost	3
7	Grand Cl. Balance	43

**PRAYER(S):**

**3B.89** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon’ble Commission to allow the impact in the ARR.

**Issue-2: GST:**

**3B.90** On 31.01.2017, the Hon’ble Commission notified DERC Tariff Regulations, 2017. Regulation-87 of DERC Tariff Regulations, 2017 specifies as under:

*“87. 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.” (Emphasis added)*

**3B.91** On 1.07.2017, the GST Act was notified and as per Section 2(10) thereof, 1.07.2017 constitutes the 'appointed date' for the said legislation. In other words, liability to pay GST commenced w.e.f. 1.07.2017. From 1.07.2017, for the services covered under the GST Act, the Petitioner is, by law, required to pay GST as opposed to earlier Service Tax.

**3B.92** On 31.08.2017, the Hon'ble Commission notified Business Plan Regulations, 2017 which included the norms for O&M Expenses from FY 2017-18 to FY 2019-20. Said norms were worked out on the basis of actual O&M Expenses from FY 2011-12 to FY 2015-16. This is evident from the explanatory memorandum to Business Plan Regulations, 2017 which specifies as under:

*“(38) The Commission had sought the data from the Distribution Licensees about their distribution network capacities installed at site for last five years, as on 31st March for respective financial years, and the projections of the capacities to be installed to meet the demand in future.*

*(39) The DISCOMs have submitted the actual O&M expenses incurred during the last five years from FY 2011-12 to FY 2015-16. However, the exact allocation of these expenses in various components of network i.e. lines and grids for various capacities & voltage levels, is not available with the DISCOMs. Therefore, the Commission felt that the allocation of O&M expenses may be done on the different voltage levels as under:*

<b>Particulars</b>	<b>% of O&amp;M Expenses</b>	<b>Applicability</b>
LT Voltage level	70%	N.A.
HT Voltage level	20%	8% in line and 12% in grid
EHT Voltage level	10%	4% in line and 6% in grid

*(40) Accordingly, per unit values have been computed based on the above methodology and data submitted by the Distribution licensee is as under:-*

*(i) In the actual expenditure incurred by DISCOMs, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retired assets have not been considered.*

*(ii) The balance actual expenditure incurred by DISCOMs on Employee*



*Expenses, Administrative and General Expenses and Repair and Maintenance Expenses from FY 2011-12 to FY 2015-16 was allocated to various capacities of network at EHT, HT & LT level, in the aforesaid proportion.*

*(iii) Per unit expenses on various components were worked out on the basis of allocated Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses and the installed capacity of the component as on 31st March of respective financial year.*

*(iv) The average of these per unit factors were computed and the average values were considered to be the values for FY 2013-14 (mid-year of FY 2011-12 to FY 2015-16).*

*(v) In order to arrive at the values for FY 2017-18, an escalation of **5.61%** (indicated in the subsequent paras on the basis of CPI & WPI), on year to year basis was provided.*

*(vi) Per unit values for the network for Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses have been computed for FY 2017-18, FY 2018-19 and FY 2019-20 by providing an escalation of 5.61% on year to year basis.*

*(vii) Per unit values for O&M expenses have been computed by adding the per unit values for Employee Expenses, Administrative and General Expenses and Repair and Maintenance Expenses for FY 2017-18, FY 2018-19 and FY 2019-20."*

As evident from above, the O&M Expenses from FY 2011-12 to FY 2015-16 has been taken into consideration for projection of norms for O&M Expenses from FY 2017-18 to FY 2019-20. Therefore these norms do not cover the impact of minimum wages.

**3B.93** Accordingly the Petitioner in its Petition for True-up of FY 2017-18 and ARR and Tariff for FY 2019-20 at Para-3.A.79 claimed the increase in expenses on account of change in tax regime from service tax to GST.

3B.94 However the Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

*"3.346 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."*

3B.95 As regards aforesaid, the Petitioner would like to submit the following:

- a) The GST Act which was notified on 1.07.2017 has, for all intents and purposes, omitted Chapter V of the Finance Act, 1994 (which introduced Service Tax). In this regard, Section 173 of the GST Act may be referred to, which provides as under:

*"173. Amendment to Act 32 of 1994- Save as otherwise provided in this Act, **Chapter V of the Finance Act, 1994 shall be omitted.**"*  
(Emphasis added)

The Petitioner respectfully submits that a bare perusal of the above unequivocally indicates that the GST Act has in effect replaced Service Tax and is clearly a new statutory levy. It is submitted that Section 173 of the GST Act clearly establishes that the GST Act is a new statutory levy and the same is not subsumed in Service Tax.

- b) In fact, to empower the Parliament to even promulgate the GST Act, the 101st Constitutional Amendment was passed. By way of the said Constitutional Amendment, several Articles were introduced in the Indian Constitution, which permitted the Parliament to legislate upon the subject matter covered under the GST Act which shows that GST is a completely new levy in tax regime.
- c) There is considerable difference between GST and VAT (system under which taxes were levied). The differences between GST and VAT is tabulated below:

**Table 3B 22: Comparison between VAT and GST**

Parameter	VAT	GST
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Parameter	VAT	GST
<b>Structure</b>	Under the old taxation system, the central taxes applicable were custom duty/central excise duty, central sales tax on commodities and services, surcharge and cesses. The state taxes included state VAT, WCT, entertainment tax, luxury tax, tax on gambling, betting and lottery, sales tax deducted at source, and surcharge and cesses.	Under GST, all the central and state taxes will be subsumed and a single tax will be levied on all commodities and services apart from motor spirit, petroleum, natural gas and high-speed diesel.
<b>Basis of Levy</b>	Under VAT, tax will be levied at the place where goods are manufactured or sold, or the place at which services are rendered.	Under GST, tax will be levied at the place of consumption, like a destination-based tax.
<b>Registration</b>	Under VAT, the registration is decentralised under state and central authorities.	Under GST, there will be uniform e-registration depending upon the PAN of the entity.
<b>Validation</b>	Under VAT, the system will partly validate the returns, and full verification will be subject to assessments by state or central authorities.	Under GST, the validation will take place on the system, and consistency checks will be carried out on input credit availed, tax payments, and utilisation.
<b>Filing of Returns and Collection of Tax</b>	Under the old scenario, service tax and central excise were uniform, but VAT varied from state to state.	Under GST, the process is uniform and the dates for collecting or depositing tax and filing returns are common.
<b>Service Tax</b>	Under VAT, the centre charges service tax on a list of services under the Finance Act on provision/payment basis.	Under GST, the State GST subsumes service tax depending upon rules relating to Place of Supply.
<b>State VAT</b>	Under VAT, all commodities apart from those exempt are taxed.	Under GST, the State GST subsumes this tax.
<b>Excise Duty</b>	Under VAT, excise duty will be levied up to the point of manufacturing.	Under GST, the excise duty will be replaced by Central GST and tax will be levied up to retail level.

Parameter	VAT	GST
<b>Basic Customs Duty</b>	Under VAT, the centre charges tax on imports under a separate act.	No change.
<b>Special Additional Duty</b>	Under Vat, the centre charges tax on imports separately.	Under GST, this duty is subsumed by State GST.
<b>Entry Tax</b>	Under VAT, entry tax is charged by certain states for inter-state transfers, detained as import in local area.	Under GST, entry tax is not applicable, but an additional 1% will be levied as tax on inter-state supply of certain commodities.
<b>Central Sales Tax</b>	Under VAT, CST is charged at a concessional rate of 2% so far as inter-state transfers are concerned against C-Forms. The full rate applicable otherwise ranges from 5% to 14.5%.	Under GST, the Integrated GST subsumes CST.
<b>Tax on Export of Commodities and Services</b>	Under VAT, this tax is exempt.	No change.
<b>Tax on Inter-State Transfer of Commodities to Agent or Branch</b>	Under VAT, this tax is exempt against Form F.	Under GST, this tax is levied but dealers will have access to full credit.
<b>Cross Set-Off of Levy</b>	Under VAT, set-off of service tax and excise duty is permitted.	Under GST, set-off between State GST and Central GST is not allowed.
<b>Tax on Transfer of Commodities to Agent or Branch</b>	Under VAT, this tax is generally exempt, but its applicability depends upon state procedures.	Under GST, this tax may be levied unless TIN of the transferor and transferee is the same.
<b>Disallowance of credit on certain items</b>	Under VAT, there are a few non-creditable commodities and services under VAT as well as CENVAT rules.	Under GST, there will be no such disallowance unless the GST Council specifically allows it.
<b>Disallowance of inputs or input services utilised in exempted commodities or services</b>	Under VAT, this is not permitted.	Under GST, there will be no such disallowance, unless the GST Council finalises a list of those items falling under the Negative List.

Parameter	VAT	GST
<b>Cascading Effect</b>	Under VAT, credit between service tax and excise duty is available, but there is no set-off against VAT on excise duty.	Under GST, credit available on the whole amount of taxes up to retailer.
<b>Threshold limits for levy of tax</b>	Under VAT, the threshold for central excise is Rs.1.5 crore, and the threshold for VAT ranges between Rs.5 lakh to Rs.20 lakh depending upon the state. The threshold for service tax is Rs.10 lakh.	Under GST, the State GST will range between Rs.10 lakh to Rs. 20 lakh based on recommendations of the GST Council.
<b>Levy of tax on NGOs and government bodies</b>	Under VAT, certain government bodies, non-profit organisations and PSUs will be covered.	No changes.
<b>Exemptions</b>	Under VAT, certain areas such as the North-East will be able to enjoy exemptions.	Under GST, there will be no such exemptions, and the GST Council may introduce an Investment Refund Scheme for certain zones.

- d) Further the Hon'ble Tribunal in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality. This Tribunal in its judgment dated 10.2.2015 in Appeal no. 171 of 2012 has held that enhancement in expenses*

*due to reasons beyond the control of the utility, such as statutory obligations are uncontrollable in nature and, therefore, ought to be allowed.*

...

*16.4.3 It is relevant to note that change in law relating to statutory levies cannot be envisaged by the Licensee or the Respondent Commission at the time of MYT Order and thus, cannot be considered as part of normative increase in expenses by the Respondent Commission."*

As per the above direction, the increase due to GST falls under both categories i.e., change in law and statutory levies and hence required to be allowed.

**3B.96** The increase due to GST during FY 2017-18 is tabulated below:

**Table 3B 23: Increase due to GST during FY 2017-18**

(Amount in Rs. Cr.)

S. No	Particulars	FY 2015-16	FY 2016-17	FY 2017-18
1	Service tax paid	36.58		
2	Esc. Factor		5.61%	5.61%
3	Service tax		38.63	40.80
4	Service tax for 9 months			30.60
5	GST paid during 9 months			45.48
6	<b>Net impact</b>			<b>14.88</b>

**3B.97** The impact on account of increase due to GST during FY 2017-18 along with carrying cost is tabulated below:

**Table 3B 24: Impact of increase due to GST along with carrying cost**

(Amount in Rs. Cr.)

S. No	Particulars	FY 18
1	Op. balance	0
2	Additions	15
3	Cl. Balance	15
4	Average	7
5	Rate of interest	14.00%
6	Carrying cost	1
7	Grand Cl. Balance	16

**PRAYER(S):**

3B.98 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-3: SMS Charges:**

3B.99 The Hon'ble Commission vide letter dated 13.01.2016 directed the Petitioner to provide SMSes to its consumers to apprise them of various aspects of their electricity connection. The said direction is reproduced below:

*“(7) The additional cost of SMS Service may be allowed separately in the annual revenue requirement of DISCOM based on actual. If the actual cost is not found justified, the Commission may disallow the unjustified cost of SMS Service.”*

As evident from above, the said directive clearly provided that the additional cost of the SMS service would be allowed to the DISCOM on actuals if the same was found to be justified. Copy of letter is attached as **Annexure-6**.

3B.100 Based on the said directive, the Petitioner implemented the facility of sending SMS to the consumers regarding bills/ power failure/ power restoration time/ maintenance activities etc. The expense incurred on account of the same is tabulated below:

**Table 3B 25: Expenses incurred on account of SMS Charges**

(Amount in Rs. Cr.)			
S. No	Particulars	FY 2016-17	FY 2017-18
1	Expenses incurred for providing service of SMS	0.75	0.63

3B.101 The Hon'ble Commission in explanatory memorandum to Business Plan Regulations, 2017 notified on 31.08.2017 clearly stated that the norms for O&M Expenses from FY 2017-18 to FY 2019-20 have been derived based on actual O&M Expenses from FY 2011-12 to FY 2015-16. Therefore the norms specified for the period FY 2017-18 to FY 2019-20 do not include expenses to be covered on

account of SMS Charges. Accordingly the Petitioner in its Petition for True-up of FY 2017-18 and ARR and Tariff of FY 2019-20 at Para-3A.85 to 3A.86 for FY 2017-18 and at Para-3B.461 (b) for FY 2016-17 claimed the aforesaid amount. However the Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

*"3.357 During the prudence check, it was observed that the Petitioner already claimed the expense of similar nature booked by the petitioner in its audited financial statement under the head of Communication expenses have already been considered by the Commission at the time of determining the O&M expenses under Regulation 23 of DERC (Business Plan) Regulations, 2017."*

**3B.102** As regards aforesaid, the Petitioner would like to submit the following:

- a) The Hon'ble Commission has categorically stated in its letter dated 13.01.2016 that the expenses to be incurred on SMS Charges shall be allowed separately in the ARR and shall be disallowed to the extent of such expenses not found to be justified. However the Hon'ble Commission contrary to its own direction has taken another unconnected ground.
- b) The Hon'ble Commission has not considered the fact that the said direction was given on 23.01.2016 and the Petitioner has incurred such expense for the first time in FY 2016-17 whereas the norms for O&M Expenses from FY 2017-18 to FY 2019-20 were specified in Business Plan Regulations, 2017 based on the actual O&M Expenses incurred from FY 2011-12 to FY 2015-16.
- c) The Hon'ble Commission has not provided any opportunity to explain the expenses appearing under the head "Communication expenses". The Hon'ble Commission has unilaterally proceeded on the assumption that the said "Communication expenses" appearing in the audited books from FY 2011-12 to FY 2015-16 is of similar nature. The said "communication expenses" which purportedly seem to have been included in the fixation of O&M norms at the material time and which form the basis of denying the Appellant the SMS charges, constitute completely different charges and have nothing to do with SMS charges. The said Communication charges, include the following:



- Telephone Expenses;
- Mobile bill expenses;
- Courier charges and
- Postal Charges etc.

Therefore the facility of SMS Charges was not available to the consumers from FY 2011-12 to FY 2015-16 and infact was implemented based on the direction and the assurance of the Hon'ble Commission contained in letter dated 13.01.2016.

- d) Further the said expense of SMS Charges was allowed to TPDDL, another Distribution Licensee of Delhi for FY 2016-17 in Tariff Order dated 28.03.2018. The relevant excerpts are as under:

*"3.121. The Commission is of the view that SMS Charges paid as per the Commission's directive which is uncontrollable. Accordingly, the Commission has considered the actual SMS Charges paid Rs. 0.35 Crore paid during FY 2016-17 in ARR."*

As evident from the aforesaid para, the Hon'ble Commission in Tariff Order dated 28.03.2018 issued for TPDDL itself admitted that SMS Charges is uncontrollable in nature whereas in Tariff Order dated 31.07.2019, the Hon'ble Commission has taken completely contrary view and held the same expense to be controllable. Further the Hon'ble Commission has not allowed the same expense for FY 2016-17 in case of the Petitioner which is against the principles of parity among DISCOMs. Also the Hon'ble Commission in Tariff Order dated 28.03.2018 has held as under:

*"3.312 However, the Commission is adopting similar treatment for all the Distribution Licensee operating in the area of GoNCTD and same tariff regulations are applicable to all the Distribution Licensees."*

In view of the above statement, the expenses are to be allowed to the

Petitioner also.

- e) Further the Hon'ble APTEL in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"12.4.1 ...However, we are of the opinion that a methodology once finalized should not be altered in such a way that it renders ultimate disadvantage to the Distribution Licensee..."*

3B.103 The claim on account of SMS Charges along with carrying cost is tabulated below:

**Table 3B 26: SMS Charges along with carrying cost**

(Rs. Cr.)

S. No	Particulars	FY 17	FY 18
1	Op. balance	0	0.80
2	Additions	0.75	0.63
3	Cl. Balance	0.75	1.44
4	Average	0.37	1.12
5	Rate of interest	14.64%	14.00%
6	Carrying cost	0.05	0.16
7	Grand Cl. Balance	0.80	1.59

**PRAYER(S):**

3B.104 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-4: Revision in Bonus of Contractual employees:**

3B.105 Ministry of Law and Justice vide Gazette Notification dated 1.01.2016 notified Payment of Bonus (Amendment) Act, 2015. The Government vide this notification revised the amount from Rs. 3500 to Rs. 7000. The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff of FY 2019-20 claimed the additional outgo of Rs. 1.2 Crore during FY 2017-18 (Para-3A.96 of the Petition). However the Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

*"3.379 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."*

**3B.106** As regards aforesaid, the Petitioner would like to submit the following:

- a) The Petitioner was bound to pay enhanced bonuses to the workers as per notification of Ministry of Law and Justice. Same falls under both Statutory levy and change in law.
- b) The said expense is not covered in norms as the Hon'ble Commission itself in the explanatory memorandum issued in support of Business Plan Regulations, 2017 has stated that the data from FY 2011-12 to FY 2015-16 has been considered for computation of norms for the period FY 2017-18 to FY 2019-20. The said revision in bonus is therefore not covered in the norms.
- c) Further the Hon'ble Tribunal in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality. This Tribunal in its judgment dated 10.2.2015 in Appeal no. 171 of 2012 has held that enhancement in expenses*

*due to reasons beyond the control of the utility, such as statutory obligations are uncontrollable in nature and, therefore, ought to be allowed.*

...

*16.4.3 It is relevant to note that change in law relating to statutory levies cannot be envisaged by the Licensee or the Respondent Commission at the time of MYT Order and thus, cannot be considered as part of normative increase in expenses by the Respondent Commission."*

As per the above direction, the increase due to revision in Bonus falls under both categories i.e., change in law and statutory levies and hence required to be allowed.

**3B.107** The claim on account of revision in Bonus along with carrying cost is tabulated below:

**Table 3B 27: Impact of increase in bonus along with carrying cost**

(Rs. Cr.)

S. No	Particulars	FY 18
1	Op. balance	0.00
2	Additions	1.23
3	Cl. Balance	1.23
4	Average	0.61
5	Rate of interest	14.00%
6	Carrying cost	0.09
7	Grand Cl. Balance	1.31

**PRAYER(S):**

**3B.108** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-5: Cost of Auditor Certificates:**

**3B.109** As regards cost of auditor certificate, the Hon'ble APTEL in Judgment dated

30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"16.1.1 The Respondent Commission has disallowed various uncontrollable expenses while truing-up for FY 2012-13. The expenses sought by the Appellant under the head other expenses were uncontrollable on part of the Appellant in as much as they related to change in law and change in charges levied by the bank/ financial institutions. The list of uncontrollable expenses claimed by the Appellant is given below:*

(Rs. Crores)

<b>S. No</b>	<b>Particulars</b>	<b>Petitioner's Submission</b>
1	Change in Service Tax Rate	1.96
2	Service Tax under Reverse charge mechanism	0.31
3	Financing charges	0.4
4	Increase in LC Charges	0.73
5	Cost of Auditor Certificate	0.07
6	Credit rating fees	0.13
	<b>Total (In Crores)</b>	<b>3.6</b>

...

16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned Counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its Judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the Petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality. This Tribunal in its Judgment dated 10.02.2015 in Appeal No. 171 of 2012 has held that enhancement in expenses due to reasons beyond the control of the Utility, such as statutory obligations are uncontrollable in

*nature and therefore, ought to be allowed.”*

3B.110 In accordance with the aforesaid direction, the Petitioner is claiming the cost of auditor certificate from FY 2012-13 to FY 2016-17 as under:

**Table 3B 28: Cost of Auditor Certificate from FY 2012-13 to FY 2016-17**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17
1	Cost of Auditor's Certificate	0.15	0.27	0.15	0.14	0.15

3B.111 The impact along with carrying cost is tabulated below:

**Table 3B 29: Impact on account of cost of auditor certificate with carrying cost**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0.00	0.16	0.48	0.72	0.97	1.28
2	Additions	0.15	0.27	0.15	0.14	0.15	
3	Cl. Balance	0.15	0.44	0.63	0.86	1.12	1.28
4	Average	0.07	0.30	0.56	0.79	1.05	1.28
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.01	0.04	0.08	0.12	0.15	0.18
7	Grand Cl. Balance	0.16	0.48	0.72	0.97	1.28	1.46

**PRAYER(S):**

3B.112 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-6: DSM Charges:**

3B.113 As per Energy Conservation Act, 2001 notified on 29.09.2001 "Designated Consumers" (like the Petitioner) are liable to take various steps for Energy Conservation. One of those steps include undertaking an Energy Audit (Section-14 (i)).

3B.114 On 31.03.2016, Ministry of Power issued a notification wherein various entities were notified as "Designated Consumers". The Petitioner was also included as one such designated consumer for the first time. The importance of this notification lies in the fact that the costs associated with any activity under the aforesaid acts could not have been visualised prior to the Petitioner being notified as a

“Designated Consumer” under the Act. Admittedly, the O&M norms for the period FY 2017-18 to FY 2019-20 were made on the basis of expenses of FY 2011-12 to FY 2015-16. This obviously did not include any possible expenses on this account since any such expenses on this account could be envisioned only after 1.04.2016.

**3B.115** On 20.04.2016, Bureau of Energy Efficiency (BEE) sent a letter with respect to inclusion of Electricity Distribution Companies under PAT Scheme to verify the data received from the Respondent Commission pertaining to T&D Losses of the Petitioner’s License area.

**3B.116** Further the Bureau of Energy Efficiency vide its letter dated 8.08.2017 again directed the Petitioner to get an energy audit conducted by an accredited energy auditor in accordance with the Bureau of Energy Efficiency (Manner and Intervals of Time of Conduct of Energy Audit) Regulations, 2010.

**3B.117** The Petitioner appointed M/s Padmashtdal Energy Services Private Limited to undertake energy audit. The Auditor submitted its report on 29.09.2017 and payment was made.

**3B.118** The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff of FY 2019-20 at Para-3A.97 submitted the claim regarding the cost incurred on energy audit. However the Hon’ble Commission in Tariff Order dated 31.07.2019 held as under:

*“3.382 The payment towards the audit service is not a statutory expense but a normal business expense of the Petitioner. Accordingly, no additional cost is being allowed.”*

As evident from the above, the Hon’ble Commission held that the cost on audit undertaken during FY 2017-18 is not a statutory expenses whereas the audit was undertaken based on direction of Bureau of Energy Efficiency in accordance with Ministry of Power notification dated 31.03.2016. Prior to FY 2017-18, no such audit ever had been conducted. Therefore the same has effect to and is akin to

being statutory in nature and the Petitioner had to abide by the directions of BEE.

3B.119 The impact on account of the expense incurred towards audit undertaken by M/s Padmashtal Energy Services Private Limited along with carrying cost is tabulated below:

**Table 3B 30: Impact of audit fees incurred during FY 2017-18 along with carrying cost**

S. No	Particulars	FY 18
1	Op. balance	0
2	Additions	0.13
3	Cl. Balance	0.13
4	Average	0.06
5	Rate of interest	14.00%
6	Carrying cost	0.01
7	Grand Cl. Balance	0.13

**PRAYER(S):**

3B.120 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

3B.121 The total impact of issues on account of category-2 is tabulated below:

**Table 3B 31: Total impact issues falling under Category-2**

(Rs. Cr.)				
S. No	Particulars	Principal	Carrying Cost	Total
1	Minimum wages	40.21	2.81	43.02
2	GST	14.89	1.04	15.93
3	SMS Charges	1.38	0.21	1.59
4	Revision in Bonus of contractual employees	1.23	0.09	1.31
5	Cost of auditor certificates	0.87	0.59	1.46
6	DSM Charges	0.13	0.01	0.13
7	<b>Sub-total</b>	<b>58.70</b>	<b>4.75</b>	<b>63.46</b>

**Impact of issues which have attained finality and have been suo-motu reopened:**



**3B.122** This category deals with the issues which have been suo-motu reopened by the Hon'ble Commission. One of the objectives of Electricity Act 2003 is to bring certainty in Electricity Sector so as to encourage private players to invest in the sector. With this objective in mind, State Regulators were introduced so as to bring regulatory certainty and transparency in the sector. Hon'ble APTEL has held in catena of Judgments that once an issue is settled and has attained finality, same cannot be reopened as the same is against the spirit of the objectives of Electricity Act 2003. There are few issues where the Hon'ble Commission has suo-motu without any reasoning reopened previous Tariff Orders and changed the treatment. These are explained below:

**Issue-1: Write-back of miscellaneous provisions considered as Non-Tariff Income:**

**3B.123** The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff of FY 2019-20 at Para-3B.481 to Para-3B.488 requested the Hon'ble Commission not to consider the write-back of miscellaneous provisions as Income as the same is merely a booking entry. However the Hon'ble Commission in Tariff Order dated 31.07.2019 did not give any specific finding on the issue and held as under:

*"3.207 The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE, no further deliberation at this juncture is required."*

**3B.124** As regards aforesaid the Petitioner would like to submit the following:

- a) The Hon'ble Commission in Tariff Order dated 28.05.2009 while undertaking truing-up of FY 2007-08 considered the miscellaneous provisions written-back as Non-Tariff Income.
- b) The Hon'ble Commission in Review Order dated 11.05.2010 (Review Petition

No. 6/2009 filed by the then NDPL (now TPDDL)) stated as under:

**“A. WRITE BACK OF DOUBTFUL DEBTS CONSIDERED AS NON-TARIFF INCOME (NTI) WHEN THE SAME HAD NEVER BEEN ALLOWED AS AN EXPENSE:**

...

**COMMISSION’S ANALYSIS:**

*20. The Commission has revisited the trued-up Non-Tariff Income of the Petitioner for F.Y. 2007-08 and has observed that the claim of the Petitioner is valid. There has been an inadvertent error while computing the Non-Tariff Income where the write back of doubtful debts amounting to Rs. 0.17 Cr. have been considered as a part of Non-Tariff Income. The Commission, therefore, allows the amount of Rs. 0.17 Cr. “*

Further the Hon’ble Commission in the same review Order dated 11.05.2010 also stated as under:

*“13. It is important to understand that while dealing with an application for a review of an Order, it is very necessary to process the application with utmost caution as the powers of review are not ordinary powers.*

*14. The provisions relating to review of an Order constitute an exception to the general Rule to the effect that once a judgement is signed and pronounced, it cannot be altered. Therefore, the Orders are not generally interfered with, till there are circumstances as defined under the law which make it necessary for a Court to alter or modify or reverse its original judgement. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. The power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by law expressly or by necessary implication.” (Emphasis added)*

As evident from the aforesaid, the Hon'ble Commission consciously decided to allow the write-back of miscellaneous provisions and not to consider the same as Non-Tariff Income.

- c) In Tariff Order dated 31.07.2013, the Hon'ble Commission deducted the miscellaneous provisions written back from "Other Income" appearing in books for the purpose of computation of Non-Tariff Income. Relevant excerpts are as under:

*"3.142 Hence, the Commission has approved the amount of Non Tariff Income as summarised below:*

**Table 35: Trued-up Non Tariff Income approved by Commission (Rs. crore)**

Sl. No.	Particulars	Now Approved
1	Non Tariff Income as per audited accounts	235.00
2	Less:	
i)	Excess Provisions written back (pertaining to O&M expenses and bad debts written off)	8.03
ii)	Transfer from Consumer contribution for capital works	7.20
iii)	Financing Cost of LPSC	25.78
iv)	Rebate	2.83
v)	Interest on Con. Reserve	3.23
3	Add:	
	Interest on consumer security deposit	30.39
4	Total Non Tariff Income	218.13

*3.225 The summarised table on Non-Tariff Income approved by the Commission is as below:*

Table 73: Non Tariff Income approved in truing up for FY 2007-08 to FY 2010-11 (Rs. Crore)

S.No.	Particulars	FY 2007-08	FY 2008-09	FY2009-10	FY 2010-11
1	Non Tariff Income	66.36	202.19	165.92	154.59
2	Add: Delayed projected charges	31.77			
3	Add: Interest as Investments	15.68			
4	Add: Prior Period interest		0.06		
5	Add: Prior period income free sale of energy		10.24		
6	<b>Total</b>	<b>113.81</b>	<b>212.49</b>	<b>165.92</b>	<b>154.59</b>
	Add: Income from normative interest as consumer security deposit	10.56	14.52	18.03	20.92
7					
8	<b>Total NTI</b>	<b>124.37</b>	<b>227.01</b>	<b>183.95</b>	<b>175.51</b>
	Less: Interest on Contingency Reserve	1.96	1.40	1.43	2.91
9					
10	Less: Financing Cost of LSPC	16.77	14.68	14.86	15.41
	Less: Interest / Short term capital gain	2.10	6.28	1.53	1.21
11					
12	Less: Rebate < 1%	21.29	21.63	24.08	25.51
13	Less: Excess/ provision back	1.89	1.56	22.58	3.49
	Less: Transfer form consumer contribution for capital works		9.09	3.68	10.63
14					
15	<b>Net Non Tariff Income</b>	<b>80.36</b>	<b>172.37</b>	<b>115.78</b>	<b>116.36</b>

”

- d) In Tariff Order dated 23.07.2014, the Hon’ble Commission without assigning any reason considered the miscellaneous provisions written back as part of Non-Tariff Income during FY 2012-13.
- e) In Tariff Order dated 29.09.2015, the Hon’ble Commission suo-motu reopened its own Review Order dated 11.05.2010 and Tariff Order dated 31.07.2013 and reversed the treatment of miscellaneous provisions written back from FY 2007-08 to FY 2011-12. In the said Order, the Hon’ble Commission recomputed NTI from FY 2007-08 to FY 2011-12 and considered miscellaneous provision written back as Non-Tariff Income from FY 2007-08 to FY 2011-12.
- d) The Hon’ble ATE in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon’ble Commission as under:

*“12.4.1 However, we are of the opinion that a methodology once finalized should not be altered in such a way that it renders ultimate disadvantage to the Distribution Licensee as in the present case.*

...

*15.4.2....In view of the facts, we are of the opinion that when final true up for previous years have been completed and final orders passed by the Commission, which have attained finality, cannot be reopened for*

*re-examination. We therefore, decide this issue in favour of the Appellant that trued up matters/ orders cannot be reopened or re-examined/ reconsidered."*

As evident from the aforesaid, the Hon'ble ATE has clearly held the following:

1. Once a methodology is finalised, same cannot be altered;
2. Tariff Orders which have attained finality, cannot be reopened for re-examination.

**3B.125** In view of the above submissions, the Petitioner would request the Hon'ble Commission to allow write-back of miscellaneous provisions as under:

**Table 3B 32: Amount pertaining to write-back of miscellaneous provisions**

(Rs. Cr.)												
S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Write-back of miscellaneous provisions	2	2	23	3	8	3	6	6	22	3	4

**3B.126** The impact on account of write-back of miscellaneous provisions along with carrying cost is tabulated below:

**Table 3B 33: Impact on account of write-back of miscellaneous provisions along with carrying cost**

(Rs. Cr.)												
S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	2	4	29	36	50	60	76	93	131	153
2	Additions	2	2	23	3	8	3	6	6	22	3	4
3	Cl. Balance	2	4	27	32	44	53	66	81	115	133	156
4	Average	1	3	15	30	40	51	63	79	104	132	155
5	Rate of interest	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0	0	2	4	6	8	10	12	15	19	22
7	Grand Cl. Balance	2	4	29	36	50	60	76	93	131	153	178

**PRAYER(S):**

3B.127 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-2: Re-opening of debt-equity ratio stipulated in transfer scheme and erroneous net-worth computations:**

3B.128 As per Transfer Scheme, 2001, Genco, Transco and three DISCOMs were handed over the assets and liabilities. The debt-equity ratio as per Transfer Scheme, 2001 is tabulated below:

**Table 3B 34: Debt-Equity ratio as per Transfer Scheme, 2001**

S. No	Particulars	Amount (Rs. Cr.)
1	GFA	360
2	Accumulated Depreciation	70
3	Equity	116
4	Debt	174

3B.129 The Hon'ble Commission in Tariff Order dated 23.02.2008 considered the funding of assets covered under transfer scheme as per the funding provided in Balance Sheet of Transfer Scheme, 2001. Further the Hon'ble Commission approved the means of finance for the capitalisation approved from FY 2002-03 to FY 2006-07 in the following priority:

- Consumer Contribution;
- APDRP Grants;
- APDRP Loans;
- Unutilised Depreciation;
- Balance through internal accruals and loans in debt-equity ratio of 70:30.

3B.130 For first control period starting from 1.03.2008, the Hon'ble Commission shifted from the approach of funding capital expenditure to the approach of funding capitalisation with notification of MYT Regulations, 2007 on 30.05.2007 which was

made applicable from 01.03.2008 to FY2011-12. Regulation 5.10 of MYT Regulations, 2007 states as under:

*“5.10 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1 + D/E} \right] * r_d + \left[ \frac{1}{1 + D/E} \right] * r_e$$

*Where,*

***D/E** is the Debt to Equity Ratio and for the purpose of determination of tariff, debt-equity ratio as on the Date of Commercial Operation in case of new distribution line or substation or capacity expanded shall be 70:30. Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The interest rate on the amount of equity in excess of 30% treated as notional loan shall be the weighted average rate of the loans of the Licensee for the respective years and shall be further limited to the prescribed rate of return on equity in the Regulations. Where actual equity employed is less than 30%, the actual equity and debt shall be considered.*

***rd** is the Cost of Debt and shall be determined at the beginning of the Control Period after considering Licensee's proposals, present cost of debt already contracted by the Licensee, and other relevant factors (risk free returns, risk premium, prime lending rate etc.);*

***re** is the Return on Equity and shall be determined at the beginning of the Control Period after considering CERC norms, Licensee's proposals, previous years' D/E mix and other relevant factors. The cost of equity for the Wheeling Business shall be considered at 14% post tax.” (emphasis supplied)*

**3B.131** On 2.12.2011, the Hon'ble Commission notified the 2011, MYT Regulations, which

were to come into force on April 1, 2012. Regulation 5.11 states as under:

*“5.11 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1+D/E} \right] * r_d + \left[ \frac{1}{1+D/E} \right] * r_e$$

*Where,*

*D/E is the Debt to Equity Ratio and for the purpose of determination of tariff, debt-equity ratio for the asset capitalized shall be 70:30. Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The interest rate on the amount of equity in excess of 30% treated as notional loan shall be the weighted average rate of the loans of the Licensee for the respective years and shall be further limited to the prescribed rate of return on equity in the Regulations. Where actual equity employed is less than 30%, the actual equity and debt shall be considered:*

*Provided that the Working capital shall be considered 100% debt financed for the calculation of WACC;*

*Provided further that the Debt to Equity Ratio for the assets covered under Transfer Scheme, dated July 1, 2002 shall be considered as per the debt and equity in the transfer scheme; ...”*

**3B.132** In accordance with the aforesaid Regulations, the Hon’ble Commission in Tariff Order dated 31.07.2013 allowed the funding of provisionally approved capitalisation from FY 2007-08 to FY 2011-12 in debt-equity ratio of 70:30. Further the debt-equity ratio for the assets funded till FY 2006-07 was not altered. The depreciation was deducted from GFA and was not utilised as means a finance. Accordingly the returns were provided on net fixed assets.

**3B.133** In accordance with the MYT Regulations, 2011, the Hon’ble Commission in Tariff Order dated 23.07.2014 allowed the funding of provisionally approved



capitalisation during FY 2012-13 in debt-equity ratio of 70:30. Further the debt-equity ratio for the assets funded till FY 2011-12 was not altered. The depreciation was deducted from GFA and was not utilised as means a finance. Accordingly the returns were provided on net fixed assets.

**3B.134** The Hon'ble Commission in Tariff Order dated 29.09.2015 (Para-3.181), contrary to Transfer Scheme, 2001 suo-motu reopened the debt-equity ratio specified in transfer scheme, 2001 and also the principle for financing of capital expenditure from FY 2002-03 to FY 2006-07 carved out at Para-3.64 of DERC Tariff Order dated 23.02.2008 and capped average equity upto 30% from FY 2002-03 onwards for the years where average equity was more than 30%. Further it is a settled financial principle that the amount of capital expenditure/ capitalisation is required to be matched with the funds, i.e., consumer contribution, grants, equity and debt. However the Hon'ble Commission in Tariff Order dated September 29, 2015 has not provided the details of means of finance and has applied the debt and equity balance by comparing the net-worth with 30% of Regulated Rate Base.

**3B.135** The Petitioner has made the debt and equity schedule based upon the computations given by the Hon'ble Commission in Tariff Order dated September 29, 2015 and August 31, 2017:

**Table 3B 35: Equity schedule based on average equity numbers considered in Table-3.37 and Table-3.50 of Tariff Order dated September 29, 2015**

(Rs. Crore)

S. No	Financial Year	Opening Equity	Additions	Closing Equity	Average Equity Considered
1	FY 2002-03	460	-29	431	446
2	FY 2003-04	431	-38	394	413
3	FY 2004-05	394	158	551	472
4	FY 2005-06	551	113	664	608
5	FY 2006-07	664	-121	543	604
6	FY 2007-08	543	-438	105	324
7	FY 2008-09	105	-100	5	55
8	FY 2009-10	5	184	190	97
9	FY 2010-11	190	381	570	380
10	FY 2011-12	570	173	744	657
11	FY 2012-13	744	-14	730	737
12	FY 2013-14	730	159	889	809

**Table 3B 36: Debt schedule based on average debt numbers considered in Table-3.36 and Table-3.50 of Tariff Order dated September 29, 2015**

(Rs. Crore)

S. No	Financial Year	Opening Debt	Additions	Repayment	Closing Debt	Average Debt Considered
1	FY 2002-03	690	1	0	691	691
2	FY 2003-04	691	19	0	710	700
3	FY 2004-05	710	221	0	930	820
4	FY 2005-06	930	359	30	1260	1095
5	FY 2006-07	1260	97	6	1351	1305
6	FY 2007-08	1351	-782		569	960
7	FY 2008-09	569	2000		2569	1569
8	FY 2009-10	2569	-1352		1217	1893
9	FY 2010-11	1217	1020		2237	1727
10	FY 2011-12	2237	-1408		829	1533
11	FY 2012-13	829	1779		2608	1719
12	FY 2013-14	2608	-1440		1168	1888

3B.136 Based on the above the funding of capitalisation is tabulated below:

**Table 3B 37: Means of finance for Policy Direction Period**

(Rs. Crore)

S. No	Particulars	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
1	Capex	76	115	539	619	306
2	Closing sundry creditors				21	
3	Closing Sundry debtors	6				
4	Total financing reqd.	71	115	539	639	306
5	<b>Means of finance</b>					
a	Consumer contribution	12	57	60	39	48
b	APDRP Grants		19			
c	APDRP Loans		19			
d	Depreciation	57	20	143	88	119
e	Internal accruals	-29	-38	158	113	-121
f	Loan	1	19	221	359	97
g	Sundry creditors			21		
5	<b>Gap left in funding</b>	<b>29</b>	<b>19</b>	<b>-63</b>	<b>41</b>	<b>162</b>

Table 3B 38: Means of finance from FY 2007-08 to FY 2013-14

(Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
A	Capitalisation	29	220	97	90	-23	301	288
B	Working Capital	67	9	5	-6	2	110	123
C	<b>Total</b>	<b>96</b>	<b>229</b>	<b>102</b>	<b>83</b>	<b>-21</b>	<b>411</b>	<b>410</b>
D	Means of Finance							
1	Consumer contribution	3	39	40	57	13	69	47
2	Debt	-782	2000	-1352	1020	-1408	1779	-1440
3	Equity	-438	-100	184	381	173	-14	159
4	<b>Total</b>	<b>-1217</b>	<b>1939</b>	<b>-1128</b>	<b>1458</b>	<b>-1221</b>	<b>1834</b>	<b>-1234</b>
E	<b>Gap left in funding</b>	<b>1313</b>	<b>-1709</b>	<b>1230</b>	<b>-1374</b>	<b>1200</b>	<b>-1423</b>	<b>1645</b>

As evident from the aforesaid tables, means of finance is not matching with capitalisation for even a single year for the period from FY 2002-03 to FY 2013-14.

**3B.137** The Petitioner in its Petition for True-up of FY 2016-17 and ARR and Tariff for FY 2018-19 raised this issue. The Hon'ble Commission in Tariff Order dated 28.03.2018 directed the Petitioner as under:

*"3.387 The Commission direct the Petitioner to submit the detail of Net worth based on audited financial statement, statement of de-capitalisation, utilisation of depreciation, means of finance for each year Capitalisation & working capital etc since inception in order to assess the actual equity. Further, the Commission has also appointed consultant for physical verification of asset since FY 2004-05 onwards which has an impact on the total financing required for regulated business. Therefore, the Commission will finalise the means of finance based on each year final value of capitalisation including the dispute related to utilisation of consumer contribution during policy direction period.*

**3B.138** Accordingly the Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff for FY 2019-20 at Para-3B.492 to Para-3B.500 raised this issue and also submitted detailed computation of Debt-equity and RoCE at Para-3B.83 to Para-3B.141. However the Hon'ble Commission in Tariff Order dated July 31, 2019 did not given any specific finding on this issue and ruled as under:

*"3.207 The Commission has been dealing the issues in respective Tariff Orders*

*as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE, no further deliberation at this juncture is required."*

**3B.139** The Petitioner again requests the Hon'ble Commission to rectify the error on the following grounds:

- a. Inconsistency in capital expenditure and capitalisation allowed vis-a-vis funding of the same;
- b. Suo-motu reopening of principle for funding of capital expenditure from FY 2002-03 to FY 2006-07 established in Tariff Order dated 23.02.2008;
- c. The Hon'ble Commission has derived net-worth from audited statements. However the Hon'ble Commission in its Statutory advice dated December 15, 2010 has itself recognised the fact that due to continuous non cost reflective tariffs, the Petitioner is not able to realise the return on equity in accordance with the entitlement as per Regulations and thus had to resort to extensive borrowings resulting in adverse effect on financials of the Petitioner. It is further submitted that the advice of the Hon'ble Commission was based on the audited accounts for FY 2008-09, FY 2009-10 and half yearly accounts of FY 2010-11.
- d. The Hon'ble Commission has not implemented various APTEL Directions given in Judgment dated 06.10.2009, 12.07.2011, 28.11.2014, 2.03.2015 pending outcome of civil appeal filed by the Hon'ble Commission challenging these APTEL Directions before Hon'ble Supreme Court. However there is no stay on implementation of these APTEL Directions. Thus the financial books do not correctly reflect the actual net-worth as the revenue on account of implementation of these directions which pertain to period from FY 2004-05 to FY 2017-18 has yet not been realised.
- e. The Hon'ble Commission has yet not given effect of actual capitalisation on

account of pendency of physical verification exercise which is pending since FY 2004-05. The Petitioner submits that when actual capitalisation appearing in audited financial statements is not being considered for computation of RoCE and depreciation pending physical verification of assets then how the audited financial statements can be utilised for computation of net-worth pending physical verification of assets.

**3B.140** The impact on account of correction of aforesaid error has been considered along with impact of other capex related issues at Para-3B.229 to Para-3B.303 of the Petition.

**PRAYER(S):**

**3B.141** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**3B.142** The total impact of issues on account of category-2 is tabulated below:

**Table 3B 39: Total impact issues falling under Category-3**

(Rs. Cr.)				
S. No	Particulars	Principal	Carrying Cost	Total
1	Write-back of miscellaneous provisions	80	98	178
2	Re-opening of debt-equity ratio stipulated in transfer scheme and erroneous net-worth computations	Considered with other capex related issues		
3	<b>Sub-total</b>	<b>80</b>	<b>98</b>	<b>178</b>

## Impact of Pending Review Petitions:

**3B.143** There are certain arithmetical/computational errors, apparent errors and omissions in the Tariff Order dated 28.03.2018 and 31.07.2019 which require reconsideration by the Hon'ble Commission.

**3B.144** The Petitioner had filed a Review Petition No. 30 of 2018 and Review Petition No. 63 of 2019 under section 94 and section 62(4) of the Electricity Act 2003 read with clauses 57, 58 and 59 of the DERC (Conduct of Business) Regulations 2001, seeking review / revision/ clarification of the Tariff Order dated 28.03.2018 and Tariff Order dated 31.07.2019 on such issues.

3B.145 All submissions with respect to the issues raised therein have already been submitted before the Hon'ble Commission and are not reiterated in this Petition for the sake of brevity.

3B.146 The financial impact on account of these Review Petitions is tabulated below:

**Table 3B 40: Impact on account of issues raised in Review Petitions**

(Rs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
<b>A</b>	<b>Review Petition No. 30 of 2018-Tariff Order dated 28.03.2018</b>			
1	Error in consideration of Rebate from DTL as NTI during FY 2013-14	15	13	28
2	Omission to deduct the amount of LPSC from Revenue for FY 2008-09	13	34	47
3	Error in consideration of impact on account of Merit Order Dispatch for FY 2013-14	104	89	194
4	Omission to withdraw / recall the Efficiency Factor for FY2015-16	23	9	32
5	Error in carrying cost on account of Anta, Auraiya and Dadri Gas Stations		17	17
6	Normative rebate considered from SECI during FY 2016-17	0.49	0.11	1
<b>7</b>	<b>Sub-total</b>	<b>156</b>	<b>163</b>	<b>319</b>
<b>B</b>	<b>Review Petition-Tariff Order dated 31.07.2019</b>			
8	Error in consideration of depreciation while computing ARR in Table-3.134 of Order	29	2	31
9	Property tax for FY 2016-17	16	4	20
10	Carrying cost on account of Anta, Auraiya and Dadri Gas Stations from FY 2012-13 to FY 2016-17	0	168	168
11	Erroneous computation of deemed revenue in excess of 1% cap on billing adjustments of FY 2017-18	26	2	28
12	Erroneous disallowance of water charges	2	0	2
13	Net Metering	0	0	0
<b>14</b>	<b>Sub-total</b>	<b>74</b>	<b>176</b>	<b>250</b>
<b>15</b>	<b>Total</b>	<b>230</b>	<b>339</b>	<b>569</b>

**PRAYER(S):**

3B.147 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR of the Petitioner.

## Directions of Hon'ble ATE given in various Judgments:

**3B.148** This Category deals with the issues which have been decided by the Hon'ble ATE in favour of the Petitioner but have not been implemented either in letter or spirit by the Hon'ble Commission till date. A gist of such judgments of the Hon'ble ATE on which the Petitioner is basing the present set of claims is set out hereunder:

**Table 3B 41: Summary of ATE Judgments**

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
1	Deferment of Capitalisation based on EI Certificate	October 6, 2009 (Appeal No. 36 of 2008)	To allow the capitalisation based on Electrical Inspector (EI) Application plus 15 days
		March 2, 2015 (Appeal No. 177 of 2012)	To conduct physical verification of assets and complete exercise within 6 months
		September 30, 2019 (Appeal No. 246 of 2014)	Issue of capitalisation is required to be re-examined by the Commission in consideration of all facts and figures and is required to be allowed on actual basis in line with Regulations.
2	Disallowance of REL Purchases	October 6, 2009 (Appeal No. 36 of 2008)	To allow the impact based on comparison with NDPL prices
		March 2, 2015 (Appeal No. 177 of 2012)	To provide all the data for comparison within a month of receipt of requirement by the Petitioner
3	Cost of Debt	October 6, 2009 (Appeal No. 36 of 2008)	True-up rate of interest of loans based on variation in SBI PLR
		November 28, 2014 (Appeal No. 61 of 2012)	To true-up the rate of interest as SBI PLR has varied by more than +/-1%
		February 10, 2015 (Appeal No. 171 of 2012)	To true-up the rate of interest pertaining to working capital loans from FY 13 to FY 15 based on actuals.
		March 2, 2015 (Appeal No. 177 of 2012)	To true-up the rate of interest as SBI PLR has varied by more than +/-1%
4	Repayment of loans	November 28, 2014 (Appeal No. 61 of 2012)	To consider repayment of loans while computing WACC
		March 2, 2015 (Appeal No. 177 of 2012)	To consider repayment of loans while computing WACC

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
5	Working Capital	May 31, 2011 (Appeal No. 52 of 2008)	To consider the working capital in debt-equity ratio of 70:30
		November 28, 2014 (Appeal No. 61 of 2012)	Implement the directions in letter and spirit
		March 2, 2015 (Appeal No. 177 of 2012)	Implement the directions in letter and spirit
6	Re-casting of means of finance based on actual consumer contribution capitalised	February 23, 2015 (Appeal No. 109 of 2014)	Matter remanded giving liberty to the DISCOMs to furnish the accounts showing that the excess amount of consumer contribution has been duly considered in ARR from FY 03 onwards in reducing Retail Supply Tariffs.
		May 15, 2017 (Appeal No. 103 of 2017)	Direct to follow instructions given in Judgment dated February 23, 2015
7	Truing-up of FY 2007-08-First 11 months	July 12, 2011 (Appeal No. 142 of 2009)	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1.
		November 28, 2014 (Appeal No. 61 of 2012)	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1.
		March 2, 2015 (Appeal No. 177 of 2012)	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1.
8	Computation of AT&C Loss for FY 2009-10	November 28, 2014 (Appeal No. 61 of 2012)	To recompute the AT&C losses for FY 2009-10 using actual kWh figures as recorded in Para-4.8 of the Impugned order
9	AT&C Loss for FY 2011-12	November 28, 2014 (Appeal No. 61 of 2012)	To consider the AT&C Loss for FY 2011-12 as per letter dated March 8, 2011
10	Non-Revision of AT&C Loss for FY 2012-13 and FY 2013-14	March 2, 2015 (Appeal No. 177 of 2012)	To set a reasonable loss trajectory and revise the AT&C Loss trajectory from FY 2012-13 to FY 2014-15 by a percentage of 1.05%, 1.2% and 1.25%. To revise the collection efficiency
11	Increase in employee expenses corresponding to increase in consumer base	October 6, 2009 (Appeal No. 36 of 2008)	To allow the increase in employee expenses corresponding to increase in consumer base
12	Efficiency factor for FY 11	March 2, 2015 (Appeal No. 177 of 2012)	To allow the impact on account of arbitrary determination of efficiency factor for FY 2010-11



S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
13	Incorrect revision of R&M Expenses by revising "K" factor from FY 13 to FY 17	March 2, 2015 (Appeal No. 177 of 2012)	To include R&M Expenses incurred during FY 08 while determination of K factor for second control period
14	Lower rates of carrying cost	July 30, 2010 (Appeal No. 153 of 2009)	To allow the carrying cost in debt-equity ratio of 70:30 by considering prime lending rates
		November 28, 2014 (Appeal No. 61 of 2012)	To allow the carrying cost in debt-equity ratio of 70:30 by considering prime lending rates
		March 2, 2015 (Appeal No. 177 of 2012)	To allow the carrying cost in debt-equity ratio of 70:30 by considering market lending rates
15	Financing cost of LPSC based on SBI PLR	March 2, 2015 (Appeal No. 177 of 2012)	To allow LPSC at prevalent market lending rates
16	Own Consumption-reversals	March 2, 2015 (Appeal No. 177 of 2012)	To consider the sales for self-consumption based on metered consumption only.
17	Additional UI Charges above 49.5 Hz	March 2, 2015 (Appeal No. 177 of 2012)	To allow UI charges incurred above 49.5 Hz in FY 2010-11
18	Financing Costs for availing loans	September 30, 2019 (Appeal 246 of 2014)	We take note of the provisions under Tariff Regulation-5.6 which specifies that the RoCE should cover all financing cost but financing cost incurred for obtaining the loans has not at all been factored in the cost of debt. To look into the fees/ charges afresh duly considering some of them as controllable and others as uncontrollable in the interest of justice and equity

**Issue-1: Capitalisation based on EI Application plus 15 days**ISSUE IN BRIEF:

**3B.149** The grievance of the Petitioner is that the Hon'ble Commission has not implemented the directions of the Hon'ble ATE, as contained in its judgment dated October 6, 2009 in Appeal No. 36 of 2008 and Judgment dated March 2, 2105 in Appeal No. 177 of 2012 by not allowing capitalisation on account of non-availability of Electrical Inspector Certificate. The Hon'ble Commission has till date not allowed the impact of the direction of the Hon'ble ATE that failure to grant EI Certificate within 15 days of application would result in capitalisation of such assets w.e.f. 16th day of submission of such application. Also as per Hon'ble APTEL directions in Judgment dated 2.03.2015, the exercise of physical verification of assets was required to be completed within 6 months of the date of Judgment, i.e., by 2.09.2015. However the impact has yet not been given by the Hon'ble Commission. This is despite the fact that these assets are already in place and have been serving the consumers of Delhi for providing 24x7 uninterrupted power supply, as also noted by this Hon'ble ATE in its judgments.

LIST OF DATES:

S.No.	Date	Event
1.	06.10.2009	In the Appeal 36 judgment (which arose out a challenge to the Tariff Order dated 23.02.2008 wherein the Hon'ble Commission deferred capitalisation inter alia on account of non-availability of EI Certificate), the Hon'ble ATE had, in para 68 thereof, <i>inter alia</i> directed that if the EIC was not granted within 15 days of the application, capitalization of such assets would be allowed w.e.f. the 16 <sup>th</sup> day of submission of the said application for EIC. Pertinently, this judgment pertained to the period FY 2004-05 to FY 2006-07.
2.	20.11.2009	Subsequent to the Appeal 36 Judgment, the Petitioner made a claim in that regard before the Hon'ble Commission by way of a separate petition filed on 20.11.2009.

S.No.	Date	Event
3.	16.03.2012	The Hon'ble Commission appointed M/s Feedback Infrastructure Service Private Limited as an independent consultant to undertake physical verification of assets capitalized in years FY 2006-2007 to FY 2010-11.
4.	11.10.2013	<i>Vide</i> its letter, the Hon'ble Commission sought from the Petitioner, the details of capitalization in respect of FY 2004-05 to FY 2006-07 in its specific format. The said details were promptly submitted by the Petitioner vide its letter dated 29.10.2013 in the format specified by the Hon'ble Commission.
5.	17.07.2014	<p>By its Order of even date, the Hon'ble Commission, after a lapse of 5 years, finally disposed of the Petitioner's Petition filed on 20.11.2009. In the said order, the Hon'ble Commission <i>inter alia</i> held that the issues raised by the Petitioner in its Petition dated 20.11.2009 had already been raised in the proceedings before the Hon'ble ATE, on which the orders were also passed by the Hon'ble Supreme Court of India. The Hon'ble Commission also held that the issues had already been addressed by it in its previous Tariff Orders.</p> <p>The Petitioner appealed against the Hon'ble Commission's Order dated 17.7.2014 in Appeal No. 230 &amp; 231 /2014, which is part of the batch of matters being led by Appeal 235 &amp; 236 of 2014, and the same is presently pending before the Hon'ble ATE.</p>
6.	02.03.2015	By its Appeal 177 Judgment, the Hon'ble ATE was <i>inter alia</i> pleased to direct the Hon'ble Commission to carry out the physical verification of the assets capitalized during FY 2004-05 and FY2005-06 and expedite the implementation of the decision of this Hon'ble Tribunal in the Appeal 36 Judgment within 6 months of the date of the said judgment.
7.	13.03.2015	<p>In point of fact, the EICertificates for the assets capitalized in FY 2004-05 and FY 2005-06 have in fact been furnished to the Hon'ble Commission under cover of various letters, between 9.08.2007 to 17.10.2013.</p> <p><i>Vide</i> its letter dated 13.03.2015, the Petitioner once again submitted the EIC Certificates and reiterated the aforesaid position.</p>

S.No.	Date	Event
8.	29.09.2015	In the Tariff Order dated 29.09.2015, the Hon'ble Commission held that it has appointed consultants for physical verification of the assets vis-a-vis value and relevant documents pertaining to capitalization of assets from FY 2006-07 to FY 2010-11. Furthermore, the Hon'ble Commission held that it had also invited bids for appointment of consultants for physical verification of asset for FY 2004-05, FY 2005-06 and FY 2011-12 to FY 2013-14. The Hon'ble Commission held that True up of capitalisation and the impact of EI Certificate as per the direction of the Hon'ble ATE would be considered based on the final reports submitted by the Consultant and subject to the outcome of Civil Appeal No. 884 of 2010 filed by the Hon'ble Commission before the Hon'ble Supreme Court of India, on this issue.
9.	18.07.2017	The Hon'ble Commission, <i>vide</i> its email dated 18.07.2017, called for a meeting with the Petitioner on 21.07.2017, to conduct prudence check on the implementation of this Hon'ble ATE's judgments.
10.	25.07.2017	The Petitioner submitted details of EICertificates received pertaining to the capitalization from FY 2004-05 to FY 2006-07.
11.	16.08.2017	The Hon'ble Commission called for another meeting with respect to bifurcation of the capitalization for the years FY 2004-05 to FY 2006-07, on the basis of REL purchases and non-REL purchases.
12.	25.08.2017	The Petitioner, <i>vide</i> its letter, submitted details of segregation of disallowed schemes on account of non-availability of EIC and related party transactions, along with the relevant purchase orders, in 37 box files.
13.	28.03.2018	The Hon'ble Commission, in its tariff order dated 28.03.2018, reiterated that it has engaged consultants for review of capitalization of distribution licensees for the period w.e.f. FY 2004-05 to FY 2005-06 and for FY 2011-12 to FY 2015-16. It has further stated by the Hon'ble Commission that report shall be submitted by the consultants for examination and further deliberation for taking a final view regarding the issue.

S.No.	Date	Event
14.	31.07.2019	The Hon'ble Commission has once again reiterated that it has engaged consultants for review of capitalization of distribution licensees for the period w.e.f. FY 2004-05 to FY 2005-06 and for FY 2011-12 to FY 2015-16. It has further been stated that a report shall be submitted by the consultants for examination and further deliberation for taking a final view regarding the issue will be taken up by the Hon'ble Commission. After approval of final report, the effect of actual capitalization shall be given to the Petitioner.
15.	30.09.2019	The Hon'ble APTEL pronounced Judgment in TPDDL's Appeal 246 of 2014, wherein the Hon'ble APTEL has directed the Hon'ble Commission to allow capitalization on actual basis as physical verification of exercise is pending for very long period which is adversely affecting cash flow of the Petitioner.

**DETAILED SUBMISSIONS:**

**3B.150** The Hon'ble Commission in the Tariff Order dated February 23, 2008 disallowed capitalisation of Rs. 855 crores, pending clearance for the capital schemes by the Electrical Inspector for the FY 2004-05 to FY 2006-07. The capital schemes have been put to use by the Petitioner and are servicing 24.65 lakh consumers. However, since FY 2004-05 the Petitioner has been deprived of the costs of such expenditure.

**3B.151** The Hon'ble ATE in its order dated October 6, 2009 (Appeal 36 of 2008) has rendered the following decision:

*"118) ...For capitalisation of fresh assets the DISCOM shall make appropriate applications to the Electrical Inspector and the capitalisation of such assets will be allowed w.e.f. 16th day of filing of the application and payment of necessary fee.."*

**3B.152** The Hon'ble commission vide its letter dated January 6, 2015 specified a format in which the details related to Electrical Inspector Certificate was sought. The Petitioner vide letter dated March 13, 2015 submitted all the details along with the documentary proofs before the Hon'ble Commission.

3B.153 Meanwhile the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) directed the Hon'ble Commission as under:

*"10.4... We, therefore direct the State Commission to carry out the physical verification of the assets capitalised during FY 2004-05 and 2005-06 through its appointed agency and **expedite implementation** of the decision of this Tribunal **in Appeal no. 36 of 2008 decided on 06.01.2009. The whole issue shall be decided within 6 months of the date of this Judgment.**" (Emphasis bold and underlined)*

3B.154 As regards the aforesaid issue, the Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

*"3.13 Further, the Petitioner has submitted segregation of disallowed schemes on account of nonavailability of Electrical Inspector certificates and related party transactions as well as reconciliation of any scheme capitalized in the subsequent years. As the data is voluminous and its segregation will take some time, therefore, the impact due if any, on non-related party transactions, **will be considered in the subsequent Tariff Orders whose Electrical Inspector certificates have been obtained.**" (Emphasis bold and underlined)*

3B.155 However the Hon'ble Commission in Tariff Order dated March 28, 2018 stated as under:

*"3.27 Accordingly, the Commission engaged Consultants for review of capitalisation of distribution licensee for the period w.e.f FY 2004-05 to FY 2005-06 and FY 2011-12 to FY 2015-16. The scope of work of the contracts included 100% physical verification of assets at site for the above period, prudence check of tendering process, related party transactions, verification of documents including Electrical Inspector (EI) certificate, de-capitalization of assets and also physical verification of left out assets of FY 2006-07 to FY 2010-11. The work is in progress. **As per time schedule in respective contracts, the work is likely to be completed during FY 2018-19** and thereafter, report shall be submitted by the Consultants to the Commission for examination and further deliberation for taking a final view." (Emphasis bold and underlined)*

3B.156 The Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

*“3.31 Accordingly, the Commission engaged Consultants for review of capitalization of distribution licensees for the period w.e.f. FY 2004-05 to FY 2005-06 and for FY 2011-12 to FY 2015-16. The scope of work of the contracts included 100% physical verification of assets at site for the above period, prudence check of tendering process, related party transactions, verification of documents including Electrical Inspector (EI) certificate, de-capitalization of assets and also physical verification of left out assets of FY 2006-07 to FY 2010-11. The work is in progress and the report submitted by the Consultants to the Commission shall be further examined and deliberated for taking a final view.*

*3.32 Accordingly, after approval of final report, the effect of actual capitalization shall be given to the Distribution Licensees.”*

**3B.157** As regards above, it is respectfully submitted that the exercise of physical verification of assets was initiated in FY 2009-10. Since then, different consultants were appointed but the exercise of physical verification of assets could not be concluded. Chronology of the exercise of physical verification of assets is tabulated below:

**Table 3B 42: Chronology of exercise of physical verification of assets**

S.No	Date	Event
1.	December 10, 2009	The Hon'ble Commission appointed M/s ASCII as an independent consultant to undertake physical verification of assets.
2.	March 16, 2012	The Hon'ble Commission appointed M/s Feedback Infrastructure Service Private Limited as an independent consultant to undertake physical verification of assets capitalized in years FY 2006-2007 to FY 2010-11.
3.	September 29, 2015	The Hon'ble Commission held that it has also invited bids for appointment of consultants for physical verification of asset for FY 2004-05, FY 2005-06 and FY 2011-12 to FY 2013-14. However the bid was scrapped.
4.	September 6, 2017	The Hon'ble Commission appointed yet another agency, namely, M/s REC-PDCL, for conducting another physical verification of assets for the years FY 2004-05 to FY 2015-16.

As evident from above, the impact of capitalisation is pending to be recovered in ARR on account of pendency of completion of exercise of physical verification of assets. However, most of these assets have been verified by Electrical Inspector and Electrical Inspector Certificate has already been obtained and submitted vide letters dated March 13, 2015 and 25.07.2017.

**3B.158** It is respectfully submitted that despite holding out an assurance in the previous Tariff Order that it would give effect to this issue in the Tariff Order dated 31.07.2019, the Hon'ble Commission once again cited pendency of physical verification as a reason for not allowing the Petitioner's claims. Pertinently, the Hon'ble Tribunal had, in its Judgment dated March 2, 2015 (Appeal 177 of 2012), directed the Hon'ble Commission to also carry out the physical verification of the assets capitalized during FY 2004-05 and FY2005-06 and expedite the implementation of the decision of this Hon'ble Tribunal in the Judgment dated October 6, 2009 (Appeal 36 of 2008) within 6 months of the date of the said judgment dated March 2, 2015. This period expired on September 2, 2015, i.e., even before the Tariff Order dated September 29, 2015.

**3B.159** Without prejudice to the above, it is respectfully submitted that the Hon'ble Commission ought not to have awaited the outcome of the aforesaid physical verification to allow the legitimate claims of the Petitioner. It is further submitted that denying the legitimate claims of the Petitioner since FY 2004-05 is against the principles enshrined in the National Tariff Policy and the National Electricity Policy and would ultimately lead to a tariff shock for the consumers. It was therefore incumbent upon the Hon'ble Commission to allow the Petitioner its dues as per its audited accounts pending such physical verification, notwithstanding the contention of the Petitioner that such physical verification is not required. This is more so when the Hon'ble Commission has consistently taken the revenue from such assets as a part of the Petitioner's ARR.

**3B.160** In any event and without prejudice to the above, the Petitioner submits as under:

- i. The EI Certificates for the assets capitalized in FY 2004-05 and FY 2005-06



have in fact been furnished to the Hon'ble Commission under cover of various letters, from August 9, 2007 to April 10, 2013.

- ii. Further, vide letter dated March 13, 2015, the Petitioner had reiterated the aforesaid position.
- iii. It is evident from an ex-facie reading of the EICs that prior to such certification the Electrical Inspector has physically verified the assets in question. In such event, there cannot be any necessity for the Hon'ble Commission to once again undertake a fresh physical verification of the very same assets, whose physical verification has already been carried out by an independent statutory authority under the EA, 2003, namely the Electrical Inspector. Such a fresh exercise would also be in excess of jurisdiction as both the EI and the Commission cannot in law have double and concurrent jurisdiction. This is particularly so in the present situation, when, the assets in question had, undisputedly been commissioned and distribution of electricity through those assets had commenced more than a decade ago, and continues till date. This is so recorded even in the Judgment dated October 6, 2009 (Appeal 36 of 2008). It is further held in the Judgment dated October 6, 2009 (Appeal 36 of 2008) that *"... there is however, no regulation that prevents recovery of revenue for electricity delivered through such assets, pending approval by the Electrical Inspector, in case any such asset has been actually put to use."* In this light, there cannot be any question of the Hon'ble Commission continuing to withhold the capitalisation of these assets, whether on a provisional basis or otherwise, even after the Electrical Inspector's certificate have been issued and placed before the Hon'ble Commission.
- iv. The aforesaid submissions are made without prejudice to the stand of the Petitioner in RP No. 16 of 2015 in Appeal No. 177 of 2012, wherein it is *inter alia* contended that the physical verification directed in the Appeal 177 Judgment was not necessary, *inter alia* since the Hon'ble Commission had already physically verified the assets capitalized during FY 2004-05 and FY 2005-06.

**3B.161** Further the Hon'ble Tribunal in Judgment dated September 30, 2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"21.4.1....It is not in dispute that before allowing any amount for capitalization, the State Commission has to carry out prudence check so as to verify authenticity of the capital deployed during the period to arrive at ROCE and other related claims. Ideally, physical verification of the assets should be*

periodically done but, in the prevailing scenario, it is observed that the same is pending since long and the Appellant is claiming ROCE as per the certificate issued by the Electrical Inspector on time to time. The Electricity Rules, 1956 and Central Electricity Authority Regulations provides for detailed inspection by Electrical Inspector before issuance of any certificate for usage of a particular assets of the licensee. In view of these facts, **if the capitalization of assets remains pending for want of physical verification, it will have a severe effect on the cash flow of the Appellant, thereby making it difficult to operate on a commercially viable manner which in turn would increase the burden on the consumers by way of increase in carrying cost.** While considering the submissions of learned counsel for the Respondent Commission, **it is essential that whatever capital is deployed by the Appellant in a particular period has to be approved by the Commission. Any mismatch in the capital deployed and that approved by the Commission results into the dispute as in the case in hand.**

21.4.2 To be more specific, the Appellant claims the capitalization figure of Rs. 316.20 crores against which the Commission has allowed only Rs.200.88 crores. In the light of these facts, **what thus, transpires is that the figures projected for capitalization by the Appellant and that considered by the Respondent Commission need to be reconciled and allowed for actual capitalization in line with the MYT Regulations, 2011. We, therefore, of the opinion that this issue needs to be reexamined by the Commission in consideration of all facts and figures. This issue, as such, is decided in favour of the Appellant.” (Emphasis added)**

As evident from above, the Hon’ble Commission has been directed to allow capitalisation based on actuals as per applicable Tariff Regulations.

**3B.162** Further in Tariff Order dated 31.07.2019, the Hon’ble Commission allowed capitalisation for FY 2017-18 on provisional basis. The relevant excerpts are as under:

*"3.399 The Commission has undertaken the exercise of review of capitalisation and physical verification of the assets during FY 2017-18 and has shared the draft report with the Petitioner for its comments. The Commission has sought the details of total meters capitalised on account of new connections, meters replaced on account of consumers, meters replaced on account of Petitioner etc. The comments on draft report of capitalisation have been received from the Petitioner. The details submitted by the petitioner are required to be examined and the effect thereof shall be considered appropriately in the subsequent tariff order. The Commission has provisionally disallowed the capitalisation as mentioned in the draft report. During physical verification, the assets amounting to Rs.0.42 Cr. were not physically found. It is further observed that the meters are also being replaced on account of fault of Distribution Licensee before the useful life of meters. Accordingly, the Commission has provisionally disallowed 20% cost of the meters capitalised during FY 2017-18."*

**3B.163** The Petitioner has already submitted its comments on the aforesaid report. In view of the same, the capitalisation for FY 2017-18 ought to be allowed on actual basis.

**PRAYER(S):**

**3B.164** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact pending physical verification of assets. Any adjustment can always be done in ARR after completion of the exercise of physical verification of assets.

**3B.165** The implementation of the aforesaid direction shall translate to increase in Depreciation from FY 2004-05 to FY 2006-07 and RoCE and Depreciation from FY 2007-08 to FY 2016-17. However there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues at at Para-3B.229 to Para-3B.303.

**Issue-2: Capex and Capitalisation pertaining to REL Purchases:**ISSUE IN BRIEF:

**3B.166** The Petitioner submits that the Hon'ble Commission has not implemented the directions of the Hon'ble ATE as contained in its judgments dated October 6, 2009 in Appeal No. 36 of 2008 and Judgment dated March 2, 2015 in Appeal 177 of 2012. The Hon'ble Commission has not allowed capital expenditure pertaining to REL purchases and has not compared the prices with that of a neighbouring DISCOM, TPDDL, despite directions of the Hon'ble ATE to this effect.

LIST OF DATES:

S. No	Date	Event
1.	23.02.2008	The Hon'ble Commission in its Tariff Order dated 23.02.2008 disallowed 38% of the capital expenditure, i.e., Rs. 364 Crore out of Rs. 972 Crore pertaining to REL EPC on ad-hoc basis, without actual verification and benchmarking of rates, to determine the arms length nature of the prices. This was despite a detailed dissent order of a member of the Hon'ble Commission, mandating an actual verification be done for determining the arms length nature of the prices for the REL purchases. This was overruled by the Chairman of the Hon'ble Commission by using his casting vote.

2.	06.10.2009	<p>Aggrieved by the MYT Order, the Petitioner challenged the issue before the Hon'ble ATE in Appeal No. 36 of 2008. The Hon'ble ATE in its Appeal 36 Judgment ruled as under:</p> <p><i>"57) The NDPL submitted its records before the Commission simultaneously with the appellant during the tariff hearing of the relevant year. As such the records are expected to be with the Commission. We think it is appropriate to allow the appellant an opportunity to prove, item-wise, that the price paid by it to REL was not higher than the price paid by NDPL and allowed to it by the Commission for similar products. The onus would be entirely on the appellant to prove that the products purchased by it and the one purchased by NDPL offered for comparison are of the same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vender rating etc. In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin. Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson."</i></p> <p>(Emphasis supplied)</p>
3.	1.12.2009	The Petitioner, vide its letter dated December 1, 2009 requested the Hon'ble Commission to provide the data pertaining to TPDDL (previously known as NDPL) for comparison of the rates of TPDDL (NDPL) with that of the Petitioner so as to facilitate the implementation of the directions given by the Hon'ble ATE in the Appeal 36 Judgment.
4.	15.12.2009	The Hon'ble Commission, vide letter dated 15.12.2009 refused to provide the data stating that the onus is on the Petitioner to provide the comparison as per the directions of Hon'ble ATE in the Appeal 36 Judgment.
5.	26.08.2011	The Hon'ble Commission did not implement the directions of this Hon'ble ATE even in Tariff Order dated 26.08.2011.

6.	13.07.2012	The Hon'ble Commission, in its Tariff Order dated 13.07.2012 remained silent on the issue and did not implement the directions of this Hon'ble ATE. The Petitioner filed Appeal No. 177 of 2012, challenging the said Tariff Order dated 13.07.2012.
7.	31.07.2013	The Hon'ble Commission failed to implement the directions of this Hon'ble Tribunal even in its Tariff Order dated 31.07.2013. The Petitioner has filed Appeal No. 266 of 2013, challenging the said Tariff Order dated 31.07.2013, which is presently pending before this Hon'ble ATE.
8.	23.07.2014	The Hon'ble Commission once again failed to implement the directions of the Hon'ble ATE in its Tariff Order dated 23.07.2014. The Petitioner filed Appeal No. 235 of 2014, challenging the said Tariff Order, which is presently pending.
9.	6.01.2015	The Hon'ble Commission, vide letter dated 06.01.2015 specified a format in which the comparison with the rates of TPDDL (NDPL) was to be provided along with documentary proofs.
10.	13.02.2015	In order to provide the data in the requisite format specified by the Hon'ble Commission, the Petitioner filed an inspection application on 13.02.2015, for seeking the data pertaining to TPDDL in Petition No. 50/2007, i.e., the Petition against which the Hon'ble Commission issued Tariff Order dated 23.02.2008.
11.	20.02.2015	The Petitioner, vide letter number RA/ 2014-15/ 01/ A/ 742 dated 20.02.2015 once again requested the Hon'ble Commission to provide opportunity for inspection of documents so as to facilitate in furnishing the information as per requisite format.

12.	02.03.2015	<p>Aggrieved by the above, the Petitioner challenged the issue before the Hon'ble ATE in Appeal No. 177 of 2012. The Hon'ble ATE pronounced the Appeal 177 Judgment on 02.03.2015. In the said Judgment, the Hon'ble ATE directed the Hon'ble Commission as under:</p> <p><i>"9.6 Without going into the controversy, we direct the Appellants to submit the details of the items for which data is required by an application to the State Commission. <b>The State Commission will make available the data to the Appellants within a month of the application. The Appellant after analysis will file its claim before the State Commission and the Commission will consider the same as per the directions of the Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009 and decide the matter within 60 days of submissions made by the Appellants. Accordingly directed.</b>"</i></p> <p>(Emphasis supplied)</p>
13.	09.03.2015	<p>The Hon'ble Commission vide letter dated 09.03.2015 informed the Petitioner to inspect the documents, as sought in the Petitioner's Petition No. 50 of 2007. The inspection was purportedly offered on 11.03.2015 (3:00 PM).</p>
14.	11.03.2015	<p>The Petitioner duly and promptly visited the office of the Hon'ble Commission on the given time. However, none of the files shown during the time of inspection contained any information about TPDDL's rates/ Purchase Orders/ Invoices based on which the capital expenditure was approved by the Hon'ble Commission. The Petitioner, vide letter number RA/ 2014-15/ 01/ A/ 778 dated 11.03.2015 informed the Hon'ble Commission about the same and requested to provide another opportunity for inspection of files relevant for the purpose of comparison.</p>

15.	13.03.2015	The Petitioner vide letter number RA/ 2014-15/ 01/ A/ 786 dated 13.03.2015 submitted all the information pertaining to its own records in the format specified by the Hon'ble Commission vide letter dated 06.01.2015 along with documentary proofs. The Petitioner also submitted the comparison based on the invoices and records pertaining to TPDDL (NDPL) which the Petitioner was able to arrange independently, along with documentary proofs. Further the Petitioner again requested the Hon'ble Commission to provide inspection so as to facilitate in submission of information pertaining to TPDDL (NDPL) for implementation of directions in the Appeal 36 Judgment.
16.	16.03.2015	The Petitioner vide letter number RA/ 2014-15/ 01/A/ 792 dated 16.03.2015 requested the Hon'ble Commission to provide the information required for comparison with TPDDL (NDPL) in accordance with the direction given by the Hon'ble ATE in its Appeal 177 Judgment. The Petitioner once again requested for another opportunity to inspect the relevant documents, as sought in Petition 50/ 2007.
17.	17.03.2015	The Hon'ble Commission conducted a meeting on 17.03.2015 to discuss the implementation of Hon'ble ATE's directions given in various Judgments. As regards the issue of REL purchases, the Hon'ble Commission enquired from the Petitioner about the data required for comparison of REL with TPDDL (NDPL). The Petitioner asked the Hon'ble Commission to provide the data pertaining to TPDDL based on which the capital expenditure has been approved by the Hon'ble Commission. These discussions are captured in minutes of meeting sent to the Hon'ble Commission vide letter number RA/ 2014-15/ 01/ A/810 dated 23.03.2015. This letter/ minutes has not been responded to by the Hon'ble Commission.
18.	20.04.2015	The Hon'ble Commission vide letter dated 20.04.2015 informed the Petitioner to inspect the documents in the said petition (Petition No. 50 of 2007) on 23.04.2015 at 3:00 PM.
19.	23.04.2015	The Petitioner duly and promptly visited the office of the Hon'ble Commission at given time to inspect the documents. The documents shown during 2 <sup>nd</sup> inspection on 23.04.2015 contained <b><u>only the relevant covering letters</u></b> referring to Purchase Orders, Invoices, BOQs but not the copies of Purchase Orders, Invoices, BOQs which are actually required for comparison with TPDDL (NDPL).



20.	29.04.2015	The Petitioner, vide letter number RA/ 2015-16/ 01/A/ 78 dated 29.04.2015 informed the Hon'ble Commission about the incomplete documents shown at the time of inspection on 23.04.2015. Further, the Petitioner specified the list of relevant letters and files inspected on 23.04.2015 and requested the Hon'ble Commission to provide the copies of documents in accordance with Conduct of Business Regulations, 2001.
21.	29.09.2015	The Hon'ble Commission did not respond to the Petitioner's letter dated 29.04.2015. Instead, in the Tariff Order dated 29.09.2015, the Hon'ble Commission stated as under: <i>"3.13 In view of the above judgment, the Petitioner has requested for inspection of documents/records vide its letter 13.02.2015 before the Commission in order to submit its claim before the Commission after analyzing the relevant document and comparing the rate of TPDDL. As per request of the Petitioner, two opportunities have been provided to the Petitioner for inspection of the relevant documents/records <b>available in the office of the Commission</b> on 11.03.2015 and 23.04.2015. As per the direction of Hon'ble APTEL, the Petitioner is yet to submit the detailed report after analyzing the documents inspected in the Commission's office. Therefore, the Commission shall take a final view, as per directions of Hon'ble APTEL, after receipt of the Petitioner's report."</i> <b>(Emphasis supplied)</b>
22.	7.03.2016	The Appeal 177 Judgment directed the necessary information to be provided within one month thereof. Even after one year of the Appeal 177 Judgment, the Hon'ble Commission failed to supply the required information in its letter dated 07.03.2016. The Hon'ble Commission only provided copies of the covering letters sent by TPDDL to the Hon'ble Commission, but did not provide the enclosures thereto, which contained the details of the materials and prices which are required for the purpose of comparison as directed in the Appeal 36 Judgment and reiterated in the Appeal 177 Judgment. Interestingly, these were the same documents which had been offered for inspection.
23.	04.07.2016	The Petitioner responded to the aforesaid letter dated 07.03.2016, by its letter dated 04.07.2016 and clearly detailed all the information which was required to be furnished by the Hon'ble Commission but not so furnished.

24.	31.08.2017	<p>Instead of responding to the above letter dated 04.07.2016, the Hon'ble Commission has, in the tariff order dated 31.08.2017 stated that the Petitioner has failed to comply with the directions of this Hon'ble Tribunal in the Appeal 177 Judgment. The Hon'ble Commission has held as under:</p> <p><i>"3.19 The Commission has not considered this issue in this Tariff Order because the Petitioner has failed to comply with the directions of the Hon'ble APTEL in Appeal No. 177 of 2012. This aspect has also been submitted before the Hon'ble APTEL in Appeal No. 297 of 2015."</i></p>
25.	28.03.2018	<p>The Hon'ble Commission, in its tariff order dated 28.03.2018, has reiterated that it has engaged consultants for review of capitalization of distribution licensees for the period w.e.f. FY 2004-05 to FY 2005-06 and for FY 2011-12 to FY 2015-16. It has further been stated by the Hon'ble Commission that report shall be submitted by the consultants for examination and further deliberation for taking a final view regarding the issue.</p>
26.	30.09.2019	<p>The Hon'ble APTEL pronounced Judgment in TPDDL's Appeal 246 of 2014, wherein the Hon'ble APTEL has directed the Hon'ble Commission to allow capitalization on actual basis as physical verification of exercise is pending for very long period which is adversely affecting cash flow of the Petitioner.</p>

DETAILED SUBMISSIONS:

**3B.167** The Hon'ble Commission in its Tariff Order dated February 23, 2008 disallowed capital expenditure of Rs. 364.16 Crore, since the goods were purchased by the Petitioner from REL for Rs. 868.70 Crore during FY 2004-05 & FY 2005-06. The goods purchased have been put to use by the Petitioner, and are servicing 24.65 lakh consumers. However, since FY 2004-05 the Petitioner has been deprived of the costs of such expenditure. The year-wise bifurcation of the disallowance is tabulated below:

**Table 3B 43: Impact on account of disallowance of REL Purchase**

(Rs. Cr.)						
S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09
1	REL Disallowances	3	61	69	122	109
2	Reference	Annexure-V; Para 32; Pg. No. 275 of Tariff Order dtd 23.02.2008				

3B.168 The Hon'ble ATE in its Judgment dated October 6, 2009 (Appeal 36 of 2008) has viewed the following:

*"57) ...In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin."*

3B.169 The Petitioner vide its letter dated July 31, 2013 and March 13, 2015 has already furnished the information as desired by Hon'ble Commission, whereby, the Petitioner has suitably submitted a comparison of rates of the capital expenditure incurred for equipment's purchased from REL, with rates as that of TPDDL which could be obtained on best effort basis. Earlier, the Petitioner vide its letter dated December 1, 2009 requested the Hon'ble Commission to provide the necessary information pertaining to TPDDL required for comparison as per the directions of Hon'ble ATE. However, the same was not provided by the Hon'ble Commission and therefore the Petitioner has submitted the information to the extent it could be obtained.

3B.170 Based on the information as obtained from the market sources, the Petitioner furnished documents which demonstrate that out of Rs. 868.70 cr., being the value of total goods purchased from REL, the price paid for goods worth Rs. 550.91 cr. i.e. ~ 63% were 23% lower than the price paid by TPDDL.

3B.171 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) directed the Hon'ble Commission as under:

*"9.6 Without going into the controversy, we direct the Appellants to submit the details of the items for which data is required by an application to the State Commission. **The State Commission will make available the data to the Appellants within a month of the application. The Appellant after analysis will file its claim before the State Commission and the Commission will consider the same as per the directions of the Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009 and decide the matter within 60 days of submissions***

**made by the Appellants. Accordingly directed.” (Emphasis bold and underlined)**

3B.172 In accordance with the aforesaid directions, the Hon’ble Commission vide letter dated April 20, 2015 informed the Petitioner to inspect the documents in Petition No. 50 of 2007 on April 23, 2015. The Petitioner duly and promptly visited the office of the Hon’ble Commission at given time to inspect the documents. The documents shown during 2nd inspection on April 23, 2015 contained only the relevant letters referring to Purchase Orders, Invoices, BOQ but not the copy of Purchase Orders, Invoices, BOQs which are actually required for comparison with TPDDL. The Petitioner vide letter number RA/ 2015-16/ 01/A/ 78 dated April 29, 2015 informed the Hon’ble Commission about the incomplete documents shown at the time of inspection on April 23, 2015. Further the Petitioner specified the list of relevant letters and files inspected on April 23, 2015 and requested the Hon’ble Commission to provide the copies of documents in accordance with Conduct of Business Regulations, 2001. The Petitioner also submitted a Demand Draft bearing No. 022104 dated April 30, 2015 drawn on IDBI Bank, of Rs. 5 Lakh towards fees for copy of the documents.

3B.173 The Hon’ble Commission vide its letter dated March 7, 2016 only provided copies of the covering letters sent by TPDDL to the Hon’ble Commission, but did not provide the enclosures thereto, which contained the details of the materials and prices which are required for the purpose of comparison as directed in the Appeal 36 Judgment and reiterated in the Appeal 177 Judgment. These were the same documents which had been offered for inspection by the Hon’ble Commission on April 23, 2015. The Hon’ble Commission however purported to comply with the directions of this Hon’ble Tribunal in the Appeal 177 Judgment by its letter dated March 7, 2016. The Appeal 177 Judgment directed the necessary information to be provided within one month thereof.

3B.174 The Petitioner responded to the aforesaid letter dated March 7, 2016, by its letter dated July 4, 2016 and clearly detailed all the information which was required to be furnished by the Hon’ble Commission but not so furnished. The Petitioner

reiterated the above facts in its letter dated July 4, 2016 to the Hon'ble Commission and pointed out that the Hon'ble Commission had, till date not implemented the directions of this Hon'ble Tribunal. The Petitioner emphasized that on account of this, the Petitioner was not able to recover the financial impact towards the capitalization of the equipment purchased from REL for the past 7 years, despite repeated directions from this Hon'ble Tribunal.

**3B.175** Instead of responding to the above letter dated July 4, 2016, the Hon'ble Commission has, in Tariff Order dated August 31, 2017 alleged that the Petitioner has failed to comply with the directions of this Hon'ble Tribunal in the Appeal 177 Judgment. The Hon'ble Commission has held as under:

*"3.19 The Commission has not considered this issue in this Tariff Order because the Petitioner has failed to comply with the directions of the Hon'ble APTEL in Appeal No. 177 of 2012. This aspect has also been submitted before the Hon'ble APTEL in Appeal No. 297 of 2015."*

**3B.176** Further the Hon'ble Commission in Tariff Order dated March 28, 2018 held as under:

*"3.27 Accordingly, the Commission engaged Consultants for review of capitalisation of distribution licensee for the period w.e.f FY 2004-05 to FY 2005-06 and FY 2011-12 to FY 2015-16. The scope of work of the contracts included 100% physical verification of assets at site for the above period, prudence check of tendering process, related party transactions, verification of documents including Electrical Inspector (EI) certificate, de-capitalization of assets and also physical verification of left out assets of FY 2006-07 to FY 2010-11. The work is in progress. **As per time schedule in respective contracts, the work is likely to be completed during FY 2018-19** and thereafter, report shall be submitted by the Consultants to the Commission for examination and further deliberation for taking a final view." (Emphasis bold and underlined).*

**3B.177** The Hon'ble Commission in Tariff Order dated July 31, 2019 held as under:

*"3.31 Accordingly, the Commission engaged Consultants for review of capitalization of distribution licensees for the period w.e.f. FY 2004-05 to FY 2005-06 and for FY 2011-12 to FY 2015-16. The scope of work of the contracts*

*included 100% physical verification of assets at site for the above period, prudence check of tendering process, related party transactions, verification of documents including Electrical Inspector (EI) certificate, de-capitalization of assets and also physical verification of left out assets of FY 2006-07 to FY 2010-11. The work is in progress and the report submitted by the Consultants to the Commission shall be further examined and deliberated for taking a final view.*

*3.32 Accordingly, after approval of final report, the effect of actual capitalization shall be given to the Distribution Licensees.”*

**3B.178** As regards aforesaid, the Petitioner requests the Hon’ble Commission to allow the impact on account of aforesaid issue in true-up exercise of FY 2018-19. The issue has been long pending since FY 2004-05. The Hon’ble Commission did not provide the data for comparison with NDPL despite of clear cut direction given by Hon’ble APTEL in Judgment dated October 6, 2009 (Appeal 36 of 2008) stating that the onus is on Appellant. Further the Hon’ble Commission provided only covering letters without any annexure (which actually contains the details of TPDDL prices) despite of further directions given by Hon’ble APTEL in Judgment dated March 2, 2015 (Appeal 177 of 2012). Now the Hon’ble Commission is maintaining that it has given necessary data which is incorrect as only cover letters have been provided which are of no use for the purpose of carrying out the direction of Hon’ble APTEL. Further the Hon’ble Commission has also linked REL issue with physical verification of assets.

**3B.179** It is further submitted that the Hon’ble Tribunal in Judgment dated September 30, 2019 (Appeal 246 of 2014) has directed the Hon’ble Commission as under:

*“21.4.1....It is not in dispute that before allowing any amount for capitalization, the State Commission has to carry out prudence check so as to verify authenticity of the capital deployed during the period to arrive at ROCE and other related claims. Ideally, physical verification of the assets should be periodically done but, in the prevailing scenario, it is observed that the same is*

*pending since long and the Appellant is claiming ROCE as per the certificate issued by the Electrical Inspector on time to time. The Electricity Rules, 1956 and Central Electricity Authority Regulations provides for detailed inspection by Electrical Inspector before issuance of any certificate for usage of a particular assets of the licensee. In view of these facts, **if the capitalization of assets remains pending for want of physical verification, it will have a severe effect on the cash flow of the Appellant, thereby making it difficult to operate on a commercially viable manner which in turn would increase the burden on the consumers by way of increase in carrying cost.** While considering the submissions of learned counsel for the Respondent Commission, **it is essential that whatever capital is deployed by the Appellant in a particular period has to be approved by the Commission. Any mismatch in the capital deployed and that approved by the Commission results into the dispute as in the case in hand.***

*21.4.2 To be more specific, the Appellant claims the capitalization figure of Rs. 316.20 crores against which the Commission has allowed only Rs.200.88 crores. In the light of these facts, **what thus, transpires is that the figures projected for capitalization by the Appellant and that considered by the Respondent Commission need to be reconciled and allowed for actual capitalization in line with the MYT Regulations, 2011. We, therefore, of the opinion that this issue needs to be reexamined by the Commission in consideration of all facts and figures. This issue, as such, is decided in favour of the Appellant.*** (Emphasis added)

As evident from above, the Hon'ble Commission has been directed to allow capitalisation based on actuals as per applicable Tariff Regulations. Therefore the Petitioner requests the Hon'ble Commission to allow the impact in truing-up exercise of FY 2018-19.

**PRAYER(S):**

**3B.180** Accordingly the Petitioner once again requests the Hon'ble Commission to:



- a) Provide copies of all the documents, i.e., invoices, purchase orders, tender specification documents etc. pertaining to TPDDL rates from FY 2002-03 to FY 2006-07 required to fill the format specified by the Hon'ble Commission itself vide letter number January 6, 2015; and
- b) Provisionally allow the capex pertaining to REL Purchases so as to avoid burden of carrying cost till the time, the Hon'ble Commission approves the same based on comparison.
- c) In case physical verification is not completed by FY 2018-19 as stated in Tariff Order dated 28.03.2018, the impact may be allowed pending physical verification of assets. Any adjustment (positive or negative) may be done in subsequent tariff exercise.

**3B.181** Without prejudice to the contentions in the Appeal(S), the implementation of the aforesaid direction shall translate to increase in Depreciation from FY 2004-05 to FY 2006-07 and RoCE and Depreciation from FY 2007-08 to FY 2016-17. However, there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues at at Para-3B.229 to Para-3B.303

### Issue-3: True-up of rate of interest on loans:

#### ISSUE IN BRIEF:

**3B.182** The Petitioner submits that the Hon'ble Commission has not implemented the directions of the Hon'ble ATE in Judgment dated November 28, 2014 in Appeal No. 61 of 2012 and Judgment dated February 10, 2016 in Appeal No. 171 of 2012, by failing to revise the cost of debt for the First Control Period and the Second Control Period.

#### LIST OF DATES:

S.No	Date	Event
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S.No	Date	Event
1.	23.02.2008	The Hon'ble Commission vide its Order determined the cost of debt for the purpose of computation of Weighted Average Cost of Capital (hereinafter referred to as "WACC") during first control period with the direction that the same will be trued-up if there is a deviation in the PLR of the scheduled commercial banks by more than 1% on either side.
2.	06.10.2009	The aforesaid treatment given by the Hon'ble Commission was challenged by the Petitioner in Appeal No. 36 of 2008. The Hon'ble ATE directed as under:  <i>"115) Further the Commission has at the very outset said that it shall true up the interest rate for the new loans to be taken for capital investment and for working capital requirement if there is a deviation in the PLR of the scheduled commercial banks by more than 1% on either side. Thus there is sufficient safeguard for the appellant and sufficient room to procure loans at the given market rate of interest. We are not inclined to interfere with the Commission's decision on the approval of interest rate."</i>
3.	26.08.2011	The issue of true-up of cost of debt was again raised in Appeal 61 of 2012 filed against Tariff Order dated 26.08.2011 (1 <sup>st</sup> control period) (2007-08 to 2010-2011) wherein it was stated that the SBI PLR considered by the Hon'ble Commission while determining cost of debt for the first control period was incorrect as the same was based on SBI PLR prevailing as on April 1, 2007 and not on weighted average SBI PLR during FY 2006-07. Further the Hon'ble Commission did not even true-up the cost of debt during first control period even though there was deviation of more than +/- 1% in SBI PLR during first control period.

S.No	Date	Event
4.	13.07.2012	<p>The Hon'ble Commission vide its Order dated 13.07.2012 at para 4.289 issued for respective distribution licensees of Delhi, determined the cost of debt for the purpose of computation of WACC during second control period, i.e., FY 2012-13 to FY 2014-15.</p> <p>While determining the cost of debt for the purpose of computation of WACC in its Order dated 13.07.2012, the Hon'ble Commission analyzed the submissions made by all the DISCOMs on new loans taken by them during FY 2011-12 and compared the average interest rates applicable for FY 2011-12 across all the DISCOMs. The Hon'ble Commission observed that the average interest rate at which the loans were availed by TPDDL for funding of Capex and working capital was the lowest among all the DISCOMs and hence, considered the same for approving interest liabilities on the normative loans approved for the control period for all the DISCOMs.</p> <p>It is pertinent to note that the Petitioner was unaware about the data submitted by TPDDL regarding interest on loans availed during FY 2011-12 to the Hon'ble Commission. Further, the Appeal filed by the Petitioner (Appeal 61 of 2012) with respect to the rate of interest during first control period was pending adjudication before this Hon'ble Tribunal which will lead to revision in cost of debt approved from FY 2012-13 to FY 2014-15. As mentioned herein below, in the judgment in Appeal Nos. 61-62 of 2012 pronounced on November 28, 2014, in any event the interest rates for the period had to be re-determined.</p> <p>The same treatment given by the Hon'ble Commission in Tariff Order dated 13.07.2012 for TPDDL was also challenged by TPDDL in Appeal 171 of 2012.</p>
5.	05.07.2013	The Petitioner vide letter number RA/ 2013-14/ 01/A/ 243 dated 5.07.2013 submitted the Auditor's certificate in support of the interest rates of loans availed from FY 2007-08 to FY 2012-13.
6.	30.05.2014	The Petitioner vide letter number RA/ 2014-16/ 01/ A/ 138 dated 30.05.2014 already submitted the Auditor's certificate in requisite format in support of the interest rates of loans availed from FY 2007-08 to FY 2013-14..

S.No	Date	Event
7.	28.11.2014	<p>The Hon'ble ATE in its Appeal 61 Judgment directed the Hon'ble Commission as under:</p> <p><i>"37. On perusal of the data submitted by the Appellant related to SBI PLR, it is clear that SBI PLR has deviated by more than 1% during the control period and accordingly the Commission was required to revise the rate of interest on loan and carry out the required true up. Further, despite admitting that true of Return on Capital Employed (RoCE) would done at the end of control period, the Delhi Commission has failed on both the counts. <u>The Delhi Commission is directed to revise the rate of interest on loan as well true up of the RoCE in its next tariff exercise.</u> The issue is accordingly decided in favour of the Appellants."</i></p> <p>(Emphasis supplied)</p>
8.	18.12.2014	<p>Subsequent to the pronouncement of the Appeal 61 Judgment, the Petitioner in the ARR Petition leading upto the Tariff Order dated 29.09.2015, requested the Hon'ble Commission to revise the cost of debt for the second control period based on the implementation of the directions given by Hon'ble ATE in the Appeal 61 Judgment for the first control period.</p>

S.No	Date	Event
9.	10.02.2015	<p>Meanwhile, on the issue of rate of interest for working capital loans, the Hon'ble ATE vide its Appeal 171 Judgment ruled as under:</p> <p><i>"13.4 We find that the State Commission has considered interest rate for working capital as 11.62% and interest rate for capital at 11.25% for the control period 2012-13 to 2014-15. The Appellant has produced a letter from SBI dated 02.01.2012 showing working capital facilities sanctioned at an interest rate of 3.25% above base rate which works out to 13.25% p.a. with monthly interests. <u>This letter was furnished to the State Commission by letter dated 21.05.2012. This has not been considered by the State Commission while deciding the rate of interest on working capital. In the submissions of the State Commission before us they have not denied receipt of this letter but have not given any explanation why the this letter was not considered by them while deciding the interest on working capital. There is also no explanation in the impugned order regarding fixing interest rate at 11.25% on working capital. We, therefore, direct the State Commission to true-up the interest rate on working capital for the years from 2012-13 to 2014-15 in the true up of the accounts, based on the actual interest rates.</u>"</i></p> <p>(Emphasis supplied)</p> <p>On the issue of rate of interest for long term debt, the Hon'ble ATE in the said Judgment ruled as under:</p> <p><i>"14.5 Shri Sitesh Mukherjee, Learned Counsel for the Appellant forwarded the data regarding increase in base rate of SBI from 01.07.2010 to 31.03.2012 indicating increase in base rate from 7.50% to 10%. <u>According to him the email dated 13.06.2012 was provided to the Commission with respect to revenue gap loans and not capex loans. Further, even the rate of interest of revenue gap loans was wrong as the same ignored the opening loans, period of loans, the loans spread up during the year itself and the purpose of loan. These aspects have also not been dealt with in the written submissions of the State Commission. The approach of composite interest rate instead of approving the spread and allowing the base rate to be trued up as per actual is erroneous and would deprive the Appellant of its entitlement to the interest as contemplated under the 2011 MYT Regulations.</u></i></p>

S.No	Date	Event
		<p>[...]</p> <p>14.7.... <u>The Appellant is now making submissions which they should have presented before the State Commission at the time of the submissions of the petition and the proceedings before the Commission.</u> Therefore, we do not find any fault in the State Commission adopting the weighted average of loans availed by the Appellant. However, the interest rates have to be trued up as per the Regulations. Accordingly, the State Commission shall true up the interest rate in the true up for the financial years from 2012-13 to 2014-15.”</p> <p>(Emphasis supplied)</p>
10.	10.04.2015	The Petitioner vide letter number RA/ 2015-16/ 01/ A/ 31 dated 10.04.2015 requested the Hon'ble Commission to revise the interest rates of loans from FY 2007-08 to FY 2013-14. This is on account of the fact that True-up of interest rates of loans during first Control Period, i.e., FY 2007-08 to FY 2011-12, as per directions of this Hon'ble ATE in the Appeal 61 Judgment, will tantamount to revision in interest rates of loans during second control period.
11.	05.06.2015	The Petitioner vide letter number RA/ 2015-16/ 01/ A/ 168 dated 05.06.2015 once again requested the Hon'ble Commission to revise the interest rates of loans during second control period.
12.	29.09.2015	Despite the Appeal 61 Judgment of the Hon'ble ATE, by way of the Tariff Order dated 29.09.2015, the Hon'ble Commission did not revise the cost of debt for the first MYT control period nor did the Hon'ble Commission revise the cost of debt consequently for the Second MYT control period. Instead, the Hon'ble Commission maintained the cost of debt as per its original MYT Orders dated February 23, 2008 and July 13, 2012.
13.	31.08.2017 & 28.03.2018 & 31.07.2019	The Hon'ble Commission, in its Tariff Orders dated 31.08.2017, 28.03.2018 and 31.07.2019, simply relied upon its findings in the tariff order dated 29.09.2015.

**DETAILED SUBMISSIONS:**

**3B.183** The Hon'ble Commission in Tariff Order dated February 23, 2008 ruled as under:

*“4.223 The Commission shall true-up the means of finance for the Control*

*Period as the asset capitalisation is subject to true-up. The Commission may true-up the interest rates considered for new loans to be taken for capital investment and for working capital requirement, if there is a deviation in the PLR of the scheduled commercial banks by more than 1% on either side."*

**3B.184** However, the Hon'ble Commission in Tariff Order dated August 26, 2011 did not true-up the interest rates considered for new loans despite variation in PLR of scheduled commercial banks by more than 1%. Aggrieved by the same, the Petitioner challenged the aforesaid issue before this Hon'ble Tribunal in Appeal 61 of 2012.

**3B.185** The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"37. On perusal of the data submitted by the Appellant related to SBI PLR, it is clear that SBI PLR has deviated by more than 1% during the control period and accordingly the Commission was required to revise the rate of interest on loan and carry out the required true up. Further, despite admitting that true of Return on Capital Employed (RoCE) would done at the end of control period, the Delhi Commission has failed on both the counts. **The Delhi Commission is directed to revise the rate of interest on loan as well true up of the RoCE in its next tariff exercise. The issue is accordingly decided in favor of the Appellants.**"(Emphasis added)*

**3B.186** The Hon'ble Commission in Tariff Order dated September 29, 2015 undertook the truing-up of rate of interest of loans by linking the same with SBI PLR rates. However truing-up of interest rates of loans was required to be done based on variation of +/-1% in PLR of scheduled commercial banks and not SBI PLR. This fact was highlighted before the Hon'ble Commission during TVS held on July 21, 2017. The Petitioner vide letter dated July 25, 2017 provided the list of banks along with change in PLR during first Control Period. However the Hon'ble Commission in Tariff Order dated August 31, 2017 maintained the same stand as in Tariff Order dated September 29, 2015 and ruled as under:

*"3.23 The Commission has already clarified this issue in Tariff Order dtd. 29/09/2015 as follows and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon'ble APTEL:*

*"3.31 In view of the above direction of the Hon'ble APTEL, it is pertinent to*

state that the SBI PLR has not deviated from FY 2007-08 to FY 2010-11 by more than 1% on either side. Therefore the Commission has not revised the interest rate from FY 2007-08 to FY 2010-11. The Commission, as such, has considered the revision in interest rate in truing up of FY 2011-12, since the SBI PLR has deviated by more than 1% (14.50%-12.50%) in FY 2011-12.

3.32 The Commission had provisionally allowed the actual rate of interest for FY 2011-12. It is observed that the SBI PLR varied by 2.13% in FY 2011-12 over the previous year, while the DISCOM was provisionally allowed the interest rate at 4.91% above the normative interest rate for FY 2010-11 in the Tariff Order dated July 2013. The Commission has decided to revise the rate of interest applicable to FY 2011-12 based on actual variation in average rate for SBI PLR from FY 2010-11 to FY 2011-12 of 2.13% and revised rate of interest is 11.29% (9.16% + 2.13%). Further, in view of the Hon'ble APTEL's direction in Appeal No. 36 of 2008 and Appeal No. 61 & 62 of 2012, the Commission has filed a Clarificatory Application before the Hon'ble APTEL, **therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said application.** (Emphasis bold and underlined)

3B.187 It is submitted that the Hon'ble APTEL vide Judgment dated October 31, 2017 dismissed the clarificatory application. However, the Hon'ble Commission in Tariff Order dated 28.03.2018 instead of implementing the aforesaid direction ruled as under:

*"3.36 This matter is sub judice before Hon'ble Supreme Court of India and the same has also been clarified by Hon'ble APTEL vide its Order dated 31/10/2017 in the Clarificatory Appeal. **Therefore, the view on this issue will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court of India in the pending Appeal.**"* (Emphasis bold and underlined)

3B.188 The Petitioner requests the Hon'ble Commission to implement the directions of Hon'ble Tribunal and its own observations at Para-4.223 of Tariff Order dated February 23, 2008 in true letter and spirit.

3B.189 Further the Hon'ble ATE in Judgment dated February 10, 2015 (Appeal 171 of 2012) has ruled as under:

*"13.4 We find that the State Commission has considered interest rate for working capital as 11.62% and interest rate for capital at 11.25% for the control period 2012-13 to 2014-15. The Appellant has produced a letter*



*from SBI dated 02.01.2012 showing working capital facilities sanctioned at an interest rate of 3.25% above base rate which works out to 13.25% p.a. with monthly interests. This letter was furnished to the State Commission by letter dated 21.05.2012. This has not been considered by the State Commission while deciding the rate of interest on working capital. In the submissions of the State Commission before us they have not denied receipt of this letter but have not given any explanation why the this letter was not considered by them while deciding the interest on working capital. There is also no explanation in the impugned order regarding fixing interest rate at 11.25% on working capital. We, therefore, direct the State Commission to true-up the interest rate on working capital for the years from 2012-13 to 2014-15 in the true up of the accounts, based on the actual interest rates."*

**3B.190** The Petitioner vide its letter dated April 10, 2015 request the Hon'ble Commission to revise the rate of interest for the period FY 2012-13 to FY 2016-17 on account of the following:

- a) The Hon'ble Commission in its Tariff Order dated July 13, 2012 has considered the interest rates of loan applicable to TPDDL (same being the lowest) for approving the interest liabilities on the normative loans approved for the Second Control Period for all DISCOMs. The Hon'ble Commission has considered rate of 11.21% and 11.62% for new Capex and working capital loans respectively during the second control period. However, the rate of interest considered for computation of WACC during FY 2012-13, FY 2013-14 and FY 2014-15 is 9.99%, 10.24% and 10.44% respectively which clearly shows that the Hon'ble Commission has considered weighted average of rate of interest for previous loans approved till FY 2011-12 and rate of interest for new loans arrived at after comparison of rate of interest of all Delhi DISCOMs. Since this Hon'ble Tribunal in Judgment dated 28.11.2014 (Appeal No. 61 of 2012) directed the Hon'ble Commission to true-up the interest rates on loans during first control period, same will tantamount to revision in interest rates on loans approved for second control period also.
- b) The True-up of interest rates of working capital loans as per audited accounts on actual basis for TPDDL in Judgment dated 10.02.2015 (Appeal 171 of 2012) will tantamount to revision in interest on loans for computation of WACC. The Hon'ble Commission, in its Tariff Order dated July 13, 2012 has considered the interest rates of loan applicable to TPDDL (same being the lowest) for approving the interest liabilities on the normative loans approved for the Second Control Period for all DISCOMs. The interest of loans considered for computation of WACC by the Hon'ble Commission in Order



dated 13.07.2012 is a function of both interest on Capex loans and working capital loans, therefore any revision in working capital loans will lead to change in overall rate of interest. Since the Hon'ble ATE in Judgment dated 10.02.2015 (Appeal No. 171 of 2012) directed the Hon'ble Commission to consider the actual rate of interest for working capital loans as per the Audited Accounts, same ratio will also be applicable in case of the Petitioner and hence, the rate of interest for computation of WACC during second control period will undergo revision.

- c) Incorrect data submitted by TPDDL leading to the lower rates of interest for the Petitioner: As stated hereinabove, the Hon'ble Commission in Tariff Order dated July 13, 2012 has considered the rate of interest applicable to TPDDL (being the lowest) for all Delhi DISCOMs during second control period. **However, TPDDL, during proceedings of Appeal 171 of 2012 has pointed out that the rate considered by the Hon'ble Commission in its Tariff Order dated July 13, 2012 is erroneous and the same was submitted with respect to revenue gap loans and not capex loans.** The Hon'ble Tribunal has rejected the contention of TPDDL on the ground that TPDDL should have submitted all such arguments during the time of proceedings itself. Since the Hon'ble Commission has considered the rate of TPDDL for the Petitioner also, the Petitioner has suffered due to TPDDL's error in submission without any fault of its own. **The Petitioner cannot be made to suffer on account of errors committed by any other DISCOM. Therefore, the rate of interest on Capex loans ought to be revised in case of the Petitioner by re-benchmarking the data.**

**3B.191** The Petitioner craves leave to refer to and rely upon the analysis of the interest rates of Scheduled Commercial Banks placed before this Hon'ble Commission in the previous tariff proceedings.

**3B.192** The Petitioner has considered the actual rate of interest for the purpose of computation of RoCE from FY 2007-08 to FY 2016-17 which are as under:

**Table 3B 44: Rate of Interest for ROCE computation FY 2007-08 to FY 2016-17**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	Rate of Interest	10.34%	11.12%	11.52%	12.30%	14.16%	14.47%	14.15%	14.25%	14%	13.56%

PRAYER(S):

**3B.193** Without prejudice to the contentions in the pending Appeal(S), the Petitioner once again requests the Hon'ble Commission to implement the directions of Hon'ble Tribunal given in Judgment dated November 28, 2014 (Appeal 61 of 2012) in true letter and spirit. The implementation of the aforesaid direction shall translate to increase in RoCE from FY 2007-08 to FY 2016-17. However there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues at at Para-3B.229 to Para-3B.303

**Issue-4: Repayment of loans:**ISSUE IN BRIEF:

**3B.194** This issue involves the computation of the Debt/Equity Ratio for the purpose of funding of capitalisation and the return to the Petitioner. The Debt /Equity Ratio is one of the components of the WACC. The Hon'ble ATE vide its Judgment in Appeal No. 61 of 2012 remanded the matter back to the Hon'ble Commission on a very limited issue (as elaborated subsequently). However, the Hon'ble Commission travelled beyond the said limited remand and instead of re-evaluating the WACC by considering the actual debt repayment, reduced the WACC by not taking into account the actual debt repayment and by embarking upon amethodology whereby the Hon'ble Commission erred in computing the actual available equity.

LIST OF DATES:

S.No	Date	Event
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S.No	Date	Event																
1.	20.11.2001	As per the Transfer Scheme Rules notified on November 20, 2001 by the GoNCTD, which are binding in terms of Sections 15 and 16 of the Delhi Electricity Reforms Act, 2000, the assets were transferred to the three DISCOMs in the debt equity ratio as under:																
		TABLE – 1																
		<table><tr><th>S. No</th><th>Particulars</th><th>Amount (Rs. Cr.)</th><th>%</th></tr><tr><td>1</td><td>Net Fixed Assets</td><td>1150</td><td></td></tr><tr><td>2</td><td>Equity</td><td>460</td><td>40%</td></tr><tr><td>3</td><td>Debt</td><td>690</td><td>60%</td></tr></table>	S. No	Particulars	Amount (Rs. Cr.)	%	1	Net Fixed Assets	1150		2	Equity	460	40%	3	Debt	690	60%
		S. No	Particulars	Amount (Rs. Cr.)	%													
		1	Net Fixed Assets	1150														
2	Equity	460	40%															
3	Debt	690	60%															
As can be seen from the above table, the Hon’ble Commission has used the opening mix of debt equity as provided in the Transfer Scheme, which was binding on all the stakeholders including the Petitioner (as upheld by the Hon’ble Supreme Court in its judgment dated 15.02.2007 in Civil Appeal No. 2733/2006), for computation of debt equity ratio for the future years.																		
The Petitioner has accordingly followed the same opening debt equity mix as specified in the statutory Transfer Scheme while filing its tariff entitlements and has at no point post privatization, from the Policy Direction period, claimed as equity an amount greater than 30% as a part of means of finance for capitalisation undertaken post the policy direction period.																		
2.	15.02.2007	Judgment of the Supreme Court of India in DERC v. BSES Yamuna Power Limited Civil Appeal No. 2733 of 2006.																
3.	30.05.2007	The MYT Regulations, 2007 at Regulation 5.10 set out the principles for determination of debt-equity in the ratio of 70:30.																

S.No	Date	Event																														
4.	23.02.2008	<p>The Hon’ble Commission, in its MYT Order (Para 3.64 thereof) explained the priority order for means of finance for funding of capital expenditure.</p> <p>Further, the Hon’ble Commission in this Tariff Order considered working capital funding entirely through debt (in paras 4.220-4.222 thereof). This was challenged before the Hon'ble Tribunal in Appeal No. 52 of 2008, as the Hon’ble Commission did not consider the amount in accordance with the Regulations and the factual/ commercial realities applicable to a regulated business, thereby denying the Petitioner its legal entitlements/ return.</p>																														
5.	31.05.2011	<p>In its Judgment in Appeal No. 52 of 2008, paras 40-45 thereof, the Hon'ble Tribunal directed the Hon’ble Commission to recompute the WACC for each year of the control period, along with carrying cost, and apply the respective year’s RRB for allowance of RoCE in terms of its Regulations (i.e. debt: equity ratio of 70:30 has to be accounted for computation of WACC).</p>																														
6.	31.07.2013	<p>As stated above, the MYT Regulations, 2007 set out the principles for determination of debt-equity in the ratio of 70:30.</p> <p>Pending the physical verification of assets, the Hon’ble Commission vide its Order dated 31.07.2013, in para 3.182, Table 58 thereof allowed the debt-equity mix towards capitalisation which was carried out during the 2nd MYT control period in the ratio of 70:30 as under:</p> <p style="text-align: center;"><b>TABLE – 2</b></p> <p style="text-align: right;">(Rs. Cr.)</p> <table><tr><th>Particulars</th><th>FY 08</th><th>FY 09</th><th>FY 10</th><th>FY 11</th><th>FY 12</th></tr><tr><td>Internal Accruals</td><td>10.39</td><td>57.48</td><td>19.11</td><td>12.43</td><td>17.59</td></tr><tr><td>Internal Accruals (%)</td><td>30%</td><td>30%</td><td>30%</td><td>30%</td><td>30%</td></tr><tr><td>Loan</td><td>24.23</td><td>134.11</td><td>44.6</td><td>29</td><td>41.05</td></tr><tr><td>Loan (%)</td><td>70%</td><td>70%</td><td>70%</td><td>70%</td><td>70%</td></tr></table>	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	Internal Accruals	10.39	57.48	19.11	12.43	17.59	Internal Accruals (%)	30%	30%	30%	30%	30%	Loan	24.23	134.11	44.6	29	41.05	Loan (%)	70%	70%	70%	70%	70%
Particulars	FY 08	FY 09	FY 10	FY 11	FY 12																											
Internal Accruals	10.39	57.48	19.11	12.43	17.59																											
Internal Accruals (%)	30%	30%	30%	30%	30%																											
Loan	24.23	134.11	44.6	29	41.05																											
Loan (%)	70%	70%	70%	70%	70%																											

S.No	Date	Event
7.	28.11.2014	<p>In Appeal No. 61-62 of 2012 before the Hon'ble Tribunal, the grievance raised by the Petitioner was that whilst computing the debt (loan balance) of the Petitioner (in the D/E Ratio) the Hon'ble Commission was not taking into account the loans repaid by the Petitioner. Hence, by not taking into account the loans repaid by the Petitioner, the Hon'ble Commission was artificially increasing the debt component thereby reducing the WACC and thence reducing the return on equity allowable to the Petitioner.</p> <p>By its judgment in the said appeal ("<b>Appeal 61 Judgment</b>") the Hon'ble Tribunal after a detailed analysis <i>inter alia</i> concluded that:-</p> <p><i>"102. In the light of above discussions we find force in the contentions of the Appellant and direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recomputed RoCE payable to the Appellant. The issue is decided in favour of the Appellant."</i></p> <p>Hence, the Appeal 61 Judgment contained a limited remand to the Hon'ble Commission – <i>"..to re-evaluate the WACC considering the repayment of loans during the period and recomputed RoCE payable to the Appellant..."</i></p>
8.	19.06.2015	<p>In point of fact, the Petitioner had opposed the proposed formulation of net-worth by the Hon'ble Commission vide its letter No. RA/2015-16/01/A/213.</p> <p>This letter has was not acknowledged by the Hon'ble Commission in Table 1.1 of its Tariff Order, which gives the list of letters supposedly sent to the Hon'ble Commission.</p>

S.No	Date	Event
9.	29.09.2015	<p>The Tariff Order dated 29.09.2015, (paras 3.33-3.37) purports to reopen the calculation of the so-called “actual equity” invested by the Petitioner in capitalisation by a method of “net worth” which is alien to the Regulations framed by the Hon’ble Commission itself and also contrary to the established practice of the Hon’ble Commission in the previous year’s Orders.</p> <p>By the said Tariff Order, the Hon’ble Commission has not only refused to take into account the repayment of loans, despite the clear direction of the Hon’ble Tribunal but has gone ahead and completely changed the entire basis of the computation of WACC. Not only has this new computation been done for the future years but, it has been reopened for not only the 1st MYT control period (2007-08 to 2011-12), but also the 2nd MYT Control period (2012-12 to 2015-16) and even for the Policy direction period (2002-03 to 2006-07).</p>
10.	31.08.2017	<p>The Hon’ble Commission vide its tariff order dated 31.08.2017 (paras 3.26) held that it had already clarified the said issue in the Tariff Order dated 29.09.2015 (Para nos. 3.34 to 3.37) and the matter was therefore not deliberated as it is <i>sub-judice</i> before the Hon’ble APTEL in Appeal No. 297/ 2015. The relevant extracts of the said order are set out below:</p> <p><i>“The Commission has already clarified this issue Tariff Order dtd. 29/09/2015 in para nos. 3.34 to 3.37 and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon’ble APTEL in Appeal No. 297/2015”.</i></p>
11.	31.10.2017	<p>The Hon’ble Commission had filed a Clarificatory Application in Appeal 177 of 2012 seeking clarification/ review of ten tariff issues including the present one.</p> <p>The Hon’ble Tribunal vide its judgment dated 31.10.2017 dismissed the said Clarificatory Application.</p>
12.	28.03.2018 & 31.07.2019	<p>The Hon’ble Commission vide its tariff order dated 28.03.2018 and 31.07.2019 has stated that the matter is sub-judice before Hon’ble Supreme Court of India and any view on this issue will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon’ble Supreme Court in the pending Appeal.</p>

**DETAILED SUBMISSIONS:**

**3B.195** As per DERC Tariff Regulations, 2007 and DERC Tariff Regulations, 2011, depreciation shall be considered towards repayment of loans.

3B.196 However, the Hon'ble Commission in Tariff Order dated August 26, 2011 did not consider the repayment of loan while computing average balance of loan for respective years.

3B.197 The issue was challenged before Hon'ble ATE in Appeal 61 and 62 of 2012. The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"102. In the light of above discussions we find force in the contentions of the Appellant and direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recomputed the RoCE payable to the Appellant. The issue is decided in favour of the Appellant."*

3B.198 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance for calculation of average debt during the year.

3B.199 The Petitioner in its Petition for True-up of FY 2017-18 and ARR and Tariff of FY 2019-20 requested the Hon'ble Commission to allow the impact on account of the aforesaid issue. However, the Hon'ble Commission in Tariff Order dated July 31, 2019 ruled as under:

*"3.49 This issue had already been discussed and clarified in Tariff Order dated 29.09.2015 and requires no further deliberation at this juncture, as the matter is sub judice before Hon'ble Supreme Court of India. Further, the Petitioner has also agitated this issue in the Appeal No. 297 of 2015 filed before Hon'ble APTEL."*

*3.50 Further, the Commission in its Tariff Order dated March 28, 2018 deliberated as under:*

*3.39 This matter is sub judice before Hon'ble Supreme Court of India and the same has also been clarified by Hon'ble APTEL vide its Order dated 31/10/2017 in the clarificatory appeal. Therefore, the view on this issue will be considered, as deemed fit and appropriate, after receipt of the Judgment of Hon'ble Supreme Court of India in the pending Appeal."*

3B.200 As regards aforesaid, it is respectfully submitted that there is no bar on the Hon'ble Commission to implement the directions of Hon'ble ATE in Judgment

dated November 28, 2014 (Appeal 61 of 2012) pending adjudication of Civil Appeal filed before Hon'ble Supreme Court as it is settled law that in the absence of any interim Order(s)/ stay, mere pendency of an Appeal is not a ground to refuse implementation of Orders passed by an Appellate Court. It is respectfully submitted that the Hon'ble Tribunal has already clarified the issue in the Judgment dated November 28, 2014 (Appeal 61 of 2012) wherein it remanded the matter to the Hon'ble Commission on a limited issue and therefore there was no warrant or justification for the Hon'ble Commission to have not implemented the same.

**3B.201** It is respectfully submitted that the remand in terms of Judgment dated November 28, 2014 (Appeal 61 of 2012), was a "limited remand" and not an open remand. It is well settled law that when an Appellate Court remits a matter to the lower authority in a limited compass, the authority of the lower court to address the issue is limited by the four corners of the remand. Reference in this regard may be had to:

- i. The Hon'ble Tribunal's judgment dated 10.08.2010 in Appeal No. 37 of 2010, para 17-31;
- ii. The Hon'ble Tribunal's Judgment in MIAL vs MERC Appeal No. 195 of 2009 Judgment dated 31.05.2011 paras 53-55;
- iii. The judgments of the Hon'ble Supreme Court in :-
  - *Mohan Lal vs. Anandibat* (1971) 1 SCC 813;
  - *Paper Products Ltd. vs. CCE* (2007) 7 SCC 352;
  - *Smt. Bidya Devi vs. Commissioner of Income Tax, Allahabad* AIR 2004 Calcutta 63;
  - *K.P. Dwivedi vs. State of U.P.* (2003) 12 SCC 572;
  - *Mr. Muneswar and Ors. vs. Smt. Jagat Mohini Des*, AIR (1952) Calcutta 368;
  - *Amrik Singh vs. Union of India* (2001) 10 SCC 424;
  - *Union of India & Anr. Vs. Major Bhadur Singh* (2006) 1 SCC 3670; and
  - *Prakash Singh Badal & Anr. Vs. State of Punjab and Ors.* (2007) SCC 1.



3B.202 It is submitted that the remand in this case was only to “re-evaluate the WACC considering the repayment of loans”. The clear and categorical direction was to recompute the RoCE after taking into consideration only one aspect, and no more, i.e. the repayment of loans. However, the Hon’ble Commission has not done the same till date.

3B.203 It is further submitted that the Petitioner in its True-up and ARR Petitions filed after Tariff Order dated 29.09.2015 has been regularly pointing out the incorrect approach adopted for computation of equity and balance leading to mismatch between the capitalisation and funds allowed for respective years. However the Hon’ble Commission without dealing with the same has been relying on its Tariff Order dated 29.09.2015.

**PRAYER(S):**

3B.204 Without prejudice to the contentions in the pending Appeal(s), the Petitioner once again requests the Hon’ble Commission to implement the directions of Hon’ble Tribunal given in Judgment dated November 28, 2014 (Appeal 61 of 2012) in true letter and spirit. The implementation of the aforesaid direction shall translate to increase in WACC which in turn will increase RoCE from FY 2007-08 to FY 2016-17. However, there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues at at Para-3B.229 to Para-3B.303.

**Issue-5: Financing of Working Capital in debt-equity ratio of 70:30:**

**ISSUE IN BRIEF:**

3B.205 This issue pertains to the non-implementation of the Judgment of the Hon’ble ATE to recompute the WACC by considering financing of working capital in debt-equity ratio of 70:30 during first control period, i.e., FY 2007-08 to FY 2011-12. However, the Hon’ble Commission instead of re-evaluating the WACC by considering the funding of Working Capital in debt-equity ratio of 70:30, reduced the WACC by

embarking upon a methodology whereby the Hon'ble Commission erred in computing the actual available equity.

LIST OF DATES:

S.No	Date	Event
1.	31.05.2011	<p>The Hon'ble APTEL in Judgment dated 31.05.2011 (Appeal 52 of 2008) directed the Hon'ble Commission as under:</p> <p>"67...</p> <p>(vi) The next issue is with reference to the equity component for margin on working capital requirement. The State Commission has considered the entire working capital requirement by way of loan contrary to the norms of debt and equity ratio of 70:30-. The State Commission relies on Regulation 5.10 but this Regulation would not support the contention of the State Commission. The MYT Regulations stipulate that Weighted Average cost of capital, as computed in the Regulation 5.10, needs to be applied on Regulated Rate Base which includes the working capital. This apart, Regulation 5.8 and Regulation 5.9 provide for the formula for calculating the Regulated Rate Base for a particular year and for computing the return on capital employed by multiplying the Weighted Average Cost of capital with Regulated Rate Base. Under those circumstances, the Delhi Commission is directed to re-compute the Weighted Average Cost of capital for each year of the Control Period, along with the carrying cost."</p>
2.	26.08.2011	<p>The Hon'ble Commission did not implement the aforesaid issue. The issue was again raised in Appeal 61 of 2012. The Hon'ble Tribunal in Judgment dated 28.11.2014 (Appeal 61 of 2012) directed the Hon'ble Commission to implement the directions in letter and spirit.</p>
3.	13.07.2012	<p>The Hon'ble Commission did not implement the directions of Hon'ble Tribunal.</p> <p>The issue was raised in Appeal 177 of 2012. The Hon'ble Tribunal in Judgment dated 2.03.2015 directed the Commission to allow the same in true letter and spirit.</p>

S.No	Date	Event
4.	31.07.2013	The Hon'ble Commission stated that it is implementing the Hon'ble ATE's Judgment by considering working capital in debt-equity ratio of 70:30. However there were computational errors due to which entire working capital was considered to be funded through 100% debt and 0% equity. The aforesaid treatment has been challenged in Appeal 266 of 2013 which is pending adjudication before Hon'ble Tribunal.
5.	23.07.2014	The Hon'ble Commission did not correct the error committed in Tariff Order dated 31.07.2013. The aforesaid treatment has been challenged in Appeal 235 of 2014 which is pending adjudication before Hon'ble Tribunal.
6.	29.09.2015	The Hon'ble Commission in Tariff Order dated 29.09.2015 changed the entire scheme of funding of working capital and capital expenditure and allowed the funding on net-worth derived from the audited statements of respective years. The challenge on account of net-worth and working capital funding is pending in Appeal 297 of 2015.
7.	31.08.2017	The Hon'ble Commission in Tariff Order dated 31.08.2017 relied upon its finding in the previous Tariff Order dated 29.09.2015 in para nos. 3.22 to 3.26. Further the Commission has held as under: <i>"3.29 Further, it is clarified that the Commission has implemented its MYT Regulations, 2007 &amp; 2011 and directions of Hon'ble APTEL in letter and spirit. The formula specified in MYT Regulations, 2007 &amp; 2011 does not provide opening Working Capital requirement to be part of opening RRB and instead it provides for change in WC for the 1st year of the Control period to be considered as the normative working capital requirement of the 1st year."</i>
8.	28.03.2018	The Hon'ble Commission in Tariff Order dated 28.03.2018 in para nos. 3.42 & 3.43 relied upon its finding in the previous Tariff Orders dated 29.09.2015 & 31.08.2017.
9.	31.07.2019	The Hon'ble Commission in Tariff Order dated 31.07.2019 in para nos. 3.56 & 3.57 relied upon its finding in the previous Tariff Orders dated 29.09.2015, 31.08.2017 & 28.03.2018 and has held that the matter is sub judice before the Hon'ble Supreme Court of India.

DETAILED SUBMISSIONS:

3B.206 The Hon'ble ATE in its Judgment dated May 31, 2011 (Appeal 52 of 2008) has ruled as under:

*"45) The Learned Counsel for the Appellant, while refuting the submission of the State Commission that the approach adopted by the State Commission was on the basis of the normal industry practice by referring to the tariff orders of the 4 State Commissions. The Appellant has cited Tariff orders of Karnataka State Commission, Himachal Pradesh State Commission, Jharkhand State Commission and the Gujarat State Commission. It is noticed from the regulations of these State Commissions have different Regulations for the interest on Working Capital and have treated Working Capital separate from the Regulated Rate Base and do not have the concept of Return on Capital Employed as provided in the Delhi Commission's Regulations. Under these circumstances, the Delhi Commission is directed to re-compute the Weighted Average Cost of Capital for each year of the Control Period along with the carrying cost and apply on the respective years Regulated Rate Base for allowance of Return on Capital Employed according to its Regulations. This issue is answered in favour of the Appellant."*

3B.207 In view of the directions of the Hon'ble ATE, the Hon'ble Commission was required to re-compute the WACC and RRB for allowance of RoCE during the period. However, the Hon'ble Commission did not implement the aforesaid direction of Hon'ble Tribunal in subsequent Tariff Order dated August 26, 2011. This issue was challenged in Appeal 61 of 2012.

3B.208 The Hon'ble ATE once again in its Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"9. However, the Appellants have reiterated in written submission that the Respondent has still not implemented the direction of this Tribunal to consider the working capital in the Debt: Equity ratio of 70:30.*

*10. We are not inclined to involve ourselves in to fact finding and direct the Commission to implement our directions in letter and spirit."*

3B.209 The Petitioner in its Petition for True-up of FY 2017-18 and ARR and Tariff of FY 2019-20 requested the Hon'ble Commission to allow the impact on account of the aforesaid issue. However, the Hon'ble Commission in Tariff Order dated July 31, 2019 ruled as under:

*"3.56 This issue has already been discussed and clarified in the Tariff Order*

*dated 29.09.2015 in para nos. 3.22 to para nos. 3.26 and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon'ble APTEL in Appeal No. 290/2015.*

*3.57 Further, it is clarified that the Commission has implemented its MYT Regulations, 2007 & 2011 and directions of Hon'ble APTEL in letter & spirit. The formula specified in MYT Regulations, 2007 & 2011 does not provide opening working capital requirement to be a part of opening RRB instead for the 1<sup>st</sup> year of the control period change in WC shall be taken as the normative working capital requirement of the 1<sup>st</sup> year and thus require no further deliberation at this juncture, as the matter is sub judice before Hon'ble Supreme Court of India."*

**3B.210** The Petitioner respectfully submits that there is no stay on the operation of the Judgment of the Hon'ble ATE in Appeal No. 61/62 of 2012 and therefore, there is no legal embargo upon the Hon'ble Commission to implement the same, on the other hand, this Commission is legally bound to implement the same in the absence of any stay of the same.

#### PRAYER(S):

**3B.211** Without prejudice to the contentions in the Appeal, it is respectfully submitted that the Hon'ble Commission may be pleased to allow the impact on account of the said issue.

**3B.212** The implementation of the aforesaid direction shall translate to increase in WACC which in turn will increase RoCE from FY 2007-08 to FY 2016-17. However there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues at at Para-3B.229 to Para-3B.303.

### **Issue-6: Re-casting of means of finance based on actual capitalisation**

#### ISSUE IN BRIEF:

**3B.213** This issue pertains to the non-implementation of the Judgment of the Hon'ble ATE

to recast the means of finance based on actual consumer contribution capitalised instead of consumer contribution received from FY 2002-03 to FY 2006-07.

LIST OF DATES:

S.No	Date	Event
1.	23.02.2008	<p>The Hon'ble Commission vide its Order trued-up the means of finance from FY 2002-03 to FY 2006-07 considering entire consumer contribution received as means of finance.</p> <p>The Hon'ble Commission in NDPL's Order (Now TPDDL) dated February 23, 2008 also held as under:  <i>"3.72 In the Policy Direction Period, the Commission has provided means of finance for the total capital investment for the year. Therefore, the Commission believes that total consumer contribution should be considered as a source of funding for capital investment irrespective of asset capitalised or not."</i></p>
2.	17.06.2009	<p>The Hon'ble Commission wrote a letter to the Petitioner stating that this Hon'ble Commission was in the process of compiling a database of deposit schemes executed by the Delhi DISCOMs. In furtherance of this exercise, the Petitioner was requested to furnish the list of deposit schemes executed by the Petitioner since taking over, i.e., w.e.f. July 1, 2002 till March 31, 2009 in the prescribed format.</p>

S.No	Date	Event
3.	3.12.2009	<p>The Hon'ble Commission wrote a letter to the Petitioner on December 3, 2009 stating that the treatment given by the Petitioner to the unspent portion of the consumer contribution was not only a wrong accounting practice but also a dishonest one. Relevant extract of the letter dated December 3, 2009 is produced below:</p> <p><i>"Retaining the refundable amount for such a long time and utilizing the same on global basis for financing of capital investment en-bloc is surely not only a wrong accounting practice but also a dishonest one. This is also against the directions given by the Commission at the time of granting initial approval that the accounts should be reconciled with the consumers depositing such amount."</i></p> <p>The Hon'ble Commission further gave the following directions to the Petitioner:</p> <p><i>"Accordingly, the Commission hereby orders as under:</i></p> <ol style="list-style-type: none"> <li><i>The DISCOM shall finalize the accounts of the deposit works already executed by them and approved by the Electrical Inspector (wherever applicable) and refund the amounts due to the agencies on whose behalf the work has been carried out by the DISOMS within a period of one month of energisation.</i></li> <li><i>The DISCOMs shall send reconciled account to all such consumers and refund them the due amount, along with the penal interest of 12% per annum. The interest will be to the account of DISCOMs only and cannot be booked to the ARR because this has become payable because of their fault.</i></li> <li><i>In all future cases, the accounts be finalized immediately after completion of works and refunds made to the consumers within three months of energization. A quarterly report shall be submitted to the Commission in this regard in the format enclosed."</i></li> </ol>

S.No	Date	Event
4.	05.01.2010	<p>The Petitioner filed a petition before this Hon'ble Commission under Section 86 of the Electricity Act, 2003, Section 11 and Section 28 of the Delhi Electricity Reforms Act, 2000 and the Conduct of Business Regulations, 2001 issued by this Hon'ble Commission being Petition No. 01/2010. In the said Petition, the Petitioner inter alia sought the following reliefs from this Hon'ble Commission:</p> <ol style="list-style-type: none"> <li>Reconsider its statement made in the letter dated December 3, 2009 and expunge the term 'financing of capital investment en-bloc is surely not only a wrong accounting practice but also a dishonest one.'</li> <li>Suitably modify its letter dated December 9, 2009 and consider implementing the principles prospectively.</li> </ol>
5.	11.03.2014	<p>The Hon'ble Commission vide its order dated March 11, 2014 passed in Petition No. 01/2010, was pleased to partly allow the Petition filed by the Petitioner. This Hon'ble Commission vide its Order dated March 11, 2014 was pleased to expunge the remark '<i>...but also a dishonest one,</i>'. However, this Hon'ble Commission declined to interfere with the directions of the Ld. Secretary as contained in the letter dated December 3, 2009.</p>



S.No	Date	Event
6.	----	<p>Being aggrieved by the order dated March 11, 2014 passed by this Hon'ble Commission, the Petitioner approached the Hon'ble Tribunal by way of an appeal under Section 111 of the Electricity Act, 2003 (hereinafter "2003 Act") being Appeal No. 110 of 2014. Briefly put, the Petitioner's case before the Hon'ble Tribunal was that this Hon'ble Commission cannot direct the Petitioner to refund the unspent portion of the consumer contribution without providing the Petitioner the consequential benefits of such a refund. In other words, the Petitioner's case before the Hon'ble Tribunal was that it may direct this Hon'ble Commission to adopt either of the following methodologies:</p> <ol style="list-style-type: none"> <li>consider making its directions with respect to the refund of the unspent portion of the consumer contribution, prospective or,</li> <li>in the event the Petitioner was required to refund the unspent consumer contribution since inception, then this Hon'ble Commission may recast the Petitioner's means of finance since inception and give the Petitioner all the consequential benefits including the carrying cost associated with such amounts. This was on account of the fact that the unspent portion of the consumer contribution had admittedly been utilised by this Hon'ble Commission as a means of finance thereby reducing the tariff. In other words, the benefit of the unspent consumer contribution had already gone to the consumers at large in the form of a reduced tariff and the Petitioner had not in any manner benefited from the same.</li> </ol>

S.No	Date	Event
7.	23.02.2015	<p>The Hon'ble APTEL was pleased to allow the Appeal with the following directions:</p> <p><b>"18. Summary of findings:</b></p> <p><i>The learned Delhi Electricity Regulatory Commission has been considering consumer contribution as means of financing the capital cost. The appellant's contention, that the unutilized portion of the consumer contribution was also used as means of finance for the capital works and accordingly regulated rate base from FY 2002-03 onwards was reduced and consumers got the benefit of lower tariff, has legal force which we accept. If the unutilized consumers contribution has been utilized as means of financing for the tariff orders from FY 2002-03 onwards and corresponding relief has been given to the consumers in terms of retail supply tariffs, then the appellants are entitled to get consequential relief and the said unspent contribution amount be refunded by the appellants as per the Commission's order. The unspent consumers contribution amount may be considered as an expenditure in the future ARR of each of the appellants / DISCOMs. These matters are fit to be remanded giving liberty to appellant's to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the annual revenue requirements from FY 2002-03 onwards in reducing the retail supply tariffs.</i></p> <p><b>19. In view of the above, these appeals being Nos. 109, 110 and 111 of 2014 are hereby partly allowed and the common impugned order dated 11.03.2014 passed by the Delhi Electricity Regulatory Commission in Review Petition Nos. 1, 2 &amp; 3 of 2010 is modified to the extent indicated above. The matters are remanded to the learned Delhi Electricity Regulatory Commission giving liberty to the appellant's / DISCOMs to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the ARRs from FY 2002-03 onwards in reducing the retail supply tariffs. In that situation the Commission is further directed to hear the matter and pass the consequential order as it thinks fit and proper in the facts and circumstances of these matters. No order as to costs."</b></p>

S.No	Date	Event
8.	23.12.2015	The Hon'ble Commission disposed off the matter related to consumer contribution with the following ruling: <i>"4. On the issue of how to arrive at the exact figure of the amount to be refunded to the respective consumers and from what date, the Commission directed the Petitioners to come up with the details of balance of consumer contribution in each case and from which date it has to be refunded. The Commission directed that this exercise should be completed within two months. Regarding re-casting of ARR for previous years, the Commission directed the Petitioners to submit the details of such cases, where the unutilized consumer contribution for assets capitalized were considered as means of finance for other capital schemes of the Petitioners. This information will be utilized for passing orders on details of refund of consumer contribution as well as re-casting of previous ARR's in the next tariff order."</i>
9.	7.03.2016	The Petitioner, vide letter number RA/ 2015-16/ 01/ A/ 785 dated 07.03.2016 submitted the details of cases where unutilised consumer contribution for assets capitalised were considered as means of finance for other capital schemes. The details contained consumer-wise details in respect of amounts refundable against schemes completed upto FY 2014-15 in cases where the deposits were received upto FY 2011-12.
10.	21.06.2016	The Petitioner, vide letter number RA/ 2016-17/ 01/A/189 dated 21.06.2016 submitted the auditor certificate in regard to balance consumer contribution which remained unutilised after the completion of respective scheme (along with interest @ 12% per annum as per the direction of the Hon'ble Commission).
11.	12.01.2017	The Hon'ble Commission directed the Petitioner to refund the balance amount of consumer contribution to the respective consumers and stated that any failure to comply with the same would attract action under section 142 of Electricity Act 2003 and further directed the Petitioner to submit comprehensive report within 15 days.
12.	---	The Petitioner filed Appeal against the letter dated 12.01.2017 before Hon'ble APTEL.
13.	15.05.2017	The Hon'ble APTEL directed the Hon'ble Commission to implement the directions given in Judgment dated 23.02.2015.

S.No	Date	Event
14.	----	The Hon'ble Commission challenged the said decision of Hon'ble APTEL in Judgment dated 15.05.2017 before Hon'ble Supreme Court. The said Civil Appeal has already been dismissed by the Hon'ble Supreme Court.
15.	18.06.2018	The Hon'ble Commission in suo-motu proceedings in Petition No. 1 of 2010 (which already stood disposed off on 23-12-2015) issued an interim order and stated as under: <i>"5. After hearing the counsels for the petitioners, it is made clear that the ARR's of previous years upto FY 2015-16 have already been trued up and it would not be desirable to recast ARR's at this juncture. As much as it is related to the issue of arranging the finance for refund, it is for the DISCOMs to arrange the necessary finance. Once refund of the Consumer contribution is made by the DISCOMs, the actual amount refunded shall be allowed in the subsequent true up of the ARR's."</i>
16.	---	Aggrieved from the aforesaid interim order, the Petitioner has challenged the same before Hon'ble APTEL which is pending adjudication.
17.	31.07.2019	The Hon'ble Commission has relied on its Order dated 18.06.2018 and has stated that the Petitioner has filed an Appeal before Hon'ble APTEL which is pending adjudication.

**DETAILED SUBMISSIONS:**

**3B.214** The Hon'ble Commission in respective tariffs order while approving the means of finance, considered the consumer contribution on receipt basis instead of actual capitalised basis. Since the consumer contribution was considered on receipt basis which includes unspent consumer contribution also, the Petitioner was allowed lower ROE and Interest on loan. Therefore, the benefit of unspent consumer contribution was passed on a global basis through lower electricity tariffs to the consumers.

**3B.215** However, the Hon'ble Commission vide letter dated December 3, 2009 directed the Petitioner to finalize the accounts of the deposit works already executed by them and approved by the Electrical Inspector (wherever applicable) and refund the amounts due to the agencies on whose behalf the works had been carried out by the Petitioner. The Hon'ble Commission further directed that the DISCOMs

were to send reconciled accounts to all such consumers and refund them the due amount along with a penal interest of 12% per annum.

**3B.216** The Petitioner on January 5, 2010 filed a petition bearing No.01/2010 before the Hon'ble Commission requesting to modify its letter dated December 3, 2009 and consider implementing the principles prospectively.

**3B.217** The Hon'ble Commission vide Order dated March 11, 2014 acknowledged the fact that unspent consumer contribution has been considered as means of finance. Despite of the same, the Hon'ble Commission maintained the same direction as was contained in letter dated December 3, 2009.

**3B.218** The said issue was challenged by all DISCOMs including the Petitioner, BYPL and TPDDL before Hon'ble ATE in Appeal 109, 110 and 111 of 2014. The Hon'ble ATE in Judgment dated February 23, 2015 (Appeal 109, 110 and 111 of 2014) has ruled as under:

*"19. In view of the above, these appeals being Nos. 109, 110 and 111 of 2014 are hereby partly allowed and the common impugned order dated 11.3.2014 passed by the Delhi Electricity Regulatory Commission in Review Petition Nos. 1, 2 & 3 of 2010 is modified to the extent indicated above. The matters are remanded to the learned Delhi Electricity Regulatory Commission giving liberty to the appellant's/ DISCOMs to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the ARR's from FY 2002-03 onwards in reducing the retail supply tariffs...."*

**3B.219** Pursuant to the above direction of Hon'ble Tribunal, the Hon'ble Commission in Order dated December 23, 2015 ruled as under:

*"4. On the issue of how to arrive at the exact figure of the amount to be refunded to the respective consumers and from what date, the Commission directed the Petitioners to come up with the details of balance of consumer contribution in each case and from which date it has to be refunded. The Commission directed that this exercise should be completed within two months. Regarding re-casting of ARR of previous years, the Commission directed the Petitioner to submit the detail of such cases, where the unutilised consumer contribution for assets capitalised were considered as*

*means of finance for other capital schemes of the Petitioners. This information will be utilised for passing orders on details of refund of consumer contribution as well as re-casting of previous ARR's in the next tariff order."*

**3B.220** With reference to the aforesaid directions, the Petitioner vide its letter dated March 7, 2016 submitted consumer-wise details in respect of amounts refundable against schemes completed upto FY 2014-15 in cases where the deposits were received upto FY 2011-12 alongwith single line item of the total amount refundable for the scheme, where deposits were received after FY 2011-12.

**3B.221** The Hon'ble Commission by its letter dated April 21, 2016 observed that the Petitioner has given the list of schemes only without intimating whether refund is made or not, vide its letters dated March 7, 2016 and March 17, 2016. The Hon'ble Commission stated that the Petitioner was advised to submit information alongwith interest @12% per annum to work out the complete liability for consideration in ARR for the relevant years. The Hon'ble Commission further stated that therefore the Petitioner were advised to submit final figures about their total liability only after payment of balance of consumers contribution along with interest within a month, supported by an Auditor's certificate reconciling with the audited accounts. Only for those cases where the unutilized consumer contribution for assets capitalized were considered as means of finance and for other capital schemes the Hon'ble Commission was to be intimated. The Hon'ble Commission directed the Petitioner to submit the desired information and refund the consumers contribution including the interest along with tariff petition for FY 2016-17.

**3B.222** The Petitioner vide its letter dated June 21, 2016 submitted the Auditor's certificate in regard to the balance consumers contribution which remained unutilized after the completion of respective scheme (along with interest @12% per annum as per direction of the Hon'ble Commission).

**3B.223** However, the Hon'ble Commission despite the clear instructions of remand by this Hon'ble Tribunal to examine the Accounts of the Petitioner to find out whether

the excess amount of consumers contribution has been duly considered in the ARR from FY 2002-03 onwards in reducing the retail supply tariffs, vide its letter/Order dated 12.1.2017 misinterpreted the aforesaid judgment dated February 23, 2015 of this Hon'ble Tribunal negating the position that refund of balance of consumer contribution is to be done only after recasting of ARRs and stated that the refund has to be made at first before recasting of ARR. The Hon'ble Commission in the said letter also stated that any failure to comply with the same would clearly attract action under Section-142 of Electricity Act, 2003 against the Petitioner.

**3B.224** The issue was challenged before Hon'ble ATE in Appeal No. 103 of 2017. The Hon'ble ATE vide Judgment dated May 15, 2017 directed the Hon'ble Commission as under:

*"14.6 We have also noticed that the Respondent Commission while determining the tariff order from FY 2002-03 onwards, a methodology was followed and in the methodology, the consumers' contribution was considered as "Means of finance" while arriving ARR of respective years from 2002-03 onwards. The Respondent Commission raised the issue regarding refund of consumer contribution to the respective consumers only after the issue was raised by some of the stake holders during the public hearing held between 08.01.2008 and 11.01.2009. However, we once again direct the State Commission (DERC) to examine the submissions made by the Appellants with respect to consumers' contribution and give an opportunity to the Appellants to place their case on Merits."*

**3B.225** The aforesaid Judgment was challenged by Hon'ble Commission before Hon'ble Supreme Court. The Hon'ble Supreme Court vide Judgment dated October 3, 2017 dismissed the appeal. Therefore, the directions of Hon'ble Tribunal in Judgment dated February 23, 2015 have attained finality. The Order dated 18-6-2018 does not in any way prevent the Commission from re-casting the ARR's for the simple reason that the Order dated 18-6-2018 was a quorum non-judice since the same had been passed while the Commission was *functus officio* in a disposed off proceeding.



3B.226 The Hon'ble Commission has issued Tariff Order 28.03.2018 and 31.07.2019 after the aforesaid Judgment of Hon'ble Supreme Court. However the means of finance has yet not been re-casted in respective ARR's.

**PRAYER(S):**

3B.227 Without prejudice to the contentions in the Appeal, the Petitioner once again requests the Hon'ble Commission to re-cast the ARR's of respective years by considering the impact on account of the aforesaid direction.

3B.228 The implementation of the aforesaid direction shall result in increase in depreciation, RoCE, Interest on loan and ROE. However there are other issues also which are pending to be implemented and will have impact on the aforesaid parameters. Therefore the impact on account of this issue has been discussed along with other capitalisation related issues in subsequent paras.

**Impact on account of the directions related to capitalisation from FY 2002-03 to FY 2017-18:**

3B.229 The Petitioner has considered the capital expenditure and capitalisation from FY 2002-03 to FY 2017-18 as per the directions of Hon'ble ATE given in Judgment dated October 6, 2009 (Appeal 36 of 2008), March 2, 2015 (Appeal 177 of 2012) and September 30, 2019 (Appeal 246 of 2014) which is the law as of date. The Hon'ble ATE has also opined the same in Judgment dated February 11, 2014 (Appeal Nos. 112, 113 and 114 of 2013) as under:

*"The Judicial discipline demands that Appellate Tribunal's or Appellate Court's judgments should be implemented and complied with in letter and spirit by the subordinate authorities, commissions or the court without any if & but, particularly, when the operation of the said judgment has not been stayed by the higher Appellate Court or Higher Forum. If this practice is allowed to prevail, that would create judicial anarchy in the country which is not permissible under the Constitution of India."*

3B.230 Also the Hon'ble Commission has tendered an unconditional apology on Affidavit before Hon'ble ATE during the proceeding of Appeal 14 of 2012 and has stated that the Hon'ble Commission is duty bound to implement the directions of the



Hon'ble ATE. The extracts of the Affidavit are reproduced below:

*"1. That at the outset of the written submissions the Respondent most respectfully submits that the language used in the impugned order is not appropriate and the Respondent submits unconditional apology for use of the said language in the impugned order. The Respondent duty is bound to implement all the directions issued by this Tribunal."*

3B.231 However the implementation of directions of Hon'ble ATE in various Judgments has not found any place till now in previous tariff orders.

3B.232 Since the implementation of ATE directions are pending since FY 2004-05 and the treatment of capex related expenses for the period FY 2002-03 to FY 2006-07 was different from the period from FY 2007-08 onwards, the capital expenditure and capitalisation has been divided into two sections as under:

a) Capital Expenditure and Capitalisation from FY 2002-03 to FY 2006-07:

REL Purchases:

3B.233 The REL Disallowances as considered by the Hon'ble Commission in Tariff Order dated February 23, 2008 is tabulated below:

**Table 3B 45: Year-wise REL Disallowances**

(in Rs. Cr.)

S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09
1	REL Disallowances	3	61	69	122	109
2	Reference	Annexure-V; Para 32; Pg. No. 275 of Tariff Order dtd 23.02.2008				

EIC Disallowances:

3B.234 As regards the issue of allowance of capitalisation based on EI Certificates, the Hon'ble ATE in Judgment dated October 6, 2009 (Appeal 36 of 2008) ruled as under:

*"118) ...For capitalisation of fresh assets the DISCOM shall make appropriate applications to the Electrical Inspector and the capitalisation of such assets will be allowed w.e.f. 16th day of filing of the application and payment of necessary fee.."*

3B.235 Since the cost incurred on account of capitalisation pertaining to FY 2004-05 to FY 2006-07 is yet to be recovered from last 12 years, despite the fact that the benefit of putting the assets in use have already been passed on to the consumers, the same ought to be allowed pending physical verification of assets.

3B.236 Accordingly, the Petitioner has considered the capitalisation on account of EI Certificates deferment in respective Financial Years in which the disallowance was considered by the Hon'ble Commission in its MYT Order dated February 23, 2008.

3B.237 Further the Petitioner has also considered de-capitalisation of assets from FY 2002-03 to FY 2006-07 provided that the Hon'ble Commission also allows the loss on retirement of assets as per the Petition No. 46 of 2012 filed on November 19, 2012.

3B.238 Consequently, the Closing GFA as on March 31, 2007 will get revised which is tabulated as under:

**Table 3B 46: GFA from FY 2002-03 to FY 2006-07**

(in Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Opening GFA	1533	1552	1658	1923	2689
2	Opening CWIP	0	58	66	723	463
3	Investment in Year	76	115	923	519	207
a	REL Additions	0	0	325	39	0
b	EI Additions	0	0	59	-138	-100
c	Already allowed by DERC	76	115	539	619	306
4	Assets capitalised	19	106	266	779	316
5	Closing WIP	58	66	723	463	354
6	Less: Retirements	0	0	0	13	4
7	<b>Closing GFA</b>	<b>1552</b>	<b>1658</b>	<b>1923</b>	<b>2689</b>	<b>3001</b>

b) Capital Expenditure and Capitalisation from FY 2007-08 to FY 2017-18:

3B.239 As regards capital expenditure and capitalisation from FY 2007-08 onwards, the Petitioner has considered the capitalisation in accordance with the Audited Accounts. The REL Disallowances during FY 2007-08 and FY 2008-09 have not

been considered as it is expected that the Hon'ble Commission will implement Hon'ble ATE Judgment dated October 6, 2009.

**3B.240** Further, the Petitioner has also considered de-capitalisation of assets from FY 2007-08 to FY 2017-18 provided that the Hon'ble Commission also allows the loss on assets retirement of assets as per the Petition No. 46 of 2012 filed on November 19, 2012.

**3B.241** Based on the above submissions, the capital expenditure and capitalisation from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 47: Capital expenditure and capitalisation**

(in Rs. Cr.)

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Capex	247	377	305	302	207	267	309	298	360	484	780
Capitalisation	261	459	299	357	156	313	306	338	383	406	584
De-capitalisation	8	10	6	8	95	12	12	29	37	35	47

**3B.242** Accordingly the GFA from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 48: Gross Fixed Assets from FY 2007-08 to FY 2017-18**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Opening GFA	3001	3254	3702	3995	4343	4404	4705	4999	5307	5654	6025
B	Capitalisation during FY	261	459	299	357	156	313	306	338	383	406	584
C	De-capitalisation	8	10	6	8	95	12	12	29	37	35	47
D	Closing GFA	3254	3702	3995	4343	4404	4705	4999	5307	5654	6025	6561
E	Average GFA	3127	3478	3848	4169	4374	4555	4852	5153	5480	5839	6293

**3B.243** The Petitioner requests the Hon'ble Commission to allow the GFA from FY 2007-08 to FY 2017-18 as stated in above table.

c) Means of finance:

**3B.244** The Petitioner has considered the funding of capitalisation from FY 2002-03 to FY 2017-18 in debt-equity ratio of 70:30 after deducting actual consumer contribution capitalised from FY 2002-03 to FY 2017-18 (unspent consumer

contribution not considered) in terms of Hon'ble ATE directions in Judgment dated February 23, 2015.

d) Funding of capital expenditure from FY 2002-03 to FY 2006-07:

3B.245 The means of finance from FY 2002-03 to FY 2006-07 as considered by Hon'ble Commission in Tariff Order dated February 23, 2008 is tabulated below:

**Table 3B 49: Funding of capex from FY 03 to FY 07 as per Order dated 23.02.2008**

(in Rs. Cr)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Capex	76	115	923	506	203
B	Closing value of sundry creditors				21	
C	Financing Required	71	115	923	527	203
	Funding					
D	Consumer Contribution	12	57	60	39	48
E	APDRP Grants	0	19			
F	APDRP Loans	0	19			
G	Depreciation utilisation	57	20	143	88	120
H	Internal accruals	1	0	95	154	41
I	Loan	1	0	221	359	96
J	Closing value of sundry creditors			21		
K	Total	71	115	539	639	306

3B.246 During the Policy Direction Period, the funding of capital expenditure was allowed instead of capitalisation in the following priority:

- Consumer contribution
- APDRP Grant/ Loan
- Unutilised depreciation including available unutilised depreciation of previous years
- Balance funds required-assumed normative debt to equity ratio of 70:30.

3B.247 In case of EI, only capitalisation was disallowed. However in case of REL Purchase, both capital expenditure and capitalisation was disallowed.

3B.248 The implementation of Hon'ble ATE directions with respect to REL Purchases will also lead to revision in depreciation from FY 2002-03 to 2006-07. The revised depreciation so computed has been considered for computing means of finance

from FY 2002-03 to FY 2006-07. The utilisation of depreciation is tabulated as under:

**Table 3B 50: Revised Utilisation of depreciation from FY 03 to FY 07**

(in Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Depreciation during FY	77	104	111	129	180
2	Means of finance					
A	Working Capital	20	26	26	0	0
B	Loan repayment	0	0	0	30	6
C	Capex	57	77	85	99	174
3	Unutilised if any	0	0	0	0	0

3B.249 Balance funds are assumed to be funded in normative debt to equity ratio of 70:30. The revised means of finance from FY 2002-03 to FY 2006-07 after considering REL purchase is tabulated below:

**Table 3B 51: Revised means of finance from FY 03 to FY 07**

(in Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Capex	76	115	923	506	203
B	Closing value of sundry creditors				21	
C	Financing Required	71	115	923	527	203
	Funding					
D	Consumer Contribution	0	0	1	16	23
E	APDRP Grants	0	19			
F	APDRP Loans	0	19			
G	Depreciation utilisation	57	77	85	99	174
H	Internal accruals	4	0	245	124	2
I	Loan	10	0	572	288	4
J	Closing value of sundry creditors			21		
K	Total	71	115	923	527	203

e) Funding of capitalisation from FY 2007-08 to FY 2017-18:

3B.250 For calculation of debt-equity during respective Financial Years, the amount of consumer contribution capitalised has been deducted from the capitalisation during and ratio of 70:30 has been applied on the remaining amount to calculate the amount of debt and equity pending implementation of Hon'ble ATE Directions

in various Judgments.

3B.251 The financing of investment capitalised from FY 2007-08 to FY 2017-18 has been shown below:

**Table 3B 52: Financing of Investment capitalised from FY 2007-08 to FY 2017-18**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Capitalisation	261	459	299	357	156	313	306	338	383	405	584
B	De-capitalisation	8	10	6	8	95	12	12	29	37	35	47
C	Consumer contribution	20	96	53	57	13	69	47	67	81	67	537
D	Net	232	352	239	292	48	232	247	241	266	304	72
E	Equity (30%)	70	106	72	88	14	70	74	72	80	91	139
F	Debt (70%)	163	247	168	204	33	163	173	169	186	213	325

f) Funding of change in working capital from FY 2002-03 to FY 2017-18:

i. Funding of working capital in debt-equity ratio of 70:30:

3B.252 The Hon'ble Commission has also applied the proposed formula for net-worth for the computation of means of finance for working capital which is contrary to the findings of this Hon'ble ATE in Judgment dated July 31, 2011 (Appeal 52 of 2008) which states as under:

*"43. Regulation 5.8 provides formula for calculating the Regulated Rate Base for a particular year wherein **working capital is clearly one of the elements so much so that any change in the normative working capital has to be included.***

*44. Regulation 5.9 sets out the formula for computing the Return on capital employed by multiplying the weighted average cost of capital with the Regulated Rate Base. As mentioned above, **Regulation 5.10 stipulates formula to compute the weighted cost of capital which precedes on a clear belief that the debt equity ratio of 70% and 30% has to be accounted for.***

*45. The Learned Counsel for the Appellant, while refuting the submission of the State Commission that the approach adopted by the State Commission was on the basis of the normal industry practice by referring to the tariff orders of the 4 State Commissions. The Appellant has cited Tariff orders of Karnataka State Commission, Himachal Pradesh State*

*Commission, Jharkhand State Commission and the Gujarat State Commission. It is noticed from the regulations of these State Commissions have different Regulations for the interest on Working Capital and have treated Working Capital separate from the Regulated Rate Base and do not have the concept of Return on Capital Employed as provided in the Delhi Commission's Regulations. Under these circumstances, the Delhi Commission is directed to re-compute the Weighted Average Cost of Capital for each year of the Control Period along with the carrying cost and apply on the respective years Regulated Rate Base for allowance of Return on Capital Employed according to its Regulations. This issue is answered in favour of the Appellant." (Emphasis supplied)*

3B.253 As evident from above, the Hon'ble ATE directed the Hon'ble Commission to allow the funding of working capital in debt-equity ratio of 70:30 since the Tariff Regulations applicable in Delhi have the concept of RRB which includes working capital unlike the practice of separately allowing interest on working capital adopted by the Regulatory Commissions in other states. However the Hon'ble Commission instead of implementing the directions of Hon'ble ATE has chosen to allow the funding of working capital based on the formulae of net-worth as proposed in Tariff Order dated July 31, 2013 which is contrary to the directions of the Hon'ble ATE.

3B.254 Therefore, the funding of working capital has been considered in debt-equity ratio of 70:30 based on the directions given by Hon'ble ATE in Judgment dated July 31, 2011 (Appeal 52 of 2008).

- ii. Funding of opening balance of working capital not be changed as per DERC MYT Regulations, 2011:

3B.255 The Hon'ble Commission in Tariff Order dated September 29, 2015 stated that the Petitioner has wrongly interpreted Clause-5.11 of Tariff Regulations, 2011 that only the working capital for the period and not entire working capital during second control period is required to be funded in debt-equity ratio of 70:30.

3B.256 It is submitted that the Hon'ble Commission in its Tariff Order dated September 29, 2015 did not deal with any of the reasons given by the Petitioner which are as

under:

- a) Clause-5.11 read with Clause-1.2 of DERC MYT Regulations, 2011 clearly states that working capital, i.e., the change in working capital and not entire working capital during second control period is required to be funded in debt-equity ratio of 70:30. The Hon'ble Commission has not even relied on Clause-1.2 of DERC MYT Regulations, 2011 in Tariff Order dated September 29, 2015.
- b) Clause-5.11 deals only with the funding of fresh investments and working capital during the period and nowhere provides for retrospective application of regulations. Clause-5.11 does not even contemplate a retrospective operation. It is settled law that an Act or Regulation has to provide expressly for retrospective application for such Act or provisions to be enforced in a retrospective manner. In fact the Tariff Regulations do not and cannot in law provide for retrospective application. It is settled law that delegated legislation cannot have retrospective application unless and until the main Statute (here the Electricity Act, 2003) contemplates that delegated legislation in the form of regulations could be made with retrospective application. Electricity Act does not in fact provide or contemplate that regulations could be made thereunder which would have retrospective operation. In fact, a delegatee such as this Hon'ble Commission, cannot in the absence of the Electricity Act, 2003 or the Delhi Reform Act 2000 specifically empowering it to do so, make Regulations with retrospective operation. Reference may be had in this regard to the following Judgments:
  - Shakti Tubes Limited Vs State of Bihar : (2009) 7 SCC 673 paras 24-25;
  - Binani Zinc Limited Vs Kerala State Electricity Board (2009) 11 SCC 244 para 36;
  - Kusumam Hotels Private Ltd Vs Kerala State Electricity Board &Ors: (2008) 13 SCC 213 paras 23,24, 36;
  - Meghalaya SEB vs Meghalaya SERC &Byrnihat Industries Association: 2010 ELR (APTEL) 0940, paras 14,35-38;
  - Nani Sha vs State of Arunachal Pradesh (2007) 15 SCC 406, at page 413 (Para 13);
  - Union of India vs Kartick Chandra Mondal (2010) 2 SCC 422, at page 426 (para 15);
  - Anil Chandra v Radha Krishna Gaur (2009) 9 SCC 454, at page 461 (para 19);
  - KeshavanMadhava Menon v. State of Bombay, 1951 SCR 228;
  - Dayawati v Inderjit (1966) 3 SCR 275 (para 9);



- Subodh S Salaskar v Jayaprakash M Shah (2008) 13 SCC 689 at page 700;
- Workmen v Firestone Tyre & Rubber Co. of India (P) Limited., (1973) 1 SCC 813, at page 839;
- Ahmedabad Mfg. and Calico Printing Co Ltd., v S G Mehta, ITO, 1963 Supp (2) SCR 92;
- LIC v Escorts Ltd., (1986) 1 SCC 264, at page 317;
- Zile Singh v State of Haryana (2004) 8 SCC 1, at page 9 (Paras 13, 14 and 15);

3B.257 The Hon'ble Tribunal in Judgment dated 06.01.2014 (Appeal 222 of 2012) has also ruled as under:

*“32. It is settled law that an Act or Regulation has to provide expressly for retrospective application for such Act or provisions to be enforced in a retrospective manner. **The Act and the relevant Regulations do not contain any provision which empower the Petroleum Board to retrospectively apply the tariff order. Such retrospective application cannot be read into the Act under the garb of consumer's interests...**”(Emphasis added)*

3B.258 The Hon'ble Commission by retrospective regulation of Clause-5.11 which does not even provide the same has acted contrary to all the aforesaid Judgments.

- Consideration of 30% of working capital funded through depreciation during policy direction period equal to loan:

3B.259 The Hon'ble Commission in Tariff Order dated September 29, 2015 stated that Policy direction period was applicable only upto FY 2006-07. However, the Hon'ble Commission has ignored the following:

- The funding of working capital during policy direction period, i.e., Rs. 71.85 Crore was considered to be funded through depreciation and the same therefore does not reflect in equity or debt balance upto FY 2011-12. When the funding of Rs. 71.85 Crore is not a part of equity balance upto FY 2011-12 then how the same can be deducted from the opening equity.
- In case the same logic is to be applied then whether the 30% of Rs. 71.85

Crone is considered as a part of equity from FY 2007-08 to FY 2011-12 as per directions given by Hon'ble ATE in Appeal 52 of 2008.

- c) Whether the Petitioner has till now received any return or interest on depreciation utilised for funding of capex or working capital during Policy Direction period?

**3B.260** Accordingly, the Petitioner has considered the funding of working capital from FY 2002-03 to FY 2006-07 through depreciation and has not claimed any interest or equity on the same. The working capital from FY 2007-08 to FY 2011-12 has been considered to be funded in debt-equity ratio of 70:30. The working capital from FY 2012-13 onwards has been considered to be funded through 100% debt. The financing of change in Working Capital from FY 08 to FY 18 has been shown below:

**Table 3B 53: Financing of working capital**

(in Rs. Cr.)												
S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Financing of working capital	257	15	150	75	88	-78	2	129	-48	68	61
B	Equity (30%)	77	4	45	23	26	0	0	0	0	0	0
C	Debt (70%)	180	10	105	53	61	-78	2	129	-48	68	61

**3B.261** It may be noted that the Hon'ble Commission in the Tariff Order dated 28.03.2018 has allowed various expenses forming part of O&M expenses for the aforesaid period which would result in revision of working capital requirement for the year. Hence, it is requested that the Hon'ble Commission while reviewing the Working Capital requirement for the respective year, consider the revised O&M expenses including the expenses allowed in the latest Tariff Order.

- g) Details of consumer contribution:

**3B.262** The average consumer contribution from FY 2002-03 to FY 2017-18 is tabulated below:

**Table 3B 54: Consumer contribution**

(in Rs. Cr.)												
S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Opening Balance	40	60	156	209	266	279	347	394	462	542	609
B	Additions during the year	20	96	53	57	13	69	47	67	81	67	72
C	Closing Balance	60	156	209	266	279	347	394	462	542	609	682
D	Average Consumer Contribution	50	108	182	237	272	313	371	428	502	576	645

h) Details of Grants:

3B.263 The average grants from FY 2002-03 to FY 2017-18 are tabulated below:

Table 3B 551: Grants

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Opening Balance	19	19	19	19	19	19	19	19	19	19	19
B	Additions during the year	0	0	0	0	0	0	0	0	0	0	0
C	Closing Balance	19	19	19	19	19	19	19	19	19	19	19
D	Average Grant balance	19	19	19	19	19	19	19	19	19	19	19

i) Depreciation:

3B.264 During Policy Direction Period, the depreciation was allowed only on opening GFA and not the additions during the year. The implementation of directions of Hon'ble ATE in Judgment dated October 6, 2009 (Appeal 36 of 2008) shall lead to revision in GFA. Accordingly, the Petitioner has computed the revised depreciation based on revision in GFA from FY 2002-03 to FY 2006-07 as under:

Table 3B 56: Computation of depreciation from FY 2002-03 to FY 2006-07

(in Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Opening GFA	1533	1552	1658	1923	2689
2	Additions	19	106	266	779	316
A	REL Additions	0	0	3	61	69
B	EI Additions	0	0	169	586	100
C	Already allowed by DERC	19	106	93	132	147
3	Retirement	0	0	0	13	4
4	Closing GFA	1552	1658	1923	2689	3001

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
5	Rate of depreciation	6.69%	6.69%	6.69%	6.69%	6.69%
6	Depreciation	77	104	111	129	180
7	Depreciation allowed by DERC	77	104	111	117	125
8	<b>Difference</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>55</b>
9	<b>Acc. Depreciation</b>	<b>460</b>	<b>564</b>	<b>675</b>	<b>803</b>	<b>983</b>

3B.265 As regards the depreciation from FY 2007-08 to FY 2015-16, the Hon'ble Commission has been deriving the rates from the audited accounts of the Petitioner instead of considering the same as per the rates specified in DERC Tariff Regulations.

**Table 3B 57: Comparison between Audited Accounts and Regulatory Books**

S. No	Particulars	Audited Accounts	Regulatory books
1	Basis of rates	Schedule XIV (Companies Act, 1956)	DERC MYT Regulations, 2011
2	Asset depreciated upto	95% of original cost of asset	90% of original cost of asset
3	Life of asset	As per CERC Notification no. L-7/ 25 (5)/ 2003- CERC dated 26 March 2004 or independent valuer's certificate whichever is lower	DERC MYT Regulations, 2011

3B.266 Since the basis of rates for depreciation, life of assets and the value of assets on which depreciation is allowable is different as per the Audited Accounts and that allowable as per DERC MYT Regulations, 2011, the depreciation during FY 2012-13 ought to be allowed as per the rates specified in DERC MYT Regulations, 2011. Further, the Hon'ble Supreme Court in Judgment 2007 (3) SCC 33 has held as under:

*"the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure."*

3B.267 Further as regards rate of depreciation, the Hon'ble APTEL in Judgment dated 30.09.2019 (Appeal 246 of 2014) has directed the Hon'ble Commission as under:

*"23.4.4 In the light of these provisions and facts, we are of the opinion that the Respondent Commission ought to have computed the average*

*depreciation rate strictly based on Tariff Regulations, 2011 and none else. It is a settled principle of law that once Regulations have been framed and are put in place, the same should be followed scrupulously by all stakeholders including the State Commission. Therefore, we decide this issue in favour of the Appellant."*

**3B.268** Accordingly, the Petitioner has calculated the depreciation after excluding consumer contribution from the Gross Fixed Assets in accordance with DERC Tariff Regulations, 2007, DERC MYT Regulations, 2011 and DERC Tariff Regulations, 2017. The Petitioner is now submitting the total depreciation from FY 2007-08 to FY 2017-18 as under:

**Table 3B 58: Depreciation from FY 2007-08 to FY 2017-18**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Average GFA	3127	3478	3848	4169	4374	4555	4852	5153	5480	5839	6294
B	Average Consumer Contribution and Grants	68	126	201	256	291	332	389	447	521	594	664
C	Average assets net of consumer contribution	3059	3352	3647	3913	4083	4223	4463	4707	4960	5245	5630
D	Average depreciation as above	3.61%	3.65%	3.66%	3.66%	3.67%	3.67%	3.68%	3.69%	3.70%	3.72%	4.79%
E	<b>Depreciation</b>	<b>110</b>	<b>122</b>	<b>133</b>	<b>143</b>	<b>150</b>	<b>155</b>	<b>164</b>	<b>174</b>	<b>184</b>	<b>195</b>	<b>270</b>

**3B.269** The cumulative depreciation on fixed assets from FY 2002-03 to FY 2017-18 is tabulated below:

**Table 3B 59: Cumulative Depreciation on fixed assets from FY 2007-08 to FY 2017-18**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Opening balance of cumulative depreciation	983	1094	1216	1349	1493	1642	1797	1962	2135	2319	2514

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
B	Additions during FY 2013-14	110	122	133	143	150	155	164	174	184	195	270
C	Closing balance of cumulative depreciation	1094	1216	1349	1493	1642	1797	1962	2135	2319	2514	2783

3B.270 The detailed computation of asset class-wise depreciation has been provided in the formats.

3B.271 As regards utilisation of depreciation, the Hon'ble Commission in Tariff Order dated July 31, 2013 ruled as under:

*"3.169 The proposed utilisation of depreciation i.e., 70% of the total depreciation towards repayment of loan and increase in equity to the extent of 30% of the Depreciation is not in accordance with the MYT Regulations, 2007. Further Regulations 5.12 and 5.19 of MYT Regulations indicate clearly that the depreciation has to utilized for repayment of loans. The Commission is of the view that there is no justification in the Petitioner's proposal of utilizing 70% of depreciation towards repayment of loan and the balance towards equity capital. The Commission has therefore considered the entire depreciation towards repayment of loan."*

3B.272 Accordingly, the depreciation has been utilised for repayment of loan during respective financial years.

j) Working Capital

3B.273 The Working Capital from FY 2007-08 to FY 2017-18 has been calculated in accordance with DERC Tariff Regulations.

3B.274 Accordingly, the Working Capital Calculation from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 60: Working Capital Requirement**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	O&M Expenses	298	345	504	439	462						

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	O&M Expenses-1 Month	25	28	42	37	38						
2	Receivables	3011	3069	4352	5236	6109	6393	6573	7653	7064	7743	8122
A	Receivables-2 Months	502	512	725	873	1018	1066	1095	1276	1177	1291	1354
3	Less: PP Cost	2380	2364	3289	4086	4802	5843	6174	6781	6177	6719	6738
A	PP Cost- 1 Month	198	197	274	341	400	487	514	565	515	560	562
4	Total WC Requirement	328	343	493	569	657	579	581	710	663	731	792
5	Working capital allowed	72	328	343	493	569	657	579	581	710	663	731
6	<b>Difference</b>	<b>257</b>	<b>15</b>	<b>150</b>	<b>75</b>	<b>88</b>	<b>-78</b>	<b>2</b>	<b>129</b>	<b>-48</b>	<b>68</b>	<b>61</b>

3B.275 The Working capital as shown above has been considered for calculation of Regulated Rate Base from FY 2007-08 to FY 2017-18.

k) Debt and Equity

3B.276 The Hon'ble Commission in its Tariff Order dated September 29, 2015 limited the average equity to 30% of the Regulated Rate Base instead of considering average equity during the year. Such treatment is contrary to Transfer Scheme, DERC MYT Regulations, 2007 and DERC MYT Regulations, 2011. As per the Transfer Scheme, the debt-equity mix of the assets transferred to the Petitioner was as under:

**Table 3B 61: Debt-Equity ratio as per Transfer Scheme**

S. No	Particulars	Amount (Rs. Cr.)	Percentage
1	GFA	1533	
2	Accumulated Depreciation	383	25%
3	Equity	460	30%
4	Debt	690	45%

3B.277 As per the Judgment of Hon'ble Supreme Court dated February 15, 2007 in Civil Appeal No. 2733/06, transfer scheme is binding on all including the Hon'ble Commission during Policy direction period. Therefore the funding of the fixed

assets covered under transfer scheme cannot be altered.

3B.278 It is further submitted that the Hon'ble Commission shifted from the approach of funding capital expenditure to the approach of funding capitalisation with notification of MYT Regulations, 2007 on May 30, 2007 which was made applicable from March 1, 2008 to FY 2011-12. Regulation 5.10 of MYT Regulations, 2007 states as under:

*"5.10 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1+D/E} \right] * r_d + \left[ \frac{1}{1+D/E} \right] * r_e$$

Where,

*D/E is the Debt to Equity Ratio and for the purpose of determination of tariff, **debt-equity ratio as on the Date of Commercial Operation in case of new distribution line or substation or capacity expanded shall be 70:30.** Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The interest rate on the amount of equity in excess of 30% treated as notional loan shall be the weighted average rate of the loans of the Licensee for the respective years and shall be further limited to the prescribed rate of return on equity in the Regulations. Where actual equity employed is less than 30%, the actual equity and debt shall be considered.  $r_d$  is the Cost of Debt and shall be determined at the beginning of the Control Period after considering Licensee's proposals, present cost of debt already contracted by the Licensee, and other relevant factors (risk free returns, risk premium, prime lending rate etc.);*

*$r_e$  is the Return on Equity and shall be determined at the beginning of the Control Period after considering CERC norms, Licensee's proposals, previous years' D/E mix and other relevant factors. The cost of equity for the Wheeling Business shall be considered at 14% post tax."*

**(Emphasis supplied)**

3B.279 As evident from aforesaid Regulation, the Hon'ble Commission shall adopt debt-equity ratio of 70:30 in case of new distribution assets. The said clause does not apply for the assets transferred under privatization and the assets added upto February 29, 2008.



3B.280 Also Regulation 5.11 of MYT Regulations, 2011 states as under:

*“5.11 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1+D/E} \right] * r_d + \left[ \frac{1}{1+D/E} \right] * r_e$$

*Where,*

*D/E is the Debt to Equity Ratio and for the purpose of determination of tariff, debt-equity ratio for the asset capitalized shall be 70:30. Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The interest rate on the amount of equity in excess of 30% treated as notional loan shall be the weighted average rate of the loans of the Licensee for the respective years and shall be further limited to the prescribed rate of return on equity in the Regulations. Where actual equity employed is less than 30%, the actual equity and debt shall be considered:*

*Provided that the Working capital shall be considered 100% debt financed for the calculation of WACC;*

***Provided further that the Debt to Equity Ratio for the assets covered under Transfer Scheme, dated July 1, 2002 shall be considered as per the debt and equity in the transfer scheme;***

***...” (Emphasis supplied)***

3B.281 The aforesaid Regulation clearly states that the debt to equity ratio for the assets covered under transfer scheme shall be considered as per the debt and equity in the transfer scheme. Therefore, when the funding of the assets covered under transfer scheme is required to be maintained as per the Transfer Scheme, 2001, i.e., debt-equity of 45% to 30%.

3B.282 Further, the Hon’ble ATE vide Judgment dated November 28, 2014 (Appeal No. 61 of 2012) has ruled as under:

*“102. In the light of above discussions we find force in the contentions of the Appellant and direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recomputed RoCE payable to the Appellant. The issue is decided in favour of the Appellant.”*

3B.283 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance

for calculation of average debt during the year. The average debt from FY 2002-03 to FY 2017-18 is tabulated below:

**Table 3B 62: Average Debt Balance from FY 2002-03 to FY 2017-18**

(in Rs. Cr.)

S. No	Financial Years	Opening	Capex	Working Capital	Repayment	Closing	Average
1	FY 2002-03	690	10		0.00	700	695
2	FY 2003-04	700	19		0.12	718	709
3	FY 2004-05	718	571		0.12	1289	1004
4	FY 2005-06	1289	288		30	1548	1418
5	FY 2006-07	1548	4		6	1546	1547
6	FY 2007-08	1546	163	180	155	1734	1640
7	FY 2008-09	1734	247	10	173	1817	1775
8	FY 2009-10	1817	168	105	182	1908	1862
9	FY 2010-11	1908	204	53	191	1974	1941
10	FY 2011-12	1974	33	62	197	1872	1923
11	FY 2012-13	1872	163	-78	187	1769	1821
12	FY 2013-14	1769	173	2	177	1768	1769
13	FY 2014-15	1768	169	129	177	1889	1829
14	FY 2015-16	1889	186	-48	189	1838	1864
15	FY 2016-17	1838	213	68	184	1936	1887
16	FY 2017-18	1936	325	61	194	2129	2032

3B.284 The average equity from FY 2002-03 to FY 2017-18 is tabulated below:

**Table 3B 63: Average Equity Balance from FY 2002-03 to FY 2017-18**

(in Rs. Cr.)

S. No	Financial Years	Opening	Capex	Working Capital	Closing	Average
1	FY 2002-03	460	4		464	462
2	FY 2003-04	464	0		464	464
3	FY 2004-05	464	245		709	587
4	FY 2005-06	709	124		832	771
5	FY 2006-07	832	2		834	833
6	FY 2007-08	834	70	77	981	907
7	FY 2008-09	981	106	4	1091	1036
8	FY 2009-10	1091	72	45	1208	1149
9	FY 2010-11	1208	88	23	1318	1263
10	FY 2011-12	1318	14	26	1359	1338
11	FY 2012-13	1359	70		1428	1393
12	FY 2013-14	1428	74		1502	1465
13	FY 2014-15	1502	72		1575	1539

S. No	Financial Years	Opening	Capex	Working Capital	Closing	Average
14	FY 2015-16	1575	80		1654	1615
15	FY 2016-17	1654	91		1746	1700
16	FY 2017-18	1746	139		1885	1815

3B.285 The Petitioner has considered the aforesaid debt and equity balance for the purpose of computation of RoCE.

l) Advance against depreciation

3B.286 Clause-5.18 of DERC MYT Regulations, 2007 and Clause-5.21 of DERC MYT Regulations, 2011 provides for the provision of Advance against depreciation (AAD) during FY 2016-17. In accordance with the aforesaid set of computations, there is no AAD. However the Petitioner requests the Hon'ble Commission to allow AAD if any as per the assumptions considered in Tariff Order.

m) Regulated Rate Base (RRB)

3B.287 Based on the above discussions, the Regulated Rate Base (RRB) during FY 2017-18 is tabulated below:

**Table 3B 64: Regulated Rate Base**

(in Rs. Cr.)

S. No	Particulars	Opening	FY 08	FY 09	FY10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	OCFA	3001											
2	Working Capital	72											
3	Accumulated Dep.	983											
4	Accumulated dep. on de-cap	5											
5	Accumulated CC	58											
6	Opening RRB		2036	2417	2665	2922	3148	3180	3183	3277	3494	3551	3750
7	Change in RRB		122	230	106	149	-102	77	83	67	82	110	195
8	Investments capitalised		252	448	293	349	61	301	294	308	346	372	537
9	Depreciation		110	122	133	143	150	155	164	174	184	195	270
10	Acc. Dep. On de-cap assets		3	4	1	2	46	4	8	21	23	21	29

S. No	Particulars	Opening	FY 08	FY 09	FY10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
11	Consumer contribution		20	96	53	57	13	69	47	67	81	67	72
12	Change in Working Capital		257	15	150	75	88	-78	2	129	-48	68	61
13	Closing RRB	2036	2417	2666	2922	3148	3180	3183	3277	3494	3551	3750	4036
14	RRB for the year		2355	2549	2869	3073	3208	3143	3231	3450	3499	3685	3924

#### Rate of Interest from FY 2007-08 to FY 2011-12:

**3B.288** As discussed in para-3.B.182 to 3.B.193, the trigger point for truing-up the interest rates of loans from FY 2007-08 was deviation in PLR of schedule commercial banks by more than +/-1%. Since the trigger point from truing-up of loans from FY 2007-08 to FY 2011-12 has already been achieved, the Petitioner has considered the actual rate of interest for the purpose of computation of RoCE from FY 2007-08 to FY 2011-12.

#### Rate of Interest from FY 2012-13 to FY 2016-17:

**3B.289** The Petitioner vide various letters has already submitted the actual rates of interest from FY 2007-08 to FY 2016-17. The Petitioner requests the Hon'ble Commission to consider the actual rate of interest for capex loans from FY 2007-08 to FY 2016-17 which is as under:

**Table 3B 65: Actual rates of Interest**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	Rate of Interest	10.34%	11.12%	11.52%	12.30%	14.16%	14.47%	14.15%	14.25%	14%	13.56%

#### Rate of Interest for FY 2017-18:

**3B.290** As regards interest of loans for the purpose of computation of FY 2017-18, DERC Tariff Regulations, 2017 states as under:

*"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 trued up on the basis*

*of prevailing bank rate as on 1st April of the respective financial year:*

*Provided that the rate of interest availed through open tendering process (Competitive Bidding) among Scheduled Banks, Financial Institutions etc., shall not be trued up.*

*86. Interest on working capital shall be payable on normative basis notwithstanding that the Utility has availed any loan for the working capital.”*

As per the aforesaid Regulation, the interest on working capital is required to be trued-up based on bank rate as on 1<sup>st</sup> April of the year plus margin as specified by the Hon’ble Commission for control period.

The margin referred to in Regulation 85 of the Tariff Regulations, 2017 is specified by the Hon’ble Commission in Regulation 22 of the Business Plan Regulations, 2017. The said Regulation provides for the margin to be the difference in weighted average rate of interest on actual loan as on 1st April 2017 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1 April 2017 provided that total rate of interest (i.e., MCLR plus margin) shall not exceed 14.00%.

**3B.291** The Hon’ble Commission in Tariff Order dated 31.08.2017 determined the margin for working capital/ Regulatory Assets loans as under:

*“4.132 The Commission has approved Return on Equity in terms of Regulation 2 (16) of the DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 for computation of weighted average rate of interest for funding of Regulatory Asset/ accumulated revenue gap through debt and equity shall be considered at 14.00% on pre-tax basis in its Business Plan Regulations, 2017. Further, the rate of interest has been considered at 14.00% with margin of 6.10% over one (1) year Marginal Cost of fund based lending rate (MCLR) of SBI based weighted average rate of interest on actual portfolio of the Petitioner for funding of revenue gap.”*

3B.292 The variations in SBI MCLR from 1<sup>st</sup> April 2017 to 1<sup>st</sup> April 2018 as notified by SBI on its website is tabulated below:

**Table 3B 66: Variations in SBI MCLR**

S. No	Particulars	Percentage
1	SBI MCLR as on 1 <sup>st</sup> April 2017	8%
2	SBI MCLR as on 1 <sup>st</sup> April 2018	8.15%
3	SBI MCLR as on 1 <sup>st</sup> April 2019	8.55%

Therefore in terms of Tariff Regulations, 2017 even if a truing-up on the basis of MCLR had to take place, the allowable rate of interest would have to be 6.10% (Margin) plus applicable MCLR, i.e., 8%. Hence the trued-up rate of interest would be 14.10% capped to 14%. It could not be 13.06% as considered by the Hon'ble Commission in Tariff Order dated 31.07.2019.

3B.293 Accordingly the weighted average rate of interest for debt portion for FY 2017-18 is tabulated below:

**Table 3B 67: Weighted Average rate of Interest for debt portion for FY 2017-18**

Particulars	Amount (Rs. Cr.)	Rate of interest
Loan availed	1093	13.01%
WC loan	545	14%
Weighted average rate		13.34%

3B.294 Accordingly the weighted average cost of capital from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 68: Weighted Average Cost of Capital (WACC)**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Average Debt	1640	1776	1863	1941	1923	1821	1769	1829	1864	1887	2032
B	Average Equity	907	1036	1149	1263	1338	1393	1465	1539	1615	1700	1815
C	Total	2547	2811	3012	3204	3261	3214	3234	3367	3478	3587	3848
D	Cost of Debt	10.34%	11.12%	11.52%	12.30%	14.16%	14.47%	14.15%	14.25%	14.00%	13.56%	13.34%
E	Return on Equity	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
F	Weighted Average Cost of Capital (WACC)	12.36%	12.92%	13.23%	13.76%	14.92%	15.13%	14.99%	15.05%	14.93%	14.72%	14.59%

Return on Capital Employed (RoCE)

3B.295 Based on the aforesaid discussion, the RoCE from FY 2007-08 to FY 2017-18 is tabulated below:

**Table 3B 69: RoCE from FY 2007-08 to FY 2017-18**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Average Equity	907	1036	1149	1263	1338	1393	1465	1539	1615	1700	1815
2	Average Debt	1640	1776	1863	1941	1923	1821	1769	1829	1864	1887	2032
3	Rate of Equity	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%
4	Rate of Debt	10.34%	11.12%	11.52%	12.30%	14.16%	14.47%	14.15%	14.25%	14.00%	13.56%	13.43%
5	WACC	12.36%	12.92%	13.23%	13.76%	14.92%	15.13%	14.99%	15.05%	14.93%	14.72%	14.59%
6	RRB	2355	2549	2869	3073	3208	3143	3231	3450	3499	3685	3924
7	RoCE	291	329	380	423	478	476	484	519	522	542	573

3B.296 The Petitioner requests the Hon'ble Commission to allow RoCE based on above computations.

R&M Expenses from FY 2007-08 to FY 2016-17:

3B.297 As regards truing-up of R&M Expenses, the Hon'ble Commission in Tariff Order dated February 23, 2008 ruled as under:

*"4.151 Any variations on account of R&M Expenses shall not be trued up and any surplus or deficit on account of over or under achievement shall be to the account of the Petitioner. The Commission clarifies that though the value of GFA is subjected to truing up at the end of the Control Period, the Commission, however, shall not true-up R&M Expenses as a consequence of the same."*

**3B.298** However, the Hon'ble Commission in Tariff Order dated July 31, 2013 trued-up R&M Expenses based on the provisional GFA approved from FY 2007-08 to FY 2011-12 for respective years. The said treatment was challenged by the Petitioner before Hon'ble ATE in Appeal 266 of 2013. Similarly TPDDL, another Distribution Licensee supplying electricity in Delhi also challenged the same issued before Hon'ble ATE in Appeal 271 of 2013. While Petitioner's appeal 266 of 2013 is pending adjudication before Hon'ble ATE, Judgment has been pronounced in TPDDL's Appeal 271 of 2013 on July 20, 2016. In the said Judgment, Hon'ble ATE has rejected the contentions of TPDDL and upheld the treatment given by the Hon'ble Commission in Tariff Order dated July 31, 2013.

**3B.299** The Petitioner in its Petition for Truing-up of FY 2016-17 and ARR and Tariff for FY 2018-19 distinguished its case with that of TPDDL. However, the Hon'ble Commission without dealing with the contentions of the Petitioner in Tariff Order dated 28.03.2018 has stated as under:

*"3.311 The Petitioner is cherry picking the issues in interpretation of Hon'ble APTEL judgments in its favour. On some of the issues against the other Distribution Licensee, in that case the Petitioner argued that with the DISCOMs are operating in different conditions, therefore same judgement need not be applied.*

*3.312 However, the Commission is adopting similar treatment for all the Distribution Licensee operating in the area of GoNCTD and same tariff regulations are applicable to all the Distribution Licensees."*

**3B.300** Without pre-judice to the contentions in Appeal 266 of 2013, the Petitioner is now claiming R&M Expenses by applying approved K factor in Tariff Order dated February 23, 2008 and September 29, 2015 (Impact on account of revision in K factor claimed at Issue No. 15) based on revised GFA estimated after the implementation of Hon'ble ATE directions with respect to REL, EIC and provisionally approved lower capitalisation from FY 2007-08 to FY 2016-17 as under:

**Table 3B 70: Revised R&M expenses from FY 2007-08 to FY 2016-17**

(in Rs. Cr.)

S. No	Particulars	FY 08*	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
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**Petition for Truing-up for FY 2018-19**





S. No	Particulars	FY 08*	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	Opening GFA	3001	3254	3702	3995	4343	4404	4705	4999	5307	5654
2	K factor	3.79%	3.79%	3.79%	3.79%	3.79%	2.62%	2.62%	2.62%	2.62%	2.62%
3	R&M Expenses	9	123	140	151	165	115	123	131	139	148
4	Revised R&M Expenses as computed at Table-3B 3	6	84	109	120	131	94	102	109	117	127
5	Difference	3	40	31	31	33	21	21	22	22	21
6	Efficiency factor	0%	2%	3%							
7	<b>Difference</b>	<b>3</b>	<b>39</b>	<b>30</b>	<b>31</b>	<b>33</b>	<b>21</b>	<b>21</b>	<b>22</b>	<b>22</b>	<b>21</b>

\*Claimed for one month, i.e., March 2008

# K factor to undergo a change in terms of affidavit filed by Hon'ble Commission in Appeal 297 of 2015

**3B.301** Without pre-judice to the Appeal pending before Hon'ble ATE, the Petitioner requests the Hon'ble Commission to allow the impact based on revision in GFA.

**3B.302** The total impact on account of capitalisation related issues as discussed above along with carrying cost is tabulated below:

**Table 3B 71: Impact of capitalisation**

(in Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening	0	2	10	30	78	196	430	761	1129	1567	2089	2667	3305	4059	4884	5834
2	Additions	2	8	19	45	110	194	254	252	269	268	245	222	236	209	219	149
3	Closing	2	10	29	76	189	390	684	1013	1398	1836	2334	2888	3541	4268	5103	5983
4	Average	1	6	20	53	134	293	557	887	1264	1701	2211	2778	3423	4163	4994	5909
5	Carrying cost	9%	9%	9%	9%	9%	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0	0	1	3	7	40	77	116	169	253	332	417	518	616	731	827
7	Grand Closing	2	10	30	78	196	430	761	1129	1567	2089	2667	3305	4059	4884	5834	6810

**3B.303** Without prejudice to the contentions in the Appeal, the Petitioner requests the Hon'ble Commission to allow the aforesaid impact on account of capitalisation related issues in ARR of the Petitioner.

### Issue-7: Truing-up of FY 2007-08 (11 Months) as per Regulation-12.1:

#### ISSUE IN BRIEF:

**3B.304** This issue pertains to the non-implementation of the Judgment of the Hon'ble ATE with respect to the truing up for the 11 month period for FY 2007-08.

LIST OF DATES:

S.No	Date	Event
1.	30.05.2007	Regulation-12.1 of the MYT Regulations, 2007 states as under: <b><i>“12.1 Performance review and adjustment of variations of the Distribution Licensees for year FY 2006-07 and period between 1<sup>st</sup> April 2007 and commencement of MYT tariff order shall be done based on the actual/audited information and prudence checks by the Commission and shall be considered during the Control Period.” (Emphasis added)</i></b>
2.	28.05.2009	The Hon’ble Commission at para 3.57 to para 3.62 in its Tariff Order 28.05.2009 trued-up the revenue gap for FY 2007-08. However, the Hon’ble Commission did not allow the actual Expenses including depreciation for first 11 months of FY 2007-08 based on Regulation-12.1 of the MYT Regulations, 2007.

S.No	Date	Event
3.	12.07.2011	<p>The aforesaid issue of disallowance of actual expenses including depreciation for first 11 months, contrary to Regulation-12.1 of the MYT Regulations, 2007, was challenged before this Hon'ble APTEL in Appeal 142 of 2009. This Hon'ble Tribunal in Judgment dated 12.07.2011 directed the Hon'ble Commission as under:</p> <p><b><i>"13.8. We do not agree with the findings of the State Commission as these are in contravention of the Regulations. According to Regulations, the Control Period commences from the date of the MYT order and all the targets set for the controllable parameters shall be applicable for the control period according to Regulation 4.7. The targets set for the control period cannot be made applicable retrospectively from 1.4.2007 as the commencement of MYT order was only from 1.3.2008. The Regulations 5.41 and 5.42 referred to by the learned senior counsel for the State Commission pertain to the control period only and not the period prior to that. Further Regulation 12.1 clearly provides for true up of the period between 1.4.2007, date of commencement of the MYT order during the control period. Thus the controllable parameters for the period 1.4.2007 to 28.2.2008 were required to be trued up during the control period as per the Regulations. This issue is, therefore, decided in favour of the Appellant and the State Commission is directed to true up the financials for the period 1.4.2007 to 28.2.2008 at the earliest and allow the costs with carrying cost."</i></b>  <b><i>(Emphasis added)</i></b></p>
4.	26.08.2011	The Hon'ble Commission did not implement the directions of Hon'ble APTEL in Tariff Order dated 26.08.2011 and remained silent on this issue.
5.	13.07.2012	The Hon'ble Commission did not implement the directions of Hon'ble APTEL in Tariff Order dated 13.07.2012 and remained silent on this issue.

S.No	Date	Event
6.	31.07.2013	<p>The Hon'ble Commission in its Tariff Order dated 31.07.2013 stated as under:</p> <p><i>"3.24 The Commission is Truing up for FY 2011-12 and determining ARR for FY 2013-14 in accordance with the MYT Regulations, 2007 &amp; 2011 respectively. The truing up of 11 months of the FY 2007-08 requires proper scrutiny and examination of the issues involved. The Commission is therefore of the view that for truing up of 11 months of FY 2007-08, prudence check has to be carried out and the impact of the same will be given once the prudence check is carried out."</i></p>
7.	2013-2014	<p>The Hon'ble Commission directed the Petitioner to submit the audited statement pertaining to first 11 months in different formats at different points of time. The Petitioner submitted the same as per the directions of the Hon'ble Commission.</p>
8.	23.07.2014	<p>However, the Hon'ble Commission in Tariff Order dated 23.07.2014 stated as under:</p> <p><b><i>"3.107 As per the Policy Direction Period, the return on equity and interest on loan is linked to the change in the equity and debt based on the capital expenditure made by the Petitioner. Whereas, as per the MYT Regulations, 2007, the return on capital employed is based on the capitalization of the assets of the Petitioner."</i></b></p> <p><b><i>3.108 The Petitioner has not provided details of the capital investment made during FY 2007-08 (11 months) on the basis of which the return on equity and debt is also required to be reviewed in line with the Policy Direction Period."</i></b></p> <p><b><i>3.109 In view of the above, the Commission had provided final opportunity to the Petitioner to make submissions for the purpose of true up of 11 months (01.04.2007 - 29.02.2008) by March 31, 2014. The Petitioner submitted the audited month wise P&amp;L statement only where in no information was submitted pertaining to capital investment." (Emphasis added)</i></b></p>

S.No	Date	Event
9.	19.08.2014	The Petitioner vide letter number RA/ 2014-15/ 01/ A/ 337 dated 19.08.2014 requested the Hon'ble Commission to specify the format in which the information is required by the Hon'ble Commission to undertake truing-up of first 11 months of FY 2007-08 as the Petitioner has already submitted all the information pertaining to FY 2007-08 including month-wise financial audited statements to the Hon'ble Commission.
10.	3.09.2014	The Hon'ble Commission, vide letter dated 3.09.2014 informed the Petitioner that the audited financial statements as per Companies Act, 1956, including balance sheet, cash flow statements, profit and loss accounts, schedules and all other relevant notes to accounts etc.
11.	3.11.2014	The Petitioner, vide letter number RA/ 2014-15/01/A/522 dated 3.11.2014 submitted the Audited Statements for 11 months in the requisite format.
12.	28.11.2014	<p>This Hon'ble APTEL, in its Appeal 61 Judgment, once again directed the Hon'ble Commission as under:-</p> <p><b><i>"23. The eighth issue is related to Truing up the financial for the period 1.4.2007 to 28.2.2008. The Appellants have submitted that the Delhi Commission has not implemented the directions of the Tribunal in judgment reported as 2011 ELR (APTEL) 1196 in Appeal No. 142 &amp; 147 of 2009, wherein this Tribunal directed the Delhi Commission to true up the financials from 01.04.2007 to 28.02.2008.</i></b></p> <p><b><i>24. The Commission in its reply has submitted that the Commission required audited accounts and the Appellant only on 25.06.2013 has submitted those accounts, hence the same will be considered and necessary true-up will be made.</i></b></p> <p><b><i>25. In the light of categorical submission that required true up would be made, the Commission is directed to carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying costs."</i></b></p>

S.No	Date	Event
13.	2.03.2015	<p>This Hon'ble APTEL, once again, in its Appeal 177 Judgment, held as under:-</p> <p><i>"12. The ninth issue is regarding refusal to consider claims for truing up for the period 01.04.2007 to 28.02.2008.</i></p> <p><i>12.1 According to the Appellants, the State Commission has not implemented the decision of this Tribunal's judgment dated 12.07.2011 in Appeal no. 142 of 2009 directing the State Commission to true up the controllable parameters for the period 01.04.2007 to 28.02.2008 as the targets set up for the control period cannot be made applicable retrospectively from 01.04.2007 and as the commencing of the MYT order was only from 01.03.2008.</i></p> <p><i>12.2 According to Learned Counsel for the State Commission, the Commission required the audited accounts for the purpose of true-up and the same have been submitted by the Appellants only on 16.04.2013. The same will be considered and necessary true up will be made.</i></p> <p><i>12.3 Shri Amit Kapur, Learned Counsel for the Appellants submitted that the Commission has not considered the said issue in its latest tariff order dated 31.07.2013.</i></p> <p><i>12.4 This issue has also been dealt with by this Tribunal in its judgment dated 28.11.2014 in Appeal nos. 61 and 62 of 2012 wherein on the basis of the submissions made by Learned Counsel for the State Commission that the required truing up would be made, this Tribunal directed the State Commission to <b>carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying cost.</b> Accordingly, the issue is also decided with the same directions." (emphasis supplied)</i></p>

S.No	Date	Event
14.	29.09.2015	In Order dated 29.09.2015, in para 3.137 thereof, the Hon'ble Commission has undertaken truing-up of first 11 months of FY 2007-08 in terms of Regulation-12.1 of MYT Regulations, 2007. However, the Hon'ble Commission erroneously computed the depreciation as under: <ol style="list-style-type: none"> <li>Derived the rate of depreciation from the audited accounts for FY 2007-08.</li> <li>Applied the aforesaid rate to the opening GFA of FY 2007-08. The opening GFA of FY 2007-08 has been computed on the methodology applicable during first control period as per MYT Regulations, 2007 instead of on the actual numbers in terms of Regulation 12.1.</li> </ol>
15.	28.03.2018	The Hon'ble Commission has, in the tariff order simply stated, in Para 3.58 that the issue stands decided in the earlier Tariff Order dated 29.09.2015 and is <i>sub judice</i> before this Hon'ble Tribunal in Appeal No. 297 of 2015.
16.	31.07.2019	The Hon'ble Commission at Para 3.56 and 3.57 has simply reiterated its earlier stand in tariff order dated 28.03.2018. The issue has already been clarified in Tariff Order dated 29.09.2015 and needs no further deliberation as the matter is sub-judice before Hon'ble Tribunal.

**DETAILED SUBMISSIONS:**

**3B.305** The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) held ruled as under:

*"25. In the light of categorical submission that required true up would be made, the Commission is directed to carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying costs."*

**3B.306** The Hon'ble Commission in Tariff Order dated July 23, 2014 stated as under:

*"3.107 As per the Policy Direction Period, the return on equity and interest on loan is linked to the change in the equity and debt based on the capital expenditure made by the Petitioner. Whereas, as per the MYT Regulations, 2007, the return on capital employed is based on the capitalization of the assets of the Petitioner.*

*3.108 The Petitioner has not provided details of the capital investment made during FY 2007-08 (11 months) on the basis of which the return*

*on equity and debt is also required to be reviewed in line with the Policy Direction Period.”*

**3B.307** The Petitioner vide letter dated November 3, 2014 submitted the audited accounts for first 11 months of FY 2007-08.

**3B.308** The Hon’ble Commission in Tariff Order dated September 29, 2015 allowed the depreciation during first 11 months of FY 2007-08 based on the depreciation rate derived from audited statement of first 11 months of FY 2007-08. The relevant excerpts are reproduced below:

*“3.63 The Petitioner has claimed the depreciation at the rate of 6.69% instead of 3.60% as provisionally approved by the Commission for 11 months. However, the Commission has considered the actual rate of Depreciation based on the Audited financial statements for FY 2007-08 in accordance with Regulation 12.1 of MYT Regulations 2007. The additional allowance on account of revision in the rate of depreciation is as follows:*

***Provisionally approved Depreciation for FY 2007-08 (11 Months)***

Sl. No.	Particulars	Amount	Remarks
A	Depreciation as per audited financial statements for FY 2007-08	155.58	Audited financial statements
B	Opening GFA for FY 2007-08	2962.63	
C	Rate of Depreciation (%)	5.25	A/B
D	Rate of depreciation (%) as per MYT Regulations, 2007	3.60	
E	Average Rate of depreciation (%) for FY 2007-08 considering 11 months as per audited statements and 1 month as per MYT Regulations, 2007	5.11	$(C \times 11/12) + (D/12)$

**3B.309** Since the Hon’ble Commission changed its approach in Tariff Order dated September 29, 2015, the Petitioner claimed the rate of depreciation as 5.25% while claiming the impact in the Petition for Truing-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff of FY 2016-17.

**3B.310** In Tariff Order dated August 31, 2017 while allowing the impact on account of ROE and Interest on loan, the Hon’ble Commission held as under:

*“3.75 The Commission had allowed Return on Equity and Interest on*



*Loan on Net Capital Employedduring FY 2007-08 in its Tariff Order dtd. 29/09/2015 in the form of RoCE. As per the Policydirection, the Petitioner is also eligible for Interest on Loan and Return on Equity for thefunding requirement of Work in Progress (CAPEX) during FY 2007-08. Accordingly, theCommission has now allowed Interest on Loan and Return on Equity for funding requirementof Work in Progress (CAPEX) during FY 2007-08. The impact is indicated in Table 101: Impactas approved by the Commission on account of implementation Hon'ble APTEL Judgments (Rs.Cr.)."*

**3B.311** The Petitioner in Petition for True-up of FY 2017-18 and ARR and Tariff for FY 2019-20, stated that as per Hon'ble Commission's own statement in Tariff Order dated 28.03.2018 the impact of Truing-up of FY 2007-08 (first 11 months) is to be allowed as per Policy Direction Principles, therefore the rate of depreciation is also required to be considered as adopted during Policy Direction Principle, i.e., 6.69% instead of 5.25% derived from audited statements of FY 2007-08 (11 Months).

**3B.312** However, the Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

*"3.58 The Commission has already clarified this issue in Tariff Order dtd. 28.03.2018 and need no further deliberation at this juncture, as under:*

*"3.58 This issue has already been discussed and clarified in Tariff Order dated 29.09.2015 and requires no further deliberation at this juncture, as the matter is sub-judice before Hon'ble APTEL in Appeal No. 297/2015.""*

**3B.313** As regards above, it is submitted that

- a) The approach of the Hon'ble Commission regarding allowance of depreciation has resulted in different approaches being adopted for the same issue. On one hand, the Hon'ble Commission has derived the rate on the basis of audited accounts, i.e., 5.25% as against the depreciation rate of 6.69% adopted in Tariff Order dated February 23, 2008 and on the other hand, the Hon'ble Commission has derived the opening GFA approved in Tariff Order

dated February 23, 2008.

- b) The Hon'ble Commission, while determining the opening GFA for first 11 months of FY 2007-08, has reduced from the GFA, the average consumer contribution. In other words, the Hon'ble Commission has, from the GFA, reduced that portion of the GFA, which was ascribable to the consumer contributions capitalised. This principle of disallowance is only to be found in the MYT Regulations, 2007, which admittedly, does not apply for the aforesaid 11 month period. The Hon'ble Commission cannot, in law, apply those parts of the Regulations which they would like to apply for a period which is not covered in the Regulation at all.
- c) Without prejudice to the above, the Hon'ble Commission has also not implemented the Judgments of the Hon'ble ATE by refusing to include the assets capitalized without the EICs and those procured from REL.

**3B.314** Accordingly the depreciation has been computed by applying rate of 6.69% adopted during Policy Direction Period on actual Opening GFA arrived after implementation of Hon'ble ATE directions (Refer Table-3B. 56 of the Petition) as under:

**Table 3B 72: Depreciation during first 11 months of FY 2007-08**

S. No	Particulars	Amount (Rs. Cr.)
1	Opening GFA	3001
2	Rate of depreciation	6.69%
3	Depreciation for first 11 months	184
4	Depreciation allowed by DERC in Order dt. Sep 29, 2015	94
5	<b>Difference to be allowed now</b>	<b>90</b>

**3B.315** The depreciation allowed by the Hon'ble Commission during first 11 months of FY 2007-08 is tabulated below:

**Table 3B 73: Depreciation allowed by the Commission during first 11 months of FY 2007-08 in Tariff Order dated September 29, 2015**

(All in Rs. Cr.)

S. No	Particulars	11 Months	1 Month	Total
1	Opening GFA	2012	2012	2012
2	Additions to asset during the year	205	205	205

S. No	Particulars	11 Months	1 Month	Total
3	De-capitalisation during the year	8	8	8
4	Net assets capitalised	197	197	197
5	<b>Closing GFA</b>	<b>2209</b>	<b>2209</b>	<b>2209</b>
6	Average GFA	2111	2111	2111
7	Less: Average Consumer Contribution	161	161	161
8	Average GFA net of CC	1950	1950	1950
9	Rate of depreciation	5.25%	3.60%	5.11%
10	<b>Depreciation</b>	<b>94</b>	<b>6</b>	<b>100</b>

3B.316 The impact on account of truing-up of first 11 months of FY 2007-08 along with carrying cost is tabulated below:

**Table 3B 742: Impact along with carrying cost for first 11 months of FY 2007-08**

(Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	0	96	110	124	141	162	186	214	246	282	324
2	Additions	90										
3	Closing Balance	90	96	110	124	141	162	186	214	246	282	324
4	Average	45	96	110	124	141	162	186	214	246	282	324
5	Carrying cost rates	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	6	13	14	17	21	24	28	32	36	41	45
7	Grand closing balance	96	110	124	141	162	186	214	246	282	324	369

**PRAYER(S):**

3B.317 Without prejudice to the contentions in the pending Appeal, the Petitioner requests the Hon'ble Commission to consider the aforesaid impact on account the issue of Truing-up of FY 2007-08 (First 11 months) in ARR.

**Issue-8: Computation of AT&C Loss for FY 2009-10:**

**ISSUE IN BRIEF:**

3B.318 This issue pertains to the non-implementation of the Judgments of the Hon'ble ATE wherein the Hon'ble Commission was directed to re-compute the AT&C losses for FY 2009-10 using actual kWh figures recorded in the meters, instead of

computing kWh based on kVAh and power factor.

LIST OF DATES:

S.No	Date	Event
1.	26.08.2011	<p>In the Tariff Order, the Hon'ble Commission had, in para 4.8 thereof, trued-up the actual revenue on kWh basis, but nevertheless went ahead and disallowed sales by 44.41 MUs on the ground that the average power factor computed from kVAh and kWh figures shown by the Petitioner in Form 2.1(a) for industrial and commercial consumers, where kVAh billing is applicable, was abnormally high.</p> <p>The said disallowance was, in the submission of the Petitioner, incorrect, as the Hon'ble Commission used the actual power factor for FY 2010-11 to disallow the metered data in kWh for FY 2009-10. The energy meters directly record kWh figures, cannot be altered in the billing system. There is no manual intervention since the Petitioner does not read meters manually. The meter readings from all consumers of the Petitioner are directly downloaded from the hand-held devices and energy bills raised thereon. Both kVAh and kWh figures are recorded in the meters. Accordingly, the kWh figures do not change due to change in power factor or any other external factors. On the other hand, kVAh depends upon the power factor.</p>
2.	28.11.2014	The aforesaid findings in the above Order dated 26.08.2011 were set aside by this Hon'ble Tribunal vide its Appeal 61 Judgment.

S.No	Date	Event
3.	29.09.2015	<p>The Hon'ble Commission, in the Tariff Order dated 29.09.2015, stated as follows [Refer: para 3.104]:</p> <p><i>"3.104 The Commission has indicated the power factor to be applied in the respective Tariff orders for projection of revenue and accordingly the revenue has been estimated and considered in the respective tariff orders for the purpose of tariff fixation. The power factor derived from the data provided by the Petitioner for FY 2009-10 was not in line with either the power factor considered by the Commission for projection of revenue or actual power factor for the past period. It is observed that the Petitioner had submitted only one actual data i.e. kWh, whereas, for computation of billed amount in respect of the consumers where kVAh billing is approved in the Tariff Schedule, either actual kVAh or kWh together with power factor is required. In view of this, the Commission has filed Clarificatory Application before Hon'ble APTEL and the view on impact of AT&amp;C Loss for FY 2009-10 will be taken, as deemed fit and appropriate, after receipt of the judgment of Hon'ble APTEL in the said Clarificatory Application."</i></p>
4.	21.07.2017	A meeting was held with the officials of the Hon'ble Commission regarding prudence check for claim on account of the Hon'ble Tribunal's Judgments.
5.	25.07.2017	The Petitioner by its letter no. RA/2017-18/01/A/207 had provided the details sought by the Hon'ble Commission on the said issue.

S.No	Date	Event
6.	31.08.2017	<p>In its Tariff Order dated 31.08.2017, the Hon'ble Commission has simply placed reliance on the Tariff Order dated 29.09.2015 wherein it had held that it has indicated the power factor to be applied in the respective Tariff Orders for projection of revenue and accordingly the revenue has been estimated and considered in the respective tariff orders for the purpose of tariff fixation.</p> <p>The Hon'ble Commission has also held that the power factor derived from the data provided by the Petitioner for FY 2009-10 was not in line with either the power factor considered by the Hon'ble Commission for projection of revenue or actual power factor for the past period. The Hon'ble Commission appears to have misunderstood application of the power factor. In fact, the power factor for consumers differs and varies according to the consumption profile and the profile of the equipments used by the consumers. The Hon'ble Commission failed to understand the fact that the power factor cannot be the same as considered by the Hon'ble Commission for projection of revenue for the past period. Thus, in the submission of the Petitioner, the dispensation provided by the Hon'ble Commission is incorrect.</p> <p>The Hon'ble Commission has also held that the Petitioner had submitted only one actual data i.e. kWh, whereas, for computation of billed amount in respect of the consumers where kVAh billing is approved in the Tariff Schedule, either actual kVAh or kWh together with power factor is required. This finding is on the face of it, not in line with the Judgment of the Hon'ble Tribunal in Appeal No.61 of 2012 where it was held that the Hon'ble Commission has erred in computing kWh based on kVAh and power factor.</p>
7.	31.10.2017	The Hon'ble Tribunal vide its judgment dated 31.10.2017 has dismissed the said Clarificatory Application of the Hon'ble Commission.
8.	28.03.2018	However, in its tariff order dated 28.03.2018 (after the Clarificatory petition was dismissed), at Para No. 3.162-3.163, the Hon'ble Commission changed its stance and stated that the issue does not merit consideration at this point of time as the issue is <i>sub-judice</i> before Hon'ble Supreme Court of India.

S.No	Date	Event
9.	31.07.2019	In the Tariff Order at Para 3.103 – 3.105, the Hon'ble Commission has merely reiterated its findings in the earlier tariff order dated 28.03.2018.

**DETAILED SUBMISSIONS:**

**3B.319** The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has directed the Hon'ble Commission as under:

*"79. The perusal of the findings of the Commission in the Impugned Order would suggest that the Delhi Commission has failed to understand the working of the tri-vector meters installed at the consumers' premises by the Appellant. Basic electricity meters record only active power i.e. kWh consumed by the consumer. Tri-vector meters records all three vectors i.e. Active Power (kWh), Reactive Power (kVARh) and Apparent Power (kVAh). The principle parameter recorded by these meters is kWh. Other parameters are determined from this basic parameter based on instantaneous values of the current and voltage and their phaser angle. Therefore, the Commission has erred in computing kWh based on kVAh and power factor. It is interesting to note that the Commission has computed the average power factor for FY 2010-11 on the basis of kWh and kVAh recordings and computed kWh figures by reverse calculations using the kVAh figures for 2009-10 and average power factor for FY 2010-11.*

*80. In the light of above discussions we direct the Commission to recomputed the AT&C losses for FY 2009-10 using actual kWh figures as recorded in para 4.8 of the Impugned order. The issue is decided in favour of the Appellants."*

**3B.320** The Hon'ble Commission in Tariff Order dated September 29, 2015 ruled as under:

*"3.104 The Commission has indicated the power factor to be applied in the respective Tariff orders for projection of revenue and accordingly the revenue has been estimated and considered in the respective tariff orders for the purpose of tariff fixation. The power factor derived from the data provided by the Petitioner for FY 2009-10 was not in line with either the power factor considered by the Commission for projection of revenue or actual power factor for the past period. It is observed that the Petitioner had submitted only one actual data i.e. kWh, whereas, for computation of billed amount in respect of the consumers where*

*kVAh billing is approved in the Tariff Schedule, either actual kVAh or kWh together with power factor is required. In view of this, the Commission has filed Clarificatory Application before Hon'ble APTEL and the view on impact of AT&C Loss for FY 2009-10 will be taken, as deemed fit and appropriate, after receipt of the judgment of Hon'ble APTEL in the said Clarificatory Application."*

3B.321 The Hon'ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*"3.167 The Commission will consider the issue after the final Judgment of Hon'ble APTEL as the matter is still sub-judice in the Clarificatory Application filed by the Commission."*

3B.322 The Hon'ble Tribunal vide Judgment dated October 31, 2017 dismissed the clarificatory application filed by the Hon'ble Commission.

3B.323 However, the Hon'ble Commission in Tariff Order dated March 28, 2018 stated as under:

*"3.162 The Commission has analysed the petitioner submission as well as the direction of Hon'ble APTEL in appeal no 61 & 62 of 2012. Hon'ble APTEL has also clarified this issue in its judgment dtd. 31/10/2017 for Clarificatory application that the issue is sub judice before Hon'ble Supreme Court of India as follows:*

*"v) Disallowance due to wrong valuation of sales in kWh figures for FY 2009-10. (Pending in Civil Appeal Nos. 8660-61 of 2015 filed against Judgement dated 28/11/2014 in Appeal Nos. 61 and 62 of 2012)"*

*3.163 In view of the above, the Commission is of the view that this issue does not merit consideration at this point of time. "*

In Tariff Order dated July 31, 2019, the Hon'ble Commission has simply reiterated the statement given in Tariff Order dated March 28, 2018.

3B.324 The Petitioner respectfully submits that there is no stay on the operation of the Judgment of the Hon'ble ATE in Appeal No. 61/62 of 2012 and therefore, there is no legal embargo upon the Hon'ble Commission to implement the same, on the other hand, this Commission is legally bound to implement the same in the



absence of any stay of the same.

**3B.325** It is further submitted that the Hon'ble Tribunal in Judgment dated November 28, 2014 (Appeal 61 of 2012) has clearly held that kWh is the basic parameter based on which the other factors are derived in the meters irrespective of the billing of the consumer. The Hon'ble Commission in Para-4.8 of the Tariff Order has stated that the energy sales in kWh was verified by the Hon'ble Commission during prudence check exercise.

**PRAYER(S):**

**3B.326** Therefore, the Petitioner requests the Hon'ble Commission to implement the direction of Hon'ble ATE as per Judgment dated November 28, 2014. The computation of AT&C Loss for FY 2009-10 is tabulated below:

**Table 3B 75: AT&C Loss for FY 2009-10**

S. No	Particulars	Units	Now Approved
A	Units consumed at BRPL Periphery	MU	9700.62
B	Units billed	MU	7796.94
C	Amount billed	Rs. Cr.	3594.46
D	Distribution Loss	%	19.62%
E	Amount collected	Rs. Cr.	3573.98
F	Collection efficiency	%	99.43%
G	Units realised	MU	7752.52
H	AT&C Loss level	%	20.08%

**3B.327** The Hon'ble Commission determined the AT&C Loss Target for FY 2009-10 as 20.23%. Since the actual AT&C Loss during FY 2009-10 is 20.08%, the Petitioner is entitled for an incentive as per DERC MYT Regulations, 2007. The over-achievement on account of AT&C Loss for FY 2009-10 is tabulated below:

**Table 3B 76: Over-achievement of AT&C Loss during FY 2009-10**

Particulars	UoM	MYT Order	Actuals	Reference
AT&C Loss	%	20.23%	20.08%	A
Over achievement/ (Under achievement)	%	0.15%		B
Energy Input	MU	9700.62	9700.62	C
Units realised	MU	7738	7753	D=C*(1-A)
Average Billing Rate	Rs./ kWh	4.64	4.64	E

Particulars	UoM	MYT Order	Actuals	Reference
Amount realised	Rs. Cr.	3567	3574	
Over-achievement	Rs. Cr.		7	
Proposed to be transferred to consumers	Rs. Cr.		3.37	
Proposed to be retained	Rs. Cr.		3.37	
Less: E. Tax	Rs. Cr.		152	
Less: LPSC	Rs. Cr.		15	
<b>Total revenue</b>	<b>Rs. Cr.</b>		<b>3405</b>	

3B.328 The impact on account of re-computation of AT&C Loss of FY 2009-10 is tabulated below:

**Table 3B 77: Re-computation of AT&C Loss during FY 2009-10**

(Rs. Cr.)

S. No	Particulars	FY 2009-10
1	Revenue submitted by Petitioner	3408
2	Revenue considered in Tariff Order	3405
3	<b>Net Impact</b>	<b>3</b>

3B.329 The total impact including carrying cost is tabulated below:

**Table 3B 78: Impact along with carrying cost on account of revision of AT&C Loss during FY 2009-10**

(Rs. Cr.)

S. No	Particulars	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. Balance	0	4	4	5	6	6	7	8	9
2	Additions	3	0	0						
3	Cl. Balance	3	4	4	5	6	6	7	8	9
4	Average	2	4	4	5	6	6	7	8	9
5	Rate of interest	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	0.22	0.48	0.61	0.70	0.81	0.94	1.06	1.20	1.31
7	Grand Cl. Balance	4	4	5	6	6	7	8	9	11

**PRAYER(S):**

3B.330 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to consider the impact on account of the same.

**Issue-9: Revision in AT&C Loss Target of FY 2011-12**ISSUE IN BRIEF:

**3B.331** This issue pertains to the non-implementation of the directions of the Hon'ble ATE wherein the Hon'ble Commission was directed to re-fix the AT&C Loss targets for FY 2011-12 to 16% by relying on the promise held out by the Hon'ble Commission vide its letter dated March 8, 2011.

LIST OF DATES:

S.No	Date	Event
1.	30.05.2007	The first MYT period was from FY 2007-08 to 2010-11. The MYT Regulations, 2007 <i>inter alia</i> contemplated (in Regulation 4.8) that the AT&C loss level at the end of the current period for the Petitioner shall be at 17%.
2.	08.03.2011	<p>Prior to the Order of 10.05.2011 (set out below), by letter dated 8.03.2011 the Hon'ble Commission informed the Petitioner that the AT&amp;C loss target for 2011-12 would be as under:-</p> <p><i>“ The AT&amp;C loss target for FY 2011-12 will be the lower of the following two figures.</i></p> <p><i>i. Actual AT&amp;C loss for 2010-11 &amp;</i></p> <p><i>ii. Reduction at 1% over the AT&amp;C target for FY 2010-11”.</i></p> <p>Since the AT&amp;C loss targets for FY 2010-11 was 17%, the AT&amp;C loss target for FY 2011-12 in terms of the said letter dated 08.03.2011 was to be 16% i.e. ( i.e. 17%-1%).</p>
3.	10.05.2011	By Order dated 10.05.2011, the Hon'ble Commission extended the MYT Regulations, 2007 as well as the Control Period upto FY 2011-12. The said order, however, purported to suggest that the AT&C loss targets for FY 2011-12 for the Petitioner would be 15%.

S.No	Date	Event
4.	26.08.2011	<p>In the Tariff Order for the ARR and Tariff for FY 2011-12, the Hon'ble Commission determined the targeted loss level for FY 2011-12 at 15%. The Hon'ble Commission in its said Tariff Order was <i>inter alia</i> pleased to give the following reasoning for fixing the loss level for FY 2011-12 as under:-</p> <p><i>"5.44 The Commission vide Order dated 10<sup>th</sup> May, 2011 has fixed the AT&amp;C loss reduction target of BYPL as 18% for FY 2011-12. The Commission while fixing the targets has taken into consideration the general trend of the trajectory for target loss reduction during the Control Period (FY 2007-08 to 2010-11) as well as the actual performance claimed by the Petitioner for FY 2010-11. The Commission was of the opinion that it is in the public interest to consider the earlier trajectory and fix the target at a level that is lower than the actual achievement during FY 2010-11."</i></p> <p>It is worth note that the reasoning adopted by the Hon'ble Commission in its Order dated 26.08.2011 was identical to the reasoning given in its order dated 10.05.2011 for fixing the lower loss level of 15%.</p>
5.	28.11.2014	<p>The Order dated 26.08.2011 was carried in Appeal before the Hon'ble Tribunal in Appeal No.61-62/2012. By its judgment in Appeal 61 of 2012 ("<b>Appeal 61 Judgment</b>") the Hon'ble Tribunal was at para 72 <i>inter alia</i> pleased to direct the Hon'ble Commission to re-fix the AT&amp;C loss level for FY 2011-12 as per its letter dated 08.03.2011 and gave consequential relief to the Petitioner.</p>
6.	18.12.2014	<p>In the Tariff Petition leading up to the Tariff Order dated 29.09.2015, the Petitioner had <i>inter alia</i> sought implementation of the Appeal 61 Judgment and the Appeal 177 Judgment of the Hon'ble Tribunal.</p>
7.	02.03.2015	<p>In the subsequent judgment in Appeal No. 177 of 2012 ("<b>Appeal 177 Judgment</b>"), the Hon'ble Tribunal, in para 30.12 was <i>inter alia</i> pleased to record the fact that the AT&amp;C loss target for FY 2011-12 has to be refixed to 16% for the Petitioner as per the decision of the Hon'ble Tribunal in Appeal No.61-62/2012.</p>

S.No	Date	Event
8.	29.09.2015	In the Tariff Order dated 29.09.2015, the Hon'ble Commission has stated that the issue of AT&C Loss for FY 2011-12 has been discussed in the Appeal 14 Judgment and the Appeal 61 Judgment and the Hon'ble Commission has already given effect to the Appeal 14 Judgment. Further, the Hon'ble Commission has relied on Order dated May 2, 2011 and has stated that the AT&C Loss target for FY 2011-12 was set after considering the stakeholder's comments. The Hon'ble Commission has also stated that it has filed a Clarificatory Application before the Hon'ble Tribunal and the impact will be allowed once the same is decided by this Hon'ble Tribunal.
9.	31.08.2017	The Hon'ble Commission in its tariff order dated 31.08.2017 has merely referred to its finding in the Tariff Order dated 29.09.2015.
10.	31.10.2017	It is noteworthy to mention here that the Hon'ble Tribunal vide its judgment dated 31.10.2017 has dismissed the said Clarificatory Application of the Hon'ble Commission.
11.	28.03.2018	The Hon'ble Commission vide its tariff order dated 28.03.2018 stated that the matter is <i>sub judice</i> before Hon'ble Supreme Court of India and the same will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court.
12.	31.07.2019	The Respondent Commission in said Tariff Order at Para. 3.112 and 3.113 has stated that the matter is <i>sub judice</i> before Hon'ble Supreme Court and Hon'ble APTEL, and the same will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court in the pending appeal.

DETAILED SUBMISSIONS:

3B.332 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"72. In the light of above discussions we direct the Delhi Commission to refix the AT&C loss levels for the FY 2011-12 as per its letter dated 8.3.2011 and give consequential relief to the Appellants. The issue is decided in favour of the Appellants."*

3B.333 The Hon'ble Commission vide letter dated March 08, 2011 fixed the AT&C Loss Target for FY 2011-12 as under:

*"The AT&C loss target for FY 2011-12 will be the lower of the following two figures.*

*i. Actual AT&C loss for 2010-11: &*

*ii. Reduction at 1% over the AT&C target for FY 2010-11"*

3B.334 However, the Hon'ble Commission in Tariff Order dated September 29, 2015 has stated that a Clarificatory petition has been filed on the said issue which is pending adjudication before Hon'ble ATE. Similar stand has been taken by the Hon'ble Commission in Tariff Order dated August 31, 2017. The Hon'ble ATE vide Judgment dated October 31, 2017 has dismissed clarificatory application filed by the Hon'ble Commission.

3B.335 The Petitioner in Petition for True-up of FY 2016-17 and ARR and Tariff for FY 2018-19 requested the Hon'ble Commission to allow the impact on account of the aforesaid issue. However, the Hon'ble Commission in Tariff Order dated March 28, 2018 ruled as under:

*"3.97 This matter is sub judice before Hon'ble Supreme Court of India and the same has also been clarified by Hon'ble APTEL vide it's Order dated 31/10/2017 in the Clarificatory Appeal. Therefore, the view on this issue will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court of India in the pending Appeal (8660-61 of 2015). "*

3B.336 The Petitioner respectfully submits that there is no stay on the operation of the Judgment of the Hon'ble ATE in Appeal No. 61/62 of 2012 and therefore, there is no legal embargo upon the Hon'ble Commission to implement the same. In fact, the Hon'ble Commission is legally bound to implement the same in the absence of any stay of the same.

3B.337 It is further submitted that the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) remanded the matter of AT&C Loss of FY 2010-11 back to the Hon'ble Commission to examine as to whether the capex schemes submitted for AT&C Loss reduction during FY 2010-11 were not approved without any fault of the Petitioner and provide consequential relief if it is found that the Petitioner

is not at fault. The directions of Hon'ble ATE regarding FY 2010-11 and FY 2011-12 in Judgment dated March 2, 2015 (Appeal 177 of 2012) and November 28, 2014 (Appeal 61 of 2012) gives an understanding as under:

- a) AT&C Loss for FY 2010-11 to be revised to 18.82% in case it is found that the Petitioner has not been able to achieve AT&C Loss reduction due to non-approval of capex schemes by the Commission.
- b) AT&C Loss for FY 2011-12 to be re-determined in terms of letter dated March 8, 2011 which states that the loss level for FY 2011-12 shall be lower of actual AT&C Loss for FY 2010-11 or the AT&C Loss target for FY 2010-11 minus 1%.

Therefore, the AT&C loss target for FY 2011-12 becomes 17.82%, i.e., 18.82% minus 1%.

**3B.338** The Petitioner filed Petition No. 50 of 2015 for re-determination of AT&C Loss of FY 2010-11. However, the Hon'ble Commission vide Order dated May 18, 2018 has rejected the contention of the Petitioner with respect to AT&C Loss of FY 2010-11. The Petitioner has filed Appeal before Hon'ble ATE against the said Order which is pending adjudication.

**3B.339** Without pre-judice to the Appeal filed against Order dated May 18, 2018, the Petitioner has computed and claimed the impact on account of difference between original and revised AT&C Loss Target of FY 2011-12 in line with the directions of Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 of 2012) only as under:

**Table 3B 79: Impact due to revision in AT&C Loss Target for FY 2011-12**

(in Rs. Cr.)

S. No	Particulars	MYT Order	Actuals
1	AT&C Loss	16.00%	18.11%
2	Over achievement/ (Under achievement)	-2.11%	
3	Energy Input	10910	10910
4	Units realized	9164	8934
5	Average Billing Rate	5.15	5.15
6	Amount realized	4720	4601
7	Under-achievement		119
8	Considered in TO dt. July 31, 2013		168
9	Impact		49

PRAYER(S):

3B.340 It is requested that the above amount ought to be allowed along with carrying cost as under:

**Table 3B 80: Impact due to revision in AT&C Loss Target for FY 2011-12 along with carrying cost**

(Rs. Cr.)

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	53	61	70	80	92	105
2	Additions	49						
3	Cl. Balance	49	53	61	70	80	92	105
4	Average	24	53	61	70	80	92	105
5	Rate of interest	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	4	8	9	11	12	13	15
7	Grand Cl. Balance	53	61	70	80	92	105	120

3B.341 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact on account of revision in AT&C Loss of FY 2011-12.

**Issue-10: Non-revision of AT&C Loss for FY 2012-13 and FY 2013-14:**

ISSUE IN BRIEF:

3B.342 The Petitioner had challenged the issue of non-revision of AT&C losses for FY 2012-13 to FY 2014-15 before the Hon'ble ATE in Appeal No. 177 of 2012, Appeal No. 266 of 2013 and Appeal No. 235 of 2014. The Hon'ble ATE had, in its Judgment dated March 2, 2015 in Appeal No. 177 of 2012, read with its directions in its judgment in Appeal No. 61 of 2012, upheld the contentions of the Petitioner. This issue therefore pertains to the non-implementation of the said Judgments.

LIST OF DATES:

S.No	Date	Event
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S.No	Date	Event
1.	13.07.2012	<p>The second MYT period was from FY 2012-13 to 2015-16. The MYT Regulations, 2007 provided that closing of first control period shall be the opening of next control period. The MYT Regulations, 2011 states that <i>"the target AT&amp;C Loss levels to be achieved by each Distribution Licensee during each year of the Control Period shall be determined by the Commission based upon benchmarking, past trends, business plan submitted by Distribution Licensee and any other factor considered relevant by the Commission."</i></p> <p>The Hon'ble Commission in Tariff Order dated 13.07.2012 set the AT&amp;C Loss trajectory for second control period.</p>
2.	02.03.2015	The said finding was challenged in Appeal 177 of 2012. The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 177 of 2012) at Para-30.12 re-fixed the AT&C Loss target from FY 2012-13 to FY 2014-15.
3.	29.09.2015	In the Tariff Order dated September 29, 2015, the Hon'ble Commission has stated that the issue of AT&C Loss for FY 2011-12 has been discussed in the Appeal 14 Judgment and the Appeal 61 Judgment and the Hon'ble Commission has already given effect to the Appeal 14 Judgment. The Hon'ble Commission has also stated that it has filed a Clarificatory Application before the Hon'ble Tribunal and the impact will be allowed once the same is decided by this Hon'ble Tribunal.
4.	31.08.2017	The Hon'ble Commission in its tariff order dated August 31, 2017 has merely referred to its finding in the Tariff Order dated September 29, 2015.
5.	31.10.2017	It is noteworthy to mention here that the Hon'ble Tribunal vide its judgment dated 31.10.2017 has dismissed the said Clarificatory Application of the Hon'ble Commission.
6.	28.03.2018	The Hon'ble Commission vide its tariff order dated 28.03.2018 stated that the matter is <i>sub judice</i> before Hon'ble Supreme Court of India and the same will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court.
7.	31.07.2019	The Hon'ble Commission has simply reiterated its stand in tariff order dated 28.03.2018.

DETAILED SUBMISSIONS:

**3B.343** The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 and 178 of 2012) has ruled as under:

*"30.12 The State Commission has proposed AT&C loss reduction 1.27% below the target fixed for 2011-12(15%). Now the AT&C loss target for FY 2011-12 has to be refixed to 16% for BRPL as per the decision of this Tribunal in Appeal no. 62 of 2012. The State Commission has fixed AT&C loss target for 2014-15 as 12.5% which would mean a loss reduction of 3.5% in the control period of 3 years which seems reasonable and can be distributed to 1.05% reduction in 2012-13, 1.2% in 2013-14 and 1.25% in 2014-15 over the target of previous year i.e. AT&C loss target of 14.99%, 13.75% and 12.5% respectively. Lower target for 2012-13 has been fixed as the impugned order was passed on 13.07.2012, about 3½ months after the commencement of FY 2012-13. In this way, the target for FY 2014-15 will remain the same as decided by the Commission in the impugned order. Considering the performance in the past and the actual AT&C loss level, the above loss reduction trajectory will be reasonable. According decided.*

*30.13...When the target level for FY 2011-12 has to be refixed, the AT&C loss targets for FY 2012-13 to 2014-15 have also to be refixed by the State Commission accordingly."*

**3B.344** The Hon'ble Commission in Tariff Order dated March 28, 2018 ruled as under:

*"3.104 This matter is sub judice before Hon'ble Supreme Court of India and the same has also been clarified by Hon'ble APTEL vide it's order dated 31/10/2017 for AT&C Loss target of FY 2011-12 in the Clarificatory appeal. Further, it is noted that the directions of Hon'ble APTEL to revise the AT&C Loss target were linked with proposed AT&C Loss target of FY 2011-12. Therefore, the view on this issue will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court of India in the pending appeal."*

**3B.345** The Petitioner respectfully submits that there is no stay on the operation of the Judgment of the Hon'ble ATE in Appeal No. 61/62 of 2012 and therefore, there is no legal embargo upon the Hon'ble Commission to implement the same, on the other hand, this Commission is legally bound to implement the same in the

absence of any stay of the same.

3B.346 Without pre-judice to the contentions raised by the Petitioner in Appeal filed against Order dated May 18, 2018, the Petitioner has computed the impact on account of the aforesaid issue as per Para-30.12 of Hon'ble ATE Judgment dated March 2, 2015 (Appeal 177 of 2012) by considering AT&C Loss target for FY 2012-13 and FY 2013-14 as 14.95% and 13.75% respectively.

3B.347 The impact on account of revision in AT&C loss target from FY 2012-13 and FY 2013-14 is tabulated below:

**Table 3B 81: Impact due to revision of AT&C Loss Target from FY 2012-13 to FY 2013-14**

(in Rs. Cr.)

S. No	Particulars	FY 2012-13		FY 2013-14	
		ATE	DERC	ATE	DERC
1	AT&C Loss	14.95%	14.16%	13.75%	13.33%
2	Energy Input	11233	11233	11509	11509
3	Units realized	9553	9642	9926	9975
4	Average Billing Rate	6.27	6.27	6.89	6.89
5	Amount realized	5993	6049	6844	6877
6	<b>Difference</b>		<b>56</b>		<b>33</b>

3B.348 The aforesaid impact along with carrying cost is tabulated below:

**Table 3B 82: Impact due to revision of AT&C Loss Target from FY 2012-13 to FY 2013-14 along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	60	105	120	138	159
2	Additions	56	33				
3	Cl. Balance	56	93	105	120	138	159
4	Average	28	77	105	120	138	159
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	4	11	16	18	20	22
7	<b>Grand Cl. Balance</b>	<b>60</b>	<b>105</b>	<b>120</b>	<b>138</b>	<b>159</b>	<b>181</b>

#### PRAYER(S):

3B.349 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR.

### Issue-11: To allow increase in employee expenses corresponding to increase in consumer base:

#### ISSUE IN BRIEF:

3B.350 The claim of the Petitioner essentially is that the normative level of employee expenses for the period FY 2007-08 to FY2011-12 must be fixed taking into account the increase in the number of consumers in the Appellant's licensed area as has also been upheld by the Hon'ble ATE in Appeal No. 36 of 2008.

#### LIST OF DATES:

S.No	Date	Event
1.	6.10.2009	<p>This claim was also made with respect to the ARR for the first control period under the MYT Regulations, 2007 for FY 2007-08 to FY2011-12.</p> <p>This was considered by this Hon'ble Tribunal in its Appeal 36 Judgment. In para 73 of its Appeal 36 Judgment wherein at para 75 of the Appeal 36 Judgment, the Hon'ble Tribunal was <i>inter alia</i> pleased to direct the Hon'ble Commission to true up the employees expenses to the extent of increase in employees costs by increase in the consumer base.</p>
2.	26.08.2011	<p>In its Order, while undertaking the true up for FY 2008-09 and 2009-10 and determination of ARR, the Hon'ble Commission at para 3.102 to para 3.109, undertook the exercise of comparing the increase in the cost of the employees of the Petitioner with the increase in consumer base and found on facts that there was, in fact, no such co-relative increase. Hence, there was no challenge in that regard by the Petitioner in Appeal No.61-62/2012.</p>

S.No	Date	Event
3.	13.07.2012	<p>However, in the MYT order for the second control period i.e. FY2012-13 onwards, the Hon'ble Commission at para 4.176 to para 4.186 initiated a benchmarking exercise for the employee expenses, taking into account the increased consumer base as well as increase in sales and stated that the impact would be given once the benchmarking exercise is completed.</p> <p>The said MYT Order in fact took into account the increase in employees expense co-related with the increase in consumer base for all the 3 DISCOMs and found that the increase in employees expense of the Petitioner herein on this count was the most reasonable. While undertaking this exercise the Hon'ble Commission analyzed the actual numbers for the entire period from FY 2006-07 to FY 2011-12 for all the 3 DISCOMs.</p>
4.	31.07.2013	<p>Despite the fact that the Hon'ble Commission undertook the benchmarking exercise in this regard in the subsequent MYT order, while passing the Tariff Order dated 31.07.2013 for the FY2013-14 the Hon'ble Commission stated that it would allow such increase after completing the benchmarking exercise. The relevant extracts of the said order are set out herein below:-</p> <p><i><u>"3.112 As regard true up of the employees expenses to the extent of increased cost by increase in consumer base and salary hike comparable to sixth pay Commission's recommendations for employees other than erstwhile DVB employees, the Commission has initiated a benchmarking exercise for employee expenses taking into account the increased consumer base as well as increase in sales. This would also take into account the salary hike of employees other than the erstwhile DVB employees. The impact will be given once the benchmarking exercise is completed."</u></i></p> <p style="text-align: right;"><i>(emphasis supplied)</i></p>

S.No	Date	Event
5.	23.07.2014	In the proceedings leading upto the Tariff Order dated 23.07.2014 for FY 2014-15 (subject matter of Appeal No.235-236/2014), the Petitioner gave full and complete details of the increase in employees expense co-related with the increase in consumer base. However, the Hon'ble Commission did not carry out the benchmarking exercise, required to be carried out in terms of the Tariff Order dated 31.07.2013.
6.	29.09.2015	In its Tariff Order dated 29.09.2015, the Hon'ble Commission only referred to its earlier order dated 26.08.2011 and proceeded on the basis that since this portion of the order dated 26.08.2011 was not challenged in Appeal No. 61 and 62 of 2012, it has attained finality.
7.	31.08.2017, 28.03.2018 and 31.07.2019	The Hon'ble Commission, in the tariff orders, passed after aforesaid Tariff Order, has only stated that the matter does not merit consideration as it has already clarified the issue in the Tariff Order of 29.09.2015.

DETAILED SUBMISSIONS:

**3B.351** In the Petitioner's licensed area of supply, consumer base has increased by 59 % in FY 12 as compared to FY 2006-07 (FY 07: 10.9 Lakhs, FY 12; 17.33 Lakhs) and units billed have grown by 51 % in FY 2011-12 as compared to FY 2006-07 (Units billed 2007: 5872 MU, 2012: 8844 MU). The Petitioner is obligated, under the extant regulatory framework, to maintain standards in supply of electricity and to retain AT & C loss levels effectively. As per the Hon'ble ATE order, the Hon'ble Commission is required to factor in the increase in employee cost required due to increase in consumer base.

**3B.352** The Hon'ble ATE in Judgment dated October 6, 2009 (Appeal No. 36 of 2008) has held that the Delhi Commission should true up employee expense to the extent of increase caused by increase in consumer base. The relevant extracts are reproduced below:

*"74) Having gone through the impugned order we do find that the*

*Commission has not considered the issue of possible increase in the number of employees consequent on increase in the consumer base. Nor has the Commission ruled on the Petitioner's proposal to increase the salaries etc. The Commission has nonetheless assured to true up the employees expenses subject to prudence check. The Commission shall also take care of the related carrying cost. This should satisfy the Petitioner.*

*75) ... We thus conclude the issue of employees' expenses by saying that the: The Commission shall allow the expenses incurred towards the retirement benefit of SVRS optees pending decision of the Actuarial Arbitration Tribunal and shall true up the employee expenses to the extent of increase caused by increase in the consumer base..... "*

**3B.353** The Hon'ble Commission in Tariff Order dated July 31, 2013 stated as under:

*"3.112 As regard true up of the employees expenses to the extent of increased cost by increase in consumer base and salary hike comparable to sixth pay Commission's recommendations for employees other than erstwhile DVB employees, the Commission has initiated a benchmarking exercise for employee expenses taking into account the increased consumer base as well as increase in sales. This would also take into account the salary hike of employees other than the erstwhile DVB employees. The impact will be given once the benchmarking exercise is completed."*

**3B.354** The aforesaid benchmarking exercise has not found place in any of the tariff orders issued after July 31, 2013.

**3B.355** The Hon'ble Commission in Tariff Order dated August 31, 2017 added the impact claimed by the Petitioner in the Petition filed for Truing-up of FY 2014-15, Review of FY 2015-16, Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 to the normative allowed O&M Expenses and compared the same with actual O&M Expenses incurred during respective years during first control period. The Hon'ble Commission further stated that the normative O&M Expenses claimed are higher than the actual O&M Expenses and hence the impact has not been considered. The Hon'ble Commission in Tariff Order dated March 28, 2018 has maintained the same stand as in Tariff Order dated August 31, 2017.

**3B.356** As regards the aforesaid, it is submitted that Regulation 4.16(b)(i) of the MYT

Regulations, 2007, which read as under:

*“4.16 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*(a) Variation in revenue / expenditure on account of uncontrollable sales and power purchase shall be trued up every year;*

***(b) For controllable parameters,***

***(i) Any surplus or deficit on account of O&M expenses shall be to the account of the Licensee and shall not be trued up in ARR; and***

***(ii) Depreciation and RoCE shall be trued up at the end of Control Period”***

3B.357 Hence, the Regulations clearly contemplate that the difference between the norm and the actual, when the actual is less, is to enure to the benefit of the Petitioner. By not re-working the norm, as was mandated by the judgments of the Hon’ble Tribunal, the Hon’ble Commission has, in the Order dated August 31, 2017 negated the benefit which the Petitioner was entitled to under Regulation 4.16 (b)(i) of the MYT Regulations, 2007. This is contrary to the doctrine of relation-back. In terms of the said principle, the position of law as declared by the judgments of this Hon’ble Tribunal would “relate-back” to the date when the cause of action originally accrued to the Petitioner, i.e. to say when the original MYT Order dated February 23, 2008 was passed. It is on that legal principle that the Hon’ble Commission was required to re-work the norm as it originally ought to have been on February 23, 2008. The refusal of the Hon’ble Commission to do so on the grounds of subsequent events is a negation of the said principle.

3B.358 Further, it is submitted that the above observation of the Hon’ble Commission in Tariff Order dated August 31, 2017 is directly contrary to its own statement made before Hon’ble ATE in Review No. 7 of 2015. Same has been captured in Judgment dated May 15, 2015 as under:

*“6. According to Shri Pradeep Misra, Learned Counsel for Delhi Commission, all facts stated by the Appellant under this issue were already before this Tribunal and after considering all such facts a conscious decision has been taken by the Tribunal. Hence the review is impermissible. Para 167 of the judgment dated 28.11.2013 in Appeal no. 14 of 2012 wherein it was decided that employees expenses are controllable item under the MYT Regulations is fully applicable.*



*Further, from the data submitted by the Review Petitioners it is clear that the number of non-executive employees are decreasing whereas the number of executive employees are increasing year after year. **The Review Petitioners/Appellants being aware that employees of non-FRSR employees are controllable they have to adjust the expenses so that the same remain within the norms.***

(Emphasis added)

3B.359 As evident from the aforesaid, the Hon'ble Commission itself stated that the Petitioner is required to adjust the expenses so that the same remains within the norms. Presently, the actual O&M Expenses of the Petitioner are higher than the normative O&M Expenses allowed by the Hon'ble Commission. However the normative O&M Expenses are required to be revised based on the various directions of Hon'ble which may exceed the actual O&M Expenses. Revision in normative O&M Expenses in excess of actual O&M Expenses on account of the implementation of directions of Hon'ble ATE cannot be a reason for denial of requisite relief for the Petitioner.

3B.360 Further, the Hon'ble Commission did not also provide the computation in support of the benchmarking exercise as stated in Tariff Order dated July 31, 2013. The rejection of proposal of the Petitioner does not mean that the Hon'ble Commission ought not implement the directions of Hon'ble Tribunal.

3B.361 The Hon'ble Commission in its Tariff Order dated 31.07.2013 for FY 2013-14, undertook that it would allow such increase after completing the benchmarking exercise, as explained above. Accordingly, the Petitioner gave full and complete details of the increase in employee expense which co-related with the increase in consumer base. Therefore, in the respectful submission of the Petitioner, the Hon'ble Commission ought not to have, in its Tariff Order dated 29.09.2015, simply relied upon its Order dated 26.08.2011 to disallow the true up of the employees expenses to the extent of increase in employees costs by increase in the consumer base.

3B.362 Despite the earlier benchmarking exercise already carried out by the Hon'ble

Commission in the MYT order dated 13.07.2012 and despite the fact that all the details for increase in employees cost co-relative to the increase in consumer base were furnished to the Hon'ble Commission, its Tariff Order dated 29.09.2015 holds that the issue has attained finality as the issue had been addressed in the Tariff Order dated 26.08.2011.

**3B.363** In the respectful submission of the Petitioner, this is contrary to the directions of Hon'ble Tribunal as contained in the Appeal 36 Judgment. It is respectfully submitted that the directions contained in the Appeal 36 Judgment in the Petitioner's own case is binding on the Hon'ble Commission and is required to be implemented.

**3B.364** Without prejudice, it may be noted that the said judgment in Appeal No.14 of 2012 has been passed in the case of another DISCOM, namely TPDDL, whereas, the Petitioner has a judgment specifically on this issue, being the Appeal 36 Judgment. In the said judgment, the Hon'ble Commission's counsel had conceded that the Hon'ble Commission would allow an increase in employee costs based on increase in consumer base, which has been carried out till date, despite the fact that the Hon'ble Commission has not challenged the judgment on this issue. Thus, when there is a direct judgment on the facts of the present case, which is also admitted to by the Hon'ble Commission and the same has not been set aside, reliance on any judgment passed in the case of another DISCOM is completely irrelevant and unsustainable, in terms of Order 47, Rule 1 (explanation) of the Code of Civil Procedure, 1908.

**3B.365** Without prejudice to the above contentions, the judgment in Appeal No. 14 of 2012 is also distinguishable on facts as the Petitioner has a very different consumer mix, geographical license area and history of creation of larger regulatory assets and non-allowance of CAPEX than TPDDL. The same has repeatedly been noted by the Hon'ble Tribunal in various judgments, including those which the Hon'ble Commission has not implemented till date (such as Appeal No. 61 and 62 of 2012).

- 3B.366** In the respectful submission of the Petitioner, the Hon'ble Commission could not proceed on the premise that employee cost would reduce upon the introduction of newer technologies and techniques. The Hon'ble Commission would have to analyse on facts that the Capex which the Hon'ble Commission permitted the Discom to undertake did or would in fact reduce the need for man-power. In the absence of such factual determination, the Hon'ble Commission cannot presume that increase in Capex would automatically reduce employee cost.
- 3B.367** In fact, the Hon'ble Commission itself considered a consumer base based analysis in its subsequent order of 31.07.2013, where it undertook this benchmarking. Therefore, the subsequent grounds of denial, are in the respectful submission of the Petitioner, incorrect and merit reconsideration.
- 3B.368** In respect of the Hon'ble Commission's finding that that the additional claim of the Petitioner for the subsequent years of the first MYT period is more than its audited accounts and highly inflated, it is submitted that if the Hon'ble Commission had implemented the earlier judgments of this Hon'ble Tribunal in Appeal No. 36 of 2008 and Appeal No. 142 of 2009, the situation today of the actual expenses being allegedly less than the revised normative claim would not have arisen.
- 3B.369** Since in those years, the Hon'ble Commission had not implemented the judgments of Hon'ble Tribunal and revised the norms correspondingly, the Petitioner was obviously forced to restrain its expenditures to the limit of the incorrect norm being insisted upon by the Hon'ble Commission at that time.
- 3B.370** Today, the Petitioner is being deprived of the norm which it was legitimately entitled to have, on the ground that the Petitioner in obedience to the orders of the Hon'ble Commission, deprived itself of the expenses which it could have incurred and legitimately recovered.
- 3B.371** If the Hon'ble Commission had, at the correct time, fixed the norm as it ought to have, even if the Petitioner had not spent the allowable amount, it would still have gained by reason of the efficiency gain, which it was legitimately entitled to.

3B.372 It is submitted that the refusal to revise the norms on the ground that the actuals are allegedly less, is contrary to the entire concept of a normative tariff determination. In a normative tariff determination, the only consideration is whether the norm has been correctly set or not. The actual expenditure, whether more or less than the norm, is immaterial. This is supported by various judgments of Hon'ble Tribunal including in its judgment dated judgment dated 30.05.2014 in Appeal No. 147, 148 and 150 of 2013, wherein Hon'ble Tribunal held:

*"25. Let us examine the findings of the Tribunal in Appeal no. 190 of 2011.*

*"39. It cannot be disputed that the norms with regard to Operation & Maintenance Expenses is covered under Regulation 98.6 of the MYT Regulations of the State Commission. In terms of this Regulation 98.6, the determination of the O&M expenses for 3 years ending 31st March, 2010 subject to prudence check and escalated at the rate of 4% to arrive at the O&M expenses for the year 2011-12. The O&M expenses for the further period after 2011-12 are to be escalated at the rate of 5.72%. 40. The determination of O & M expenses under the Regulations of the State Commission is on normative basis. The very concept of allowing the O & M on normative basis is that the actual expenses is of no relevance thereafter and any variation on the normative O & M expenses is to the account of the Petitioner unless there is a specific consequence for such variation provided for in the Regulations itself. 41. The State Commission has determined the O&M expenses strictly in terms of Regulation 98.6. It is not the case of the Petitioner that the normative O&M calculated by the State Commission is not in accordance with Regulation 98.6. So, the main controversy revolves around the normative O&M expenses. 44. The reading of the above findings by the State Commission would make it clear that while determining Operation and Maintenance Expenses under Regulation 98.6, the State Commission failed to consider one time pay revision expenses and major overhaul expenses for computing normative O&M expenses for the 2nd control period.*

*45. In fact, the State Commission has accepted that increase in employee's cost due pay revision is uncontrollable. On this ground, the State Commission had allowed Rs 65.19 Cr towards employees' cost including pay revision costs of Rs 10.59 Cr for FY 2009-10. However, for the purpose of computing normative cost for 2nd Control period, Commission has considered Rs 54.6 Cr (65.19 - 10.59) as actual employees costs for FY 2009-10. This approach may not be correct. 46. With reference to one time major overhauling costs, the*

*Petitioner had indicated in its petition that it had deferred the major overhaul, which was scheduled for FY 2009-10 to FY 2010-11. Therefore, the actual R&M expenditure during FY 2009-10 was reduced by Rs 6.74 Cr on account of deferment of major overhaul. The State Commission had approved the reduced actual R&M expenditure. 47. The above aspect would clearly establish that major overhaul was part of approved O&M expenditure for FY 2009-10. But for its deferment to FY 2010-11, the Petitioner would have spent this amount on major overhaul and claimed as part of actual R&M expenditure for FY 2009-10. In that event, the State Commission would have considered the same for arriving the normative O&M expenses for the 2nd control period for the 2 to FY 2015-16.*

*48. This aspect is required to be considered by the State Commission and pass the necessary orders in the light of the above observations. On this issue, we remand the matter to the State Commission for fresh consideration. This point is answered accordingly."*

*26. Thus, the Tribunal has held that the O&M expenses have been allowed on normative basis and the variation in O&M expenses have to be on account of the Petitioner unless there is a specific consequence for such variation provided for in the Regulations. However, the Tribunal held that same uncontrollable expenditure which the State Commission failed to consider for computing the normative O&M expenses were required to be reconsidered."*

**3B.373** Further, in terms of the aforesaid judgment, the MYT Regulations, 2007 of the Hon'ble Commission had specified a clear and categorical consequence of the normative tariff determination. This is referred to in Regulation 4.16(b)(i) of the MYT Regulations, 2007, which read as under:

*"4.16 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*(a) Variation in revenue / expenditure on account of uncontrollable sales and power purchase shall be trued up every year;*

***(b) For controllable parameters,***

***(i) Any surplus or deficit on account of O&M expenses shall be to the account of the Licensee and shall not be trued up in ARR; and***

***(ii) Depreciation and RoCE shall be trued up at the end of Control Period"***

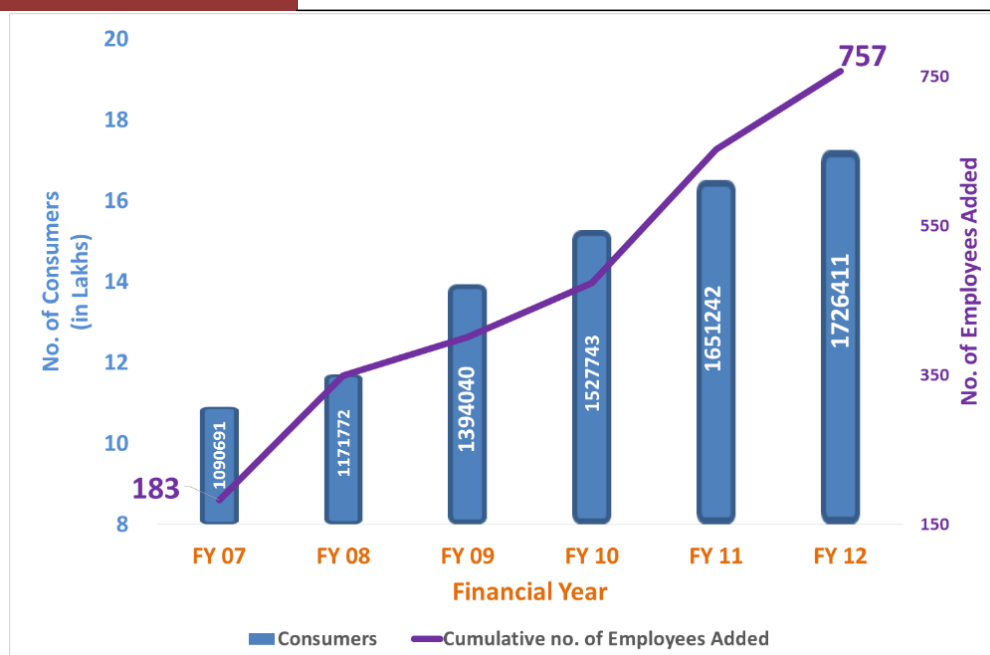
**3B.374** Hence, the Regulations clearly contemplate that the difference between the norm and the actual, when the actual is less, is to ensure to the benefit of the

Petitioner. By not re-working the norm, as was mandated by the judgments of this Hon'ble Tribunal, the Hon'ble Commission has, in the Order dated 31.8.2017 negated the benefit which the Petitioner was entitled to under Regulation 4.16 (b)(i) of the MYT Regulations, 2007. This is contrary to the doctrine of relation-back. In terms of the said principle, the position of law as declared by the judgments of this Hon'ble Tribunal would "relate-back" to the date when the cause of action originally accrued to the Petitioner, i.e. to say when the original MYT Order dated 23.02.2008 was passed. It is on that legal principle that the Hon'ble Commission was required to re-work the norm as it originally ought to have been on 23.02.2008. The refusal of the Hon'ble Commission to do so on the grounds of subsequent events is a negation of the said principle.

**3B.375** Without prejudice to the above, it is submitted that even if it were assumed for the purpose of argument that the actuals were less than the revised norm (as claimed by the Petitioner), and even if it were assumed on a demurrer that the earlier judgments of this Hon'ble Tribunal had not directed a revision of the norms, but had directed a true-up on actuals, even on that basis, the Petitioner would be entitled to its actual expenditure.

**3B.376** It is further submitted that the Petitioner has added considerable number of employees during the MYT Control period to cater to the needs of the business growth as shown in the figure below:

**Figure 1: Additional recruitment to meet business growth**



**3B.377** As per the DERC MYT Regulations, sales is an uncontrollable factor because the licensee has a universal obligation to provide electricity to any consumer. Therefore, to meet with the business growth, the licensee is forced to employ additional manpower. Under these circumstances, the Hon'ble Tribunal had directed the Hon'ble Commission to true up the employees expenses to the extent of increased cost by increase in consumer base. The Hon'ble Commission has already trued up the consumer base of the Petitioner for the First MYT Control Period but is yet to implement the judgment of the Hon'ble ATE. The impact of increase in consumer base on the employee cost is estimated below:

**Table 3B 83: Increase in employee expenses from FY 08 to FY 12**

(Rs. Cr.)							
S. No	Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
1	Employee Expenses in the base year	181					
2	No. of Consumers served during base year	1090691					
3	Employee Expenses per consumer in the base year	1659					
4	Escalation Factor		4.66%	4.66%	4.66%	4.66%	4.66%
5	Increase in employee expenses over first MYT Control Period after applying escalation factor		1736	1817	1902	1990	2083

S. No	Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
6	Actual number of consumers served during first Control Period		1171772	1394040	1527743	1651241	1733007
7	Increase in number of consumers served y-o-y basis		81081	222268	133703	123498	81766
8	<b>Increase in employee Expenses based on number of consumers</b>		<b>14</b>	<b>40</b>	<b>25</b>	<b>25</b>	<b>17</b>

Table 3B 84: Impact on account of increase in employee expenses along with carrying cost

(Rs. Cr.)												
S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. Balance	0	15	60	95	134	173	198	228	263	302	346
2	Additions	14	40	25	25	17	0	0	0	0	0	0
3	Cl. Balance	14	55	86	120	151	173	198	228	263	302	346
4	Average	7	35	73	108	143	173	198	228	263	302	346
5	Rate of interest	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	1	5	10	14	21	26	30	35	39	44	48
7	Grand Cl. Balance	15	60	95	134	173	198	228	263	302	346	394

**Note** To the extent of increase in consumer base

#### PRAYER(S):

3B.378 Without prejudice to the contentions in the pending Appeal(s), the Hon'ble Commission is requested to expeditiously implement the Hon'ble ATE judgment and to true-up the employee expenses to the extent of increased cost by increase in consumer base along with carrying costs.

#### **Issue-12: Efficiency factor for FY 2010-11:**

#### ISSUE IN BRIEF:

3B.379 This issue pertains to the non-implementation of the Judgments of the Hon'ble ATE in Appeal No. 177 of 2012, whereby the Hon'ble Commission was directed to reconsider the efficiency factor of 4% for FY 2010-11.

#### LIST OF DATES:

S.No	Date	Event
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1.	02.03.2015	<p>This issue relates to the incorrect imposition of efficiency factor while determining the O&amp;M expenses for true-up of FY 2010-11.</p> <p>The Hon'ble Tribunal in its judgment dated March 2, 2015 in Appeal No.177 of 2012(<b>"Appeal 177 Judgment"</b>), in para 44 thereof has directed the Hon'ble Commission to reconsider the efficiency factor of 4% for FY 2010-11.</p>
2.	28.04.2015	<p>The Petitioner vide its letter dated April 28, 2015 <i>inter alia</i> requested the Hon'ble Commission to implement the said Appeal 177 Judgment in the Tariff proceedings which culminated in the Tariff Order dated 29.09.2015. However, the said letter does not find mention in Table 1.1 of the said Tariff Order.</p>
3.	31.08.2017	<p>The Hon'ble Commission in the tariff order dated 31.08.2017 has observed that the issue does not merit consideration as the Petitioner has not challenged the issue of Efficiency Factor in its Appeal against MYT Order dated 23.02.2008 and even this Hon'ble Tribunal has upheld the methodology for Efficiency Factor in case of TPDDL in its judgment in Appeal No. 14 of 2012.</p>
4.	28.03.2018	<p>The Hon'ble Commission, in its tariff order dated 28.03.2018 stated that it has not reconsidered the issue as the same has already been clarified in the tariff order dated 31.08.2017.</p>
5.	31.07.2019	<p>At Para 3.125 of the Tariff Order, the Hon'ble Commission has reiterated its findings in the tariff order dated 28.03.2018.</p>

DETAILED SUBMISSIONS:

**3B.380** The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has directed the Hon'ble Commission as under:

*"44. The 36<sup>th</sup> issue is arbitrary imposition of efficiency factor for determination of O&M Expenses for true-up of FY 2010-11*

*44.1 This issue has been considered by this Tribunal in Appeal No. 61 of 2012 and decided in favour of the Appellant. The relevant extracts of the Judgment are referred below:*

...

*201 So, on strength of the Judgment in Appeal No. 14 of 2012 applies squarely into the facts of the present case. The issue is decided in favour of the Appellants."*

*44.2 Accordingly, this issue is decided in favour of the Appellant."*

**3B.381** The Hon'ble Commission in Tariff Order dated March 28, 2018 ruled as under:

*"3.152 The Commission has already clarified this issue in tariff order dated 31/08/2017 as follows:*

*"3.157 The Commission has observed that the Hon'ble tribunal in its judgments in Appeal No. 52/2008 has not find any merit in the contention raised by the TPDDL regarding introduction efficiency factor of 2%, 3% and 4% for FY 2009, FY 2010 and FY 2011 respectively as follows: "67. (ix) The last issue is erroneous computation of the Efficiency Factor. Admittedly, the Appellant had not proposed any Efficiency Factor in its MYT Petition in accordance with the MYT Regulations. The State Commission has compared the O&M expenses of the Appellant with similar urban distribution companies in other states and found the expenses of the Appellant on higher side. Accordingly, the State Commission has decided to introduce efficiency factor of 2%, 3% and 4% for FY 2009, FY 2010 and FY 2011 respectively. Therefore, we do not find any merit in the contention raised by the Appellant. Therefore, the State Commission finding on this issue is justified." 3.158 Further, the Petitioner has relied upon the judgment of Hon'ble APTEL in Appeal No. 177/2012 which has been pronounced on the basis of Appeal No. 14/2012. It is pertinent to state that TPDDL (Appellant in Appeal No. 14/2012) had prayed before Hon'ble APTEL against the Efficiency Factor for FY 2011-12 and not FY 2010-11 in issue no. 23. However, the Petitioner has*

*misrepresented the facts before the Commission that Hon'ble APTEL has decided the issue for Efficiency Factor of FY 2010-11. The relevant extract of the said judgement is as follows: "198. On this issue, the learned Counsel for the Appellant submits as under: ... (c) However, in the impugned order the Delhi Commission has merely extended the efficiency factor of 4% that was applicable for O & M expenses of the Appellant for the period FY 2010-11 to apply to FY 2011-12 and has also extended the MYT Order while extending the operation of the MYT Regulations to the period FY 2011-12. This has resulted in gross under- allowance of O & M costs for FY 2011-12...."*

*3.159 It is clarified that the Efficiency Factor had been introduced by the Commission for 1st MYT Control Period (FY 08-FY11) in its MYT Order dtd. 23/02/2008 for all the Distribution Licensees. The Petitioner has not challenged the issue of Efficiency Factor in its Appeal against MYT Order dtd. 23/02/2008 and even Hon'ble APTEL has upheld the methodology for Efficiency Factor in case of other Distribution Licensee as indicated above. Therefore, this issue does not merit consideration."*

*3.153 In view of the above the Commission has not re-considered this issue. "*

**3B.382** It is submitted that the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has set aside the efficiency factor for FY 2010-11. Further, the Hon'ble ATE in Judgment dated October 31, 2017 has dismissed the Clarificatory Application filed by the Hon'ble Commission. There is no stay on the implementation on Judgment dated March 2, 2015 (Appeal 177 of 2012). The impact on account of efficiency factor for FY 2010-11 is tabulated below:

**Table 3B 85: Impact on account of efficiency factor for FY 2010-11**

S. No	Particulars	FY 2010-11
1	Employee Expenses	391

S. No	Particulars	FY 2010-11
2	Eff. Fact. %	4%
3	Eff. Factor	16

3B.383 The impact on account of the said issue along with carrying cost is tabulated below:

**Table 3B 86: Impact on account of efficiency factor during FY 2010-11 along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	17	19	22	25	29	34	38
2	Additions	16	0	0	0	0	0	0	0
3	Cl. Balance	16	17	19	22	25	29	34	38
4	Average	8	17	19	22	25	29	34	38
5	Rate of interest	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	1	2	3	3	4	4	5	5
7	Grand Cl. Balance	17	19	22	25	29	34	38	44

**PRAYER(S):**

3B.384 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

**Issue-13: Incorrect revision of R&M expenses by revising K factor:**

**ISSUE IN BRIEF:**

3B.385 This issue pertains to the non-implementation of the Judgments of the Hon'ble ATE in Appeal No.177 of 2012 and Appeal No. 171 of 2012, in terms of which the Hon'ble Commission was directed to recalculate the "K" factor for the control period based on "K" factor for FY 2007-08 to FY 2011-12 as the Hon'ble Commission considered average of "K" factor from FY 2008-09 to FY 2011-12. However, in the respectful submission of the Petitioner, the Hon'ble Commission has completely changed the methodology and has derived new "K" factor based on re-determined R&M Expenses for FY 2011-12 contrary to the directions of this Hon'ble Tribunal.

LIST OF DATES:

S.No	Date	Event
1.	01.04.2012	<p>Clause-5.5 of MYT Regulations 2011 states as under:</p> <p><i>"5.5 O&amp;M expenses permissible towards ARR for each year of the Control Period shall be determined using the formula detailed below:</i></p> <p><i>(a) <math>O\&amp;M_n = (R\&amp;M_n + EMP_n + A\&amp;G_n) * (1 - X_n)</math></i></p> <p><i>Where,</i></p> <p><i>(i) <math>R\&amp;M_n = K * GFAn-1</math>;</i></p> <p><i>...</i></p> <p><i>(vii) <math>R\&amp;M_n</math> – Repair and Maintenance Costs of the Licensee for the nth year.</i></p> <p><i>Where,</i></p> <p><i>„K“ is a constant (could be expressed in %). Value of K for each year of the Control Period shall be determined by the Commission in the MYT Tariff order based on Licensee's filing, benchmarking, approved cost by the Commission in past and any other factor considered appropriate by the Commission;</i></p> <p><i>..."</i></p>
2.	13.07.2012	<p>The Hon'ble Commission determined O&amp;M Expenses for the second control period in Tariff Order dated July 13, 2012, para 4.219 thereof. The Hon'ble Commission while determining "K" factor for the purpose of computation of R&amp;M Expenses for the second control period in Tariff Order dated July 13, 2012 excluded the "K" factor of FY 2007-08 and considered average of "K" factors from FY 2008-09 to FY 2011-12.</p> <p>An Appeal was filed by all DISCOMs including the Petitioner on the said issue namely Appeal 177 of 2012 in case of Petitioner, Appeal 178 of 2012 in case of BYPL and Appeal 171 of 2012 in case of TPDDL.</p>

S.No	Date	Event
3.	10.02.2015	The Hon'ble Tribunal in Judgment dated February 10, 2015 directed the Hon'ble Commission as under: <i>"11.4... The tariff order might have been passed on 23.02.2008, but the opening GFA and R&amp;M expenses have been decided for the whole FY 2007- 08. There is no reason for not relying on these figures. Therefore the 'K' factor for the control period has to be recalculated on the basis of 'K' factor for the FY 2007-08 to 2011-12."</i>
4.	02.03.2015	In the case of the Petitioner, the Hon'ble ATE, in its Judgment in Appeal No. 177 of 2012 in para 36 thereof held as under: <i>"...Therefore, the Commission should take into account the K factor for 2007-08 also and re-determine the K factor and the R&amp;M expenses for the Control Period. Accordingly, directed."</i>
5.	29.09.2015	In the Tariff Order dated 29.09.2015, at para 3.164 to 3.167 & Table 3.43, the Hon'ble Commission has re-determined R&M Expenses for FY 2011-12 for the purpose of projection of R&M Expenses from FY 2012-13 to FY 2014-15. For the purpose of the determination of R&M Expenses, the Hon'ble Commission has compared the Actual R&M Expenses of FY 2011-12 as per audited Financial statement of FY 2011-12 with the Actual R&M Expenses of FY 2007-08 escalated by proportionate increase in five years Sales Growth, Increase in CPI and WPI indices and performance on account of reduction in AT&C Loss levels. The Hon'ble Commission has then derived "K" Factor by dividing the R&M Expenses so re-determined for FY 2011-12 by Opening GFA for FY 2011-12 approved in the said Tariff Order. This "K" Factor has been applied on approved GFA from FY 2012-13 to FY 2014-15.

S.No	Date	Event
6.	31.08.2017	In the tariff order dated 31.08.2017, (Para 3.207 thereof), the Hon'ble Commission has held that it has given detailed reasoning and the factors which have been considered for determination of R&M expenses.
7.	28.03.2018	Again, in the tariff order dated 28.03.2018, the Hon'ble Commission merely reiterated its stand in the tariff order dated 31.08.2017. The relevant extract is reproduced as below:  <i>"3.225 The Commission has given the detailed reasoning and the factors which have been considered for determination of R&amp;M expenses in Tariff Order dated 29/09/2015 and the same has challenged by the Petitioner in Appeal No. 297/2015 before Hon'ble APTEL and is sub judice. Further, R&amp;M expenses are linked with the value of Opening GFA of the Petitioner which is subject to true up after physical verification of the asset since FY 2004-05 onwards. Therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said Appeal and true up of asset based on physical verification report of the consultant appointed by the Commission."</i>
8.	31.07.2019	In Tariff Order dated 31.07.2019, the Hon'ble Commission has stated that the Commission in Tariff Order dated 29.09.2015 has provided detailed reasoning for determination of R&M Expenses and the Petitioner has challenged the same in Appeal 297 of 2015 which is pending adjudication before Hon'ble APTEL. The Hon'ble Commission has further reiterated its Tariff Order dated 28.03.2018.

DETAILED SUBMISSIONS:

3B.386 The Hon'ble ATE in Judgment dated March 2, 2012 (Appeal 177 of 2012) has ruled

as under:

*“36.5 We find that the State Commission had decided to fix the ‘K’ factor as the average K factor based on the actual R&M expenses of the last five years. **We do not find any infirmity in the methodology except that the Commission has not followed the principle of computing the ‘K’ factor based on the actual for the last 5 years by ignoring the K factor for FY 2007-08. By this method the R&M expenses of FY 2012-13 have been determined more or less at the same level as 2011-12 which does not even cover the normal inflation factor.** Therefore, the Commission should take into account the K factor for 2007-08 also and redetermine the K factor and the R&M expenses for the Control Period. Accordingly, directed.”*

(Emphasis supplied)

3B.387 As evident from the aforesaid, the Hon’ble ATE remanded the matter back to the Hon’ble Commission to re-determine the “K” factor by considering past 5 years data. Same was a limited remand. However, the Hon’ble Commission in Tariff Order dated September 29, 2015 revised the entire methodology and allowed “K” factor of 2.62% instead of 2.70% which was to be allowed as per Hon’ble ATE directions.

3B.388 Aggrieved from the above, the Petitioner challenged the same before Hon’ble ATE in Appeal No. 297 of 2015. Same is pending adjudication before Hon’ble ATE. In reply to the Appeal 297 of 2015, the Hon’ble Commission stated as under:

**“ISSUE NO. 25**

**Incorrect revision of R&M Expenses by revising “K” Factor**

*25.1 That the Commission will reconsider this issue in view of the submission made by the Appellant in the appeal. The impact, if any, on account of revision of R&M Expenses by revising “K” factor will be considered in the subsequent tariff order.”*

3B.389 However, despite the above statement, the Hon’ble Commission in Tariff Order dated July 31, 2019 ruled as under:



*“3.140 The Commission has given the detailed reasoning and the factors which have been considered for determination of R&M expenses in Tariff Order dated 29/09/2015 and the same has been challenged by the Petitioner in Appeal No. 297/2015 before Hon’ble APTEL....”*

**3B.390** The aforesaid approach tantamount to not honouring its own affidavit submitted before Hon’ble APTEL in Appeal 297 of 2015. The Hon’ble Commission on one hand submits an affidavit before Hon’ble APTEL that the issue shall be reconsidered in subsequent tariff order and on the other hand cites pendency of the same appeal in respect of which the Hon’ble Commission has filed affidavit for non-implementation of Hon’ble APTEL’s directions.

**3B.391** As regards above, it is submitted that the Hon’ble Commission in various Tariff Orders has already allowed lower capitalisation on provisional basis. Now R&M Expenses have been linked by applying ‘K’ factor on Opening GFA. The ‘K’ factor so determined by the Hon’ble Commission in Tariff Order dated September 29, 2015 is also incorrect which has also been conceded by the Hon’ble Commission in its own affidavit filed before Hon’ble Tribunal in Appeal 297 of 2015. However, the Hon’ble Commission has till date not corrected the same and the error is being continued in subsequent years resulting in denial of legitimate expenses borne by the Petitioner. The Petitioner requests the Hon’ble Commission to correct the error as per its own affidavit filed before Hon’ble Tribunal and provide consequential relief to the Petitioner.

**3B.392** As per the said direction, the “K” factor for the Petitioner is tabulated below:

**Table 3B 87: Revised “K” factor as per Judgment in Appeal 177 of 2012**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	Average
1	Opening GFA	2030	2558	3099	3649	4099	
2	Total R&M Expenses	69.4	71.8	63.4	90.5	113.4	
3	K Factor	3.42%	2.81%	2.05%	2.48%	2.77%	2.70%

**3B.393** As evident from above, the Hon’ble Commission in Tariff Order dated 13.07.2012

considered average of “K” factors from FY 2008-09 to FY 2011-12 as 2.53% whereas as per the directions of Hon’ble Tribunal, after factoring FY 2007-08 as per the methodology adopted by the Hon’ble Commission in Tariff Order dated 13.07.2012, revised “K” factor is 2.70%.

**3B.394** However, the Hon’ble Commission has completely changed the methodology and has derived new “K” factor as 2.62% based on re-determined R&M Expenses for FY 2011-12 instead of 2.70% as per the directions of the Hon’ble Tribunal.

**3B.395** The remand by the Hon’ble Tribunal in Judgment dated March 2, 2015 (Appeal 177 of 2012) was a limited remand. It only envisaged that the Hon’ble Commission was to re-calculate the “K” Factor for the Control Period on the basis of the “K” factor for all the years of the Control Period.

**3B.396** The Petitioner has computed the R&M Expenses based on “K” factor as per the direction of the Hon’ble ATE and GFA considered by the Hon’ble Commission in Tariff Order dated July 13, 2012 as under:

**Table 3B 88: Difference in R&M Expenses due to revised “K” factor**

(in Rs. Cr.)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17
1	Opening GFA	4404	4705	4999	5307	5654
2	K Factor	2.70%	2.70%	2.70%	2.70%	2.70%
3	Revised R&M Expenses	119	127	135	143	153
4	R&M Expenses computed at Table-3B. 70	115	123	131	139	148
5	<b>Difference</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>5</b>

**3B.397** The aforesaid impact along with carrying cost is tabulated below:

**Table 3B 89: Impact on account of difference in R&M Expenses along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	4	9	15	22	30
2	Additions	4	4	4	4	5	0

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
3	Cl. Balance	4	8	13	19	26	30
4	Average	2	6	11	17	24	30
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.28	0.89	1.64	2.49	3.50	4.17
7	<b>Grand Cl. Balance</b>	<b>4</b>	<b>9</b>	<b>15</b>	<b>22</b>	<b>30</b>	<b>34</b>

PRAYER(S):

3B.398 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR.

**Issue-14: Lower rates of carrying cost:**ISSUE IN BRIEF:

3B.399 This issue pertains to the non-implementation of directions of Hon'ble Tribunal in Judgment dated July 30, 2010 (Appeal 153 of 2009), July 12, 2011 (Appeal 142 of 2009), November 28, 2014 (Appeal 61 of 2012) and March 2, 2015 (Appeal 177 of 2012) by not allowing carrying cost in the debt: equity ratio of 70:30 and instead adopting a new formula in respect of the same.

LIST OF DATES:

S.No	Date	Event
1.	28.05.2009	Clause-8.2.2 of the National Tariff Policy provides for the provision of allowing carrying cost on regulatory assets. The Hon'ble Commission in its Tariff Order dated May 28, 2009, in para 4.135 thereof, allowed carrying cost @ 9% on the regulatory assets recognised upto FY 2007-08. The Petitioner challenged the same before the Hon'ble Tribunal in Appeal 142 of 2009.

S.No	Date	Event
2.	30.07.2010	<p>The Hon'ble Tribunal in its Judgment dated July 30, 2010 in Appeal 153 of 2009, NDPL Vs. DERC ("<b>Appeal 153 Judgment</b>"), in para 51 thereof directed the Hon'ble Commission as under:</p> <p><i>"51....Therefore, the State Commission is hereby directed to reconsider the rate of carrying cost at the prevailing market rate and the carrying cost also to be allowed in the debt/ equity of 70:30."</i></p>
3.	12.07.2011	<p>The Hon'ble Tribunal in Judgment dated July 12, 2011 in Appeal No. 142 of 2009, in para 11.1 thereof directed the Hon'ble Commission to determine the rates of carrying cost in terms of the directions given in Judgment dated July 30, 2010</p>
4.	26.08.2011	<p>The Hon'ble Commission, in its Tariff Order dated August 26, 2011 (in para 3.152- 3.153 thereof) did not implement the directions of Hon'ble Tribunal and stated as under:</p> <p><i>"3.152 The Hon'ble ATE in its Order dated July 30, 2010 on appeal no 153 of 2009 filed by NDPL has observed as follows:</i></p> <p><i>"the fixation of 9% carrying cost, in our view, is not appropriate. Therefore, the State Commission is hereby directed to reconsider the rate of carrying cost at the prevailing market rate and the carrying cost also to be allowed in the debt/ equity of 70:30"</i></p> <p><i>3.153 The Commission has decided to go in appeal against the Hon'ble ATE Order on allowing carrying cost in the debt/ equity of 70:30. The Commission therefore has not implemented the Judgement of the Hon'ble ATE in this regard."</i></p>

S.No	Date	Event
5.	01.04.2012	<p>Clause-5.40 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 (<b>“MYT Regulations, 2011”</b>) states as under:</p> <p><i>“5.40 Truing-up shall be carried out in accordance with Regulation 4.21, for each year based on the actual/audited information and prudence check by the Commission;</i></p> <p><i>Provided that if such variations are large, and it is not feasible to recover in one year alone, the Commission may take a view to create a regulatory asset, as per the guidelines provided in clause 8.2.2 of the National Tariff Policy.”</i></p>
6.	13.07.2012	The Hon’ble Commission in its Tariff Order remained silent on the issue of allowance of carrying cost in debt-equity ratio of 70:30 and did not implement the directions of the Hon’ble Tribunal.
7.	21.08.2012	Meanwhile, the Hon’ble Supreme Court dismissed the Civil Appeal filed in case of TPDDL in the Appeal 153 Judgment by the Hon’ble Commission due to the delay in filing the Appeal.
8.	31.07.2013	<p>The Hon’ble Commission in Tariff Order, at para 3.206-3.210 thereof allowed the rates of carrying cost in debt-equity ratio of 70:30 for the period, FY 2007-08 to FY 2011-12 on a provisional basis subject to the approval of the loans. However, the Hon’ble Commission considered the rate of return on equity as 14% instead of 16% while computing the rates of carrying cost and return on debt as weighted average rates of non-capex loans instead of SBI PLR.</p> <p>The Petitioner has challenged the aforesaid treatment in Appeal No. 265-266 of 2013 which is pending adjudication before Hon’ble Tribunal.</p>

S.No	Date	Event
9.	23.07.2014	<p>The Hon'ble Commission in its Tariff Order, in para 4.171 thereof allowed the rates of carrying cost in debt-equity ratio of 70:30 during FY 2013-14 on a provisional basis subject to the approval of the loans. However, the Hon'ble Commission considered the rate of interest on debt as approved in 2<sup>nd</sup> MYT Order dated July 13, 2012 on a provisional basis subject to true-up of loans and capitalisation instead of SBI PLR.</p> <p>The Petitioner has challenged the aforesaid treatment in Appeal No. 235 of 2014 which is pending adjudication before Hon'ble Tribunal.</p>
10.	28.11.2014	<p>Aggrieved by the aforesaid treatment in the tariff order dated August 26, 2011, the Petitioner challenged the same in Appeal 61 of 2012. The Hon'ble Tribunal in Judgment dated November 28, 2014 ruled as under:</p> <p><i>"7. The first issue is related to Interest on Working Capital and Regulatory Assets. According to the Appellant the Delhi Commission has not implemented the directions of this Tribunal in judgment reported as 2010 ELR (APTEL) 0891 in Appeal No. 153 of 2009 related to debt/ equity ratio of 70:30 for financing of the working capital during first control period comprising of FY 2007-08 to FY 2011-12. <u>On the 70% debt portion, the carrying cost has to be allowed at the prevalent market rate considering SBI PLR and on 30% equity portion, the rate of return on equity as specified by the Delhi Commission in the MYT Regulation, 2007 has to be allowed.</u></i></p> <p style="text-align: center;">...</p> <p><i><u>We are not inclined to involve ourselves in to fact finding and direct the Commission to implement our directions in letter and spirit."</u></i></p> <p style="text-align: right;">(Emphasis supplied)</p>

S.No	Date	Event
11.	2.03.2015	<p>Aggrieved by the treatment in its Tariff Order dated July 13, 2012, the Petitioner challenged the same in Appeal 177 of 2012. The Hon'ble Tribunal in Judgment dated March 2, 2015 ("<b>Appeal 177 Judgment</b>") ruled as under:</p> <p><i>"5.8 However, the State Commission has not computed the carrying cost considering 70% as debt and 30% as equity to be allowed the prevailing Return on Equity rate as per the decision of the Tribunal.</i></p> <p><i>5.9 Therefore, we direct the State Commission to compute the carrying cost considering 70% to be allowed as debt at 11.66% and the balance 30% to be allowed at the prevailing ROE rate for the relevant year for which the carrying cost is being computed."</i></p>

S.No	Date	Event
12.	29.09.2015	<p>The Petitioner, in its ARR which culminated into the Tariff Order dated 29.09.2015, requested the Hon'ble Commission to consider the rates of carrying cost in debt-equity ratio of 70:30 by considering return on equity as 16% on 30% portion and rate of SBI PLR for respective years on 70% portion as per the direction given by Hon'ble Tribunal in various Judgments.</p> <p>In the said Tariff Order, the Hon'ble Commission has applied the formulae of net-worth proposed for computation of WACC for the purpose of RoCE in Tariff Order dated July 31, 2013 to derive the equity available during respective years. The Hon'ble Commission has utilized the so derived equity for the respective years in the following priority:</p> <ol style="list-style-type: none"> <li>30% of Capitalisation</li> <li>If left after funding of capitalization then, 30% of working capital</li> <li>If left after funding of capitalization and working capital, then 30% of Regulatory Assets.</li> </ol> <p>At Table-3.53 and Table-5.1 of the said Tariff Order, the Hon'ble Commission has reduced the carrying cost for the period from FY 2007-08 to FY 2013-14, by reducing the equity base so derived from the formula instead of implementing the directions of Hon'ble Tribunal in various Judgments.</p>
13.	31.08.2017	<p>The Hon'ble Commission further in its tariff order dated 31.08.2017 has not allowed the claim on two primary grounds namely:</p> <ol style="list-style-type: none"> <li>By referring to the actual equity infused, and for which it relies upon the same principles that it had held in the earlier tariff order of 29.09.2015;</li> <li>Restricts the claim for the RoE on the equity component of funding to 14%, for which it relies upon the judgment of this Hon'ble Tribunal in Appeal 271 of 2013.</li> </ol>



S.No	Date	Event
14.	28.03.2018 & 31.07.2019	In its tariff order dated 28.03.2018, the Hon'ble Commission has merely reiterated its findings in its tariff order dated 31.08.2017.

DETAILED SUBMISSIONS:

3B.400 The Hon'ble ATE in Judgment dated July 30, 2010 (Appeal 153 of 2009) has ruled as under:

*"51. It cannot be disputed that the State Commission shall be guided by the principles that reward efficiency in performance as provided under section 61(e) of the Electricity Act, 2003. Similarly, the said section provide that State Commission shall be guided by the National Electricity Policy and Tariff Policy. Therefore, the State Commission should have allowed the carrying cost at the prevailing market lending rate for the carrying cost so that the efficiency of the distribution company is not affected. The State Commission is required to take the truing up exercise to fill up the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of theyear. This Tribunal in various judgments rendered by it held in Appeal No. 36 of 2008 in the judgment dated 06.10.2009 reported in 2009 ELR (APTEL) 880 has held that "the true up exercise is to be done to mitigate the difference between the projection and actuals and true up mechanism should not be used as a shelter to deter the recovery of legitimate expenses/revenue gap by over-projecting revenue for the next tariff." Therefore, the fixation of 9% carrying cost, in our view, is not appropriate. **Therefore, the State Commission is hereby directed to reconsider the rate of carrying cost at the prevailing market rate and the carrying cost also to be allowed in the debt/ equity of 70:30.***

...

58. ...

*(iv) The next issue is relating to the inadequate lower rate of 9% for the allowance of the carrying cost. The carrying cost is allowed based on the financial principle that whenever the recovery of the cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accrual and/or internal accrual has to be paid for by way of carrying cost. The carrying cost is a legitimate expense. Therefore the recovery of such carrying cost is a legitimate expectation of the distribution company. **The State Commission instead of applying the principle of PLR for the***

***carrying cost has wrongly allowed the rate of 9% which is not the prevalent market lending rate. Admittedly, the prevalent market lending rate was higher than the rate fixed by the State Commission in the tariff order. Therefore, the State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate. "***

(Emphasis added)

3B.401 It is respectfully submitted that the Hon'ble Commission in Tariff Order dated September 29, 2015 applied a formula, which in the Petitioner's submission, is erroneous for computing equity and consequently, allowed very lower rates of carrying cost from FY 2007-08 to FY 2013-14 without even verifying as to whether the capitalisation allowed to the DISCOMs is matching with the funding or not. The Petitioner in its Petition for True-up of FY 2016-17 and ARR and Tariff for FY 2018-19 has detailed the reasons as to why and how net-worth formula applied by the Hon'ble Commission was incorrect which is also recorded at Para-3.382 to Para-3.386 of the Tariff Order dated March 28, 2018. However, the Hon'ble Commission has not dealt with the submission and stated as under:

***"3.387 The Commission direct the Petitioner to submit the detail of Net worth based on audited financial statement, statement of de-capitalisation, utilisation of depreciation, means of finance for each year Capitalisation & working capital etc since inception in order to assess the actual equity. Further, the Commission has also appointed consultant for physical verification of asset since FY 2004-05 onwards which has an impact on the total financing required for regulated business. Therefore, the Commission will finalise the means of finance based on each year final value of capitalisation including the dispute related to utilisation of consumer contribution during policy direction period."***

3B.402 As evident from aforesaid, the Hon'ble Commission did not deal with the submissions of the Petitioner and the aforesaid error has still not been corrected while computing carrying cost for FY 2016-17. It is respectfully stated that the actual net-worth as per the books is not relevant as the Hon'ble Commission itself has refused to implement various directions of Hon'ble ATE in Judgments dated October 6, 2009 (Appeal 36 of 2008), July 12, 2011 (Appeal 142 of 2009), November 28, 2014 (Appeal 61 of 2012) and March 2, 2015 (Appeal 177 of 2012)

without any stay, thereby eroding the net-worth of the Petitioner. It is further submitted that the Hon'ble Commission has itself admitted on judicial records for being responsible for the creation of the huge accumulated regulatory assets due to insufficient retail tariff. The Hon'ble Commission has in fact, on affidavit before the Hon'ble Supreme Court admitted in writing that it has not implemented the Hon'ble Tribunal's judgments as such implementation would have led to a recovery of at least Rs.4500 crores as on March 31, 2013. It is a well-settled principle that acts of Court shall not prejudice anyone.

3B.403 It is further submitted that the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 171 of 2012) has directed the Hon'ble Commission to allow actual rates of working capital during second control period as under:

*"13. The eleventh issue is regarding erroneous computation of working capital interest rates.*

*...*

*13.4 We find that the State Commission has considered interest rate for working capital as 11.62% and interest rate for capital at 11.25% for the control period 2012-13 to 2014-15. The Appellant has produced a letter from SBI dated 02.01.2012 showing working capital facilities sanctioned at an interest rate of 3.25% above base rate which works out to 13.25% p.a. with monthly interests. This letter was furnished to the State Commission by letter dated 21.05.2012. This has not been considered by the State Commission while deciding the rate of interest on working capital. In the of the State Commission before us they have not denied receipt of this letter but have not given any explanation why the this letter was not considered by them while deciding the interest on working capital. **There is also no explanation in the impugned order regarding fixing interest rate at 11.25% on working capital. We, therefore, direct the State Commission to true-up the interest rate on working capital for the years from 2012-13 to 2014-15 in the true up of the accounts, based on the actual interest rates.**"*

(Emphasis supplied)

3B.404 However, the Hon'ble Commission has utilised net-worth formula to compute actual equity for the purpose of debt-equity ratio but has considered normative

rates of debt instead of actual rates of working capital thereby resulting in a mix approach contrary to the industry practices as well as direction of Hon'ble Tribunal in Judgment dated March 2, 2015 (Appeal 171 of 2012).

**3B.405** Without prejudice to the contentions raised in Appeal, the Petitioner would like to once again request the Hon'ble Commission to correct the lower rates of carrying cost allowed by employing erroneous net-worth formulae without providing for any debt and equity schedule. The Petitioner has applied the debt-equity ratio of 70:30 from FY 2007-08 to FY 2016-17 considering ROE as 16% and rate of interest as SBI PLR while computing the impact.

**3B.406** Accordingly the rates of carrying cost are tabulated below:

**Table 3B 90: Rate of carrying cost**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	Rate of Interest	12.69%	12.79%	11.87%	12.26%	14.40%	14.61%	14.58%	14.75%	14.29%	14.05%
2	Return on Equity	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%
3	WACC	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%

**3B.407** As regards FY 2017-18, Regulation-2 (16) of DERC Tariff Regulations, 2017 notified on 31.01.2017 states as under:

***"2. Definitions and Interpretation***

....

*(16) "Carrying Cost Rate" means the weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity in an appropriate ratio, as specified by the Commission in the relevant Orders:"*

Further Regulation 86 of the 2017 Regulations provides that the interest on working capital shall be payable on a normative basis. The said norm is to be calculated as per the methodology specified in Regulation 85, which provides that the rate of interest on working capital shall be considered as the bank rate as on 1 April of the year plus the margin specified by the Hon'ble Commission for the Control Period and that the same shall be trued up on the basis of the prevailing

bank rate bank rate as on 1 April of the respective financial year.

**3B.408** The margin referred to in Regulation 85 of the Tariff Regulations, 2017 is specified by the Hon'ble Commission in Regulation 22 of the Business Plan Regulations, 2017. The said Regulation provides for the margin to be the difference in weighted average rate of interest on *actual loan* as on 1st April 2017 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1 April 2017 provided that total rate of interest (i.e., MCLR plus margin) shall not exceed 14.00%.

**3B.409** The Hon'ble Commission in Tariff Order dated 31.08.2017 determined carrying cost of 14% for FY 2017-18 in accordance with Regulation-2 (16) of Tariff Regulations, 2017 as under:

*"4.132 The Commission has approved Return on Equity in terms of Regulation 2(16) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for computation of weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity shall be considered at 14.00% on pre-tax basis in its Business Plan Regulations, 2017. Further, the rate of interest has been considered at 14.00% with margin of 6.10% over one (1) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI based weighted average rate of interest on actual portfolio of the Petitioner for funding of revenue gap.*

*4.133 Accordingly, the Commission has computed Carrying Cost as follows:*

**Table 235: Carrying cost approved by the Commission for FY 2017-18**

Sr. No.	Particulars	FY 2017-18
A	Rate of Return on Equity	14.00%
B	Rate of Interest on Loan	14.00%
C	Rate of Carrying Cost	14.00%
D	Opening Revenue Gap	3586.10
E	Surcharge @ 8%	669.95
F	Carrying Cost	428.00

**3B.410** It is submitted that Regulations 85 and 86 of the Tariff Regulations, 2017 read with Regulation 22 of the Business Plan Regulations, 2017 clearly and unequivocally provide for the manner in which the interest is to be computed and the same is capped at 14%. However, for reasons best known to the Hon'ble Commission, while the Hon'ble Commission has stated that the truing up of the

interest rate has been done in accordance with the Tariff Regulations, 2017, it has allowed an interest rate of 13.62% when clearly the rate of interest as per the prescribed formula in the Hon'ble Commission's own Regulations, ought to have been 14.10%,(capped at 14%). Therefore, the Hon'ble Commission fell into error by not complying with its own Regulations by providing the rate of interest as 13.62%.

**3B.411** Further the Hon'ble Commission in Tariff Order dated 31.08.2017 in accordance with Regulation-2 (16) determined the rate of carrying cost as 14% for the next control period and categorically stated that margin is 6.10% over and above SBI MCLR (1 Year Average). However, at the stage of truing-up, the Hon'ble Commission contrary to its own Regulations and Tariff Order dated 31.08.2017 revised the rate of carrying cost.

**3B.412** The variations in SBI MCLR from 1st April 2017 to 1st April 2018 as notified by SBI on its website is tabulated below:

**Table 3B 91: Variations in SBI MCLR**

S. No	Particulars	Percentage
1	SBI MCLR as on 1 <sup>st</sup> April 2017	8%
2	SBI MCLR as on 1 <sup>st</sup> April 2018	8.15%
3	SBI MCLR as on 1 <sup>st</sup> April 2019	8.55%

**3B.413** Therefore in terms of Tariff Regulations, 2017 even if a truing-up on the basis of MCLR had to take place, the allowable rate of interest would have to be 6.10% (Margin) plus applicable MCLR, i.e., 8%. Hence the trued-up rate of interest would be 14.10% capped to 14%. It could not be 13.62% as considered by the Hon'ble Commission in Tariff Order. Accordingly the Petitioner has considered rate of interest for the purpose of carrying cost during FY 2017-18 as 14%.

**3B.414** The carrying cost on already recognised Regulatory Assets upto FY 2017-18 is tabulated below:

**Table 3B 92: Impact due to difference in rates of carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
A	Opening Balance	382	601	540	1517	2935	5139	5788	5784	6094	5569	6049
B	Adjustments: Contingency Reserve				29							
C	Additions	156	-135	851	1169	1645	184	-304	55	-1083	-387	-387
D	Adjustment from surcharge						299	507	580	619	649	649
E	Closing	538	466	1391	2657	4580	5024	4976	5259	4392	4533	5013
F	Average	460	534	965	2073	3757	5081	5382	5521	5243	5051	5531
G	Carrying cost	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
H	Carrying cost	63	73	127	277	559	764	808	835	776	739	774
I	Grand Closing balance	601	540	1517	2935	5139	5788	5784	6094	5168	5272	5787
J	Additional true-up past impact									402#	776#	277\$
K	Total balance									5569	6049	6064

# True-up past impact revised on carrying cost rates claimed

\$ Impact of carrying cost claimed in pending review petition

**3B.415** There is difference of Rs. 2085 Crore above closing balance, i.e, Rs. 6064 Crore when compared with Regulatory Assets recognised up to FY 2013-14, i.e., Rs. 3979 Crore.

**PRAYER(S):**

**3B.416** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issue in ARR of the Petitioner.

**Issue-15: Financing cost of LPSC based on SBI PLR:****ISSUE IN BRIEF:**

**3B.417** This issue pertains to the implementation of two principles laid down by this Hon'ble Tribunal for the funding of Late Payment Surcharge ("LPSC"), being that (A) the funding of LPSC must be in the ratio of 70:30 (Judgment in Appeal No. 153 of 2009, Para 51, referred to in para 10 of its Judgment in Appeal No. 142 of 2009 in case of the Petitioner); and (B) the funding of LPSC has to be on the prevailing

market lending rates (Judgment in Appeal No. 177 of 2012, para 4.8) and erred in relying upon the judgment in Appeal No. 14 of 2012.

LIST OF DATES:

S.No	Date	Particulars
1.	30.07.2010	The claim of the Petitioner was for the funding of LPSC for the period 2007-08 to 2011-12 and 2012-13 in the ratio of 70:30 as if such funding were through working capital.  This was based entirely on the judgment of this Hon'ble Tribunal in Appeal No.153/2009 Para 23-25.
2.	12.07.2011	The Hon'ble Tribunal has held in favour of the Petitioner in the Petitioner's own case in Appeal No.142/2009 (" <b>Appeal 142 Judgment</b> "), in para 10 thereof, referring to the Appeal 153 Judgment.
3.	02.03.2015	In the Judgment dated March 2, 2015 in Appeal No. 177 of 2012, in para 39 thereof (" <b>Appeal 177 Judgment</b> ") the Hon'ble Tribunal directed the Hon'ble Commission to determine the interest rate and amount of financing cost after verifying the cost of debt taken by the Petitioner and the market rate of debt.



4.	29.09.2015	<p>In the Tariff Order of even date, the Hon'ble Commission appears to have done the following:-</p> <p>a. It has rejected any revision in the interest rate for funding of LPSC on the ground that (a) the funding of LPSC is akin to the funding of working capital and (b) since the interest rate for working capital is to be trued-up only when the variation in the SBI PLR is more than +/-1%, and as the actual variation has not been more than 1%, there is no need to revise the rate of interest for funding of LPSC;</p> <p>b. It seemingly has computed the interest rate not on the 70:30 basis, but by computing the rate of interest as equal to the interest rate computed in the WACC. This is derived from Table 3.125, Sr. No. 1.c of the Tariff Order and by comparing the said figures with the figures of interest on funding of LPSC taken into account in the previous Tariff Orders.</p>
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5.	31.08.2017	<p>In the In its tariff order dated 31.08.2017, (Para Nos. 3.183 – 3.184), the Hon'ble Commission has held as under:</p> <p><i>"3.183 The Commission has already dealt this issue in its Tariff Order dtd. 29/09/2015 as follows:</i></p> <p><i>"3.44 Further, in view of the Hon'ble APTEL's direction in Appeal No. 36 of 2008 and Appeal No. 61 &amp; 62 of 2012, the Commission has filed a Clarificatory Application before Hon'ble APTEL therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said application."</i></p> <p><i>3.184 In view of the above the Commission has not reconsidered this issue in this Tariff Order as the issue is sub judice before Hon'ble APTEL."</i></p> <p>The Hon'ble Commission has effectively rejected any revision in the interest rate for funding of LPSC on the ground that (a) the funding of LPSC is akin to the funding of working capital and (b) since the interest rate for working capital is to be trued-up only when the variation in the SBI PLR is more than +/-1%, and as the actual variation has not been more than 1%, there is no need to revise the rate of interest for funding of LPSC. The Hon'ble Commission, in so far as it relies upon the Tariff Order has computed the interest rate not on the 70:30 basis, but by computing the rate of interest as equal to the interest rate computed in the WACC.</p>
6.	31.10.2017	<p>The Hon'ble Commission had filed a Clarificatory Application in Appeal 177 of 2012 seeking clarification/ review of ten tariff issues including the present one.</p> <p>On 31.10.2017, the Hon'ble Tribunal has dismissed the said Clarificatory Application.</p>
7.	28.03.2018	<p>The Hon'ble Commission vide its tariff order dated 28.03.2018 has stated that the matter is sub-judice before Hon'ble Supreme Court of India and any view on this issue will be considered, as deemed fit and appropriate, after receipt of the judgment of Hon'ble Supreme Court in the pending Appeal.</p>

8.	31.07.2019	In the Tariff Order at Para 3.161 and 3.162, the Hon'ble Commission stated that it has deliberated the issue in the Tariff order dated 28.03.2018 and reiterated its findings.
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DETAILED SUBMISSIONS:

3B.418 The issue of financing cost of LPSC arose for the first time in Appeal 142 of 2009 which was filed with respect to Tariff Order dated May 28, 2009. The relevant extracts from Judgment dated July 12, 2011 (Appeal 142 of 2009) are reproduced below:

*"10. The fifth issue is regarding the Late Payment Surcharge.*

*10.1. The above issue had been covered in this Tribunal's Judgment dated 30.7.2010 reported in 2010 ELR (APTEL) 0891 titled as NDPL vs. DERC. The relevant extracts of the Judgment are reproduced below:*

*"The normative working capital compensates the distribution company in delay for the 2 months credit period which is given to the consumers. The late payment surcharge is only if the delay is more than the normative credit period. For the period of delay beyond normative period, the distribution company has to be compensated with the cost of such additional financing. It is not the case of the Appellant that the late payment surcharge should not be treated as a non-tariff income. The Appellant is only praying that the financing cost is involved due to late payment and as such the Appellant is entitled to the compensation to incur such additional financing cost. Therefore, the financing cost of outstanding dues, i.e. the entire principal amount, should be allowed and it should not be limited to late payment surcharge amount alone. **Further, the interest rate which is fixed as 9% is not the prevalent market Lending Rate due to increase in Prime Lending Rate since 2004-05. Therefore, the State Commission is directed to rectify its computation of the financing cost relating to the late payment surcharge for the FY 2007-08 at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate**".*

*This issue is decided accordingly in terms of the above Judgment."*

(Emphasis supplied)

3B.419 Further the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012)

has directed the Hon'ble Commission as under:

*"4.8 We find that the State Commission has mechanically allowed interest rate of 9.5% as allowed while passing the MYT order on funding of working capital without verifying the prevailing cost of debt contracted by the licensee and other relevant factors. As directed in the judgment in appeal no. 153 of 2009, the financing cost for Late Payment amount has to be allowed at the prevalent market lending rates as per the Tariff Regulations. According, the State Commission is directed to redetermine the interest rate and the amount of financing cost."*

(Emphasis supplied)

3B.420 The Petitioner raised the issue of lower financing cost of LPSC allowed in various Tariff Orders in its Petition for truing-up of FY 2017-18 and ARR and Tariff for FY 2019-20. However the Hon'ble Commission did not deal with the submissions of the Petitioner and simply stated that the Judgment of Hon'ble APTEL does not specify SBI PLR. In this regard, the relevant direction given by Hon'ble ATE in Judgment dated July 12, 2011 (Appeal 142 of 2009) is once again reproduced as under:

*"...Further, the interest rate which is fixed as 9% is not the prevalent market Lending Rate due to increase in Prime Lending Rates since 2004-05....Therefore, the State Commission is directed to rectify its computation of the financing cost relating to the late payment surcharge for the FY 2007-08 at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate"*

(Emphasis supplied)

3B.421 As regards aforesaid a comparison of Prime Lending Rate, rates allowed by the Hon'ble Commission and actual rate of borrowing from FY 2007-08 to FY 2016-17 is tabulated below:

**Table 3B 93: Borrowing rate comparison**

S. No	Financial Year	Rates considered in Tariff Order	SBI PLR rates	Actual rates
1	FY 2007-08	9.50%	12.69%	11.03%
2	FY 2008-09	9.50%	12.79%	11.47%
3	FY 2009-10	9.50%	11.87%	11.31%
4	FY 2010-11	9.50%	12.26%	11.87%
5	FY 2011-12	13.10%	14.40%	13.11%

S. No	Financial Year	Rates considered in Tariff Order	SBI PLR rates	Actual rates
6	FY 2012-13	9.99%	14.61%	15.40%
7	FY 2013-14	10.24%	14.58%	15.19%
8	FY 2014-15	10.44%	14.75%	15.24%
9	FY 2015-16	10.47%	14.29%	14.29%
10	FY 2016-17	10.47%	14.05%	14.07%

3B.422 As evident from the above table, the rates considered by the Hon'ble Commission are far lower than SBI PLR rates and actual rates and thus, Hon'ble ATE direction is still pending to be implemented.

3B.423 Accordingly the Petitioner has computed the financing cost of LPSC based on SBI PLR as under:

**Table 3B 94: Difference in financing cost of LPSC due to rate of interest**

(in Rs. Cr.)

S. No	Particulars	UoM	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	Delayed Payment Surcharge	Rs. Cr.	32	28	28	29	35	31
2	Rate of LPSC per month	%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
3	Rate of LPSC for 12 Months	%	18%	18%	18%	18%	18%	18%
4	Principal Amount	Rs. Cr.	177	155	156	162	197	172
5	SBI PLR	%	12.69%	12.79%	11.87%	12.26%	14.40%	14.61%
6	Financing Cost of LPSC	Rs. Cr.	22	20	19	20	28	25
7	Allowed by DERC	Rs. Cr.	19	14	15	17	25	17
8	<b>Net Amount</b>	<b>Rs. Cr.</b>	<b>3</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>8</b>

3B.424 The aforesaid difference has been considered along with carrying cost as under:

**Table 3B 95: Impact along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	3	9	14	20	26	39	44	51	59	67
2	Additions	3	5	4	3	3	8	0	0	0	0	0
3	Cl. Balance	3	9	13	18	23	34	39	44	51	59	67
4	Average	2	6	11	16	21	30	39	44	51	59	67
5	Rate of interest	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.21	0.82	1.47	2.14	3.17	4.53	5.80	6.73	7.58	8.60	9.44

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
7	Grand Cl. Balance	3	9	14	20	26	39	44	51	59	67	77

PRAYER(S):

3B.425 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR.

**Issue-16: Reversal of Self-consumption during FY 2012-13:**ISSUE IN BRIEF:

3B.426 This issue pertains to the energy sales towards self-consumption of the Petitioner in its establishment, i.e., its offices, call centres, sub-stations, etc. There is a mandatory direction by the Hon'ble APTEL in its judgment dated March 2, 2015 to inter alia arrive at the quantum of self-consumption based on the actual figure. The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) ruled as under:

*"25.5 This issue has also been dealt by us in Appeal no. 195 of 2013 filed by a consumer and the Tribunal decided as under:*

*"We feel that the Appellant should have installed meters for self consumption in all its offices, call centres, sub-stations, etc. The Respondent no.2 does not need specific instructions for the same. When the Respondent no.2 is including self consumption in its energy sale figures, then it was legally bound to supply electricity for gross consumption only through correct meters. We feel that the State Commission should have allowed self consumption only to the extent of actual consumption for metered installations. The formula proposed by the Respondent no. 2 for calculating own consumption in its installations is for calculating energy consumption for consumers in case of faulty meters. Accordingly, we direct the State Commission to re-determine the self consumption based on the metered data only. We also do not feel that this would result in change in procedure in true up with respect to the MYT order dated 23.02.2008. In the MYT order the consumption is based on the projections. In the MYT order the State Commission has not approved that the self consumption would not be metered and would only be assessed by a formula considering the load, number of days/hours, load factor, etc."*

**3B.427** However, the Hon'ble Commission has considered own consumption of the Petitioner on a normative basis rather than on the basis of actual consumption of metered data only. During FY 2014-15 and FY 2015-16, there was error of 148 MU and 50 MU in billing on account of own consumption. A reversal entry was passed in the same respective financial years and the actual own consumption during FY 2013-14 and FY 2014-15 was 23 MU and 24 MU respectively.

**3B.428** However, the Hon'ble Commission while truing-up sales in Tariff Order dated September 29, 2015 and August 31, 2017 considered 148 MU and 50 MU as sales on account of self-consumption during FY 2014-15 and FY 2015-16 respectively.

**LIST OF DATES:**

S. No	Date	Event
1.	-	The energy consumed by various offices of the Petitioner is termed as Own Consumption.
2.	FY 2013-14	In the year, FY 2013-14 the Petitioner had originally erroneously billed its own consumption at 177 MU. Since the bills had been wrongly raised, either on account of data entry error or other administrative/technical issues, the said bills were revised as per the actual metered data and after such adjustment total self-consumption has computed as 23 MU.
3.	09.02.2015	In the Appeal 195 Judgment, the Hon'ble Tribunal specifically stated that the self-consumption of the Petitioner has to be determined on the basis of actual consumption of metered data only and not on any normative basis.
4.	02.03.2015	Again in the Appeal 177 Judgment, at para 25, the Hon'ble Tribunal, relying on the Appeal 195 Judgment, had set aside the Hon'ble Commission's second MYT Order which provided for a normative self-consumption of 25% of the unit sold with a normative increase of 2% p.a.
5.	April – August, 2015	In response to the information and details sought by the Hon'ble Commission, the Petitioner furnished the required information through its various letters inter alia, dated April 9, 2015, May 18, 2015 and August 26, 2015.

S. No	Date	Event
6.	29.09.2015	The Hon'ble Commission did not consider the reversals made on account of self-consumption and considered the excess MUs billed over and above normative limit of self-consumption at the rate of non-domestic category and thus increased the revenue of the Petitioner on notional basis.
7.	28.03.2018	The Hon'ble Commission stated that it will consider the issue after the final Judgment of Hon'ble APTEL as the matter is still sub-judice in the Appeal No. 297 of 2015 filed by the Petitioner.
8.	31.07.2019	The Hon'ble Commission at Para-3.177 and 3.178 has stated that it has dealt with the issue and merely reiterated its findings in its earlier tariff order dated 28.03.2018 and has stated that this issue would be considered once the decision of this Hon'ble Tribunal in Appeal 297 of 2015 is rendered.

DETAILED SUBMISSIONS:

**3B.429** The aforesaid Order was passed against the observations of Hon'ble APTEL in Judgment dated February 9, 2015 in Appeal No. 195 of 2013 and March 2 2015 in Appeal No. 177 of 2012, wherein a similar dispensation of normative self-consumption was set aside and the Hon'ble Tribunal held that self-consumption of the Licensee has to be determined on the basis of actual consumption of metered data only and not on any normative basis

**3B.430** However, the Hon'ble Commission in Tariff Order dated September 29, 2015 stated as under:

*"3.201 It is observed from the above table that the opening readings are much less than the closing reading as per the bill dated 12.06.2013 which shows that the meter readings are either suppressed or wrong. While adjusting the bill, the Petitioner adjusted the final readings to match the opening readings. Further it is noticed from the adjustment bill that meter readings of kWh and kVAh are same. The said CA number pertains to a Non Domestic LT Consumer which may have inductive/capacitive load leading to non unity power factor. Thus it can be seen that the original bill captures actual consumption, whereas adjusted bill is prepared manually by entering the meter reading. This shows that the own consumption bills are regularly being adjusted and it is also noted that out of 171.26 MU, 147.86 MU have been adjusted to match the normative consumption allowed by the Commission. Hence, the explanation provided by the Petitioner for*



adjustment of 147.86 MU in Form 2.1(a) against own consumption is not justified.

**3.202 The Commission is of the view that such an act of suppression of facts by the petitioner will have adverse impact on tariff. Therefore as a penal action, the Commission has considered Sales against own consumption as 171.26 MU indicated in Form 2.1 (a) without considering negative adjustments of 147.86 MU.**

3.203 In the 2<sup>nd</sup> MYT Order, the Commission vide directive 6.12 has directed all DISCOMs to meter self-consumption in their own premises and to raise the bills at appropriate tariff for actual consumption based on meter reading every month and the licensee may avail credit at zero tariff to the extent of the normative self-consumption approved by the Commission at the end of the financial year.

3.204 The Commission, vide Para 2.79 of 2<sup>nd</sup> in its MYT Order had decided the base self-consumption as 0.25% of total sales for FY 2010-11, to be escalated at the rate of 2% per annum up to FY 2014-15. Accordingly, the Commission has arrived at the normative own consumption for the Petitioner as 22.30 MU (21.86\*1.02) for FY 2013-14 by escalating the own consumption approved for FY 2012-13 at the rate of 2% per annum.

3.205 It is noted that the own consumption over and above the normative consumption is 148.96 MU. As discussed above, the Commission decided to consider this excess own consumption of 148.96 MU at the Average Billing Rate of Rs. 10.45/kWh for FY 2013-14 of Non-Domestic category assuming all installations for non-domestic purpose as given in Form 2.1(a) submitted by the Petitioner and has disallowed the same in truing up for FY 2013-14. The additional amount to be considered as deemed revenue billed, thus computed as Rs.155.66 Crore (148.96\*10.45/10) on account of own consumption.” **(Emphasis added)**

**3B.431** The Petitioner raised the following issues before the Hon’ble Commission:

- a. Each adjustment of the bill was necessitated inter alia, due to data entry error and the fact that such data entry was done without any pre or post audit of the consumption.
- b. The self-consumption of the Petitioner in the three years immediately preceding 2014-15 was never shown exceeding 27 MU. In point of fact for FY 2012-13, the Commission has trued up a self-consumption at 21.86 MU. Hence it is incomprehensible as to how the 27 MU had come down to 21.71 MU in 2 years.
- c. Even if it is assumed for the purpose of arguments that originally the

bills of 171 MU were faulty by adopting the Commission's own LDHF formula specified in the Supply Code, the self-consumption for the year in question comes to 33 MU only.

- d. In terms of own consumption bills for 171 MU being faulty in terms of clause 1.8 of the DERC Supply Code, 0.2% of total bills raised by the licensees are permitted to be faulty. The bills of own consumption of 171 MU constituted only 0.003% of the total bills issued by the Petitioner. Even on this count there is no question the Commission imposing a punitive measure.
- e. In Judgment dated February 9, 2015 in Appeal No. 195/2013, this Hon'ble Tribunal specifically stated that the self-consumption of the Petitioner has to be determined on the basis of actual consumption of metered data only and not on any normative basis.
- f. Again in Judgment dated March 2, 2015 in Appeal No. 177/2012 para 25, this Hon'ble Tribunal relying a Judgment in Appeal No.195/2013 had set aside the Commission's second MYT Order which provided for a normative self-consumption of 25% of the unit sold with a normative increase of 2% p.a.

**3B.432** Despite the aforesaid submissions, in the Tariff Order dated September 29, 2015, the Commission held *inter alia* that:-

- a. The reasons given by the Petitioner for the adjustment of the bills was not acceptable and tantamount a suppression.
- b. The Petitioner submitted only one original bill and one adjusted bill for the month of June 2013 and did not submitted any other bills despite being required to do so.
- c. The adjustment had been made for the purpose of matching the normative consumption allowable by the Commission.
- d. The Hon'ble Commission, as a penal action, has considered the sale of 171.26 MU without considering the adjustment of 147.86 MU.

**3B.433** A punitive measure in a tariff proceeding as was done in terms of the foregoing portion of the aforesaid order, was erroneous. In law no penal action in a tariff determination order could have been taken. The well settled law of the Tribunal is

that Tariff determination exercise could not be converted into a punitive exercise and the tariff could not be disallowed as a punishment. In this regard reference may be had to Judgment dated May 4, 2009 in Appeal No. 71 of 2007 titled MSEDCL versus MERC.

**3B.434** Appeal against the aforesaid issue arising in the said Tariff Order dated September 29, 2015 is currently pending before Hon'ble ATE in Appeal No. 290 and 297 of 2015, Appeal No. 265 and 266 of 2013, Appeal No. 235 and 236 of 2014.

**3B.435** The treatment by the Hon'ble Commission may be reconsidered on account of following reasons:

- (i) The Hon'ble Commission could not pass the Tariff Order dated September 29, 2015 in complete violation and in the teeth of two Judgments in Appeal No.195/2013 and Appeal No. 177/2012.
- (ii) The Hon'ble Commission committed a factual erroneous error in proceeding on the basis that the Petitioner has submitted only one original bill for the month of June 2013. Factually, the entire data of all the original bills as well as the adjusted bills had been furnished to the Hon'ble Commission by the Petitioner vide letter dated May 18, 2014 in response to the Hon'ble Commission's e-mail dated May 13, 2015. Interestingly the Petitioner letter dated May 18, 2013 has admittedly being received by the Hon'ble Commission.
- (iii) The Hon'ble Commission's finding that the adjustments were made to match the normative consumption allowed by the Hon'ble Commission is factually incorrect and a mere conjunctive on the part of the Hon'ble Commission. This is clear from the fact that though the normative consumption as per the Hon'ble Commission was 22.3 MU, as per the Judgments of Hon'ble Tribunal dated February 9, 2015 (Appeal No. 195 of 2013) (para 13 thereof) and March 2, 2015 (Appeal No. 177 of 2012) (para 25 thereof) the consumption of the Petitioner was 23.4 MU. If the Petitioner wants to match its consumption to match the normative it could have done so by bringing the same within the normative. Further there is no question of the Hon'ble Commission to consider or allowing any normative consumption which has been specifically and squarely set aside by this Hon'ble Tribunal in Appeal No.195/2013 and Appeal No.177/2012. Since there is no question of the Hon'ble Commission allowing any normative self-consumption, the question of Petitioner having to match the normative could not and does not arise.

- (iv) The Hon'ble Commission committed a grave error in law in proceeding on the basis that it could take penal action in a tariff determination Order. The well settled law of this Hon'ble Tribunal is that the Tariff determination exercise could not be into a punitive exercise and the tariff could not be disallowed as a punishment. In this regard reference may be had to Judgment dated 04.05.2009 in Appeal No 71 of 2007 titled MSEDCL Vs MERC.
- (v) Without prejudice to the same even assuming that the Hon'ble Commission could consider a punitive measure as part of the tariff determination process the Hon'ble Commission completely violated the fundamental principles of natural justice since there was no notice to the Petitioner to explain as to why a punitive action could not to be made out. In the absence of any such opportunity, no punishment can be awarded against the Petitioner.
- (v) In the Order dated September 29, 2015, the Hon'ble Commission has sought to rely upon the normative number determined in its second MYT order for own consumption. The Hon'ble Commission appears to have overlooked the Judgment of this Hon'ble Tribunal in Appeal No.177/2012, para 25 thereof where that portion of the second MYT order dealing with the normative of own consumption has been squarely set aside by this Hon'ble Tribunal. After the judgment of this Hon'ble Tribunal in Appeal No.177/2012 the portion of the second MYT order determining the norms of own consumption ceased to exist in law and could not be relied upon by the Hon'ble Commission and that too deliberate intention of awarding a penalty to the Petitioner.
- (vi) The Hon'ble Commission further erred in considering the so called "excess own consumption" over and above the normative number at average billing rate of the non-domestic category. If the Hon'ble Commission were to treat such own consumption as a normative sale, then the Hon'ble Commission was also required to consider the cost of such power procurement, distribution cost of the so-called excess consumption and treated as an additional costs in the ARR. The Hon'ble Commission has considered only the revenue and not estimated the costs in the ARR. This contention has also been raised before Hon'ble Tribunal in Appeal No.235-236/2014 which is pending before Hon'ble Tribunal.

3B.436 Further, the Hon'ble Commission in Tariff Order dated August 31, 2017 also adopted similar methodology and did not consider the actual adjustments of 50

MU on account of self-consumption while truing-up the sales of FY 2014-15.

**3B.437** As per the aforesaid Judgment dated March 2, 2015 (Appeal 177 of 2012), the Hon'ble ATE has directed the Hon'ble Commission to allow the actual self-consumption on metered basis and not apply any formula for computation of self-consumption. Application of any formulae to arrive at the self-consumption at the establishments of the Petitioner was barred and would result in an erroneous conclusion besides being in the teeth of the said judgement passed by the APTEL. Accordingly, the actual self-consumption on metered basis was communicated to the Hon'ble Commission vide letter dated May 1, 2015.

**3B.438** However, the actual self-consumption on metered basis was ignored by the Hon'ble Commission in Tariff Order dated September 29, 2015 as normative formulae were applied and normative revenue at tariff rates approved for non-domestic category beyond normative self-consumption was factored in.

**3B.439** Accordingly the revised revenue billed and revenue collection during FY 2013-14 and FY 2014-15 is tabulated as under:

**Table 3B 96: Revenue billed and revenue collection during FY 2013-14 and FY 2014-15**

(in Rs. Cr.)

Revenue billed			
S. No	Particulars	FY 2013-14	FY 2014-15
A	Revenue billed	7444	8322
B	Less: ED	309	349
C	Less: 8% Surcharge	514	580
D	Less: Revenue-enforcement	55	
E	Add: Revenue-enforcement	35	51
F	<b>Total</b>	<b>6602</b>	<b>7455</b>

Revenue Collection			
S. No	Particulars	FY 2013-14	FY 2014-15
A	Revenue collection	7425	8490
B	Less: ED	304	346
C	Less: 8% Surcharge	507	576
D	Less: LPSC	22	25
E	Less: Monthly rebate#		44
F	<b>Net Amount</b>	<b>6592</b>	<b>7499</b>

# Without pre-judice to rights and contentions raised in Appeal

3B.440 The revised AT&C Loss during FY 2013-14 and FY 2014-15 is tabulated below:

**Table 3B 97: Revised AT&C Loss during FY 2013-14 and FY 2014-15**

S. No	Particulars	UoM	FY 2013-14	FY 2014-15
A	Energy I/p	MU	11509	11824
B	Units Billed	MU	9652	10229
C	Amount Billed	Rs. Cr.	6602	7455
D	ABR	Rs./ U	6.84	7.29
E	Dist. Loss	%	16.13%	13.49%
F	Amount collected	Rs. Cr.	6592	7499
G	CE	%	99.85%	100.60%
H	Units realised	MU	9637	10290
I	AT&C Loss level	%	16.26%	12.97%

3B.441 The revised amount realized vis-à-vis that considered by the Hon'ble Commission in Tariff Order dated September 29, 2015 is tabulated below:

**Table 3B 98: Revised revenue after consideration of sales on account of self-consumption**

**FY 2014-15:**

S. No	Particulars	UoM	Revised AT&C Loss	Tariff Order
A	AT&C Loss	%	13.33	13.33
B	Energy Input	MU	11509	11509
C	Units realised	MU	9975	9975
D	ABR	Rs./ kWh	6.84	6.89
E	Amount realised	MU	6822	6877
F	Difference	Rs. Cr.		55

**FY 2015-16:**

S. No	Particulars	UoM	Revised AT&C Loss	Tariff Order
A	AT&C Loss	%	12.50	12.50
B	Energy Input	MU	11824	11824
C	Units realised	MU	10346	10229
D	ABR	Rs./ kWh	7.29	7.34
E	Amount realised	MU	7540	7499
F	Difference	Rs. Cr.		59

**PRAYER(S):**

3B.442 The aforesaid impact along with carrying cost is tabulated below:

Table 3B 99: Impact on account of self-consumption along with carrying cost

(in Rs. Cr.)

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	59	131	151	173
2	Additions	55	59	0	0	0
3	Cl. Balance	55	118	131	151	173
4	Average	27	88	131	151	173
5	Rate of interest	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	4.10	13.36	19.42	22.04	24.17
7	<b>Grand Cl. Balance</b>	<b>59</b>	<b>131</b>	<b>151</b>	<b>173</b>	<b>197</b>

3B.443 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the above impact in ARR.

### Issue-16: Additional UI Charges above 49.5 Hz:

#### ISSUE IN BRIEF:

3B.444 This claim pertains to the allowance of recovery of the Additional Unscheduled Interchange ("UI") charges paid when the overdrawl is between 49.2 Hz and 49.5 Hz. The Hon'ble Commission, in the past, has not implemented the directions of this Hon'ble Tribunal as contained in its judgment in Appeal No. 177 of 2012 on this issue.

#### LIST OF DATES:

S.No	Date	Event
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S.No	Date	Event
1.	30.05.2007	<p>The MYT Regulations, 2007 provide as under:-</p> <p><i>"5.30 Distribution Licensee shall allowed to recover the cost of power it procures from sources approved by the Commission, viz. Intra-state and Inter-state Trading Licensees, Bilateral Purchases, Bulk Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators, generation business of the Distribution Licensee and others, for supply to consumers of Retail Supply Business;</i></p> <p><i>Provided that the Distribution Licensee shall propose the cost of power procurement taking into account the fuel adjustment formula specified for the generating stations and net revenues through bilateral exchanges and Unscheduled Interchange (UI) transactions;</i></p> <p><i>[...]"</i></p>
2.	23.07.2009	<p>Press Release of the Forum of Electricity Regulators (hereinafter referred to as "<b>FOR</b>") recommendations provides as follows:-</p> <p><i>"3. After deliberation on the recommendation, the Forum of Regulators arrived at a consensus that the additional UI charges imposed on the utilities under the UI regulations of CERC for overdrawl during the period <u>when grid frequency is below 49.2 Hz.</u> should not be permitted in the annual revenue requirement of distribution utilities w.e.f. 1st August, 2009."</i>  <i>(Emphasis supplied)</i></p>
3.	13.07.2012	<p>The Hon'ble Commission, in its Tariff Order, in para 3.104 and Table 13 thereof did not consider additional UI Charges in power purchase cost and held:</p> <p><i>"3.104 The Commission further observes that UI charges paid by the Petitioner also includes Penal UI charges of Rs 5.50 Cr. The Commission has, as a member of FOR, already decided that any Penal UI charges will not be allowed in the power purchase cost, therefore the Commission has not considered Penal UI charges in power purchase cost."</i></p>



S.No	Date	Event
4.	31.07.2013	<p>The Hon'ble Commission, in its Tariff Order, in para 3.88 and Table 19 thereof did not consider additional UI charges in power purchase cost and held:</p> <p><i>"3.88 On a query from the Commission the Petitioner submitted that the UI charges paid by the Petitioner also includes penal UI charges of Rs. 9.60 Crore. The Commission, as a member of FOR, has already decided that any penal UI charges will not be allowed in the power purchase cost. Therefore, the Commission has not considered penal UI charges in power purchase cost."</i></p>
5.	23.07.2014	<p>The Hon'ble Commission, in its Tariff Order dated 23.07.2014, in para 3.87 and Table 3.18 thereof, held as under:-</p> <p><i>"3.86 The Commission observed that UI charges claimed by the Petitioner also included penal/additional UI charges towards power availed.</i></p> <p><i>3.87 The Petitioner, vide its letter dated April 02, 2014 furnished that Rs. 10.70 Crore was the liability on account of additional UI charges during FY 2012-13. The Commission as a deterrent action has decided that any penal/additional UI charges will not be allowed in the power purchase cost. Similar approach has been adopted by the Commission in the past as well."</i></p>

S.No	Date	Event
6.	02.03.2015	<p>This Hon'ble Tribunal, in its judgment in Appeal 177 of 2012 ("<b>Appeal 177 Judgment</b>"), in Para 28.3 read with Para 28.1 held as under:</p> <p><i>"28. The 20th issue is regarding erroneous reduction of additional UI charges:</i></p> <p><i>"28.1 The Commission has not allowed penal UI charges of Rs. 5.50 crores in power purchase cost. <u>These penal UI charges are for overdrawal at frequency lower than 49.2 Hz.</u> According to the Appellant disallowance of penal UI charges is arbitrary and without any legal basis.</i></p> <p><i>28.2 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:</i></p> <p><i>"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." The findings in the above case will apply squarely to the present case.</i></p> <p><i>28.3 The Appellant has also submitted that only Rs. 2.66 crores would have been disallowed as the additional charges were imposed equivalent to such a mount when the frequency of the grid went between 49.2 Hz. <u>The Appellant had paid 2.84 crores for UI overdrawal at frequency between 49.2 to 49.5 Hz and only 2.66 crores was paid for overdawl below 49.2 Hz.</u> The Commission had sought information regarding additional UI charges without mentioning the purpose or any frequency band. Therefore, the Appellant submitted the total additional UI charges paid i.e. Rs. 5.50 crores.</i></p> <p><i>28.4 In view of above submissions of the Appellant, we direct the State Commission to reconsider the amount disallowed on account of UI charges to restrict it to the amount for overdrawals below the frequency at which</i></p>

S.No	Date	Event
		<p><i>penal charges for UI are leviable. Accordingly, decided."</i></p> <p>(Emphasis supplied)</p> <p>Therefore, in terms of the aforesaid judgment, the UI Charges of Rs. 2.66 Crores could have been disallowed, since these were the charges incurred when the system frequency was below 49.2 Hz. Whereas, the amount of Rs. 2.84 Crores was to have been allowed since these charges were incurred when the system frequency was between 49.5 Hz and 49.2 Hz. <u>Such charges were therefore, not penal in nature.</u></p>
7.	05.08.2015	The Hon'ble Commission directed the Petitioner to re-submit the UI Charges for FY 2010-11 duly certified by the Delhi State Load Despatch Centre ("SLDC").
8.	12.08.2015	<p>The Petitioner, vide its letter dated 12.08.2015, submitted the details of total additional UI amount below 49.5 Hz and up to 49.2 Hz totalling to Rs. 2.84 Cr. duly certified by the Delhi SLDC.</p> <p>The certificate of the SLDC placed before the Hon'ble Commission under cover of the said letter certifies the aforesaid numbers in the same proportion. Yet, the Hon'ble Commission has once again disallowed the entire amount by completely ignoring the Appeal 177 Judgment.</p>
9.	29.09.2015	The Hon'ble Commission, in the Tariff Order dated 29.09.2015, erroneously stated that SLDC has not differentiated between penal and additional charges on account of UI despite the fact that as per this Hon'ble Tribunal's Appeal 177 Judgment specific month-wise details of the additional UI amount below 49.5 and up to 49.2 Hz has been provided to the Hon'ble Commission vide the Petitioner's letter dated August 12, 2015 duly certified by the SLDC.

S.No	Date	Event
10.	26.04.2017	The Petitioner, vide its letter submitted the details of total additional UI amount is zero below 49.2 Hz. As the grid frequency never reached 49.2 Hz during FY 2014-15 and FY 2015-16.  Yet, the Hon'ble Commission has once again disallowed the entire amount by completely ignoring the Appeal 177 Judgment.
11.	31.08.2017	In its tariff order dated 31.08.2017 (para 3.518 & 3.519) the Hon'ble Commission stated that as a deterrent action has decided that any penal/ additional UI charges will not be allowed in the power purchase cost and has accordingly decided in line with past practices followed in earlier Tariff Orders to disallow the same.
12.	28.03.2018	The Hon'ble Commission, in its tariff order dated 28.03.2018 (para 3.235-3.236) stated that the matter does not merit consideration and that the Hon'ble Commission has already given the detailed reasoning regarding penal nature of payment towards additional UI Charges due to non-adherence of the scheduled drawl in its various Tariff Orders.
13.	31.07.2019	The Hon'ble Commission, in its Tariff Order dated 31.07.2019 has relied on Tariff Order dated 28.03.2018.

DETAILED SUBMISSIONS:

3B.445 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has ruled as under:

*"28.4 In view of above submissions of the Appellant, we direct the State Commission to reconsider the amount disallowed on account of UI charges to restrict it to the amount for overdrawals below the frequency at which penal charges for UI are leviable. Accordingly, decided."*

3B.446 As regards the issue of UI Charges, the Hon'ble Commission has given contradictory statement in Tariff Order dated September 29, 2015 which is as under:

*"3.112 The Commission, in compliance to the Hon'ble APTEL's judgment in Appeal No. 177 of 2012, has vide its letter dated 05.08.2015 sought the details of additional UI charges paid by the*

*Petitioner in FY 2010-11 duly certified by SLDC. The Petitioner vide its letter dated 12.08.2015 has submitted additional UI charges paid in FY 2010-11 as Rs. 5.50 Crore certified by SLDC, which is the same amount disallowed by the Commission in the Tariff Order dated 13.07.2012. It is pertinent to state that **SLDC has not differentiated between penal and additional charges on account of UI. All the additional UI charges are imposed on the Distribution Licensee to maintain the Grid discipline.** The Forum of Regulators in its Press Release dated 23.07.2009 had stated that additional UI charges imposed on various distribution utilities across the country for excessive over drawl from the Grid will not be allowed to be recovered from the consumers w.e.f 01.08.2009 as follows:*

*"....*

*all the Chairpersons of State Electricity Regulatory Commissions as its members, has agreed that the additional Unscheduled Interchange (UI) charges imposed on distribution utilities for excessive over drawl from the grid would not be allowed to be recovered from consumers w.e.f. 1st August, 2009."*

*3.113 In view of the above, **the Commission has not considered any impact on the same. (Emphasis added)***

**3B.447** As evident from above, the Hon'ble Commission has disallowed entire UI Charges only because SLDC has not differentiated between penal and additional UI Charges.

**3B.448** The Hon'ble Commission in Tariff Order dated August 31, 2017 has maintained the same stand as in Tariff Order dated September 29, 2015 and has not allowed the entitled relief to the Petitioner.

**3B.449** In Tariff Order dated March 28, 2018, the Hon'ble Commission has relied on Judgment in Appeal 271 of 2013 instead of implementing the direction of Hon'ble Tribunal in Judgment dated March 2, 2015 (Appeal 177 of 2012).

**3B.450** It is submitted that the Central Electricity Regulatory Commission (UI and related matters) Regulations, 2009 (hereinafter referred to as the "UI Regulations") as amended from time to time does not prescribe any UI rates as penal. However, the said Regulations prescribed drawls and injection below 49.2 Hz as additional

UI rate.

3B.451 The Hon'ble Commission has also relied upon the deliberation of the FOR to justify the disallowance. It is submitted that the Press Release of the FOR dated July 23, 2009 provides as follows:-

*"3. After deliberation on the recommendation, the Forum of Regulators arrived at a consensus that the additional UI charges imposed on the utilities under the UI regulations of CERC for overdrawl during the period **when grid frequency is below 49.2 Hz.** should not be permitted in the annual revenue requirement of distribution utilities w.e.f. 1st August, 2009."* (Emphasis supplied)

3B.452 It is clear from the above that the Hon'ble Commission has erred in relying upon the deliberations of the FOR as the FOR did not state that the additional UI charges for overdrawl during the period when grid frequency is between 49.5 and 49.2 Hz should not be permitted in the annual revenue requirement of distribution utilities.

3B.453 It is submitted that this Hon'ble Commission may be pleased to note the Judgment of the Supreme Court in Central Power Distribution Co (2007 8 SCC 197), wherein the Hon'ble Supreme Court has opined as under on the nature of UI Charges:-

*"It is thus clear from the above that UI Charges are a commercial mechanism to maintain grid discipline....therefore there is no merit in the contention of the BSES DISCOMs that the UI Charges are by way of penalty"*

3B.454 As such, there being, admittedly, no distinction between UI and Additional UI, to treat Additional UI would be acting contrary to the Supreme Court Judgment.

3B.455 It is further submitted that prior to February 2014, the SLDC was not scheduling power for the Discoms individually. Prior to that date, SLDC was scheduling power to Delhi as a whole. In the circumstances, there cannot be any question of any individual discom being response for overdrawl from its system.

3B.456 In either case it is submitted that the Petitioner has, in fact, no control

whatsoever over drawl of electricity from its system. The drawl by the discom from the Grid is nothing but the collective drawl from the discom by its consumers.

**3B.457** It is also submitted that to treat Additional UI has a punitive measure would be contrary to the fundamental tenets of law that a punishment could only follow culpability. Unless culpability were first established, on a case to case basis, it is arbitrary to impose a punishment.

**3B.458** It is further submitted that this Hon'ble Commission has mandated a load-shedding limit of 1% of sales. Hence, if the Discom complies with the said directive and arranges sufficient power to keep within the 1% directive, per necessity, there will always be some UI and depending upon the frequency of the grid, additional UI as well.

**3B.459** It is axiomatic that the Discom has no control over scheduling, it has no control over drawal and it has its hands tied by the directives of this Hon'ble Commission. In such circumstances to treat any part of UI as a penalty, would be it is respectfully submitted arbitrary and opposed to ground realities.

**3B.460** Accordingly the Petitioner requests the Hon'ble Commission to allow UI Charges worth Rs. 2.84 Crore above frequency 49.2 Hz along with carrying cost as under:

**Table 3B 100: Impact on account of UI Charges along with carrying cost**

(Rs. Crore)

S. No	Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. Balance	0	3	3	4	5	5	6	7
2	Additions	3	0	0	0	0	0	0	0
3	Cl. Balance	3	3	3	4	5	5	6	7
4	Average	1	3	3	4	5	5	6	7
5	Rate of interest	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.80%	14%
6	Carrying cost	0.19	0.45	1	1	1	1	1	1
7	Grand Cl. Balance	3	3	4	5	5	6	7	8

**PRAYER(S):**

**3B.461** Without prejudice to the contentions in the pending Appeal(s), the Petitioner

requests the Hon'ble Commission to allow the above in the ARR.

### **Issue-17: Financing cost for availing loans for the purpose of Regulatory Assets:**

#### **ISSUE IN BRIEF:**

**3B.462** This claim pertains to the financing cost incurred by the Petitioner towards availing loans for the purpose of funding of Regulatory Assets created by the Hon'ble Commission from FY 2007-08 onwards. The Petitioner's case is that the rate of interest allowed for carrying cost is normative and does not include financing charges for availing the loans. It is well recognised that Regulatory Assets are legitimate dues of the DISCOMs which should be created in exceptional circumstances. However in Delhi, Regulatory Assets have been created only to avoid tariff shock. In FY 2010-11, the quantum of Regulatory Assets substantially increased. As a result, the Petitioner was forced to take loans from banks which charged syndication fees. However the Hon'ble Commission is not allowing syndication fees simply stating that the rate of interest allowed on carrying cost captures the syndication fees also.

#### **LIST OF DATES:**

S.No	Date	Event
1.	31.07.2013	The Hon'ble Commission simply stated that the expenses relating to equity, debt and working capital requirement are allowed in the form of RoCE in accordance with DERC MYT Regulations 2007. The Commission is allowing the carrying cost on the approved revenue gap. The Commission therefore disallows the borrowing costs claimed by Petitioner over and above the RoCE and Carrying cost on the approved revenue gap separately here.
2.	23.07.2014	The Hon'ble Commission stated that only the borrowing cost will be considered at the time of final true up of capitalization. Accordingly, the Commission has not considered the syndication and documentation charges claimed by the Petitioner.
3.	29.09.2015	The Commission reiterated the same finding as given in Tariff Order dated 23.07.2014.



S.No	Date	Event
4.	31.08.2017	The Commission had already clarified this issue in its tariff order dated 29/09/2015 that the borrowing cost including syndication & documentation charges for availing the loan will be considered at the time of final true up of capitalization. Further, the matter is sub-judice before Hon'ble APTEL in Appeal No. 297/2015 against the Commission's decision in Tariff Order dtd. 29/09/2015. Therefore, the matter does not merit consideration at this point of time.
5.	28.03.2018	The Commission reiterated its earlier stand in Tariff Order dated 31.08.2017.
6.	31.07.2019	The Commission has been dealing the issues in respective Tariff Orders as per applicable Tariff Regulations issued from time to time. As the issues pleaded for merit reconsideration by the Petitioner are already under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE, no further deliberation at this juncture is required.
7.	30.09.2019	Hon'ble APTEL in Appeal 246 of 2014 has observed that ROCE allowed by the Commission does not include bank charges/ syndication fees and hence is required to be allowed separately.

DETAILED SUBMISSIONS:

3B.463 It is submitted that :-

- The Hon'ble Commission in fact ignored clause 3 (b) of Appendix 2 of the Multi Year Tariff Regulations, 2011 which clearly contemplates A&G costs to include financing expenses on loans. The Hon'ble Commission was thus obliged to include such financing costs as part of the A&G expenses.
- Since the A&G expenses projected in the original Multi Year Tariff order only provided for an escalation on the previous Multi Year Tariff's A&G expenses level and also since such earlier A&G expenses level did not include any amounts towards financing charges, the Petitioner could not be pegged down to the level of A&G expenses which have been projected by the Hon'ble Commission.
- Even the definition of ROCE in Clause 5.6 of the Multi Year Tariff Regulations, 2011 (**MYT Regulations, 2011**) indicates that it shall cover all financing costs. Hence, taking a cue from the same, it is obvious that even the return to the business would include something more than the actual interest on debt but also include such costs over and above the actual

interest costs. However, this Regulation is applicable only in respect of the financing cost of Capex loans and not loans taken by the Petitioner to fund its Regulatory Assets. The Regulations do not even conceive that the Petitioner would need to borrow funds to fund its Regulatory Assets since the Regulations in fact contemplate the determination of a full cost reflective tariff and do not contemplate the Hon'ble Commission creating Regulatory Assets for the licensees. The Hon'ble Commission, having created Regulatory Assets, could not, in law, rely on the Regulations which do not contemplate this situation at all.

- d. Further, as already submitted herein above the Petitioner is relying upon the definition of ROCE for the limited purposes of showing that the Hon'ble Commission is cognizant of all "financial costs" being a reality. As already submitted earlier the Petitioner is claiming the reimbursement of such Bank charges and syndication charges as a revenue item and not as a capital expense.
- e. Admittedly, the Petitioner is seeking recovery of such syndication/bank charges as part of miscellaneous expenses and not as part of capitalization. The same did not form part of the projected Operation & Maintenance Expenses (**O&M Expenses**). If a particular expense did not form part of the projected O&M Expenses, the Hon'ble Commission could not peg such uncovered expenses within the Operation & Maintenance norm.

**3B.464** It is submitted that in the past, the Hon'ble Commission appears to have not considered the following:

- a) Other SERCs are also allowing borrowing costs separately and not covering the same under carrying costs. Even the Hon'ble Commission also allowed borrowing costs/ financing charges separately till February 2008. The Hon'ble Commission did not delve into the issues as to how the financial institutions can have different borrowing conditions only for the Petitioner as compared to the Utilities in other states?
- b) The Hon'ble Commission did not delve into the issue as to how the borrowing costs/ financing charges borne on account of the loans taken for funding of Regulatory Assets be covered under normative rate of carrying cost which is already lower than the actual rate at which Petitioner is borrowing?
- c) The Hon'ble Commission did not delve into the issue as to when borrowing costs have not been included in A&G Expenses in the base year, i.e., FY 2010-11 then how the condition of cost allocation as per DERC MYT Regulations, 2011 is fulfilled?
- d) The Hon'ble Commission did not delve into the issue as to how the financial

institutions can exclude Delhi DISCOMs from finance charges when DISCOMs in other states are paying the syndication charges/ borrowing fees and the same is being allowed in their ARR.

**3B.465** Borrowing costs pertaining to capex Loans is not capitalized with Assets: The borrowing costs which are capitalized during the year are not directly attributable to specific assets/ capital expenditure incurred during the year. In fact the funds are borrowed generally for capex purposes and related borrowing costs are capitalized as per the requirements of Clause-12 of AS-16 which states as under:

*“12. To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be determined by applying a capitalisation rate to the expenditure on that asset. The capitalisation rate should be the weighted average of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs capitalised during a period should not exceed the amount of borrowing costs incurred during that period.”*

**3B.466** However, the borrowing costs/ syndication fees are not being capitalized and are charged to Profit and Loss Account as finance costs. The practice adopted by the Petitioner regarding borrowing costs, i.e., syndication fees and finance charges etc. is in line with that followed by DISCOMs operating in other states. The Petitioner vide its letter dated May 30, 2014 submitted the relevant extracts of the Tariff Orders issued by other State Electricity Regulatory Commissions where the financing charges have not been capitalized and have been allowed separately as a part of ARR. The same is reproduced again as under:

Chhattisgarh State Electricity Regulatory Commission (CSERC):

CSERC in its Tariff Order for FY 2013-14 dated July 12, 2013 considered the financing Charges of Rs. 2.35 Crore and Rs. 2.69 Crore apart from Interest on Loans while truing-up Interest and Finance Charges for FY 2010-11 and FY 2011-12 respectively. The relevant excerpts from the Order are given below:

*“The Interest and Finance Charges claimed by CSPDCL and approved by the Commission is as given in the following Table:*

**Table 204: Interest and Finance Charges as approved by the Commission (Rs. Crore)**

Particulars	FY 2010-11		FY 2011-12	
	Petition	Approved after Final Truing-up	Petition	Approved after Final Truing-up
Total Opening Net Loan	689.59	395.76		459.93
Repayment during the period	109	53.15		59.06
Additional Capitalisation of Borrowed loan during the year	108.47	97.18		92.37
Addition/ (Reduction) in normative loan during the year	0	20.14		18.58
Total Closing Net Loan	689.06	459.93		511.83
Average Loan during the year	689.33	427.85		485.88
Weighted Average Interest Rate	9.55%	9.62%		10.09%
Interest Expenses for the period	65.85	41.17		49.02
Add: Interest payment on Consumer Security Deposit	33.13	30.71		34.7
Add: Legal, Bank, Guarantee and Other Charges		2.35		2.69
Add: Adjustment on a/c of term loan from financial institution				(2.99)
Total interest and finance charges	98.98	74.22		83.4

**Maharashtra Electricity Regulatory Commission (MERC):**

MERC in its Tariff Order for FY 2013-14 dated August 16, 2012 allowed the actual financing Charges apart from interest on loans while truing-up the Interest and Finance Charges of MSEDCL for FY 2011-12. The relevant excerpts from the Order are given below:

*“3.10.5 The actual expenditure on other interest and finance charges has been accepted by the Commission as per the Audited Accounts. Thus, the interest on working capital, other interest and finance charges including interest on consumers’ security deposit, approved by the Commission for FY 2010-11 works out to Rs. 257 crore.*

**Table 30: Interest on Working Capital, Consumers’ Security Deposit and other interest and finance charges for FY 2010-11**

(Rs. crore)

Particulars	APR Order	Actual	Allowed after Truing-up
Interest on Working Capital		198.76	0
Interest on Security Deposit		211.3	211.3
Guarantee Charges		14.33	14.33
Finance Charges		25.34	25.34
Stamp Duty		5.93	5.93
Service Fee		0	0
Total other Interest and Finance Charges	295.8	455.66	256.9

Tamil Nadu Electricity Regulatory Commission (TNERC):

TNERC in its Tariff Order for FY 2013-14 dated June 20, 2013 allowed the Finance Charges apart from Interest on Loans. The relevant excerpts from the Order are given below:

*“3.148 Commission has observed that TANGEDCO has claimed interest on GPF in other finance charges. Commission is not allowing the interest expenses on GPF as it has not considered GPF reserve for funding of capital expenditure. **The interest expenses on consumer security deposits and other finance charges approved by the Commission are tabulated below.***

**Table 67: Interest and other finance charges approved by the Commission (Rs. Cr)**

Parameter	2010-11		2011-12		2012-13	
	Petition	Commission	Petition	Commission	Petition	Commission
Interest on Consumer Security Deposit	145.34	100.44	380.05	247.6	399.05	380.81
Other Finance Charges	48.78	20.23	140.56	87.14	147.58	87.14
Total	194.12	120.67	520.61	334.74	546.63	467.95

Rajasthan Electricity Regulatory Commission (RERC):

RERC in its Tariff Order for FY 2013-14 dated June 06, 2013 allowed the Finance Charges as sought by the DISCOMs. The relevant excerpts from the Order are given below:

*“12.2 Commission’s Analysis*

*Finance charges have been allowed as sought by the three Discoms.....*

*Table-13: Interest and Finance Charges approved by the Commission*

for FY 2013-14 (Rs. Crore)

Particulars	Approved JVVNL	Approved AVVNL	Approved JdVVNL	Total
Opening balance of LTL	4108	2705	2496	9309
Capitalization	673	506	556	1734
Capital expenditure financed by Equity	120	111	108	339
Capital expenditure financed by Consumer Contribution and grants	272	137	195	604
Receipt of LTL for Capital expenditure	281	258	253	791
Principal Repayment	398	311	280	989
Closing balance of LTL	3990	2652	2469	9111
Average LTL	4049	2679	2482	9210
Average Interest rate of LTL (%)	12.61%	10.12%	11.51%	
Interest Charges on LTL	511	271	286	1067
Interest on Security Deposit	80	42	34	156
<b>Finance Charges &amp; Lease Rental</b>	<b>2</b>	<b>1</b>	<b>6</b>	<b>10</b>
Gross Interest Charges	593	314	326	1233
Interest Expenses Capitalized	0	0	0	0
Total Interest & Financing Charges	593	314	326	1233

Haryana Electricity Regulatory Commission (HERC):

HERC in its Tariff Order for FY 2013-14 dated March 30, 2013 allowed the Finance Charges apart from Interest. The relevant excerpts from the Order are given below:

**“3.9.4 Cost of raising finance and bank charges**

*UHBVNL has estimated that it will incur additional expenditure on account of raising finance and bank charges amounting to Rs. 110.60 million. The Commission feels that this estimate is extremely high considering the fact that the licensee expects to raise an additional amount of Rs. 1125 million and the proposed cost comes to nearly 10% of additional borrowings. The Commission allows the licensee to recover Rs. 68.30 million on this account based on the audited accounts for FY 2011-12 subject to true up.” (Emphasis added)*

As evident from above, the Distribution companies in other states have also not capitalized the finance charges along with assets and the respective SERCs have allowed the same as a part of ARR. Therefore the

borrowing cost, i.e., finance charges, syndication fees etc. ought to be allowed separately in the ARR.

3B.467 Borrowing costs pertaining to non-capex Loans are directly linked to Regulatory Assets:

In absence of any amortization plan of Regulatory Assets, the Petitioner was left to fund the entire Regulatory Assets on its own. The Petitioner is funding a large portion of these Regulatory Assets through debt for which the Petitioner is required to bear syndication and documentation fees. It is noteworthy to mention that the finance charges have been borne mainly on account of IDBI Loan of Rs. 5000 Crore which was borrowed in absence of amortization of Regulatory Assets so as to clear the dues to the Gencos during FY 2011-12 and FY 2012-13. The Petitioner also informed the same to the Hon'ble Commission vide letter dated December 16, 2011 and November 1, 2012. The Petitioner also submitted the loan agreement before the Hon'ble Commission. Also the Hon'ble Commission vide its letter dated December 16, 2011 has assured the lender to amortize the Regulatory Assets completely by the end of Second Control Period.

3B.468 It is further submitted that the energy distribution Sector is operating on cost plus regime. Any costs on account of Regulatory Assets ought to be allowed to the Petitioner otherwise the Petitioner will be penalized without any fault its own.

3B.469 Borrowing cost have not been included in A&G Expenses:

The Hon'ble Commission itself has observed that Appendix 2 – Cost Allocation, Clause 3 (b) states as under:

*“A&G Cost: A&G expenses related to power purchase, metering, billing and collection, **financing expenses on loan** related to Retail Supply business shall be allocated to Retail Supply business. Office expenses like telephone, stationery, electricity, lease rent etc shall be apportioned between Wheeling and Retail Supply business on the basis of predominant usage concept.” (Emphasis added)*

3B.470 The Hon'ble Commission has not included financing charges as a part of A&G



Expenses while approving A&G Expenses from FY 2012-13 to FY 2014-15 in Tariff Order dated July 13, 2012. The financing charges appear in a separate schedule and are not merged with the A&G Expenses in the Audited Accounts of the Petitioner. The comparison of A&G Expenses from FY 2006-07 to FY 2010-11 as considered by the Hon'ble Commission and that appearing in the Audited Accounts is tabulated below:

**Table 3B 101: A&G Expenses considered from FY 07 to FY 11**

(Rs. Cr.)

S. No	Particulars	Reference	FY 07	FY 08	FY 09	FY 10	FY 11
1	A&G Expenses considered by the Commission	Table-93, Page-140 of TO dt. July 13, 2012	137	158	108	145	110
	Less: Provisions		77	94	43	95	35
	Add: Lease Rentals		2	2	2	2	2
	<b>Net A&amp;G Expenses considered by Commission for benchmarking</b>		<b>61</b>	<b>65</b>	<b>67</b>	<b>52</b>	<b>76</b>
2	A&G Expenses as per Audited Accounts	Respective Audited Accounts	139	159	113	147	110
3	<b>Financing charges as per Audited Accounts<sup>#</sup></b>	<b>Respective Audited Accounts</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>7</b>	<b>16</b>

<sup>#</sup> not included in Sr. No. 2 and appearing in separate schedule of Audited Accounts

**3B.471** As evident from above, the Hon'ble Commission has not considered the financing charges while benchmarking A&G Expenses. Therefore, the financing charges have not been included in A&G Expenses from FY 2012-13 to FY 2014-15 and are required to be allowed separately.

**3B.472** Further the Hon'ble APTEL in Judgment dated 30.09.2019 (Appeal 246 of 2014) has ruled as under:

*"16.1.5 The Appellant in its Tariff Petition had claimed an additional amount of Rs. 0.40 Crore towards financing charges as per the audited accounts of the Appellant. However, the Respondent Commission in the Impugned Order disallowed such claim on the pretext that Return on Capital Employed ("RoCE") shall be used to provide for financing charges also. The Tariff*



*Regulations 5.6 clearly specifies that "Return on Capital Employed (RoCE) shall be used to provide a return to the Distribution Licensee and shall cover all financing costs, without providing separate allowances for interest on loans and interest on working capital". The above regulations clearly specifies that the RoCE should cover all financing cost but financing cost incurred for obtaining the loans has not at all been factored in the cost of debt. If these minor charges are not incurred, the Appellant will not be able to avail the Loans from the banks as these are the minimum required charges for availing the loans and are uncontrollable at the hands of the Appellant. The Respondent Commission has itself recognized that the interest rate of Appellant is lowest amongst all other Discoms. Therefore, disallowing these minimum charges levied by banks puts undue burden on the Appellant without recognizing the efficiency of Appellant in keeping the interest rate to lowest possible levels. The Respondent Commission has failed to consider the allowance of cost incurred for financing of Loans. The RoCE as computed by the Respondent Commission has not considered the above financing cost and therefore, the same needs to be separately allowed as it does not form part of any other expenditure i.e., allowed to the Appellant. **Therefore, the contention of the Respondent Commission to cover the same as part of ROCE is contrary to the provisions of Tariff Regulations."** (Emphasis added)*

As regards above, it is submitted that the Petitioner has also been allowed the rate of interest equivalent to TPDDL and hence, the syndication charges ought to be allowed for the Petitioner.

**3B.473** In view of the above submissions, the Commission may kindly permit bank charges/ syndication charges to be included as a cost in the Annual Revenue Requirement.

**3B.474** The present issue is also pending in Appeal No. 290 & 297 of 2015 and Appeal Nos. 235 & 236 of 2014. Without pre-judice to the contentions in the said appeals, the Petitioner requests the Hon'ble Commission to allow the impact in the ARR. It is respectfully submitted that, the Hon'ble Commission should take up and decide

the issue subject to the result of the aforesaid Appeals. This will avoid exposure of carrying costs on the consumers which could also be contained.

3B.475 Accordingly the Petitioner is claiming syndication fees/ borrowing cost incurred during previous year as under:

**Table 3B 102: Impact on account of syndication fees/ borrowing cost along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. Balance	0	2	6	14	33	58	103	143	177	213	258
2	Additions	2	3	7	16	19	34	23	11	9	13	15
3	Cl. Balance	2	5	13	30	52	92	126	155	186	226	273
4	Average	1	4	9	22	42	75	115	149	182	219	265
5	Rate of interest	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	0.14	0.50	1.20	2.92	6.28	11.25	17.19	22.53	26.87	32	37
7	Grand Cl. Balance	2	6	14	33	58	103	143	177	213	258	310

**PRAYER(S):**

3B.476 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

3B.477 Based on the above submissions, the total impact claimed on account of implementation of Hon'ble ATE Judgments is tabulated below:

**Table 3B 103: Total impact claimed on account of implementation of Hon'ble ATE Judgment**

(Rs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Capex related issues	2703	4107	6810
2	Impact of 11 months truing-up on account of depreciation rate for first 8 months	90	279	369
3	Computation of AT&C Loss for FY 2009-10	3	7	11
4	AT&C Loss for FY 2011-12	49	71	120
5	Revision of AT&C Loss targets from FY 2012-13 to FY 2013-14	89	92	181

S. No	Particulars	Principal	Carrying Cost	Total
6	Increase in employee expenses corresponding to increase in consumer base for FY 2007-08 to FY 2011-12	122	273	394
7	Efficiency factor for FY 2010-11	16	28	44
8	Revision of R&M Expenses by revising "K" factor for FY 2012-13 to FY 2016-17	21	13	34
9	Lower rates of carrying cost		2085	2085
10	Financing cost of LPSC based on SBI PLR-FY 08 to FY 13	26	51	77
11	Own Consumption-Reversals	114	83	197
12	Additional UI Charges above 49.5 Hz frequency	3	5	8
13	Syndication fees	152	158	310
14	<b>Sub-total</b>	<b>3387</b>	<b>7252</b>	<b>10640</b>

PRAYER(S):

3B.478 The Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issues in the present ARR of the Petitioner.

## Issues which are contrary to Regulations/ Previous directions:

3B.479 The Petitioner most respectfully submits that there are certain issues where the approach of the Hon'ble Commission is not in line either with the executed PPAs; previous tariff orders; affidavits of the Hon'ble Commission filed before Hon'ble APTEL/ Supreme Court or where the Hon'ble Commission has partially implemented the Judgments of the Hon'ble ATE. These issues are listed below for the convenience of the Hon'ble Commission:

- Legal fees disallowed during FY 2017-18
- Interest rates for working capital and carrying cost during FY 2017-18 considered contrary to Regulations
- Disallowance of power purchase cost during period of regulations;
- Disallowance on account of overlapping banking transactions;
- Cost disallowed on account of excessive trading at UI above contingency limit;

- f) Normative rebate of 2% considered from FY 2012-13 to FY 2017-18;
- g) Income from Street Light Maintenance Business to be considered as other business income;
- h) Old methodology for computation of financing cost of LPSC continued post FY 2012-13 despite of change in methodology of levying of LPSC;
- i) Disallowance of account of monthly billing rebate contrary to its own affidavit submitted by the Hon'ble Commission in Civil Appeal 6959-60 of 2015 before Hon'ble Supreme Court;
- j) Partial implementation of allowance of actual claims of R&M and A&G expenses from FY 05 to FY 07;

**3B.480** The Petitioner further respectfully submits that the aforesaid issues are under challenge in various Tariff Appeals filed by the Petitioner and which are presently pending adjudication before Hon'ble ATE. However, without prejudice to the Petitioner's contentions in the said Appeals, the Petitioner is raising the above issues herein in an attempt to clarify the same and with the objective of minimising litigation.

**3B.481** The aforesaid issues are discussed in detail as under:

a) Legal fees disallowed during FY 2017-18:

**3B.482** The grievance of the Petitioner is that the Hon'ble Commission has, at **Para. 3.371** of Tariff Order dated 31.07.2019, denied all the legal expenses incurred by the Petitioner except expenses incurred by the Petitioner in enforcement cases which it has won. Moreover, while this miniscule set of legal expenses (i.e., for enforcement cases won by the Appellant) have been allowed in principle, the same are subject to further prudence check by the Respondent Commission.

**3B.483** On 31.08.2017, the Hon'ble Commission notified Business Plan Regulations, 2017. On 6.10.2017, the Hon'ble Commission issued Statement of Reasons to the Business Plan Regulations, 2017 wherein following was clarified on the issue of legal charges:

*“5) With regards to the stakeholder’s submission that Legal Expenses is not allowed to be recovered through ARR, the Commission has examined and is of the view that no modification to be allowed from the draft Regulation in this regard. The Commission has provided the treatment of Legal Expenses in its Explanatory Memorandum as follows:*

*“(43) The Commission has not considered the expenditure incurred on account of legal fee. Further, the Commission is of the view that legal expenses incurred on cases filed against the decisions of the Commission in any of the Courts and Forums shall not be allowed as pass through in the ARR. The legal expenses incurred on cases other than aforesaid, shall be claimed by the DISCOMs in Tariff petitions which may be allowed separately after prudence check in true-up order for respective year.”*

**3B.484** The Petitioner in its Petition for truing-up of FY 2017-18 and ARR and Tariff of FY 2019-20 claimed an amount of Rs. 13.20 Crore for FY 2017-18 towards expenses incurred by it on account of legal charges.

**3B.485** The Hon’ble Commission vide email dated 20.06.2019 directed the Petitioner to submit the details of all the expenses under the head legal expenses along with the bills raised by the legal counsels with corresponding matter/ appeal/ petition details for the purpose of prudence check of the claims sought.

**3B.486** The Petitioner vide its letter dated 21.06.2019 submitted the details along with justification for claiming legal expenses.

**3B.487** However, in Tariff Order dated 31.07.2019, to the surprise of the Petitioner, the Hon’ble Commission held that only the legal expenses incurred by the Petitioner on account of enforcement cases where the Petitioner has won such cases before the Appropriate Forum may be allowed. Accordingly, the Petitioner may provide the requisite data, case-wise. The same shall be considered subject to the prudence check of the claims.

**3B.488** The Petitioner respectfully submits that it incurs legal expenses on a variety of issues. The dispensation of the Hon’ble Commission in allowing only a small

subset of the legal expenses incurred is not only arbitrary but is also against the law laid down by this Hon'ble Tribunal in Appeal No 265 of 2006, in the matter of North Delhi Power Limited v. DERC &Ors. (and batch), wherein this Hon'ble Tribunal held as under:

*"52.... One has to take note of the fact that all the Discoms are under obligation to reduce AT&C losses, the major part of which is caused by theft of electricity. Fighting a legal battle is a part of effort to check theft. **Unless the Commission is able to specifically point out which part of the legal expense is not justified the Commission cannot cut down on such expenses by an arbitrary method. The Commission is liable to make room for legal expenses incurred by the appellant, except for those which the Commission can specifically point out to be imprudent...**"*

*[emphasis supplied]*

3B.489 In view of the above, it is abundantly clear that except for legal expenses incurred imprudently, there is no room for the Hon'ble Commission to disallow the legal expenses incurred by the Petitioner. The Petitioner submits that despite the above unequivocal exposition of law by this Hon'ble Tribunal, the Hon'ble Commission has denied legal expenses incurred by the Petitioner.

3B.490 Contrary to its own position, the Hon'ble Commission has not even allowed the legal expenses duly and legitimately incurred by the Petitioner in cases other than cases filed against the decisions of the Commission. As noted above, the only form of legal expenses allowed (and that too in principle) are the ones incurred by the Petitioner while successfully prosecuting/defending enforcement related cases.

3B.491 Further the Petitioner had provided to it all the details of the legal expenses incurred by it. In fact, the Hon'ble Commission's auditors were granted a full and complete access to the Petitioner's back up documents for incurring such expenses including access to the Petitioner's SAP system. These also included cases filed which had nothing to do with the Hon'ble Commission's orders. However, despite such information/documentation being provided, the same has not been allowed and no reasoning whatsoever has been provided in the Tariff Order dated 31.07.2019.

3B.492 Further the Hon'ble Commission has ignored the fact that Bar Council of India has defined Standards of Professional Conduct and Etiquette to be observed by Advocates under Section-49 (1) (c) of the Advocates Act, 1961. Section-II of the same specifies the Duty of Advocates towards Clients. Point -20 of Section-II clearly specifies as under:

*"20. An advocate shall not stipulate for a fee contingent on results of litigation or agree to share the proceeds thereof."*

Therefore there is absolutely no rational nexus for the Hon'ble Commission to have allowed legal expenses only for enforcement cases which have been won by the Petitioner. It is submitted that such a dispensation is clearly violative of Articles 14, 19(1)(g) and 21 of the Indian Constitution.

3B.493 Accordingly the Petitioner is claiming the legal fees and expenses incurred during FY 2017-18 based on actual as per the table below:

**Table 3B 104: Legal fees and expenses along with carrying cost**

(Rs. Cr.)		
S. No	Particulars	FY 18
1	Opening balance	0
2	Additions	13
3	Closing	13
4	Average	7
5	Carrying cost rate	14%
6	Carrying cost	1
7	Grand closing	14

**PRAYER(S):**

3B.494 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact on account of aforesaid claim.

b) Interest rates for working capital and carrying cost during FY 2017-18 considered contrary to Regulations:

3B.495 As regards carrying cost, Regulation-2 (16) of DERC Tariff Regulations, 2017 notified on 31.01.2017 states as under:

**"2. Definitions and Interpretation**

....

*(16) "Carrying Cost Rate" means the weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity in an appropriate ratio, as specified by the Commission in the relevant Orders:"*

Further Regulation 86 of the 2017 Regulations provides that the interest on working capital shall be payable on a normative basis. The said norm is to be calculated as per the methodology specified in Regulation 85, which provides that the rate of interest on working capital shall be considered as the bank rate as on 1 April of the year plus the margin specified by the Hon'ble Commission for the Control Period and that the same shall be trued up on the basis of the prevailing bank rate bank rate as on 1 April of the respective financial year.

**3B.496** The margin referred to in Regulation 85 of the Tariff Regulations, 2017 is specified by the Hon'ble Commission in Regulation 22 of the Business Plan Regulations, 2017. The said Regulation provides for the margin to be the difference in weighted average rate of interest on *actual loan* as on 1st April 2017 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1 April 2017 provided that total rate of interest (i.e., MCLR plus margin) shall not exceed 14.00%.

**3B.497** The Hon'ble Commission in Tariff Order dated 31.08.2017 determined carrying cost of 14% for FY 2017-18 in accordance with Regulation-2 (16) of Tariff Regulations, 2017 as under:

*"4.132 The Commission has approved Return on Equity in terms of Regulation 2(16) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for computation of weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity shall be considered at 14.00% on pre-tax basis in its Business Plan Regulations, 2017. Further, the rate of interest has been considered at 14.00% with margin of 6.10% over one (1) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI based weighted average rate of interest on actual portfolio of the Petitioner for funding of revenue gap.*

*4.133 Accordingly, the Commission has computed Carrying Cost as follows:*



**Table 235: Carrying cost approved by the Commission for FY 2017-18**

Sr. No.	Particulars	FY 2017-18
A	Rate of Return on Equity	14.00%
B	Rate of Interest on Loan	14.00%
C	Rate of Carrying Cost	14.00%
D	Opening Revenue Gap	3586.10
E	Surcharge @ 8%	669.95
F	Carrying Cost	428.00

”

**3B.498** It is submitted that Regulations 85 and 86 of the Tariff Regulations, 2017 read with Regulation 22 of the Business Plan Regulations, 2017 clearly and unequivocally provide for the manner in which the interest is to be computed and the same is capped at 14%. However, for reasons best known to the Hon'ble Commission, while the Hon'ble Commission has stated that the truing up of the interest rate for working capital and carrying cost has been done in accordance with the Tariff Regulations, 2017, it has allowed an interest rate of 13.06% and 13.62% for the purpose of working capital and carrying cost respectively when clearly the rate of interest as per the prescribed formula in the Hon'ble Commission's own Regulations, ought to have been 14.10%,(capped at 14%). Therefore, the Hon'ble Commission fell into error by not complying with its own Regulations by providing the rate of interest as 13.62%.

**3B.499** Further the Hon'ble Commission in Tariff Order dated 31.08.2017 in accordance with Regulation-2 (16) determined the rate of carrying cost as 14% for the next control period and categorically stated that margin is 6.10% over and above SBI MCLR (1 Year Average). However, at the stage of truing-up, the Hon'ble Commission contrary to its own Regulations and Tariff Order dated 31.08.2017 revised the rate of carrying cost.

**3B.500** The variations in SBI MCLR from 1st April 2017 to 1st April 2018 as notified by SBI on its website is tabulated below:

**Table 3B 105: Variations in SBI MCLR**

S. No	Particulars	Percentage
1	SBI MCLR as on 1 <sup>st</sup> April 2017	8%
2	SBI MCLR as on 1 <sup>st</sup> April 2018	8.15%

3	SBI MCLR as on 1 <sup>st</sup> April 2019	8.55%
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3B.501 Therefore in terms of Tariff Regulations, 2017 even if a truing-up on the basis of MCLR had to take place, the allowable rate of interest would have to be 6.10% (Margin) plus applicable MCLR, i.e., 8%. Hence the trued-up rate of interest would be 14.10% capped to 14%. It could not be 13.62% as considered by the Hon'ble Commission in Tariff Order. Accordingly the Petitioner has considered rate of interest for the purpose of carrying cost during FY 2017-18 as 14%.

3B.502 The impact of correction in rate of working capital of FY 2017-18 has been considered in capex related claims at Para- 3B.295 of the Petition and the impact of correction in rate of carrying cost has been considered at Para-3B.414 of the Petition.

PRAYER(S):

3B.503 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact on account of aforesaid claim.

c) Cost disallowed on account of Regulation of power:

3B.504 As regards cost disallowed on account of regulation of power, the Petitioner submits that the Hon'ble Commission in its Tariff Order dated July 23, 2014 stated as under:

*"3.88... Further, the Petitioner may submit within one month, claim if any along with relevant documents, related to loss on sale of surplus power during the off-peak hours from regulated stations that would have been otherwise imminent in case the power was not regulated.*

...

*3.91 Accordingly, the Commission obtained from SLDC the details of power drawn from other sources during regulation period and also the stations from which power regulation was done along with the quantum of power that would have been available if there was no regulation." (Emphasis added)*

3B.505 As is evident from above, the Hon'ble Commission in its Tariff Order dated July 23,

2014 obtained the information pertaining to regulation of power during FY 2012-13 from SLDC and directed the Petitioner to submit the cost-benefit analysis. Accordingly, the Petitioner within one month vide its letter dated August 25, 2014, submitted its claim along with relevant documents, related to loss on sale of surplus power during the off-peak hours from regulated stations that would have been otherwise imminent in case the power was not regulated. A meeting was also convened by the staff of the Hon'ble Commission on November 20, 2014, wherein the savings on account of regulation of energy from long term sources was demonstrated. However, the Hon'ble Commission in its Tariff Order dated September 29, 2015 has stated that information from SLDC is awaited (which was actually the basis for disallowance of cost on account of regulation of power in Tariff Order dated July 23, 2014).

**3B.506** Further, the Petitioner vide letter dated April 10, 2015 also submitted the cost-benefit analysis on account of regulation of power during FY 2013-14. However, the Hon'ble Commission in its Tariff Order dated September 29, 2015 directed the Petitioner as under:

*"Impact on account of Regulated Power for FY 2012-13*

...

*3.115 The Commission has received the claims regarding disallowance on account of regulated power in truing-up of FY 2012-13 in tariff order dated 23.07.2014. In order to finalise the claim of the Petitioner, the Commission has directed SLDC to submit the relevant information like quantum of Short Term Purchase during regulated period in case there has been no regulation of power. **The said information is awaited from SLDC. The Commission will take the final view on the basis of information submitted by SLDC.***

...

*3.262 Accordingly, the Commission vide its letter dated 18.03.2015 directed SLDC to submit various details pertaining to regulation of power viz. period of regulation, quantum of regulated power and short term procurement during regulated period.*

***SLDC vide its letter dated 21.04.2015 has submitted 99.31 MU of regulated quantum and 40.49 MU of short term purchase during the regulated period i.e., during 01.04.2013 to 14.04.2013.***

*3.263 The Commission has considered the weighted average per unit*

rate of Rs. 2.70 based on bill details of TPDDL pertaining to the period of regulation for regulated stations. The Petitioner vide its letter dated 10.04.2015 has submitted the slot wise details of quantum of power purchased from short term sources during the regulation period and furnished that 14 MU of short term power procurement would have been avoided without regulation of power.

3.264 The Commission has derived additional expenditure incurred for procurement of 14MU by considering the average power purchase cost from various sources from which power was purchased during the period of regulation. The weighted average per unit cost of power procured during the period of Regulation has been derived as Rs. 3.32/kWh for 40.49 MU which were procured by the Petitioner through short term power purchase. The Commission has considered the weighted average cost of long term power procurement at Rs. 2.70/kWh in case the Petitioner's power was not regulated from these stations. The Commission decides to disallow this differential amount of power procurement for 14 MU @ Rs. 0.62/kWh (3.32-2.70) i.e., Rs. 0.87 Crore incurred in the power purchase cost for FY 2013-14.

3.265 As discussed above, the additional fixed cost amounting to Rs. 11.77 Crore was borne by the Petitioner. The Commission has already given the treatment to 14.00 MU out of 99.31 MU which the Petitioner would have received had his power not been regulated. The Commission, therefore, decides to disallow the prorated fixed cost against 85.31 (99.31-14.00) MU which works out to Rs. 10.11 Crore  $(85.31 \times (11.77/99.31))$ . **(Emphasis added)**

3B.507 It is submitted that the Hon'ble Commission in Tariff Order dated July 23, 2014 disallowed the cost borne on account of regulated power based on data of SLDC. However, in its Tariff Order dated September 29, 2015, the Hon'ble Commission stated that the information pertaining to short term power purchased during FY 2012-13 is awaited from SLDC. In subsequent Tariff Order dated August 31, 2017, the Hon'ble Commission rejected the claim of the Petitioner opining as under:

**"3.314 The Commission has analyzed the submission of the Petitioner and it is observed that the Petitioner has not factored the merit order principle while computing the opportunity cost and benefit due to regulation of power vis-a-vis sale of surplus power. It is clarified that in case the power would not have been regulated from these cheaper station of NHPC then the Petitioner had the opportunity to**

*back down its costly station and avail the cheaper power from NHPC, which could have reduced the loss on sale of surplus power as considered by the Petitioner. Therefore, the claim of the Petitioner is not tenable."*

(Emphasis added)

**3B.508** Thereafter, the Hon'ble Commission in its subsequent Tariff Order dated March 28, 2018 maintained the similar stand without dealing with the contentions of the Petitioner.

**3B.509** It is respectfully submitted that as regards the aforesaid, the following points have been ignored by the Hon'ble Commission:

- 1) The fixed charges are to be borne by the Petitioner in accordance with PPA signed with the respective Generators irrespective of the fact that power is regulated or not regulated. The Hon'ble Commission has completely ignored the fact that any additional cost borne by the consumers due to regulation of power may be disallowed but fixed charges paid to generators during period of regulation would have been borne even in case where power would not have been regulated. Fixed charges are even required to be paid in case the power is not regulated and the Petitioner procures even zero units from any power plant during the year. Therefore, disallowance of fixed charges paid during period of regulation is unjustified.

The year-wise fixed charges disallowed for period of regulation is tabulated below:

**Table 3B 106: Year-wise fixed charges disallowed for period of regulation**

(Rs. Cr.)

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1	Fixed cost borne during period of regulation	21	37	11	5	4	24

- 2) As regards Merit Order Despatch Principle, the Hon'ble Commission has not given any computations in support of its statement that the Petitioner was actually having an opportunity to back-down costly power stations in case power would not have been regulated, i.e., the Hon'ble Commission has not examined as to whether the costly power stations were running at full capacity or technical minimum during the

period of regulation.

- 3) Further, the Hon'ble Commission has ignored the fact that DISCOM-wise scheduling was implemented after series of rigorous follow-ups from March 22, 2014 only. For period prior to FY 2013-14, DISCOM-wise scheduling was not available.
- 4) Even for period post FY 2013-14, the Petitioner had to buy power from short term market. The logic given by the Hon'ble Commission, i.e., *the Petitioner has still not factored the merit order principle while computing the opportunity cost and benefit due to regulation of power vis-a-vis sale of surplus power as per the remark of the Commission in Tariff order dated 31/08/2017*, will hold true only for the quantum which would have been available from regulated power above short term power procured from FY 2014-15 to FY 2016-17. A comparison of quantum of short-term power procured and the quantum of power regulated is tabulated below:

**Table 3B 107: Comparison of short term power procured and regulated quantum**

S. No	Financial Year	Quantum Regulated (MU)	Short term power procured (MU)	Difference (MU)
1	FY 2014-15	92	71	21
2	FY 2015-16	400	366	34
3	FY 2016-17	204	131	73

The difference as shown in the above table was the only potential available for back-down of costly power stations.

3B.510 The Petitioner vide various letters has submitted the reduction in power purchase cost from FY 2012-13 to FY 2016-17. The cost-benefit analysis for FY 2012-13 which is tabulated below:

**Table 3B 108: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2012-13**

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Actual Power Purchase cost during FY 13 (A)	11233	5.2	5843	Figures as per ARR Petition
Regulated Power during FY 2012-13	671	2.39	160	671 MU @ Rs. 2.39 per kWh as per DERC Tariff Order

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2012-13)	165	3.24	53	165 MU as per short term schedule and Rs. 3.24 per kWh as per IEX Rate (Slot-wise)
Power Purchase Cost assuming no regulation of power in FY 2012-13 (B)	11739	5.07	5950	
<b>Net savings to consumers due to reduction in power purchase cost</b>			<b>107</b>	<b>B-A</b>

3B.511 Similarly, during regulation of power during FY 2013-14, the Petitioner was able to avoid purchase of 99 MU during off-peak hours whereas the Petitioner was required to purchase additional 14 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3B 109: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2013-14**

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Actual Power Purchase cost during FY 14 (A)	11509	5.36	6174	Figures as per ARR Petition
Regulated Power during FY 2013-14	99	2.39	24	99 MU @ Rs. 2.39 per kWh as per DERC Tariff Order
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2013-14)	14	2.23	3	14 MU as per short term schedule and Rs. 2.23 per kWh as per IEX Rate (Slot-wise)
Power Purchase Cost assuming no regulation of power in FY 2013-14 (B)	11594	5.34	6194	
<b>Avoided cost consumer due to reduction in power purchase cost</b>			<b>21</b>	<b>(B-A)</b>

3B.512 Similarly, during regulation of power during FY 2014-15, the Petitioner was able to



avoid purchase of 93 MU during off-peak hours whereas the Petitioner was required to purchase additional 14 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3B 110: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2014-15**

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Actual Power Purchase cost during FY 15 (A)	11938	5.83	6955	As per actuals
Regulated Power during FY 2014-15	93	3.85	36	Quantum of purchase is considered as per slot-wise analysis and rate is considered before regulation of power
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2014-15)	14	1.94	3	14 MU's as per slot-wise analysis and Rs. 1.94/ Unit as per IEX/ UI rate
Power Purchase Cost assuming no regulation of power in FY 2014-15 (B)	12017	5.82	6988	
<b>Avoided cost consumer due to reduction in power purchase cost</b>			<b>33</b>	<b>(B-A)</b>

3B.513 Similarly, during regulation of power during FY 2015-16, the Petitioner was able to avoid purchase of 400 MU during off-peak hours whereas the Petitioner was required to purchase additional 253 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3B 111: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2015-16**

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	



Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Actual Power Purchase cost during FY 16 (A)	12017	5.32	6389	As per actuals
Regulated Power during FY 2015-16	400	3.85	133	Quantum of purchase is considered as per slot-wise analysis and rate is considered before regulation of power
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2015-16)	253	2.70	68	253 MU's as per slot-wise analysis and Rs. 2.70/ Unit as per IEX/ UI rate
Power Purchase Cost assuming no regulation of power in FY 2015-16 (B)	12164	5.31	6454	
<b>Avoided cost consumer due to reduction in power purchase cost</b>			<b>65</b>	<b>(B-A)</b>

3B.514 Similarly, during regulation of power during FY 2016-17, the Petitioner was able to avoid purchase of 204 MU during off-peak hours whereas the Petitioner was required to purchase additional 102 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3B 112: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2016-17**

Particulars	Quantum (MU)	Avg. per unit	Amt. (Rs. Cr.)	Remarks
Actual Power Purchase (FY 17) (A)	12687	5.45	6913	As per Actuals
Regulated Power (FY 17)	204	5.83	119	204 MU as per SLDC @ Rs. 5.83/ unit (As per slot wise analysis)
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 17)	102	2.93	30	102 MU as per slot-wise analysis and Rs. 2.93/ unit as per IEX rate
Power purchase cost assuming no regulation of power in FY 17 (B)	12789	5.47	7001	
Avoided cost consumer due to reduction in power purchase cost (Savings to the consumers)			89	B-A

3B.515 Without pre-judice to the Appeal pending before Hon'ble ATE, the Petitioner requests the Hon'ble Commission to consider the above submissions and allow the cost incurred on account of Regulated Power from FY 2011-12 to FY 2016-17 along with carrying cost as tabulated below:

**Table 3B 113: claim on account of regulated power from FY 12 to FY 17**

(Amount in Rs. Cr.)

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	23	173	211	251	334	422
2	Additions	21	137	11	7	43	36	
3	Cl. Balance	21	159	184	218	294	370	422
4	Average	11	91	179	215	272	352	422
5	Rate of interest	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	2	14	27	32	40	52	59
7	Grand Cl. Balance	23	173	211	251	334	422	481

**PRAYER(S):**

3B.516 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact of aforesaid claim in ARR.

**d) Cost disallowed on account of overlapping banking transactions:**

3B.517 The Hon'ble Commission in its Tariff Order dated March 28, 2018 did not deal with the submissions of the Petitioner and simply stated that *"The Commission has already provided detail reason for disallowance on account of overlapping of banking transactions in power purchase cost of the relevant year."*

3B.518 In this regard, it is respectfully submitted that the Hon'ble Commission has not provided any reason in Tariff Order dated September 29, 2015 and has simply stated as under:

*"3.275 During the Technical Validation Session, it was observed that there was overlapping in Banking Transactions during FY 2013-14. The total quantum of Import and Export of Energy in the same time slot as per Letter of Intent (Lol) submitted by the Petitioner in FY 2013-14 was*

*49.44 MU. Due to overlapping in banking transactions, the Petitioner has incurred additional expenses on account of Trading Margin and Transmission Charges. Accordingly, the additional expenses incurred on account of Trading Margin and Transmission Charges on quantum of overlapping in Banking Transaction is Rs. 6.04 Crore, which could have been avoided and thus has not been considered in Power Purchase Cost for FY 2013-14. Therefore, the Commission directs the Petitioner to take necessary precautionary measures before entering into Power Banking Transactions to avoid the overlapping transactions and resultant losses."*

**3B.519** As regards FY 2013-14, it is submitted that the Petitioner vide its letter dated August 12, 2015 provided detailed justification to the Hon'ble Commission regarding reasons for overlapping banking transactions. The Petitioner also highlighted that the Hon'ble Commission vide letter dated January 31, 2013 had itself directed the Petitioner to arrange for extra power to meet the demand stating that Delhi SLDC during its 26th meeting of Coordination Forum on January 18, 2013, had projected a shortage in availability of power during summer months. However, the said demand never materialised due to a long monsoon season during FY 2013-14. As a result, the Petitioner put all out efforts and arranged to sell this surplus power through banking (since banking transactions are revenue neutral) so as to protect the interest of consumers. However, the Hon'ble Commission has not dealt with any of the reasons given by the Petitioner and without providing any details, has disallowed the cost on account of overlapping of banking transactions. The Hon'ble Commission has also not dealt with the aforesaid contentions in Tariff Order dated August 31, 2017.

**3B.520** Further, the Hon'ble Commission in Tariff Order dated August 31, 2017 while truing-up FY 2014-15 and FY 2015-16 disallowed banking transaction stating as under:

*"3.501 During prudence check, the Commission directed the petitioner to provide statement of banking transactions indicating opening and closing balance of banking transactions as per that indicated in the audited financial statement.*

*3.502 Further, the Commission observed that import units of LOI no. 2000 and 2026 overlapping with export units of LOI 1962 for the*

month of January for FY 2014-15 and import units of LOI no. 1962 and 2085 are overlapping with export units of LOI no. 2031, 2000, 2026 for the month of September in FY 2015-16. The Commission has sought clarification on these transaction vide e-mail dated 30/06/2017.

3.503 The petitioner submitted detailed reply to the Commission's e-mail vide their letterref. : RA/2017-189/01A/177 dated 13/07/2017. In their reply they have submitted that tender for LOI no. 1932 was floated on 10/09/2014 but LOI was finally signed on 14/11/2014. And contrary to LOI no. 1932 tender for LOI no. 2000/2026 was floated on 18/12/2014 just after 33 days of signing of LOI no. 1962. The Commission is of the view that the petitioner was well aware if they sign LOI no. 2000/2026 then banking transaction will overlapped in the month of January 2015. Therefore, such transactions could have been avoided if the petitioner could have planned in a better manner to optimize power purchase cost. During January 2015 short term power purchase is generally available at cheaper rate as compared with summer period.

Therefore, there is no point that shortfall in power due to sudden re-allocation of power could not be arranged through other short term means.

3.504 Further, signing date of LOI no. 1962, 2000, 2026, 2031 and 2085 were within a range of 3 months. Therefore the Commission is of the view that planning for said banking

LOIs is a failure at petitioner's end. Banking LOIs should not be entered by the petitioner against the philosophy of banking of power. Banking of surplus power was evolved and supported by the Commission in past to optimise power purchase cost by exporting surplus power in winter and to meet shortage of power by importing in summer period. On the contrary, it has been observed that the petitioner is involved in banking of power in which power is being imported in the winter period and is being exported in summer peak. Signing of LOI no. 2000/2062 is a perfect example of this.

3.505 In view of the above it has been observed that 19 MU and 42 MU were overlapped in banking transactions due to non-consideration of opportunity losses by petitioner in the FY 2014-15 and FY 2015-16 respectively while planning for power banking.

Therefore, the Commission has decided to disallow transmission charges and trading margin related to overlapped units from total power purchase cost.

**Table 141: Overlapping in banking transactions submitted by Petitioner**

(MU)

Financial Year	Period of Overlapping	Import Units	Export Units	Overlapped Units
2014-15	January, 2015	19 MU	22 MU	19 MU
2015-16	September, 2015	46 MU	42 MU	42 MU

*3.506 In view of the above, the Commission has decided to dis-allow total additional cost due to overlapping in banking transaction of Rs. 1.97 Cr. and Rs. 4.89 Cr. from total power purchase cost in FY 2014-15 and FY 2015-16 respectively.”*

**3B.521** As regards FY 2014-15 and FY 2015-16, it is submitted that the Hon’ble Commission in Tariff Order dated August 31, 2017 once again disallowed the legitimate entitlements of the Petitioner by citing the instance of the Petitioner doing banking purchase and sale in January 2015 and September 2015 without examining and giving any opportunity to the Petitioner as to why and in what circumstances the overlapping banking transactions happened.

**3B.522** It is respectfully submitted that the Petitioner did not intentionally engage in overlapping of any banking transactions and any such incident was completely out of the control of the Petitioner, on account of the re-allocation of power from Dadri II and BTPS by the Central Government. The disallowance amounts to a micromanagement of the Petitioner’s power procurement process, which in the respectful submission of the Petitioner is contrary to the law laid down by the Hon’ble Tribunal in KPTCL v. KERC, reported as 2007 ELR (APTEL) 233.

**3B.523** In this regard, the Petitioner makes the following submissions:

- a. Forecasting, importing and exporting of power is done on a best endeavour basis. The same assumes a trajectory of demand based on existing power sources being able to deliver as they have historically. However, at times, it is not possible to forecast with arithmetic precision or even provide in a forecast, a deviation which is not in the ordinary course of business.
- b. It may be noted that the re-allocation of power was done by the Hon’ble Commission itself in Tariff Order dated July 23, 2014 between the Petitioner and other Delhi DISCOMs. The Petitioner who had forecasted its power requirements earlier from these re-allocated sources, actually resulted in a gap, which needed to be filled. However, through its professional, diligent and dedicated review of

its power requirements and in anticipation of the shortage arising on account of the reallocation of the Dadri II and BTPS power, the Petitioner sought power from the market to make up the shortfall/gap.

- c. While approaching the market to procure the power to make up the gap in supply arising out of an extraordinary situation, such as the reallocation of power from Dadri II and BTPS, the Petitioner proceeded in an efficient and economic manner to procure power. The Petitioner approached the market, by way of tenders, to seek power for specific time slots where the gap had arisen, as the gap was not a RTC gap. Accordingly, the Petitioner approached the market for time slots 07-13 hrs and 18-21 hrs., i.e., a time slot other than the time slot for which it had entered into LOI 1962 (which was for 0-06 hrs and 22-24 hrs).
- d. However, the tender did not solicit adequate responses to meet the projected gap and also produced the market rate of Rs. 4.17- Rs. 6, which, in the eyes of the Petitioner did not seem to be a reasonable price. Accordingly, the Petitioner gave up its attempt to bilaterally procure power for the time slots where it was deficient as the said power was either not available or wherever, available was at a high cost.
- e. In light of the fact that bilateral trading did not result in an efficient and economic price, the Petitioner resorted to a cash neutral method for obtaining power to make up for the gap. It did so by way of a banking transaction *vide* LOI 2000/ 2026. However, despite the Petitioner's best efforts and its professional, diligent and prompt actions, only RTC power was available in the banking market (which is usually the case as parties entering into banking are aware that they will be in surplus and want to dispose the power as a whole rather than on a slot wise basis). The Petitioner entered into the banking transaction (i.e. LOI 2000/ 2026), though there was a slight overlap for factors beyond its control and only account of prevailing market conditions, which the Petitioner could not avoid despite its best efforts. This was the most economical and efficient method for arranging the gap. This is evident from the fact that had the Petitioner entered into a bilateral transaction for power @ Rs. 4.17-6 per unit, it would have had to pay charges amounting to approx. Rs. 8 Crs. - Rs. 11Crs for the same as opposed to the Rs. 1.97 Crs., which the Petitioner paid. Had the Petitioner purchased the power from the Exchange, it would have had to pay charges amounting to approx. Rs. 7 Crs. for the same as opposed to the Rs. 1.97 Crs., which the

Petitioner paid. A tabular representation of the above comparison is set out below:

**Table 3B 114: Comparison of cost actually incurred due to overlapping banking transactions and would have been incurred in other scenarios**

FY	Month	Time period	Overlapping Quantum (MU)	If Purchased from Bilateral (Rs. Cr.)	If Purchased from Exchange (Rs. Cr.)	Additional cost due to Banking (Rs. Cr.)
<b>FY 2014-15*</b>	Jan-15	07-13 & 18-21	19	8-11	7	1.97
<b>FY 2015-16#</b>	Sep-15	RTC	42	18	15	4.89

SOURCE: \* As per IEX and BRPL's bilateral Tender rates

# As per CERC Market monitoring report

- f. It is therefore evident from the above that the Petitioner has not incurred any losses as a result of the above transactions, justifying a disallowance of this nature and has in fact, acted in the best interests of its consumers.
- g. It is submitted that the above transactions have been duly approved by DPPG.
- h. Thus, the acts of the Petitioner were not only reasonable and prudent but also needed to ensure that it had sufficient power to meet the shortfall or gap arising out of an extraordinary circumstance, namely, the reallocation of power from Dadri II and BTPS. Further, the acts are consistent with the statutory obligations of the Petitioner in view of the Power Directions as well as its emphasis on banking as a preferred mode of meeting gaps. Unfortunately, instead of allowing the cost, the Hon'ble Commission has ended up penalizing the Petitioner for its efficient, economic, diligent and professional acts.
- i. The direction to take necessary precautionary measures before entering into "Power Banking Transactions to avoid the overlapping transactions and resultant losses" was issued for the first time in the Hon'ble Commission's Tariff Order dated September 29, 2015. It is submitted that this cannot be the basis for challenging transactions that took place almost a year before, in December 2014.

3B.524 Accordingly the impact on account of the disallowance of power purchase cost due to overlapping banking transactions along with carrying cost is tabulated



below:

**Table 3B 115: Impact on account of disallowance of power purchase cost due to overlapping banking transactions**

(in Rs. Cr.)

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	6	10	16	19
2	Additions	6	2	5		
3	Cl. Balance	6	8	14	16	19
4	Average	3	7	12	16	19
5	Rate of interest	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.45	1.13	1.78	2.38	2.61
7	Grand Cl. Balance	6	10	16	19	21

**PRAYER(S):**

**3B.525** Without pre-judice to the contentions in the Appeals, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact of Rs. 21 Crore in the ARR.

e) Cost disallowed on account of excessive trading through UI above contingency limit of 3%

**3B.526** The Hon'ble Commission in Tariff Order dated August 31, 2017 disallowed sales in UI above contingency limit above 3% in months of January 2015 and September 2015. Further, the Hon'ble Commission in Tariff Order dated March 28, 2018 disallowed sales in UI above contingency limit above 3% in month of February 2017.

**3B.527** As regards above, it is submitted that the aforesaid treatment is required to be reconsidered on account of the following:

- a. It is submitted that the Hon'ble Commission has not provided any basis for determining the contingency limit to dispose of surplus power in UI at 3% of Gross Power Purchase for every month. It is pertinent to note that the Hon'ble Commission has at no point, either in the Tariff Regulations, or in Availability Based Tariff Regulations or in Guidelines for short term power purchase and sale ever mentioned any such criteria of limiting the UI sale contingency limit to dispose of



surplus power in UI, which has now been fixed at 3% on Gross Power Purchase for every month.

- b. It is submitted that no such norm was stipulated for the Second MYT period (i.e. FY 2012-13 to FY 2014-15, subsequently extended to FY 2015-16). If no such norm was put in place at the beginning of the MYT Period, but has been inserted towards the end of the MYT Period, the entire principle of regulatory certainty sought to be introduced by the MYT principle, is defeated. Further, by way of its Order dated 22.10.2014, the Hon'ble Commission had specified that the same principles applicable to the original MYT Period of FY 2012-13 to FY 2014-15 would continue to apply to FY 2015-16.
- c. Further, the UI Contingency limit of 3% was specified in Tariff Order dated September 29, 2015. However, the Hon'ble Commission has disallowed the sales through UI above contingency limit for the months of January 2015 and September 2015 which was before the principle was set out. It is a settled law and has been upheld by Hon'ble Tribunal in catena of Judgments, that the principles cannot be applied retrospectively.
- d. It is further submitted that unscheduled interchange, as the name itself suggests, is a deviation from the schedule, entailing a scenario where actual energy drawn is either higher or lower than the schedule. Accordingly, the UI mechanism obliges a DISCOM to pay for excess energy drawn by it over and above the energy scheduled or entitles the DISCOM to receive payment for energy under drawn against its schedule. This is based on the frequency in the grid and is monitored by statutory authorities such as the SLDC and Regional Load Despatch Centre (hereinafter referred to as "RLDC"). The Petitioner too monitors UI, however, it acts as per the directions of the SLDC. The final decision and energy accounting is only as per the SLDC and RLDC directions.
- e. The SLDC and RLDC, in terms of Sections 32 and 28 of the 2003 Act respectively, monitor grid discipline and direct various stakeholders to act as per their directions, including on whether they should schedule power or not. These directions are not just desirable but in fact mandatory and binding under the 2003 Act on the parties to whom it is directed. Thus, the involvement of statutory authorities such as the SLDC and RLDC, whose directions the Petitioner is mandated to follow under the 2003 Act gives the Petitioner little room but to follow the same.
- f. UI is a post facto based transaction and any real time Overdrawl / Underdrawl gets settled as per the provisions of the Central Electricity

Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (as amended) (UI Regulations). Further, the UI as determined by SLDC and RLDC has to be accepted by the Petitioner, who has no say in the accounting of UI. While the Petitioner monitors UI on a real time basis, its measurement is not taken as conclusive. Instead, the accounting done by the SLDC, two months later, i.e. not on a real time basis is alone relied upon by various stakeholders, including the Hon'ble Commission. For day ahead planning and forecasting, all the SEBs and DISCOMs all over India depend on the real time data of their SLDC (in this case Delhi SLDC). The real time data captured by Delhi SLDC does not match with the actual SEM meter data, which is received from the SLDC after a delay of 2 months. The deviation of SLDC real time demand versus actual SEM demand varies up to 10% higher side and the difference of demand data also creates an unpredictable surplus, which settles through UI mechanism. Thus, even the calculation of the UI is not entirely in the control of the Petitioner, which, coupled with the fact that UI gets determined post facto, establishes that the Petitioner cannot be held responsible as it has to carry out the directions of statutory authorities empowered under the 2003 Act and cannot disregard the same.

- g. In addition to the above, the Petitioner keeps a margin of 30 to 35 MW (around 263 MU per year) of power to avoid any shortages due to outages of generators, rise in predicted demand, down fall in availability, etc. This is also on account of the Power Directions of the Hon'ble Commission dated 21.10.2009 that the Petitioner should not have an unmet demand greater than 1% of the total demand serviced. This is more so in the case of the Petitioner on account of various factors, including the peculiar characteristic of Delhi as an area, unique nature of electricity as a good and the responsibility of the Petitioner to meet the total demand of its consumers. The Petitioner has minimal excess, which it maintains as a buffer to meet unexpected demand surges or forced outages, which is disposed through UI. In the event the Petitioner did not maintain the minimum excess to comply with the Power Directions and had to obtain the day ahead shortfall, it would only be able to do so, if at all possible, at a very expensive rate, i.e. at the marginal cost of power.
- h. As stated above, Delhi SLDC issues UI bills after delay of 2 months due to UI account given by the NRLDC, after adjustment of Inter DISCOM Power and transfer of power under Inter DISCOM. This is on account of the fact that Delhi SLDC does scheduling for Delhi as a whole and

not for the Petitioner alone in the first instance and only proceeds to the level of the Petitioner after it has scheduled for the entire state. In other words, the Petitioner having Surplus power cannot sell the same in the open market beforehand. The Petitioner's power is required to be first adjusted with other DISCOMs, having power shortage and only the balance power goes to UI. As per the directions of SLDC, the Petitioner is allowed to sell power in night hours only in few months of winter.

- i. It is evident from the above submissions that the situation of surplus power is beyond the control of the Petitioner and hence, limiting the Petitioner's ability in this matter would only contribute towards burdening the consumers of the Petitioner. This approach also completely overlooks the existing system constraints, which are uncontrollable in nature. This is on account of the fact that the schedule provided by the Petitioner is being revised by the SLDC, considering various factors such as grid security, technical minimum, islanding schemes, transmission constraints, etc. Thus, the consequential UI charges are incidental and uncontrollable and cannot be attributed to the Petitioner.
- j. It is submitted that UI surplus or deficit cannot be predicted beforehand, as the Petitioner does not know with certainty the exact extent of its surplus but only as an approximation, as it does not have a final say in the accounting/scheduling of the same. Further, the calculation of UI is not in the hand of the Petitioner and is done post facto. Therefore, where the calculation machinery itself fails, the Hon'ble Commission cannot penalize the Petitioner, as it is not in the Petitioner's control and is dependent on statutory authorities such as the SLDC. Finally, the SLDC's directions to schedule in order to maintain grid discipline, as issued under Section 32 cannot be disregarded by the Petitioner, who necessarily has to follow the same. Accordingly, the Petitioner cannot be penalized for disposing off surplus power in UI, where the Petitioner cannot, with 100% freedom decide its drawl (as it has to follow SLDC directions) or account for the surplus power in its system for disposal (as it is dependent upon the SLDC's accounting of the same).
- k. It is submitted that the generation and calculation of the UI is not entirely in the control of the Petitioner. This, coupled with the fact that UI gets determined post facto, establishes that the Petitioner cannot be held responsible as it has to carry out the directions of statutory authorities such as the SLDC and NRLDC, empowered under the 2003 Act and cannot disregard the same.

3B.528 Accordingly, the impact on account of the disallowance of UI above contingency limit of 3% along with carrying cost is tabulated below:

**Table 3B 116: Impact on account of disallowance of power purchase cost due to sale through UI above Contingency Limit**

(in Rs. Cr.)

S. No	Particulars	FY 16	FY 17	FY 18
1	Op. balance	0	4	8
2	Additions	4	3	
3	Cl. Balance	4	7	8
4	Average	2	6	8
5	Rate of interest	14.80%	14.64%	14.00%
6	Carrying cost	0.30	0.84	1.12
7	Grand Cl. Balance	4	8	9

**PRAYER(S):**

3B.529 Without prejudice to the contentions in the Appeals, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact of Rs. 9 Crore in the ARR.

f) Normative rebate of 2% considered on gross power purchase cost from FY 2012-13 to FY 2017-18:

3B.530 As regards the issue of normative rebate, the Hon'ble Commission in Tariff Order dated August 31, 2017 and March 28, 2018 has viewed as under:

*"3.285 The issue of normative rebate is related to MYT Regulations, 2011 in which the power purchase cost has to be considered on the basis of maximum normative rebate on power purchase cost and transmission charges of the distribution licensee. One of the distribution licensee has challenged this issue before the Hon'ble High Court of Delhi in Writ Petition No. 2203 of 2012. The Hon'ble High Court of Delhi has upheld the provision of MYT Regulations, 2011 regarding consideration of maximum normative rebate on power purchase cost and transmission charges for allowing power purchase cost to the distribution licensee. Therefore, the matter does not merit reconsideration."*

3B.531 Further for FY 2017-18, the Hon'ble Commission has quoted Regulation-119 of DERC Tariff Regulations, 2017 which is again nothing but the methodology for projection of power purchase cost as there can be no assumption at the time of truing-up stage. Assumptions can only be made with respect to controllable parameters. In entire India, Delhi is the only state where at the stage of truing-up, normative instead of actual rebate is considered for allowance of power purchase cost. This is also when the working capital norms for Delhi DISCOMs are far inferior as compared to the working capital norms for DISCOMs operating in other states.

3B.532 As regards above, it is submitted that it is factually correct that the Hon'ble Delhi High Court has upheld DERC Tariff Regulations, 2011. Therefore, maximum rebate at the time of projection or truing-up has to be considered in terms of the Regulations. The Hon'ble Commission has ignored Regulation-4.21 of DERC Tariff Regulations, 2011 which is reproduced below:

*"4.21 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*(a) Variation in revenue/ expenditure on account of uncontrollable sales/ power purchase respectively shall be trued up every year;  
..."*

3B.533 As per the aforesaid Regulations, entire power purchase cost including normative rebate is uncontrollable. Regulation-4.21 does not carve out any exception for rebate. It includes all components of revenue, sales and power purchase costs.

3B.534 It is further submitted that Regulation-5.24 which was the subject matter of dispute before Hon'ble Delhi High Court is applicable for the purpose of determination of ARR. Regulation-5.24 is reproduced below:

*"A5: PRINCIPLES FOR DETERMINATION OF ARR  
ARR FOR RETAIL SUPPLY BUSINESS*

*5.2 The Aggregate Revenue Requirement for the Retail Supply Business of the Distribution Licensee, for each year of the Control Period, shall contain the following items;*

*(a) Cost of power procurement;  
(b) Transmission & Load Dispatch Charges;*

...

*Cost of Power Procurement*

5.23 Quantum of Power Purchase - The Commission approved category-wise sales forecast shall be applied along with Distribution loss trajectory **for estimating the Licensees" power procurement requirement** for each year of the Control Period.

5.24 Distribution Licensee shall be allowed to recover the net cost of power it procures from sources approved by the Commission, viz. Intra-state and Inter-state Trading Licensees, Bilateral Purchases, Bulk Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators, generation business of the Distribution Licensee and others, **assuming maximum normative rebate** available from each source for payment of bills through letter of credit on presentation of bills for supply to consumers of Retail Supply Business;

Provided that the Distribution Licensee **shall propose** the cost of power procurement taking into account the fuel adjustment formula specified for the generating stations and net revenues through bilateral exchanges and Unscheduled Interchange (UI) transactions;

Provided further that where the Licensee utilises a part of the power purchase approved or bulk supply allocated or contracted for the Retail Supply Business for its Trading Business, the Distribution Licensee shall provide an Allocation Statement clearly specifying the cost of power purchase that is attributable to such trading activity." **(Emphasis bold and underlined)**

3B.535 As evident from the above, normative rebate of 2% was required to be assumed for the purpose of ARR. It is further clear from Regulation-5.40 which states as under:

*"5.40 Truing-up shall be carried out in accordance with Regulation 4.21, for each year based on the actual/ audited information and prudence check by the Commission;*

*..."*

3B.536 As evident from the above, Regulation-5.40 clearly states that truing-up shall be carried out in accordance with Regulation-4.21. There is no mention of Regulation-5.24 for the purpose of truing-up.

3B.537 It is further submitted that the Hon'ble Delhi High Court in Judgment dated July 29, 2016 (W.P. (C) 2203/ 2012 & C.M. No. 4756/2012) on the issue of normative rebate held as under:

*"34. Next, the petitioner complained that in terms of Regulation 5.24, it is assumed that the petitioner would avail the 2% rebate on power purchase costs allowed to a distribution licensee on immediate payment of purchase bills. It was submitted on behalf of the petitioner that even though the working capital has been determined on the basis that bills for purchase of electricity would be paid within a period of one month, nonetheless, the impugned Regulations assumed availing of rebate of 2% which is only possible if the bills are paid by a letter of credit. It is submitted that to the aforesaid extent, the impugned Regulations are contrary to Section 61(c) and 61(e) of the Act which required the Commission to be guided by the principle of rewarding efficiency in performance while determining the tariff. Mr Sanjay Jain countered the aforesaid submissions by pointing out that the bills for purchase of electricity are raised only at the end of the month and, therefore, the petitioner is expected to pay the same immediately thereafter and there is no inconsistency in the Regulations.*

*35. It is not necessary for us to examine the merits of this dispute because the principles as referred to in Section 61(c) and 61(e) of the Act are broad principles for guidance of the Commission. It is not necessary for the Commission to ensure that each and every component of ARR be so determined so as to incorporate an incentive for rewarding efficiency. As long as the Regulations as a whole promote efficiency in performance, no grievance in this regard can be made by any distribution licensee." (Emphasis added)*

3B.538 As evident from the aforesaid, the Hon'ble High Court has categorically stated that the Hon'ble High Court has not examined the merits of the dispute. Therefore, the issue of normative rebate is not dismissed on merits.

3B.539 It is further submitted that the Hon'ble ATE in Judgment dated July 30, 2010 (Appeal 153 of 2009) and March 2, 2015 (Appeal 177 of 2012) has decided the matter on merits and ruled as under:



*"6.3 The Tribunal in Appeal no. 14 of 2012 on 28.11.2013 reiterated the view taken by this Tribunal in Appeal no. 153 of 2009. This Tribunal in Appeal no. 153 of 2009. Decided as under:*

*"The second issue relates to the deduction of rebate due to the early payment of the power purchase cost from the ARR. The Appellant, through its efficient management, has paid all the bills immediately on raising of the bills by the generating company and, therefore, it has to be allowed a rebate of 2 per cent. Therefore, there is no justifiable reason for the State Commission to reduce the power purchase cost by rebate earned by the Appellant. The normative working capital provides for power purchase cost for one month. Therefore, rebate of 1 per cent available for payment of power purchase bill within one month should be considered as non-Tariff income and to that extent benefit of 1 per cent rebate goes to reducing the ARR of the Appellant. The rebate earned on early payment of power purchase cost cannot be deducted from the power purchase cost and rebate earned only up to 1 per cent alone can be treated as par of the non-Tariff income. Therefore treating the rebate income for deduction from the power purchase cost is contrary to the MYT Regulations. As such this issue is answered in favour of the Appellant." The Tribunal in Appeal no.142 of 2009 reiterated the above decision of the Tribunal.*

*6.4 Accordingly, this issue is decided in term of the findings of this Tribunal in Appeal no. 153 of 2009 and Appeal no. 14 of 2012 in favour of the Appellant."*

**3B.540** Therefore, the decision of Hon'ble ATE in Judgment dated March 2, 2015 to consider the actual rebate upto 1% still holds valid and therefore is required to be implemented in true letter and spirit.

**3B.541** In accordance with the above submissions and without prejudice to the contentions raised in Appeal before the Hon'ble ATE, the Petitioner requests the Hon'ble Commission to reinstate the power purchase cost disallowed by assuming normative rebate and consider the actual rebate earned from FY 2012-13 to FY 2016-17 in accordance with Regulation-4.21 read with Regulation-5.40 of DERC Tariff Regulations, 2011. Accordingly, the Petitioner is claiming the difference between actual and normative rebate from FY 2012-13 to FY 2017-18 along with carrying cost as per the table given below:



**Table 3B 117: Impact along with carrying cost on normative rebate**  
(Rs. Crore)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	82	181	320	486	683
2	Additions	76	81	104	110	118	96
3	Cl. Balance	76	162	285	430	604	779
4	Average	38	122	233	375	545	731
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	5.71	18.32	35.22	55.52	79.71	102.39
7	Grand Cl. Balance	82	181	320	486	683	882

**PRAYER(S):**

**3B.542** Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid amount in the ARR.

g) Income from Street Light Maintenance Business to be considered as other business income:

**3B.543** As regards Street Light Maintenance Charges, the Hon'ble Commission in Tariff Order dated June 31, 2019 ruled as under:

*"3.456 The Commission in its order dated March 5, 2004 regarding directions for street lighting in the areas of MCD stated,*

*"11... The best way doing this would be to have an in-built system of providing incentives in case of good performance and likewise, impose penalties in case the performance is lower than expectations... The Commission would like to evolve a system whereby good performance is rewarded. Similarly, poor performance also needs to be discouraged and therefore, the Commission directs that full maintenance charges may be paid for 90% performance. Performance higher than 90 shall earn an incentive for the DISCOMS according to the following table:*

Performance level achieved	Incentive	Example
Between 90-95%	1% for each percentage in over achievement from target of 90%	Actual Performance 93% Incentive 93-90 = 3%
Between 95-97%	1.5% for each percentage in over achievement from target of 95%	Actual Performance 97% Incentive = 5 + 3 = 8%
Above 97%	2.0% for each percentage in over achievement from target of 97%	Actual Performance 99% Incentive = 8 + 4 = 12%

*Performance less than 90% shall attract disincentive for the DISCOMS according to the following table:*

<b>Performance level achieved</b>	<b>Incentive</b>	<b>Example</b>
<i>Between 80-90%</i>	<i>1% for each percentage in shortfall to achieve target of 90%</i>	<i>Actual Performance 83% Disincentive 90-83 = 7%</i>
<i>Between 70-80%</i>	<i>1.5% for each percentage in shortfall to achieve target of 80%</i>	<i>Actual Performance 77% Disincentive 10+4.5 = 14.5%</i>
<i>Above 70%</i>	<i>2.0% for each percentage in shortfall to achieve target of 70%</i>	<i>Actual Performance 60% Disincentive 25 + 20 = 45%</i>

*The incentive or disincentive would not be a pass through in the calculation of the Annual Revenue Requirement and the payment would be made by the 15th day of the following month.”*

*3.457 The Petitioner has not substantiated that whether any incentive is included in revenue of street light maintenance which should not be considered a pass through in the calculation of ARR. The Petitioner shall be allowed incentive, if any, on account of street light maintenance for FY 2017-18 on production of documentary evidence without any carrying cost.”*

**3B.544** As regards above, it is submitted that the Hon’ble Commission only acted as mediator between MCD and the Petitioner. Factually the responsibility of maintaining street light is not contained in the License of the Petitioner. Even the Electricity Act, 2003, does not mandate the Distribution Licensee to maintain Street Lights. Further, as per Section-42 of Delhi Municipal Corporation Act, 1957, it is the responsibility of MCD to maintain Street lighting system which is reproduced below:

*“42. Obligatory functions of the Corporation*

*....*

*(o) the lighting, watering and cleansing of public streets and other public places;*

*...*

*(w) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;”*

**3B.545** With the unbundling and restructuring of Delhi Vidyut Board (DVB) into corporate

entities and privatisation of Distribution Business, the past legacy of maintenance of public lighting was passed on to the Petitioner as matter of course, though as distribution licensee the maintenance of public lighting was not their function. In fact, the Petitioner vide letter dated March 24, 2004 intimated the Hon'ble Commission that maintenance of street lighting is the responsibility of MCD under DMC Act and not the Petitioner. Also the Hon'ble Commission in Order dated September 3, 2003 ruled as under:

*"10. Having heard the submission of the parties, the Commission observed that it was the prerogative of the MCD, either to get the work done themselves or through the DISCOMs, in the latter alternative, scope of works, as also the commercial terms and conditions, shall need to be proposed by MCD. Thereafter, the Commission shall determine the maintenance charges, etc. after having considered the responses of the DISCOMs."*

**3B.546** Therefore, it is clear that maintenance of street lighting is an activity assigned to the Petitioner by MCD under DMC Act and does not fall under Regulated Business.

**3B.547** However, there was a dispute between the Delhi DISCOMs and MCD on scope of work of the activities and charges at which is the maintenance is to be undertaken by Delhi DISCOMs. The DISCOMs vide letter dated 24.03.2004 refused to undertake the work of street light maintenance and clearly specified as under:

*"2. It may be recalled that it has been BRPL's submission that its primary responsibility is that of ensuring reliable power supply and improvement of consumer services and that maintenance of public lightning is not its core business. Further as the roads are laid and maintained by the MCD, the maintenance of public lighting on such roads would be best handled by the civic agency, which in any case happens to be its responsibility under the DMC Act."*

Copy of the letter attached as **Annexure-7**.

**3B.548** During FY 2003-04, the Hon'ble Commission received a number of complaints on the poor conditions of street light prevailing in respect of public lighting in Delhi. Consequently, in order to settle the matter, the Hon'ble Commission vide letter

dated October 15, 2003, identified the scope of works as maintenance of existing streetlights, addition of new streetlights, installing of high mast lights, transformers, etc. Further, the Hon'ble Commission vide Order dated March 5, 2004 determined the rates for maintenance of street lights. These rates were further amended by the Order issued by the Hon'ble Commission on September 24, 2009. It is further submitted that the determination of rates and scope of work by the Hon'ble Commission, was only with a view to helping end an impasse between the Petitioner and the DERC and de-hors the jurisdiction of the Commission under Section 62 of the Act and does not mean that maintenance of streetlights falls under the Licensed Activity and is a part of the regulated business. The scope of work and determination of rates by the Hon'ble Commission has only helped MCD and the Petitioner to reach a consensus to avoid dispute. Therefore it is amply clear that the Hon'ble Commission simply acted as a mediator and the same does not mean that the income earned for street light maintenance business, becomes a part of licensed activity and the same can be passed on to the consumers.

**3B.549** Therefore, the Petitioner is maintaining Street Lights not as an obligation under Licensed Business but on behalf of road owning agencies, viz. MCD, NHAI, PWD in the areas comprising South and West Delhi. For carrying out maintenance services, the Petitioner optimally engages its existing manpower, technicians, electricians, electric men, line engineers and also outsources further manpower which is not a part of O&M Expenses.

**3B.550** In view of the above submissions, the amount of streetlight maintenance charges recovered by the Petitioner ought to be considered as other income and not NTI as considered by the Hon'ble Commission.

**3B.551** The income from street light maintenance business along with carrying cost is tabulated below:

**Table 3B 118: Impact on income from SLM Business along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
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S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	16	21	48	80	122	168	221	282	340	416
2	Additions	15	3	22	24	28	26	26	26	15	24	1
3	Cl. Balance	15	19	44	72	108	148	194	247	297	365	416
4	Average	7	17	32	60	94	135	181	234	290	352	416
5	Rate of interest	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	1	2	4	8	14	20	27	35	43	52	58
7	Grand Cl. Balance	16	21	48	80	122	168	221	282	340	416	475

**PRAYER(S):**

3B.552 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid along with carrying cost.

- h) Financing cost of LPSC from FY 2013-14 to FY 2017-18: Old methodology for computation of financing cost of LPSC continued post FY 2012-13 despite of change in methodology of levying of LPSC:

3B.553 As regards financing cost of LPSC from FY 2013-14 onwards, the Hon'ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*"3.346 The Petitioner has submitted that total LPSC collected from the consumer should be allowed to be retained by the Petitioner. However, as per the practice followed by the Commission and Hon'ble APTEL's direction in Appeal no. 61 & 62 of 2012 dated 28/11/2014, the cost of funding of working capital due to delayed payment by the consumers has been allowed to the Petitioner. Therefore, the Commission has not considered the additional cost over and above the cost of funding of working capital for financing of LPSC during FY 2013-14."*

3B.554 Further, in Tariff Order dated March 28, 2018 and July 31, 2019, the Hon'ble Commission without dealing with contentions of the Petitioner simply stated that it has already dealt the issue in respective Tariff Order and therefore this issue does not merit reconsideration.

3B.555 In this regard, it is respectfully submitted that the Hon'ble Commission has referred to Hon'ble ATE's direction in Appeal No. 61 and 62 of 2012 which was in respect of truing-up of FY 2008-09 and FY 2009-10 when the LPSC was being

levied for entire month of flat rate of 1.5% per month. However the Hon'ble Commission has not dealt with the submission of the Petitioner that the Hon'ble Commission vide letter dated December 13, 2012 itself changed the methodology of charging LPSC from the consumers and has directed the Petitioner to charge LPSC only corresponding to number of days of delay in the payment by the Consumers.

**3B.556** It is further submitted that in compliance with the directions of the Hon'ble Commission, the Petitioner levied LPSC @ 1.5% per month on flat basis till FY 2012-13. The Hon'ble Commission was therefore allowing only financing cost of LPSC to the Petitioner by computing the principal amount (LPSC divided by 18% (12 x 1.5%) and allowing carrying cost on the principal amount. The difference between the amount of LPSC and the principal amount was passed on the consumers by way of NTI.

**3B.557** Based on the representation of Foundation of Rubber & Polymer Manufacturers, the Hon'ble Commission vide letter dated December 13, 2012 communicated that LPSC should be charged proportional to the number of days of delay in receiving payment from the consumers by the Petitioner. The Hon'ble Commission in Tariff Order dated July 31, 2013 again directed the Petitioner to charge LPSC proportionate to the number of days of delay in receiving the payment from the consumers of the DISCOMs.

**3B.558** The Petitioner in its Petition for Truing-up of FY 2013-14, Review of FY 2014-15 and ARR and Tariff for FY 2015-16 requested the Hon'ble Commission to allow the entire LPSC instead of financing cost of LPSC as during FY 2013-14, the Petitioner charged LPSC proportionate to the number of days of delay and not on flat basis. The methodology of charging LPSC proportionate to the number of days of delay leads to recovery of only financing cost of LPSC for the delay in payment and not on flat basis. However, the Hon'ble Commission without referring to its direction for change in charging of LPSC continued with the earlier methodology which was utilised for computation of financing of LPSC till FY 2012-13. Such treatment has actually resulted in allowance of financing cost of LPSC at much lower rate.

**3B.559** It is further submitted that the concept of financing cost of LPSC was introduced by the Hon'ble Commission in Tariff Order dated August 26, 2011 as LPSC was considered as a part of revenue realisation for the purpose of computation of AT&C Loss as per Clause-4.7 (c) of DERC Tariff Regulations, 2007. As per DERC Tariff Regulations, 2011, the methodology of computation of revenue realisation for the purpose of computation of AT&C Loss has been changed and LPSC is no longer being included as a part of revenue realisation for computation of AT&C Loss from FY 2012-13 onwards. Since the methodology for computation of AT&C Loss has been changed, the Petitioner ought to be allowed entire LPSC instead of financing cost of LPSC.

**3B.560** The Petitioner respectfully submits that in the past, the Hon'ble Commission has been unjustified in considering the amount of LPSC in the Non-Tariff Income while computing the ARR, without realising that the change in the methodology of levy of LPSC to a proportionate number of days results in the LPSC itself being equal to the financing cost. Hence, according to Regulation 5.35 of the DERC MYT Regulations, 2011, the entire amount of LPSC is required to be allowed to be retained by the Petitioner.

**3B.561** It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the amount delayed through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is a time taking process and therefore, in case of any default on part of consumers to pay their electricity bills on time, the Petitioner has to face the following penalties as per the MYT Regulations 2011:

- a. Penalty on account of under-achievement of AT&C Loss: As per DERC MYT Regulations, 2011, the AT&C Loss Target has been categorized as controllable parameter. In case of any under-achievement of AT&C Loss, the Hon'ble Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.
- b. Penalty in repayment of Loans: In present scenario, the Petitioner is



not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result the Petitioner has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.

- c. Penalty by Generators: Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

**3B.562** The Hon'ble Commission neither allows the amount nor financing cost on account of these penalties. These penalties are entirely borne by the Petitioner. However, the penalty paid by the consumers on account of the delayed payment is not being allowed to the Petitioner and only financing cost on such delayed payment is being allowed. Therefore, the Petitioner requests the Hon'ble Commission to allow entire LPSC during FY 2013-14 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

**3B.563** It is further submitted as follows:-

- (i) The Petitioner, in its ARR Petition, requested the Hon'ble Commission to allow the Petitioner to retain the entire amount collected during FY 2014-15 & FY 2015-16 on account of LPSC on actuals instead of allowing financing cost of LPSC. The Petitioner had made the above request, based on the direction of the Hon'ble Commission in its Tariff Order dated 31.07.2013, under which it had been charging only the financing cost of LPSC on an actuals basis as opposed to a normative basis. Consequently, the Petitioner was entitled to retain the entire amount of LPSC received as the same was the entire financing cost on an actual basis. However, the Hon'ble Commission has given a selective tariff treatment in this regard by sticking to only allowing financing cost on normative basis by deducting the difference between LPSC and the principal amount due and offering the same towards tariff fixation through non-tariff income. In other words, while the Hon'ble Commission has moved away from a normative basis for charging of LPSC, however, it has done so only selectively contrary to its own directions contained in its letter dated 13.12.2012. Thus, the



Hon'ble Commission has not made consequential changes in the tariff process which reflect the fact that today the LPSC charged by the Petitioner is on actual basis. Therefore, there is no requirement for any deduction on the LPSC financing cost, as done earlier when the same was charged on a normative basis. The amount charged by the Petitioner now is the actual cost incurred by it, which ought to be allowed entirely to the Petitioner.

- (ii) It is submitted that the Hon'ble Commission by considering the funding of LPSC as per the principle adopted in previous tariff orders has acted contrary to its own directions given in Tariff Order dated 31.07.2013. The Hon'ble Commission by giving directions to charge LPSC based on proportional number of days of delay in receiving payment from the consumers from FY 2014-15 to FY 2015-16 ought not to apply a methodology for computation of financing cost of LPSC which was applicable when LPSC was charged @ 1.5% per month.
- (iii) It is further submitted that the LPSC being charged from the consumers from FY 2014-15 to FY 2015-16 is itself only the financing cost of funding the delay in payment by the consumers since the same is being charged proportional to the number of days of delay and not a flat basis. The Hon'ble Commission has provided the working capital on a normative basis as per the MYT Regulations, 2011. Therefore, the entire LPSC is required to be retained by the Petitioner was required to resort to additional borrowing since actual collection was less than 100% and normative working capital does not include financing on account of delayed payment of consumers. This Hon'ble Tribunal in para 13 of Judgment dated 04.10.2007 (Appeal No. 223 of 2006) has also observed as under:

*"13. On a consideration of contentions of all parties, we are inclined to agree with the decision of the Commission to not include delayed surcharge revenue in the ARR in view of the fact that the working capital amount has been reduced to the bare minimum, 100% collection is not happening as of now, and therefore, to meet its cash requirements, the Discoms will have to borrow from Banks to compensate for the outstanding payments from consumers."*

As evident from the above, the Hon'ble Tribunal has also ruled that LPSC is to be retained by the DISCOMs when the additional financing is required to be done to compensate for the outstanding payments from consumers.

- (iv) The impact of the omission on the part of the Hon'ble Commission

in following its own directions of shifting from normative to actual basis is a denial to the Petitioner of its rightful entitlement of funding the shortfall in its legitimate recoveries. While the Hon'ble Commission allows working capital @ 10% - 11% (approximately), the present dispensation allows the Petitioner a funding of the gap at a much lower rate. This denies the Petitioner a legitimate amount of funds due to a mismatch in the period between the date of billing and its actual recovery, for which LPSC is made available. The reference to working capital, which is pari-materia and covers the funding up to the date of billing (till when the benefit of working capital cover is available), is drawn to highlight the fact that the market would give funding for the period for which delay takes place in recovery post the bill date on a similar rate as that for working capital.

- (v) It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the LPSC through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is time taking process and therefore, in case of any default on part of consumers to pay electricity bills in time, the Petitioner has to face the following penalties as per the MYT Regulations 2011:
- a. Penalty on account of under-achievement of AT&C Loss: As per DERC MYT Regulations, 2011, the AT&C Loss Target has been categorized as controllable parameter. In case of any under-achievement of AT&C Loss, the Hon'ble Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.
  - b. Penalty in repayment of Loans: In present scenario, the Petitioner is not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result the Petitioner has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.
  - c. Penalty by Generators: Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

- (vi) The Hon'ble Commission neither allows the amount nor financing cost on account of these penalties. These penalties are entirely borne by the Petitioner. However, the penalty paid by the consumers on account of the delayed payment is not being allowed to the Petitioner and only financing cost on such delayed payment is being allowed. Therefore, entire LPSC paid by the consumers ought to be retained by the Petitioner.

If the LPSC is now permitted to be recovered from the consumers proportionately for the actual days of delayed payment, the financing cost of such LPSC has to be computed on the same basis. It cannot be computed as if the LPSC has been computed for the month as a whole. There is no contention by the Petitioner on this issue pertaining to the rate of interest of funding LPSC. The Petitioner accepts that the rate of interest of funding of LPSC should be equal to the rate of interest of working capital funding. That is all that has been held in the judgment in Appeal 14 of 2012 by the Hon'ble Tribunal. However, that is not at all a question in the current issue.

- (vii) The Hon'ble Commission while computing the financing cost of LPSC during FY 2014-15 and FY 2015-16 ignored the fact that the Hon'ble Commission itself in Tariff Order dated 31.07.2013 has directed the Petitioner to levy LPSC proportional to number of days of delay by the consumers in making payment and not on flat basis. Therefore, the LPSC collected from the consumers for the above two years is itself equivalent to the financing cost required to bridge the revenue gap due to delay in payment by the consumers. The Hon'ble Commission erred in applying the previous methodology which was utilised for computation of financing cost of LPSC till FY 2012-13, while computing the financing cost of LPSC during FY 2014-15 and FY 2015-16. This may be better explained with the help of the following illustration:

Illustration: Suppose a consumer X is required to pay Rs. 1000. The due date of payment is 20<sup>th</sup>. Now the consumer pays the bill on 25<sup>th</sup>, i.e., a delay of 5 days. The LPSC percentage is 1.5% per month. The amount of LPSC as per the methodology adopted till FY 2012-13 is tabulated below:

**Case-1:** When LPSC is charged on flat basis

**Table 3B 119: When LPSC is charged on flat basis**

S. No	Particulars	Amount (Rs.)	Reference
A	Billed Amount	1000	
B	No. of days of delay	5	
C	LPSC pc charged on monthly basis	1.50%	
D	<b>LPSC amount</b>	<b>15</b>	<b>D=AxC</b>

Whereas the amount of LPSC charged as per the methodology adopted during FY 2013-14 pursuant to the directions of the Hon'ble Commission in Tariff Order dated 31.07.2013 is tabulated below:

**Case-2:** When LPSC is charged proportional to no. of days of delay

**Table 3B 120: When LPSC is charged proportional to no. of days of delay**

S. No	Particulars	Amount (Rs.)	Reference
A	Billed Amount	1000	
B	No. of days of delay	5	
C	LPSC pc charged on monthly basis	1.50%	
D	<b>LPSC amount</b>	<b>2.5</b>	<b>D=AxCx5/30</b>

Now the Hon'ble Commission is applying the same principle of LPSC in both cases which is adversely impact the Petitioner. The same is demonstrated in the table below:

**Table 3B 121: Comparison of financing cost allowed by the Commission in two approaches of LPSC (Amount in Rs.)**

S. No	Principal	Case-1	Case-2	Reference
A	LPSC Amount	15	2.5	
B	Rate of LPSC	1.50%	1.50%	
C	Principal amount	1000	167	C=A/B
D	Rate of Carrying cost	12.50%	12.50%	
E	Financing cost of LPSC for the month	10.42	1.74	E=CxD/12

3B.564 As evident from aforesaid table, the Petitioner earlier was collecting Rs. 15

towards LPSC and the Hon'ble Commission was allowing Rs. 10.42 towards financing cost of LPSC whereas after the change in methodology, the Petitioner is able to collect only Rs. 2.5 and the Hon'ble Commission by erroneously applying the previous formulae is allowing Rs. 1.74 towards financing cost of LPSC. Accordingly the methodology for computation of financing cost of LPSC ought not be applied on LPSC collected during FY 2014-15 and FY 2015-16 and the Petitioner ought to be allowed to retain entire amount of LPSC collected during FY 2014-15 and FY 2015-16.

3B.565 The difference in LPSC and the amount allowed by the Hon'ble Commission from FY 2013-14 to FY 2015-16 along with carrying cost is tabulated below:

**Table 3B 122: Impact on account of difference in LPSC during FY 2013-14 to FY 2017-18 along with carrying cost**

(in Rs. Cr.)

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	10	23	38	57
2	Additions	9	11	11	12	7
3	Cl. Balance	9	21	34	50	63
4	Average	5	15	29	44	60
5	Rate of interest	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.70	2.32	4.23	6.48	8.40
7	Grand Cl. Balance	10	23	38	57	72

**PRAYER(S):**

3B.566 Without prejudice to the Petitioner's contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid along with carrying cost.

- i) Monthly Billing Rebate for FY 2014-15 to FY 2016-17: Disallowance of account of monthly billing rebate contrary to its own affidavit submitted by the Hon'ble Commission in Civil Appeal 6959-60 of 2015 before Hon'ble Supreme Court:

3B.567 As per Regulation-4.21 (b) of DERC Tariff Regulations, 2011 any surplus or deficit in working capital shall be to the account of Licensee and shall not be trued up in ARR.

3B.568 With a view of manage its working capital requirement, the Petitioner in FY 2013-14 changed the billing cycle of its consumers from bi-monthly to monthly. Such change in billing cycle only benefitted the Petitioner in efficiently managing its' cash-flow, i.e., the revenue which was to be collected after 2 months would be collected one month earlier, and did not provide any additional revenue to the Petitioner. However, the Hon'ble Commission in Tariff Order dated July 31, 2013 introduced a rebate system linked to the number of bills raised during the year. This was done by the Hon'ble Commission with an objective to counter the positive impact on account of cash-flow improvement was brought in the system by the Petitioner by shifting to monthly billing cycle.

3B.569 However, the Petitioner provided the monthly billing rebate in accordance with the directions of the Hon'ble Commission. Therefore, whatever positive impact due to increase in cash-flow was brought in the system was paid back to the consumers at the end of financial year by way of monthly billing rebate.

3B.570 On March 2, 2015, the Hon'ble ATE pronounced Judgment in Appeal 177 of 2012 wherein the Hon'ble ATE decided the issue of normative rebate in favour of the Petitioner. The Hon'ble Commission challenged the same in Civil Appeal No. 6959-60 of 2015 before Hon'ble Supreme Court wherein the Hon'ble Commission submitted as under:

*"Issue No. (iii) Rebate on power purchase:*

*(h) Because the Hon'ble Tribunal failed to appreciate that the Commission as shown before it that it has determined the tariff in such a manner that the Respondent requires the power purchase cost for one month only to avail the rebate of 2%. The submissions of the Appellant before the Tribunal were as follows:*

*"...*

**By optimizing and efficiently managing its working capital requirement, DERC made clear that the Appellant can adjust its billing/ revenue cycles, in such a manner that it keeps getting revenue throughout the month which would reduce the requirement for working capital loan."**

(Emphasis Supplied)

**3B.571** As evident from the aforesaid, the Hon'ble Commission has also submitted on affidavit before Hon'ble Supreme Court, that the Petitioner is free to adjust its billing cycle. However, when the Petitioner has actually shifted from bi-monthly to monthly billing cycle, the Hon'ble Commission has levied a rebate linked to number of bills which is not being allowed as a pass-through in the ARR at the time of truing-up.

**3B.572** The allowance of monthly billing rebate shall result in change in AT&C Loss of FY 2014-15 to FY 2016-17. During FY 2014-15 and FY 2015-16, the penalty shall reduce as the Petitioner was not able to achieve the stipulated AT&C Loss Target, whereas during FY 2016-17, the incentive will increase as the Petitioner over-achieved the AT&C Loss target during FY 2016-17.

**3B.573** Accordingly, AT&C Loss Target and under-achievement for FY 2014-15 to FY 2016-17 has been computed below:

**Table 3B 123: Change in Revenue Billed from FY 2014-15 to FY 2016-17**

(in Rs. Cr.)

Particulars	FY 2014-15	FY 2015-16	FY 2016-17
Amount billed	7513	8075	8150
Less: Rebate	48	28	30
Less: Error apparent			37
Net amount billed	7465	8047	8084

**Table 3B 124: Re-computation of AT&C Loss from FY 2014-15 to FY 2016-17:**

Particulars	UoM	FY 2014-15	FY 2015-16	FY 2016-17
Energy Input	MU	11824	12000	12564
Units billed	MU	10229	10505	11166
Amount billed	Rs. Cr.	7465	8047	8084
Average Billing Rate	Rs./ kWh	7.30	7.66	7.24
Distribution Loss	%	13.49%	12.46%	11.13%
Amount collected	Rs. Cr.	7499	8109	8130
Collection Efficiency	%	100.46%	100.77%	100.58%
Units realized	MU	10276	10587	11231
AT&C Loss level	%	13.09%	11.78%	10.61%

Table 3B 125: Financial Impact from FY 2014-15 to FY 2015-16:

(in Rs. Cr.)

Particulars	UoM	FY 2014-15	FY 2015-16
AT&C Loss	%	12.50%	11.67%
Energy Input	MU	11824	12000
Units realized	MU	10346	10600
Average billing rate	Rs./ kWh	7.30	7.66
Amount realized	Rs. Cr.	7550	8119
Revenue considered by DERC	Rs. Cr.	7599	8147
Financial impact	Rs. Cr.	49	28

Table 3B 126: Financial Impact from FY 2016-17:

(in Rs. Cr.)

Particulars	FY 2016-17
Target for CY	11.67%
Actual	10.61%
Target for PY	12.50%
Incentive	1.27
RRB	3177.58
Equity	734.07
Debt	2443.51
ROE	17.27%
ROD	10.47%
WACC	12.04%
ROCE	382.61
ROCE AS PER TO	376.13
Impact	6.48

3B.574 The aforesaid amount along with carrying cost is tabulated below:

Table 3B 127: Impact on account monthly billing rebate along with carrying cost

(in Rs. Cr.)

S. No	Particulars	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	52	82	89
2	Additions	49	28	6	0
3	Rate of interest	15.13%	14.80%	14.64%	14.00%
4	Carrying cost	4	10	14	15
5	Grand Cl. Balance	52	90	110	126



PRAYER(S):

3B.575 Without prejudice to its contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR.

j) Partial Implementation of allowance of actual claims of R&M and A&G Expenses from FY 2004-05 to FY 2006-07

3B.576 The Hon'ble ATE in Judgment dated October 10, 2009 (Appeal 36 of 2008) has ruled as under:

*"89) The appellant has alleged that the Commission has incorrectly denied the R&M expenses for the FY 2004-05, 05-06 & 06-07 to the tune of Rs.13.01 Crores, Rs.1.85 Crores and Rs.18.51 Crores respectively.*

*90) For the FY 2004-05 and 05-06, the appellant had notified expenses of Rs.92 Crores and Rs.73.60 Crores respectively. For the FY 2004-05, the Commission accepted the actual expense of Rs.92 Crores but allowed only Rs.68.99 Crores while carrying out the second truing up for the FY 2004-05 in its tariff order for the FY 2006-07 dated 22.09.08. The principle of second truing up was challenged before this Tribunal and this Tribunal vide order dated 24.05.07 said that truing up was to be done for adjusting the provisional accounts with the audited accounts and with the second truing up beyond adjustment the provisional account was not correct. For the FY 2005-06, the Commission approved R&M to the tune of Rs.71.75 Crores and denied the raise on the ground that the appellant did not take prior approval of the Commission before incurring such liability. The appellant contends that the appellant cannot predict with precision the work that is required to be undertaken and certain sudden expenditures caused by transformer failures, cable failure, breakdown of vehicles, equipments etc. caused the rise of R&M expenditures which should have been allowed. For the FY 2006-07 instead of Rs.89.49 Crores, the Commission allowed a sum of Rs.70.98 Crores only. The Commission contends that the appellant did not claim for truing up for the FY 2004-05 in its MYT petition. The appellant, however, contends that it had submitted audited accounts of R&M expenses for the FY 2004-05 and 2005-06. The appellant contends that the Commission had failed to give effect to the principle enunciated by the Tribunal in the matter of truing up. As per the appellant the audited accounts showed R&M expenses for the FY 2004-05 as Rs.92 Crores and 2005-06 as Rs.73.60 Crores.*

91) The next question is whether any expense towards R&M expenses can be denied on the ground that approval of the Commission had not been taken before incurring expenses. Now R&M expense is directly related with capital works and gross fixed assets. The Commission does not say that the expenses incurred were imprudent or unnecessary. Since the sole purpose of tariff fixation is to recover the cost and reasonable profit it will not be prudent to be technical on such issues. We are of the opinion that R&M expenses properly incurred should be approved and in case there is any gap between the demand made by the appellant and the amount sanctioned by the Commission, the Commission should enter into the exercise of a prudent check and grant the approval to such expenses. The appellant would be bound to produce whatever expenses or material that may be required for permitting the Commission to carry out a prudent check. ...

97...

*It appears that the Commission is yet to true up the accounts for the year 2004-05 on the basis of the audited accounts and whenever such truing up is done the appellant's grievance of denial of administrative and general expenses of 2004-05 should disappear."*

3B.577 The Hon'ble Commission in Tariff Order dated July 23, 2014 has allowed the R&M and A&G Expenses from FY 2004-05 to FY 2006-07 based on benchmarking with other DISCOMs of Delhi.

3B.578 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"22. We agree with the contentions made by the Appellants that true up for the policy direction period cannot be carried out on the basis of benchmarking concept muted in MYT Regulations. **The Commission is directed to implement the direction of this Tribunal in true letter and spirit and do not involve in inventing any new methodology to circumvent to such directions.** The issue is decided in favour of the Appellants. " (Emphasis added)*

3B.579 The Hon'ble Commission in Tariff Order dated September 29, 2015 stated as under:

*"3.50 In compliance of the direction of Hon'ble APTEL in Appeal No. 61 and 62 of 2012, the Commission has appointed a Chartered*

*Accountant firm empanelled with C&AG for independent verification of the claims of the Petitioner in respect of R&M and A&G expenses for FY 2004-05 to FY 2005-06. Final impact will be considered based on the report of Chartered Accountant firm appointed by the Commission."*

**3B.580** The Hon'ble Commission in Tariff Order dated August 31, 2017 claimed to allow the actual R&M and A&G Expenses from FY 2005-06 to FY 2006-07 but disallowed even the earlier allowed R&M Expenses for FY 2004-05 based on benchmarking in Tariff Order dated 23.07.2014. The relevant para is reproduced below:

*"3.128 The Commission has indicated in its Tariff Order dtd. 29/09/2015 that in compliance of the direction of Hon'ble APTEL in Appeal No. 61 and 62 of 2012, the Commission has appointed a Chartered Accountant firm empanelled with C&AG for independent verification of the claims of the Petitioner in respect of R&M and A&G Expenses for FY 2004-05 to FY 2005-06. The report has been submitted by the firm and approved by the Commission.*

*3.129 Accordingly, the incremental impact based on the report of the firm on R&M and A&G Expenses from FY 2004-05 to FY 2006-07 is indicated in the Table 101: Impact as approved by the Commission on account of implementation Hon'ble APTEL Judgments (Rs. Cr.) as follows:*

**Table 43: Impact on R&M and A&G Expenses from FY 2004-05 to FY 2006-07 (Rs. Cr.)**

<b>FY</b>	<b>Particulars</b>	<b>Petitioner's Submission</b>	<b>Trued up as per Consultant's Report</b>	<b>Approved in earlier TO</b>	<b>Difference</b>
2004-05	Repair & Maintenance	92.02	68.99	78.7	-9.71
	Administrative & General Expenses	38.54	29.04	35.06	-6.02
2005-06	Repair & Maintenance	75.3	75.3	68.38	6.92
	Administrative & General Expenses	48.47	48.47	48.47	0
2006-07	Repair & Maintenance	89.49	89.49	77.2	12.29
	Administrative & General Expenses	66.65	66.65	66.65	0

**3B.581** The numbers trued-up by the Hon'ble Commission from FY 2004-05 to FY 2006-07 do not appear in the Consultant's Report shared with the Petitioner. Further, the Hon'ble Commission has not provided any computation as to how the Hon'ble

Commission has derived the numbers appearing in the truing-up column from FY 2004-05 to FY 2006-07 from Consultant's Report.

**3B.582** The Petitioner has highlighted this issue in its Petition for truing-up of FY 2017-18 and ARR of FY 2019-20. However the Hon'ble Commission has not dealt with the issue in Tariff Order dated 31.07.2019.

**3B.583** A Comparison of R&M Expenses and A&G Expenses allowed by the Hon'ble Commission during FY 2004-05 in various Tariff Orders is given in the table below:

**Table 3B 128: R&M and A&G Expenses for FY 2004-05-Comparison of various Orders**

(in Rs. Cr.)

S. No	Particulars	TO dt. 23.02.2008	TO dt. 23.07.2014	Impugned Order	Actuals
1	Repair & Maintenance	68.99	78.70	68.99	92.02
2	Administrative & General Expenses	29.04	35.06	29.04	38.54

**3B.584** The above comparison shows that the Hon'ble Commission has simply considered the numbers for R&M Expenses and A&G Expenses for FY 2004-05 as per Tariff Order dated February 23, 2008 which was subject matter of Appeal 36 of 2008. In Tariff Order dated February 23, 2008, the Hon'ble Commission without entering into any prudence check simply disallowed the R&M and A&G Expenses during FY 2004-05 only based on the reason that the Petitioner did not apply for prior approval from the Hon'ble Commission before incurring the R&M and A&G Expenses above stipulated limit. Coincidentally, the Hon'ble Commission in the Tariff Order dated August 31, 2017 has arrived at the same numbers (upto two decimal places) as trued-up in Tariff Order dated February 23, 2008 based on the Consultant's report.

**3B.585** Accordingly, the Petitioner is claiming actual R&M Expenses and A&G Expenses of FY 2004-05 as under:

**Table 3B 129: Impact of R&M and A&G Expenses from FY 2004-05 to FY 2006-07**

(in Rs. Cr.)

Particulars	FY 2004-05		
	Audited A/c	Tariff Order	Diff.
A&G Expenses	38.54	29.04	9.50
R&M Expenses	92.02	68.99	23.03
<b>Total base impact</b>	<b>130.57</b>	<b>98.03</b>	<b>32.54</b>

3B.586 The total impact on account of R&M and A&G Expenses from FY 2004-05 along with carrying cost is as under:

**Table 3B 130: Impact of R&M and A&G Expenses from FY 2004-05 along with carrying cost**

(Rs. Cr.)

S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Op. balance	0	34	37	40	46	52	59	67	77	89	102	117	135	154
2	Additions	33													
3	Cl. Balance	33	34	37	40	46	52	59	67	77	89	102	117	135	154
4	Average	16	34	37	40	46	52	59	67	77	89	102	117	135	154
5	Rate of interest	9%	9%	9%	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	1.46	3.06	3.34	5.53	6.32	6.85	7.91	9.97	11.57	13.29	15.40	17.35	19.69	22
7	Grand Cl. Balance	34	37	40	46	52	59	67	77	89	102	117	135	154	176

**PRAYER(S):**

3B.587 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the ARR of the Petitioner.

3B.588 The total impact claimed on account of implementation of Hon'ble ATE Judgments is tabulated below:

**Table 3B 131: Total impact claimed on aforesaid issues which merit reconsideration**

(Rs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Legal fees	13	1	14
2	Interest rates of working capital and carrying cost during FY 2017-18	Included in capex related claims		
3	Fixed charges against regulated power	255	225	481
4	Over lapping banking transactions	13	8	21
5	Cost disallowed on account of excessive trading at UI above contingency limit	7	2	9

S. No	Particulars	Principal	Carrying Cost	Total
6	Normative rebate from FY 13 to FY 18	585	297	882
7	Income from other business-SLMC	210	265	475
8	Financing cost of LPSC-FY 14 to FY 18	50	22	72
9	Monthly Rebate	83	43	126
10	Non-consideration of actual R&M and A&G Expenses of FY 05	33	143	176
11	<b>Sub-total</b>	<b>1248</b>	<b>1007</b>	<b>2255</b>

3B.589 The Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issues in the present ARR of the Petitioner.

Total impact on account of past claims:

3B.590 Based on aforesaid submissions, the total impact on account of past claims is tabulated below:

**Table 3B 132: Total impact on account of past claims**

(Rs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Impact for issues where there is inconsistency in different orders	206	397	603
2	Issues which fall under statutory levies/ Change in law	59	5	63
3	Issues which tantamount to suo-motu reopening of previous orders	80	98	178
4	Impact on account of APTEL Judgments	3387	7252	10640
5	Impact of review petition	230	339	568
6	Issues which are contrary to Regulations/ previous directions	1248	1007	2255
7	<b>Total</b>	<b>5210</b>	<b>9098</b>	<b>14308</b>



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