

BEFORE THE HON'BLE DELHI ELECTRICITY REGULATORY COMMISSION

VINNIYAMAK BHAWAN, C BLOCK, SHIVALIK, MALVIYA NAGAR,

NEW DELHI-110017

Petition _____ of 2019

IN THE MATTER OF:-

BSES Yamuna Power Limited ("BYPL")

PETITIONER.....

Shakti Kiran Building, Karkardooma

New Delhi-110 032

AND

IN THE MATTER OF:-Truing up of expenses 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**"), provisions under 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 UPTO FY 2018-19

RESPECTFULLY SHEWETH:

1. BSES Yamuna Power Limited (hereinafter referred to as **“the Petitioner”**), a company incorporated under the Companies Act, 1956, and having its registered office at Shakti Kiran Building, Karkardooma, New Delhi – 110032, 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 for FY 2018-19 (hereinafter referred to as **“the True-Up Petition”**), based on the actual expenses and income as per the audited Annual Accounts for FY 2018-19. The Petitioner has also presented its submissions regarding certain critical aspects influencing the true-up expenses for FY 2018-19. This Petition is also without prejudice to all the contentions of the Petitioner pending in various Appeals before the Hon’ble APTEL and the Hon’ble Supreme Court of India.
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 the Hon’ble Commission’s letter ref no. F.3(588)/Tariff-Fin./DERC/2019-20/6596/2029 dated 21.11.2019, the Petitioner is required to file Petition for Truing up of Expenses upto FY 2018-19 the Petitioner is required to file Truing up of Expenses up to FY 2018-19. The Petitioner further submits that vide the present filing 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, variation in sales to meet the performance standards during FY 2019-20 as well as comply with various directives specified by the Hon’ble Commission, which

particularly entails expenditure.

4. Truing up petition of a Distribution Utility 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.
5. Power Purchase Cost including Transmission Charges is one of the major components of ARR which contributes to almost 71% of the total ARR of a Distribution Utility. 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 the Audit is already being carried by the CAG. Petitioner purchases power from Central Generating Stations at the rate specified by CERC in its various Tariff Orders.
6. The present Petition contains the following chapters:
 - i. Chapter 1A – List of Dates & Events
 - ii. Chapter 1B – Executive Summary
 - iii. Chapter 1C – Preamble
 - iv. Chapter 2A - Performance during FY 2018-19
 - v. Chapter 2B - Compliance to Directives
 - vi. Chapter 3A - Truing Up for FY 2018-19
 - vii. Chapter 3B – True Up of Past claims upto FY 2017-18

The above chapters are essentially a part and parcel of this Petition (Hereinafter collectively referred to as the “**ARR Petition**”).

7. The Petitioner is filing the present True up petition to ensure prompt determination of truing-up of expenses upto FY 2018-19 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.

(c) Set a realistic, achievable and practical trajectory for various heads based on the actual performance of the Petitioner during last control period.

8. It is respectfully submitted that the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "the Hon'ble ATE") has in a catena of judgments underscored the necessity for carrying truing-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.
9. Hence, 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 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 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 kind consideration of the Hon'ble Commission in the present Petition.

FACTORS IMPACTING THE PETITIONER AND THE CONSUMERS:

10. A commercially sustainable 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 EA 2003 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 petition :-
 - a) 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) Progressive buildup of revenue gap and regulatory assets since FY 2006-07;
- f) Absence of any time bound mechanism for recovery of accumulated shortfall;
- g) Non recognition of Regulatory Asset (RA), in consonance with various judgments of the Hon'ble ATE. 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 decision of the Hon'ble Commission to continue to retain a meager 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.
- h) 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 ATE in its various judgments.
- i) 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;
- j) Results in a situation where financial institutions are not willing to extend financial assistance to the Petitioner to carry on its licensed business.

k) The following Appeals on various issues are pending before Hon'ble SC filed by the Honble Commission or Discoms 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 inasmuch 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) Following Appeals are pending adjudication before the Hon'ble ATE.

S. No	Tariff Orders/Orders	Date of Tariff Orders/ Other Orders	Appeal before Hon'ble ATE	Present Status
1.	True up for FY 2013-14, Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2015-16	29.09.2015	Appeal No. 290 of 2015	Pending
2.	Order in Petition No. 14 of 2014 – In the matter of implementation of Hon'ble ATE judgment dated 30.10.2009 in Appeal No. 37 of 2008	17.07.2014	Appeal No. 231 of 2014	Pending
3.	Suo-moto Order in Petition No. 14 of 2014 – In the matter of implementation of Hon'ble ATE judgment dated 30.10.2009 in Appeal No. 37 of 2008	20.04.2015	Appeal No. 156 of 2015	Pending
4.	True up for FY 2012-13 and Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2014-15	23.07.2014	Appeal No. 236 of 2014	Pending
5.	True up for FY 2011-12 Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2013-14	31.07.2013	Appeal No. 265 of 2013	Pending

S. No	Tariff Orders/Orders	Date of Tariff Orders/ Other Orders	Appeal before Hon'ble ATE	Present Status
6.	Review of the judgment dated 02.03.2015 passed by the Hon'ble ATE in Appeal No. 177 and 178 of 2012.	02.03.2015	R.P. No. 17 of 2015 in A.No 177 & 178 of 2012	Pending
7.	True up of expenses upto FY 2014-15, Review of FY 2015-16, and Multi Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 True up of expenses for FY 2015-16	31.08.2017	70 & 71 of 2018	Pending
8.	True up of FY 16-17 and ARR for FY 18-19.	28.03.2018	214 of 2018	Pending
9.	True up of FY 17-18 and ARR for FY 19-20.	31.07.2019	DFR 2333/2019	Pending

It is respectfully submitted that the present petition is without prejudice to the rights and contentions of the Petitioner in the aforesaid cases pending before the higher Courts.

11. The Petitioner has filed a Petition 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 in Petition no. 69 of 2017 on 15 issues and Tariff Order dated 31.07.2019 in Petition No. 08 of 2018 on 04 issues.
12. The Hon'ble Commission is mandated in law to decide the present 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.
13. The filing of the Petition should not be treated as curtailing any right or claim of Petitioner (BYPL), which it is permitted to recover in terms of its License and Orders of the Hon'ble Commission, Hon'ble ATE (including the principle of parity / equality in treatment of DISCOMs) and or any other proceedings

relevant to the entitlement of the Petitioner.

14. The Petitioner is filing the present Petition to ensure prompt determination of tariff as to seek the truing up of expenses upto FY 2018-19.

Prayers:-

In view of the above, the petitioner most respectfully prays that the Hon'ble Commission may be pleased to:

- (i) Take the present true up, Petition on record and admit the same;
- (ii) Approve the True up of expense and revenues for FY 2018-19 and financial impact for past claims upto FY 2017-18 as also implement the Judgements of Hon'ble APTEL as submitted in Chapter – 3B ;
- (iii) Approve amortization of the accumulated Revenue Gaps (regulatory asset) upto FY 2018-19 and carrying cost thereof though separate surcharges as submitted in chapter - 3,;
- (iv) Carry forward the compliance of RPO for FY 2018-19 as submitted in Chapter – 3;
- (v) 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;
- (vi) Condone the delay in submission of this petition and any inadvertent omissions/ errors/ rounding off difference/ shortcomings; and
- (vii) Pass any order or further order/s and grant any other relief which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Prayed accordingly

PETITIONER

Through:

Gagan B. Swain
Head – Regulatory Affairs
Authorised Signatory
BSES Yamuna Power Limited

BEFORE THE DELHI ELECTRICITY REGULATORY COMMISSION

C BLOCK, SHIVALIK, MALVIYA NAGAR, NEW DELHI

Petition No.... of

IN THE MATTER OF:-

BSES Yamuna Power Limited ("BYPL")

Shakti Kiran Building,

Karkardooma,

New Delhi-110032.

.....

PETITIONER

AND

IN THE MATTER OF:-

Truing up of expenses upto FY 2018-19, in terms of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as "**Tariff Regulations, 2017**") And the Delhi Electricity Regulatory Commission Business Plan Regulations, 2017 (hereinafter referred to as "**Business Plan Regulations, 2017**"), And the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as "**MYT Regulations, 2011**") And Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling and Retail Supply Tariff) Regulations, 2007 (hereinafter referred to as "**MYT Regulations, 2007**") and read with Section 62 of the Electricity Act 2003 (hereinafter referred to as "**the Act**") 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**").

AFFIDAVIT CERTIFYING THE PETITION:

I, Gagan Bihari Swain, S/o Brahmananda Swain, aged about 46 years, having my office at Shakti Kiran Building, Karkardooma, New Delhi -110032, do hereby solemnly affirm and state as follows:

1. I am working with BSES Yamuna Power Limited, the Petitioner herein, as Head (Regulatory Affairs) and am duly authorized by the said Petitioner to make the present affidavit.

2. I further say that statements made and data presented in the present True up and ARR Petitions are to the best of my knowledge derived from records of the Company and based



Register Entry No. 1160/19

Page No. 86-87

Date 04/12/2019

Document Affidavit

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
GAGAN BIHARISWAIN
Head (Regulatory Affairs)
Authorized Signatory
BSES Yamuna Power Limited

VERIFICATION:

I, Gagan Bihari Swain, 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 04th Day of December, 2019 at New Delhi.




WITNESS:
Brajesh Kumar
Manager –Regulatory Affairs
BSES Yamuna Power Limited.
Shakti Kiran Building, Karkardooma,
New Delhi-110032



DEPONENT
GAGAN BIHARI SWAIN
Head (Regulatory Affairs)
Authorized Signatory
BSES Yamuna Power Limited



ATTESTED

D. K. TYAGI
NOTARY PUBLIC
Karkardooma Court Complex
DELHI

- 4 DEC 2019

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
ARR	Aggregate Revenue Requirement
AT & C	Aggregate Technical and Commercial
ATE	Appellate Tribunal for Electricity
BBMB	<u>Bhakra Beas Management Board</u>
BEST	M/s Brihanmumbai Electric Supply & Transport Undertaking
BYPL	M/s BSES Yamuna 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
CERC	Central Electricity Regulatory Commission
CESC	M/s Calcutta Electricity Supply Company
CESU	<u>M/s. Central Electricity Supply Utility</u>
CFL	Compact Florescent Lamp
CGRF	Consumer Grievance Redressal Forum
CGS	Central Generating Stations
CISF	Central Industrial Security Force
CPI	Consumer Price Index
CPRI	Central Power Research Institute
CTC	Cost to the Company
CSERC	Chhattisgarh State Electricity Regulatory Commission
CSPDCL	Chhattisgarh State Power Distribution Co. Ltd
DA	Dearness allowance
DDA	M/s Delhi Development Authority
DERC	Delhi Electricity Regulatory Commission
DIAL	M/s. Delhi International Airport Limited
DISCOM	Distribution Company
DJB	M/s. Delhi Jal Board
DMRC	M/s Delhi Metro Rail Corporation

Abbreviation	Full form
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
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
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
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
IEX	Indian Energy Exchange
IP Station	M/s Indraprastha Station
IPPAI	Independent Power Producers Association of India
IPGCL	M/s Indraprastha Power Generation Co. Ltd
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

Abbreviation	Full form
kVAh	Kilo Volt Ampere hour
kVArh	Kilo Volt Ampere Resistance hour
kW	Kilo Watt
kWh	Kilo Watt Hour
LDC	Load Despatch 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
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	<u>National Accreditation Board for Testing and Calibration Laboratories</u>
NCT	National Capital Territory
NDPL	M/s North Delhi Power Limited
NGO	Non-Government Organisation
NHPC	M/s National Hydroelectric Power Corporation Ltd.
NJPC	<u>Nathpa Jhakri Power Corporation Ltd.</u>
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
PPCA	Power Purchase Cost Adjustment
PPCL	M/s Pragati Power Corporation Ltd.
PTC	Power Trading Corporation
RA	Regulatory Asset

Abbreviation	Full form
R & M	Repair and Maintenance
RE	Renewable Energy
REC	Rural Electrification Corporation
REL	M/s Reliance Energy Limited
RERC	Rajasthan Electricity Regulatory Commission
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
SGS	State Generating Stations
SJVNL	M/s Satluj Jal Vidyut Nigam Limited
SLDC	State Load Dispatch Centre
SMS	Short Message Service
Sq. Kms	Square Kilometers
SoP	Standard of Performance
SVRS	Special Voluntary Retirement Scheme
TANGEDCO	Tamil Nadu Generation and Distribution Corporation
T&D	Transmission and Distribution
THDC	Tehri Hydro Development Corporation Ltd.
TNERC	Tamil Nadu Electricity Regulatory Commission
TPDDL	Tata Power Delhi Distribution Limited
TRANSCO	Transmission Company
T.O.	<u>Tariff</u> Order
UERC	Uttarakhand Electricity Regulatory Commission
UPERC	Uttar Pradesh Electricity Regulatory Commission
UI	Unscheduled Interchange
VRS	Voluntary Retirement Scheme
WACC	Weighted Average Cost of Capital
WPI	Whole Sale Price Index
Y-o-Y	Year on Year

Table of Contents

	Particulars	Page No.
1A	List of Dates and Events	19
1B	Executive Summary	27
1C	Preamble	39
2A	PERFORMANCE DURING FY 2017-18	47
2A.1	AT&C Loss Reduction	49
2A.2	Performance Standards	50
2A.3	Peak Demand	53
2A.4	Growth in Consumer Base	53
2A.5	Improvement in Distribution Network	53
2A.6	Initiatives Under taken by BYPL	53
2A.7	Safety Initiatives	56
2A.8	Quality Initiatives	59
2A.9	Customer Centric Initiatives	59
2A.10	Key process improvements	64
2A.11	CSR Initiatives	65
2A.12	Awards and Recognition	67
2B	Compliance to Directives	69
1	Compliance to Directives Given in Tariff Order Dated March 28, 2018	71
3A	TRUE UP FOR FY 2018-19	85
3.1	Background	85
3.2	Legislative Provisions of Truing-up	85
3.3	Energy Sales	90
3.4	Distribution Loss, Collection Efficiency and AT&C Loss for FY 2018-19	98
3.5	Power Purchase Quantum	102
3.6	Power Purchase Cost	108
3.7	Rebate on power purchase and Transmission Charges	117
3.8	Late Payment Surcharge (LPSC)	121
3.9	Incentive on Sale rate of Surplus Power	123
3.1	RPO Obligation	125
3.11	Total Power Purchase Cost for the purpose of Truing-up	128
3.12	Operation & Maintenance Expenses	129
3.13	Additional O&M Expenses	130
3.14	Non-Tariff Income	137
3.15	Income from Other Business	148
3.16	Income from Open Access	150
3.17	Capital Expenditure and Capitalisation	150
3.18	Depreciation	151
3.19	Working Capital	153
3.2	Debt and Equity	153
3.21	Regulated Rate Base (RRB)	154
3.22	Rate of Interest on Loan	154
3.23	Weighted Average Cost of Capital (WACC)	156

	Particulars	Page No.
3.24	Return on Capital Employed (RoCE)	156
3.25	Aggregate Revenue Requirement for Truing-up of FY 2018-19	157
3.26	Revenue available towards ARR	157
3.27	Revenue (Gap)/ Surplus	158
3B	Truing-up of Past Claims Upto FY 2017-18	159
3.28	Truing-up of Past Claims Upto FY 2017-18	160
3.28.4	Issues where inconsistent treatment given in past Orders	161
3.28.30	Issues which falls under statutory levies/change in law	168
3.28.80	Issues which tantamount to suo moto reopening of previous Tariff Orders	192
3.28.94	Issues pertaining to Review Petition	198
3.28.98	Issues on account of direction of APTEL judgment	199
3.28.401	Previous Claims contrary to Regulations	374

Chapter – 1A
LIST OF DATES & EVENTS

1A.1 BACKGROUND

1A.1.1 BSES Yamuna Power Limited (hereinafter referred to as “the Petitioner”), a company incorporated under the Companies Act, 1956, and having its registered office at Shakti Kiran Building, Karkardooma, New Delhi – 110032, 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 Govt. of NCT of Delhi. The company spans across an area of 200 sq. km. serving to Central and East part of Delhi.

1A.1.2 The present petition is being filed for Truing up of Expenses upto FY 2018-19.

1A.1.3 The present Petition contains the following chapters:

- a) Chapter 1A – List of Dates & Events
- b) Chapter 1B – Executive Summary
- c) Chapter 1C – Preamble
- d) Chapter 2A - Performance during FY 2018-19
- e) Chapter 2B - Compliance to Directives
- f) Chapter 3A - Truing Up for FY 2018-19
- g) Chapter 3B – True up of Past claims upto FY 2017-18

The above chapters are essentially a part and parcel of this Petition (Hereinafter collectively referred to as the “**True up Petition**”).

1A.1.4 In accordance with the Electricity Act, 2003 (hereinafter referred to as “2003 Act”), the License conditions, Business Plan Regulations, 2017, and Tariff Regulations, 2017 and the Hon’ble Commission’s letter ref no. F.3(588)/Tariff-Fin./DERC/2019-20/6596/2029 dated 21.11.2019, the Petitioner is required to file Petition for Truing up of Expenses upto FY 2018-19.

1A.2 LIST OF DATES AND EVENTS

Dates	Events
On or about 20.11.2001	<p>Delhi Government, 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 ("Transfer Scheme").</p> <p>The Delhi Government issued notification No. F.II (118)12001-Power containing Policy Directions under Section 12 of the Reforms Act 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>Delhi Government issued an Information Memorandum to the six prequalified entities which were shortlisted on the basis of the criteria specified in the RFQ.</p> <p>Delhi Government 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 the Ld. Delhi Commission ("Joint Petition"), pursuant to the Transfer Scheme and the Policy Directions</p>
09.03.2001	Hon'ble Commission notified Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001.
22.02.2002	Prior to privatization, Hon'ble Delhi 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 realized from DISCOMs.
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.

Dates	Events
01.07.2002	This is the effective date of privatization of DISCOMs. BRPL / BYPL 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	The Electricity Act, 2003 notified by Ministry of Power(MOP).
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 Electricity 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 Act.
21.07.2006	The Petitioner challenged the Tariff Order dated 09.06.2004 wherein the Hon'ble Commission, as recorded by the Hon'ble APTEL, had directed the Petitioner to create a Regulatory Asset in its books. The Hon'ble APTEL by its judgment dated 21.07.2006 in Appeal No. 155, 156 & 157 of 2005 set aside the findings of Hon'ble Commission whereby Hon'ble Commission deferred the payments of Petitioner's legitimate dues by creating Regulatory Asset. The APTEL 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 to arrange power for themselves which, prior to this date was being undertaken by DTL. On this date, the Hon'ble Commission also passed a detailed order assigning the existing PPAs (entered into by the DVB / DTL) amongst the distribution licensees of Delhi.
30.05.2007	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	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 APTEL in Appeal 36/ 37 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 APTEL in Appeal 142 / 147 of 2009. TPDDL carried this Order before APTEL in Appeal 153 of 2009.

Dates	Events
06.10.2009& 30.10.2009	Hon'ble APTEL 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, Distribution loss and AT&C losses, Capital expenditure and capitalisation, Employee expenses, Non-inclusion of Reactive Energy Charges, Disallowance of R&M and A&G expenses, Lower approval of interest rates for loans. This judgment was carried by the Hon'ble Commission to the Hon'ble Supreme Court in Civil Appeal No. 884 / 980 of 2010. Through there is no stay by the Hon'ble Supreme Court, many parts of this judgment are yet to be implemented by the Hon'ble Commission.
30.07.2010	The Hon'ble APTEL pronounced judgment in Appeal 153 of 2009 (TPDDL Vs DERC) inter-alia holding four issues in favor of TPDDL. The Hon'ble Commission carried this judgment in Appeal before the Hon'ble Supreme Court in CA no. 6006 of 2012. However, the said civil appeal was dismissed by the Hon'ble Supreme Court on the ground of delay.
15.10.2010	Statutory advice was issued by the Hon'ble Commission under section 86(2) (iv), stating, inter-alia a) The tariff during previous years has not been cost reflective causing DISCOMs to resort to extensive borrowing. b) Hon'ble Commission's past practice was to assume higher surplus for tariff fixation which did not consider rise in power procurement cost. c) Revenue from sale of electricity has not been able to meet even the power purchase. Accumulation of revenue gaps are beyond sustainable levels. d) (d) There is a need for a fuel cost adjustment Mechanism.
2010-11	Due to stay imposed on determination of tariff by Hon'ble Delhi High Court in PIL entitled 'N.K.Garg Vs. NCW', no Tariff Order was passed for the FY 2010-11.

Dates	Events
12.07.2011	Hon'ble APTEL 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 the Hon'ble Commission to the Hon'ble Supreme Court in Civil Appeal 9003 / 9004 of 2011. Through there is no stay by the Hon'ble Supreme Court, many parts of this judgment are yet to be implemented by the Hon'ble Commission.
26.08.2011	Tariff Order issued by Hon'ble Commission for FY 2011-12. This was carried by the Petitioner in Appeal before APTEL in Appeal No. 61 / 62 of 2012.
02.12.2011	Hon'ble Commission notified DERC (Terms and conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulation, 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. upto 31.03.2016.
02.12.2011	Letter Ref.No.3/Tariff/DERC/2011-12/OPANO.3214/5215/522 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 Section 121 of the Act before APTEL.
05.07.2012	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 APTEL in Appeal Nos. 142&147 of 2009 and also stay of the proceedings of O.P. Nos. 1&2 of 2012.
13.07.2012	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 APTEL 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	Hon'ble Supreme Court passed in IA No. 5 inCA No. 980 of 2010 and IA No. 3-4 in CA No. 9003-04 of 2011 directing that the APTEL 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	Hon'ble Commission issued Tariff Order for ARR for FY 2013-14 and True up FY 2011-12. This was subsequently challenged before APTEL by the Petitioner in Appeal 265 / 266 of 2013.

Dates	Events
14.11.2013	The Hon'ble APTEL pronounced judgment in O.P. No. 1 and 2 of 2012.
23.07.2014	Hon'ble Commission issued Tariff Order for ARR for FY 2014-15 and True up FY 2012-13. This was subsequently challenged before APTEL by the Petitioner in Appeal 235 / 236 of 2014.
28.11.2014	Hon'ble APTEL 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 and on 10 in favor of the Commission. The Petitioner has filed an Appeal before the Supreme Court in CA 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	Hon'ble APTEL 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 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	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 APTEL 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 2011 Tariff Regulations to FY 2016-17.
31.08.2017	Hon'ble Commission passed ARR and Tariff for FY 2017-18. The Petitioners carried the matter in Appeal before the APTEL 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 the Hon'ble Commission, which came to be allowed vide order dated 22.03.2018.

Dates	Events
31.08.2017	The Hon'ble Commission notified DERC Business Plan Regulations, 2017 in the official gazette. These Regulations were issued in Terms of the DERC (Terms and Conditions for Determination of Tariff) Regulations 2017.
27.03.2018	Hon'ble Commission passed order for reallocation of power for FY 2018-19.
28.03.2018	Hon'ble Commission passed ARR and Tariff for FY 2018-19. The Petitioner carried the matter in Appeal No. 193 and 214 of 2018 before APTEL. The Petitioner has also filed a Review Petition being Petition number 30 / 31 of 2018 before the Hon'ble Commission.
18.09.2018	Hon'ble Commission passed Order in Petition No. 44/45 of 2018 allowing the power purchase cost from Anta, Auraiya, Dadri Gas stations for FY 2012-13 to 2015-16.
29.11.2018	The Appellant filed a Petition for approval of Truing up of Expenses upto FY 2017-18, ARR and for FY 2019-20. This Petition was subsequently numbered as Petition No.08/2019.
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.
31.07.2019	Hon'ble Commission passed ARR and Tariff for FY 2019-20. The Petitioner has carried the matter before APTEL. The Petitioner has also filed a Review Petition before the Hon'ble Commission which is admitted by the Hon'ble Commission.
21.11.2019	Hon'ble Commission directed BYPL for submission of True up petition for FY 2018-19.

Chapter – 1B

EXECUTIVE SUMMARY

A. Introduction

- 1B.1 The Petitioner has filed this Petition for Approval of True up up-to FY 2018-19 as per Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017.
- 1B.2 The Executive Summary contains the summary of the Petition filed by BYPL for True up for FY 2018-19 (based on audited accounts).

B. True up for FY 2018-19**Energy Sales and Revenue**

- 1B.3 The Petitioner submitted that its sale of energy in FY 2018-19 is 6514 MU as shown below:

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

S. No.	Category	Actual
A	Domestic	3838
B	Non Domestic	1791
C	Industry	374
D	Public Lighting	104
E	Agriculture & Mushroom Cultivation	0.0
F	DMRC	171
G	DJB	149
H	Others *	84
Total		6514

**Includes enforcement, Own consumption, Temporary Supply, net metering and Advertisement & Hoardings etc*

- 1B.4 The Petitioner realised revenue amounting to Rs. 4,929 Cr. (excluding 8% Surcharge, 3.80% Pension Surcharge, LPSC and Electricity Tax).

AT&C Loss for FY 2018-19

- 1B.5 The actual AT&C loss along with Distribution loss and Collection Efficiency for FY 2018-19 is tabulated as under:

Table 1B 2: AT&C Loss for FY 2018-19 (%)

S. No	Particulars	Actuals
1	Distribution Losses	9.31%
2	Collection Efficiency	100.37%
3	AT&C Loss level	08.98%

Power Purchase Requirement:

- 1B.6 The Petitioner purchases almost 80% 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.
- 1B.7 The summary of actual power purchase quantum procured by the Petitioner during FY 2018-19 is as follows:

Table 1B 3: Power Purchase Quantum for FY 2018-19 (MU)

S.N.	Particulars	Amount	Remarks
A	Power Purchase:		
I	Gross Power Purchase Quantum	8826	(includes banking)
II	Power sold to other sources	1332	
III	Net Power Purchase	7494	i-ii
B	Transmission Loss:		
I	Total transmission loss (Inter State & Intra State)	312	
C	Net power available after Transmission Loss*	7182	A-B

*Excluding Open Access

Power Purchase Cost:

- 1B.8 The actual power purchase cost claimed during FY 2018-19 is tabulated below:

Table 1B 4: Power Purchase Cost for FY 2018-19 (Rs. Cr.)

S. No.	Particulars	Submission	Reference
A	Power Purchase Cost		
i	Gross Power Purchase Cost	3186.23	As Per Audited Certificate
ii	Power sold to other sources	499.33	
iii	Net Power Purchase Cost	2686.90	i-ii
B	Transmission Charges		
i	Inter-state transmission charges	330.97	PGCIL – 323.45 , NTPC Ltd – 4.18, SECI – 1.89, BBMB – 0.07

S. No.	Particulars	Submission	Reference
ii	Intra-state transmission charges	259.40	
iii	Other Transmission/OA charges	89.21	
iv	Total Transmission charges	679.58	i+ii+iii
C	Rebate		
i	Power Purchase Rebate	18.89	
ii	Rebate on Transmission Charges		
iii	Total rebate	18.89	i+ii
D	Add: Net Metering	1.03	
	Add: Self Generation (BYPL Roof Top Solar)*	0.84	
E	Net Power Purchase Cost including Transmission charges net of rebate	3349.46	A+B-C+D
G	Incentive on short term Sale	19.22	
H	Total Power purchase including incentive	3368.68	

* Self Generation @ Rs 5.36/unit vide Hon'ble DERC order dt.26.02.2018.

O&M Expenses:

1B.9 The Petitioner has computed the O&M expenses for FY 2018-19 as per Business Plan Regulations, 2017 as shown below:

Table 1B 5: O&M expenses for FY 2018-19

Particulars	Capacity as on 31.03.2019	O&M expenses per unit(Rs lakh)	O&M expenses (Rs. Cr.)
66 kV Line (ckt km)	225	4.669	10.5
33 kV Line (ckt km)	381	4.669	17.8
11kV Line (ckt km)	2869	1.961	56.3
LT Line system (ckt km)	5460	8.756	478.1

Particulars	Capacity as on 31.03.2019	O&M expenses per unit(Rs lakh)	O&M expenses (Rs. Cr.)
66/11 kV Grid S/s (MVA)	1765	1.104	19.5
33/11 kV Grid S/s (MVA)	2013	1.104	22.2
11/0.415 kV DT (MVA)	3366	2.425	81.6
Total O&M Expenses			686.0

Other Statutory levies/ Other Miscellaneous Expenses:

1B.10 The Petitioner has claimed certain amount on account of statutory levies/Taxes and miscellaneous expenses which are uncontrollable in nature and not covered in the above normative O&M expenses during FY 2018-19 as shown below:

Table 1B 6: Other uncontrollable costs/ miscellaneous expenses

S. No	Particulars	Amount (Rs. Cr.)
1	Loss on Sale of Retired Assets	9.0
2	Arrears paid on account of 7 th Pay Commission revision	54.3
3	Impact of Revision in Minimum Wages	3.1
4	Water Charges	0.9
5	Property Tax	1.2
6	GST Charges	20.1
7	SMS Charges	0.9
8	Legal Expenses	12.3
9	Ombudsman Fees	0.1
10	DSM charges	1.2
11	KYC expenses	2.6
Total		105.8

Non-Tariff Income:

1B.11 The Petitioner has deducted the following items for the purpose of computation of Non-Tariff Income:

- Late Payment Surcharge (LPSC)
- Rebate on power purchase and Transmission Charges
- Write-back of Miscellaneous expenses
- Short term gain
- Transfer from consumer contribution for capital works
- Bad debts recovered
- Incentive towards Street Light

h. Commission on Electricity Duty

1B.12 The Non-Tariff Income claimed by the Petitioner in True-up of FY 2018-19 is Rs. **85.63 Cr.**

Income from other business:

1B.13 The summary of total income received from other business and proposed to be retained by the Petitioner is tabulated below:

Table 1B 7: Other Business Income during FY 2018-19 (Rs. Crore)

S. No	Particulars	Total Income	Petitioner's Share	Consumer's Share
A	Pole Rental Income	1.5	0.95	0.63
B	Total	1.59	0.95	0.63

Income from Open Access

1B.14 In addition to the income received from Other Business, the income of Rs. 1.12 Cr. (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 & Capitalisation

1B.15 Actual capitalization and de-capitalisation as per the Audited Accounts for FY 2018-19 has been considered to derive the closing balance of GFA as under:

Table 1B 8: Gross Fixed Assets for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Opening GFA	3428.70
B	Capitalisation during the year	338.28
C	De-capitalisation	23.43
D	Closing GFA	3743.56
E	Average GFA	3586.13

Funding of Capitalisation

1B.16 The financing of Capitalisation (net of de-capitalisation and consumer contribution) through debt and equity in the ratio of 70:30 as shown below:

Table 1B 9: Financing of Capitalisation for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Total Capitalisation	338.28

S. No	Particulars	Amount
B	De-capitalisation	23.43
C	Consumer Contribution	19.05
D	Balance Capitalisation	295.81
E	Debt	207.06
F	Equity	88.74

Consumer contribution and Grants:

1B.17 The average consumer contribution and Grants for FY 2018-19 is tabulated below:

Table 1B 10: Consumer contribution and Grants for FY 2018-19 (Rs. Crore)

S. No	Particulars	Consumer Contribution*
A	Opening Balance	286.78
B	Additions during the year	19.05
C	Closing Balance	305.83
D	Average Consumer Contribution	296.31

*Including Grants

Depreciation:

1B.18 The average rate of Depreciation for FY 2018-19 based on the Audited Accounts of the Petitioner is tabulated below:-

Table 1B 11: Computation of avg. rate of Depreciation for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Opening GFA as per audited accounts	3399.30
B	Closing GFA as per audited accounts	3714.14
C	Average of GFA	3556.72
D	Depreciation as per Audited Accounts	182.52
E	Average depreciation rate (%)	5.13%

Table 1B 12: Depreciation for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Average GFA	3586.13
B	Average Consumer Contribution and Grants	296.31
C	Average GFA net of consumer contribution & Grants	3289.82
D	Average rate of depreciation (%)	5.13%
E	Depreciation	168.82

Working Capital

1B.19 The Petitioner has computed the Working Capital Requirement for FY 2018-19 is tabulated below:

Table 1B 13: Working Capital Requirement (Rs. Crore)

S. No	Particulars	Amount
A	Annual Revenues from Tariff & Charges	4662.5
A1	Receivables equivalent to two months average	777.1
B	Power Purchase Expenses	3368.7
B1	Less: 1/12th of power purchase expenses	280.7
C	Working Capital	496.4
D	Opening Working Capital	489.0
E	Change in Working Capital	7.4

Regulated Rate Base (RRB)

1B.20 The Regulated Rate Base (RRB) for FY 2018-19 has been computed as below:

Table 1B 14: Regulated Rate Base for FY 17-18 (Rs. Crore)

S. No	Particulars	Amount
A	RRB Opening	2401.81
B	Δ AB (Change in RRB)	140.07
C	Investments Capitalized	314.86
D	Depreciation (incl AAD)	168.82
E	Add: Depreciation on De-capitalised Assets	13.09
F	Consumer Contribution	19.05
G	Change in WC	7.37
H	RRB Closing	2,549.25
I	RRB (i)	2,479.22

Weighted Average Cost of Capital (WACC) and Return on Capital Employed (RoCE)

1B.21 The Petitioner has considered the actual rate of interest of capex loans during 2017-18 i.e. andRoE at 16%(post tax) for computation of WACC as under:

Table 1B 15: Weighted Average Cost of Capital (WACC) (Rs. Crore)

S. No	Particulars	Amount
A	Average Equity	1134.32
B	Average Debt	1313.63
C	Return on Equity	16.00%
D	Income Tax Rate (%)	21.55%
E	Grossed up Return on Equity	20.39%
F	Rate of Interest	14.00%
G	Weighted average cost of Capital (%)	16.96%

1B.22 Based on the aforesaid submissions, the RoCE for FY 2018-19 is computed as below:

Table 1B 16: RoCE for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Weighted Average Cost of Capital (WACC) (%)	16.96%
B	RRB (i)	2479.22
C	RoCE	420.54

Additional return due to T&D loss and Collection Efficiency overachievement during FY 2018-19

1B.23 For FY 2018-19, the petitioner has claimed the overachievement as detailed below;

Table 1B 17: Overachievement incentive sought on Collection Efficiency for FY 2018-19 (Rs. Cr.)

S.No	Particulars	UoM	Target	Actual
A	Amount billed	Rs. Cr	4,911.16	4,911.16
B	Collection Efficiency	%	99.50%	100.37%
C	Amount collected	Rs. Cr	4,886.61	4,929.7
D	Over-achievement	Rs. Cr		42.56
E	Amount to be retained by petitioner and consumer shared 50:50 for achievement of collection efficiency Target from 99.50% to 100% $[(1-B)*A]/2$	Rs. Cr		12.28
F	Entire 100% to be retained for achievement over 100% $[(B-1)*A]$	Rs. Cr		18.01
G	Total Incentive to be retained by Discom (E+F)	Rs. Cr		30.29

Table 1B 18: Overachievement incentive sought on T&D Loss for FY 2018-19 (Rs. Cr.)

S.No	Particulars	UoM	Figure	Remarks
A	Distribution Loss Target in previous Year	%	13.00%	As per BPR 2017
B	Distribution Loss Target in Current Year	%	11.69%	As per BPR 2017
C	Actual Distribution Loss	%	9.31%	
D	50% of (previous year target - current year target)	%	0.66%	50%*(A-B)
E	Distribution loss target - 50% of (previous year target - current year target)	%	11.04%	B-D
F	Actual Energy Input at Distribution periphery	MU	7,182.26	
G	Average Power purchase Cost	Rs/KWh	4.66	
H	Total Incentive	Rs. Cr	79.67	(B-C)*F*G/10
I	Petitioner Share 1 of incentive (less than Loss Target-50%*(PYT-CYT)	Rs. Cr	7.31	(B-E)*F*G/10*(1/3)
J	Petitioner Share 2 of incentive (up to Loss Target-50%*(PYT-CYT)	Rs. Cr	38.49	(E-C)*F*G/10*(2/3)
K	Total Incentive to Petitioner	Rs. Cr	45.80	I+J
L	Incentive to Consumer	Rs. Cr	33.87	(B-E)*F*G/10*(2/3)+(E-C)*F*G/10*(1/3)

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

1B.24 The Based on the above submissions, the Annual Revenue Requirement for FY 2018-19 sought for True-up is tabulated below:

Table 1B 19: Annual Revenue Requirement for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	Purchase of power including Transmission and SLDC Charges	3369
B	O&M Expenses	686
C	Other Expenses/ Statutory levies	106
D	Depreciation	169
F	Return on Capital Employed (RoCE)	421
I	Sub-total	4750
J	Less: Non-Tariff Income	85
K	Less: Income from other business	0.6
L	Less: Income from Open Access	1.12
M	Aggregate Revenue Requirement	4663

1B.25 Revenue Available to meet ARR is tabulated as under:

Table 1B 20: Revenue Available to meet ARR

Particulars	Amount
Revenue Collection from Consumers	4929
Less: Incentive on overachievement of T&D Loss Targets (Petitioner share)	46
Less: Incentive on overachievement of Collection Efficiency Target (Petitioner share)	30
Less: Carrying cost on RA	307
Revenue Available towards ARR	4547

1B.26 The revenue gap during FY 2018-19 is tabulated as under:

Table 1B 21: Revenue (Gap) for FY 2018-19 (Rs. Crore)

S. No	Particulars	Amount
A	ARR for FY 2018-19	4663
B	Revenue available towards ARR	4547
C	Revenue (Gap)/ Surplus	(116)

Past period true-ups:

1B.27 In its Petition, the Petitioner has divided the claims in Chapter 3B pertaining to true-up pending with respect to past period into 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. yet to be numbered
- E. Category-5: Directions of Hon'ble Tribunal given in various Judgments:
 - Attained finality
 - No stay granted by Hon'ble Supreme Court for Civil Appeals filed by the Hon'ble Commission
- F. Category-6: Previous claims which are contrary to Regulations

Table 1B 22: Total Impact on account of past claims (Rs. Crore)

S. No	Particulars	Principal	Carrying Cost	Total
1	Impact for issues where there is inconsistency in different orders	176	298	474
2	Issues which fall under statutory levies/ Change in law	45	4	48
3	Issues which tantamount to suo-motu reopening of previous orders	Impact included in capex related claims		
4	Impact of review petition	751	1182	1933
5	Impact on account of APTEL Judgments	3284	3852	7136
6	Issues which are contrary to Regulations/ previous directions	866	568	1434
7	Total	5122	5903	11025

Chapter – 1C

PREAMBLE

The Petitioner, a Distribution Licensee is required to file the True up of the FY 2018-19 as per the requirement of the DERC (terms and conditions of determination of tariff) Regulations, 2017. While submitting the true up petition, Licensee is required to claim the expenses based on the provisions of the Electricity Act, 2003 and other legislations as narrated below:

- 1C.1 In accordance with Section-62 of Electricity Act 2003 and Revised Tariff Policy 2016, Delhi Electricity Regulatory Commission has notified DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 which is required to be followed by the Licensees for filing the Petition for True up of expenses of any particular year.
- 1C.2 In Delhi, the Distribution Licensees are required to follow DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and DERC Business Plan Regulations, 2017 while filing true up petition.
- 1C.3 As per the provisions of the DERC (Terms and conditions of determination of tariff) Regulations, 2017, the Truing-up of Previous Year is based upon the Audited Accounts for that year and Tariff determination for the ensuing year.
- 1C.4 Truing-up requirement for any year is filed on the basis of Audited Accounts for previous year and norms specified by the Commission for controllable expenses. Regulation 152 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 time in 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 true up in ARR; and

(e) Depreciation, Return on equity and interest on loan shall be true 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 true up every year based on the working capital requirement as specified in Regulation 85 of these Regulations."

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 (Terms and Conditions for Determination of 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 Appellate Tribunal for Electricity (hereinafter referred to as "Hon'ble ATE") 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 ATE 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 ATE pertaining to the fixing of financial and performance targets before the Tariff Year;
- viii. Principles of law laid down by the Hon'ble ATE that Regulations framed under the Act could not operate retrospectively;
- ix. Principles of law laid down by the Hon'ble ATE 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 Commission 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.

1C.5 It is, therefore, respectfully submitted that while deciding the present true up

petition the Hon'ble Commission will need to be guided by inter alia the following mandates of the 2003 Act and Revised Tariff Policy:

a) Electricity Act, 2003:

"61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:"

{Emphasis supplied}

b) Revised Tariff Policy, 2016 notified by the Central Government under Section 3 of the Electricity Act, 2003:

"Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events."

{Emphasis supplied}

Furthermore, the Revised Tariff Policy also mandates approval of the capital expenditure necessary to meet the minimum service standards. There is a need to accelerate performance improvement and reduction in losses which will be in the long term interest of consumers by way of lower tariffs.

“a) Return on Investment

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.

..

Making the distribution segment of the industry efficient and solvent is the key to success of power sector reforms and provision of services of specified standards. Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests. Loss making utilities need to be transformed into profitable ventures which can raise necessary resources from the capital markets to provide services of international standards to enable India to achieve its full growth potential. Efficiency in operations should be encouraged. Gains of efficient operations with reference to normative parameters should be appropriately shared between consumers and licensees.

....

At the beginning of the control period when the “actual” costs form the basis for future projections, there may be a large uncovered gap between required tariffs and the tariffs that are presently applicable. The gap should be fully met through tariff charges and through alternative means that could inter-alia include financial restructuring and transition financing.

....

Working capital should be allowed duly recognizing the transition issues faced by the utilities such as progressive improvement in recovery of bills. Bad debts should be recognized as per policies developed and subject to the approval of the State Commission.

Pass through of past losses or profits should be allowed to the extent caused by uncontrollable factors.

....

The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

- a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;*
- b. Recovery of outstanding Regulatory Asset along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same."*

{Emphasis supplied}

- 1C.6 Various judgments of Hon'ble APTEL on the previous Tariff Orders are followed by the Petitioner while claiming the various components of the cost and projecting the revenue. The details on various issues are set out in the Chapter – 3B.

Chapter -2A

Performance during FY 2018-19

Table of Content

1. PERFORMANCE DURING FY 2018-19.....	
2A.1 AT&C Loss Reduction	49
2A.2 Performance Standards	50
2A.3 Peak Demand.....	53
2A.4 Growth in Consumer Base	53
2A.5 Improvement in Distribution Network	53
2A.6 Initiatives undertaken by BYPL.....	53
2A.7 Safety Initiatives.....	56
2A.8 Quality Initiatives.....	58
2A.9 Customercentric Initiatives.....	59
2A.10 Key Process Improvements.....	64
2A.11 CSR Initiatives.....	65
2A.12 Awards And Recognition.....	67

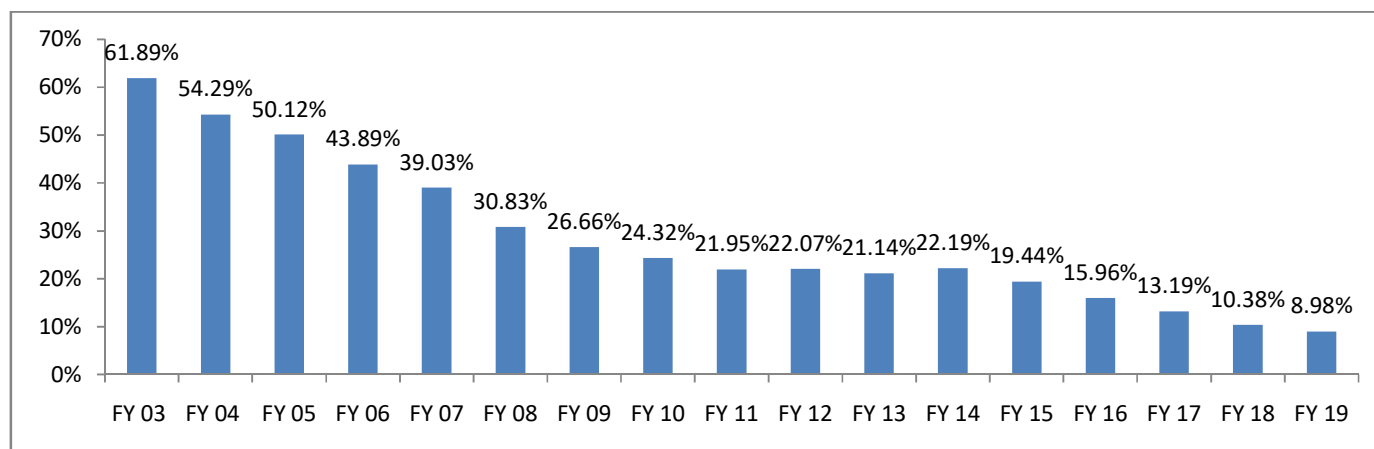
2A.1 AT&C Loss Reduction

2A.1.1 During FY 2018-19, the Petitioner has significantly reduced the AT&C Loss by 13.45% over the previous year's loss levels of 10.38%(Trued-up by Hon'ble Commission in Tariff Order dated 31.07.2019) in FY 2017-18. The actual loss level for FY 18-19 is 8.98%. In absolute terms, the AT&C Loss reduction in percentage points is 1.40%.

2A.1.2 BYPL has shown exemplary performance in the loss reduction with an average reduction of 3.31% per annum in absolute terms since July 2002. The reduction is amongst the highest average loss reduction rate achieved by any power distribution utility in the country.

2A.1.3 Further, it is noteworthy that the AT&C Losses were reduced from a level of over 61.89% in FY 2002-2003 to 08.98% at the end of FY 2018-19. The graph below shows a steep and consistent decline in the AT&C loss levels in last 16 years indicating considerable results from various loss reduction initiatives taken from time to time:

Figure: AT&C Loss levels since takeover:



2A.1.4 As shown above, there is a tremendous reduction of 52.91 percentage points in AT&C loss levels signifying BYPL's commitment to achieve the loss reduction objective.

2A.2 Performance Standards

2A.2.1 The achievement against set performance levels in DERC (Supply Code and Performance Standards) Regulations, 2017) for the period FY 2018-19 is summarized as below:

I. Power Supply Failure

- a) **Continuous power failure affecting individual consumer and group of consumer upto 100 connected at Low voltage supply:** The Petitioner has been able to achieve compliance of 99.3% against Hon'ble Commission's benchmark of 95%.
- b) **Continuous power failure affecting more than 100 consumers connected at Low voltage supply:** - The Petitioner has been able to achieve compliance of 97.2% against Hon'ble Commission's benchmark of 95%.
- c) **Continuous power supply failure requiring replacement of distribution transformer:** - The Petitioner has been able to achieve compliance of 97.9% against Hon'ble Commission's benchmark of 95%.
- d) **Continuous power failure affecting consumers connected through High Voltage Distribution System (HVDS):-** : The Petitioner has been able to achieve compliance of 97.2% against Hon'ble Commission's benchmark of 95%.
- e) **Continuous scheduled power outages:-** The Petitioner has been able to achieve compliance of 99.9% against Hon'ble Commission's benchmark of 95%
- f) **Replacement of burnt meter or stolen Meter:-** The Petitioner has been able to achieve compliance of 100% against Hon'ble Commission's benchmark of 95%.
- g) **Scheduled Outage:-** The Petitioner has been able to achieve compliance of 99.96% in 'maximum duration in single stretch' and 99.58% in 'Restoration of supply by 6 PM' against Hon'ble Commission's benchmark of 95%.
- h) **Faults in street light maintained by the Licensee:-**The Petitioner has

been able to achieve compliance of 99.22% against Hon'ble Commission's benchmark of 90%.

- i) **Percentage billing mistakes:** The Petitioner has been able to be under the limit of 0.003% against the Hon'ble Commission's benchmark of limit of 0.2%.

Table 2.2: Performance during FY 2018-19

Sr No	Service Area	Overall Standards of Performance	Total Cases Received/ Reported (A)	Complaints Attended (B)		Standard of Performance achieved (C)%
				Within Specified Time	Beyond specified time	
1	Power Supply Failure					
(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.	At least 95% calls received should be rectified within prescribed time limits	532052	528446	2466	99.3%
(ii)	Continuous power failure affecting more than 100 consumers connected at Low voltage supply excluding the failure where distribution transformer requires replacement.		9209	8954	252	97.2%

Performance during FY 2018-19

BSES Yamuna Power Limited

Sr No	Service Area	Overall Standards of Performance	Total Cases Received/ Reported (A)	Complaints Attended (B)		Standard of Performance achieved (C) %
				Within Specified Time	Beyond specified time	
(iii)	Continuous power supply failure requiring replacement of distribution transformer.		97	95	2	97.9%
(iv)	Continuous power failure affecting consumers connected through High Voltage Distribution System (HVDS) and not covered under (i) & (ii) above		645	627	19	97.2%
(v)	Continuous scheduled power outages	At least 95% of cases resolved within time limit	5590	5585	3	99.9%
(vi)	Replacement of burnt meter or stolen Meter	At least 95% of cases resolved within time limit	17248	17241	0	100.0%
Period of scheduled outage						
2	Maximum duration in a single stretch	At least 95% of cases resolved within time limit	4565	4563	0	99.96%
	Restoration of supply by 6:00 PM		4565	4546	19	99.58%
3	Faults in street light maintained by the Licensee	At least 90% cases should be complied within prescribed time limits	77477	76870	607	99.22%
			Total Bills received during the year	No of Bills with Mistakes during the year		Standard of Performance achieved (C) %
4	Percentage billing mistakes	Shall not exceed 0.2%	38575854	1120		0.003%

2A.3 Peak Demand:

2A.3.1 BYPL has successfully met the peak demand of 1561 MW during FY 18-19 as against the 1459 MW in financial year 2017-18.

2A.4 Growth in Consumer Base:

2A.4.1 Total number of consumers being served by BYPL at the end of FY 2018-19 was 16.86 lakh as against 16.49 lakh consumers served at the end of FY 2017-18 thereby exhibiting significant annual growth of 2.24%. Evidently, BYPL's consumer density one of the largest among the private distribution utility in the country.

2A.5 Improvement in Distribution Network:

2A.5.1 To maintain service quality, strengthening, upgrading and modernizing the distribution network is a consistent effort at BYPL. There has been a commensurate increase in the distribution network capacity across all levels – EHV/HT/LT for improving the services and supply reliability. This is despite regular challenges with respect to space constraints & other hindrances in the license area being served by BYPL.

Table No 2.3: Network Augmentation during FY 18-19 is summarized as below:

Particulars	Addition during the year
No. of Power Transformers	7
EHV Capacity (MVA)	184
Shunt Capacitors (MVar)	55.4
No. of Distribution Transformers*	155
Distribution Transformer Capacity** (MVA)	98
No. of 11 kV feeders	33
Length of 11 kV cables (Ckt.kms.)	132
Total No. of LT feeders	421
Length of LT lines laid (Ckt.kms.)	180
(*) Includes HVDS DT (Nos.)	
(**) Includes HVDS DT Capacity (MVA)	

2A.6 Initiatives Undertaken by BYPL**2A.6.1 Technical Initiatives****1. Technical Initiatives for enhancing power reliability**

- Remote substation health monitoring.
- Use of ester oil and thermally upgraded kraft paper in distribution transformers.
- On-line underground cable partial discharge measurement.
- Lightning arrester health monitoring system.
- Installation of two tier sub-station.
- Installation of bridge mounted distribution transformer.
- Incorporation of 2 MVA, 1.6 MVA DTs and 1 MVA micro substation for space constraint area.

2. Technical initiatives specific for Loss Reduction

- Implementation of Integrated group metering system.

3. Technical Initiatives for Cost Optimization: Improved Maintenance Practices with regular use of:-

- Deployment of Fuse switches dis-connector or switches installed in Feeder Pillars.
- Introduction of Flexible current measuring Probes.
- Power demand estimation on the basis of weather forecasting.

4. Other Technical Advancements

- Introduction of Auto-switch capacitor bank for Automatic Power Factor improvement.
- Installation of FPIs in the overhead HVDS network.
- Introduction of resin encapsulated straight through joints.
- Installation of Hybrid switchgears in grid substations.
- Network analysis through CYME-DIST software (Power engineering software).
- GIS digitization for EHV HT, LT network upto consumer end.
- Installation Li-Ion battery bank.
- Cable entry sealing systems in Grid Sub Station.
- Transformer HT Terminal Protecting Kits.
- Thermal Imaging Camera for LT Circuit inspection.
- Pilot project of energy storage at the distribution sub-stations.

5. Implementation of Roof Top Solar (Net Metering)

- Roof top solar net metering is an ideal method for customers to reduce their electricity bills by generating electricity for self consumption and selling surplus power to the Company. The consumers are paid for the surplus energy by your company as per DERC guidelines.
- A total 303 nos. of solar roof top power generation systems were energized and connected with your Company network till March 31, 2019 and a total solar capacity of 17 MWp was installed..
- Out of 303 solar systems, 156 numbers were connected in financial year 2018 -19 alone with solar capacity of 8 MWp.
- With energisation of these 'net metering' connections, these premises will be able to supply surplus electricity to the Company during lean-periods at Hon'ble Commission's approved rates.
- BYPL is deeply involved with RWAs, Schools and various customer groups to spread awareness on renewable energy and solar rooftop systems participated in various programs for faster adoption of solar rooftop systems.

6. Green Technology

- Bio Degradable Ester oil have been used in Distribution Transformers.
- Li ION Battery in place of lead acid batteries installed at East of Loni Road Grid S/S.

7. Metering Pilots

- **Power Quality Monitoring:** Four meters have been installed at Various BYPL Grid S/S to measure Real time Power Quality parameters including harmonic profile.

2A.7

SAFETY INITIATIVES:

Safety is given highest level of importance in your Company. In this regard, BYPL pursues number of initiatives for monitoring, implementing and taking corrective actions for safety improvements, covering all manpower. Some of the key initiatives are:

1. DEVELOPMENT OF SAFETY PRACTICE YARD

Safety practice yard has been developed at Patparganj Industrial Area to provide hands on training to the field employees on the various electrical equipments and enhance the usage of safety gears.

2. INITIATIVES FOR SAFETY

- Implementation of the Integrated Management System by merging three existing standards namely ISO 9001, ISO 14001 and OHSAS 18001, which is more effective to improve the quality.
- Safety Awareness programs were organized in all 14 divisions of BYPL, at a large scale under the aegis of 48th National Safety Week celebration in the month of March 2019. Grand finale of the program was held in presence of Shri A.K. Thakur, Director – CEA and Shri Goutam Roy, Chief Electrical Inspector –CEA at Hindi Bhavan, ITO.
- A case study on major safety initiatives taken in BYPL has been published in the souvenir by Institution of Engineers (India), ITO, New Delhi.
- Modular Fire Extinguishers (automatic operation) have been installed for more than 50 outdoor transformers installed at vulnerable locations in BYPL.
- As a part of fire safety initiative, internal fire safety audit of all the stores in of BYPL has been implemented as a quarterly practice.
- Safety training module has been developed for various categories like lineman/ALM, zonal in-charges, telephone operators, etc.

3. CONSUMER SAFETY AWARENESS

- Improvement of cleanliness, aesthetics and safety of 11 KV substations at Delhi Gate near Mother Dairy and LohaMandi, near PaharGanj police station carried out on pilot basis.



Sub-station Beautification – BYPL steps towards clean, green and safe Delhi.

- Organized safety campaigns at 45 locations to spread awareness about electrical safety among the consumers.



- A speaker vehicle was deployed during National Safety Week in March 2019 to spread awareness on electrical safety among all consumers in all the divisions. Pamphlets on electrical safety were also distributed among the consumers.



- Electrical Safety training camps for women were organized at 4 locations along with CSR team. There were over 200 participants.
- Electrical Safety training imparted to 220 neighbourhood electricians. The list of electricians trained in safety by your Company is annexed on company's website.

4. SAFETY TRAININGS

- Onsite training on handling of fire equipment to 740 employees at the corporate office and division/zone sites under the ambit of the Fire Safety Week from April 14 to April 20, 2018.
- Safety training imparted to 1500 field staff comprising zonal in charges, linemen and helpers during the financial year 2018-19.
- Two days IMS internal auditor certification training was conducted for IMS Champions. The certificate has been awarded to 23 employees from different functions of your Company.

2A.8 QUALITY INITIATIVE

1. SGA Projects: BYPL embarked on the journey of SGA Activities in 2014 with three focus areas -5S, Quality Circle & KAIZEN. The aim was to foster and develop a strong and robust Quality culture in the organization through

Quality Concepts and techniques.

2. 5S was implemented in total 40 Nos of BYPL locations. First time BYPL has covered the 12 EHV Grids, Transformer workshop and 2 C&M Main Stores under 5S Implementation.
3. Quality Circle advanced training programs was conducted for 16 Numbers of teams with respect to QC methodology and QC Tools & Techniques to assist them in smooth execution of their projects. 5 Nos of projects had completed their projects and 11 Nos of QC Teams are under progress.
4. KAIZEN activity has been taken into digitization by creating a KAIZEN Portal in-house.

2A.9 CUSTOMERCENTRIC INITIATIVES

1. BSES APP: BYPL had launched a downloadable BSES App for viewing billing/payment history, payment of bills and registration of No supply complaints, new connection requests and address change requests. During financial year 2018-19, following new functions were added in the APP:
 - In “My Account” if consumer has more than 1 CA no. and if he/she wants to delete a particular CA no. the option has been introduced with “Delete Icon”.
 - Once the payment is done and is successful, there will be options available “Print” & “Email” so if customer presses “Email”, then it will ask for the Email Address & after entering the Email address, the customer has to press send, the payment receipt will be sent to the customer Email ID.
 - In case of “No Current Complaint” if consumer has already registered any complaint, there is an option of “complaint status” wherein it shows the status of the complaint whether it is Open/Closed.
 - Option to view the Demand Note and make Demand Note Payment.
 - Alert message in case the internet connection of the user is not “ON”.
 - Consumption history of last 11 months is available in “My Account” section.
 - Eye icon against the password while logging to see the entered

- password (avoid login error).
- Auto prompt in case of re-registration of “No Supply” or “Street Light” complaint
 - A mammoth 6.31 Lakh consumers have already downloaded BSES App till March 31, 2019.
2. RWA Meetings: BYPL organized 6 RWA meetings at each Circle with various representatives of RWAs to involve them in key result areas like loss reduction, power theft detection and customer service in financial year 2018-19. The underlying principle of this program is that improved communication and transparency lead to enhancement of customer confidence in our activities. Total 450 RWA members from North East, South East and Central Delhi participated in these meetings.
 3. SajhaPrayas: A total 114 SajhaPrayas camps were conducted to address consumer queries and grievances at their doorstep.
 4. Pragati: A total 152 nos of Pragati camps were organized to promote online services and create awareness about various initiatives among the consumer residing in low loss areas at their doorstep.
 5. Campaign against Theft: Thousands of young students were engaged by organising 100 programs in various schools located in high loss areas with a view to promote electrical safety, conserve environment and create awareness about the ill effects of power theft. The program also aims to inculcate energy conservation habit amongst school children. Approx 25000 students & 1000 teachers attended these programs.
 6. Nukkad Natak: Total 350 street plays were organised in high loss / theft prone areas to educate the residents about ill effects of power theft and sensitize them about energy conservation and electricity safety procedures. Approx 28000 people attended Nukkad Natak.
 7. Voicebot: BYPL has introduced a Voicebot service “Mr. Watt” for it’s consumers. Mr. Watt powered by Google Assistant will allow the Company to address all the customer queries using any compatible Android or iOS mobile devices without downloading the app, or visiting the company website. BYPL customers in Delhi can now use voice commands to interact with for various services like Bill Details, Bill Payment, Registration & Status of No Supply Complaint, Find BYPL outlets (Payment Centres & Customer Care Centres). BYPL outlets service

is tagged with Google maps thereby showing nearest BYPL office location from the customer location on a Google map.

8. Celebration of World Health Day: BYPL organized a medical checkup Camp for its “UtkrishtSehbhagis” and consumers at each of its three circles – South East, North East & Central. More than 100 UtkrishtSehbhagis and RWA members and thousands of consumers availed the benefits of the medical camp. All UtkrishtSehbhagis and consumers highly appreciated this noble initiative undertaken by your Company.
9. Consumer Meet: Organised annual consumer meet dated February 27, 2019, where representatives from 170 RWAs of East and Central Delhi enthusiastically participated in the meeting.
10. Mashwara: A community engagement program called “Mashwara” initiated in North East and Central Circle with effect from August 16, 2018 especially in high loss areas:
 - In Mashwara program, BYPL organized 58 camps at different location.
 - 2246 residents of high loss areas were assisted to apply for Income certificate through Mashwara camps for EWS applications, Fee waiver, Stationary & Scholarship.
 - Total 546 EWS, 174 Fee Waiver, 169 Stationary & 168 Scholarship forms filled in the camps.
 - Till date out of 546 EWS applications, 109 applicants shortlisted in various private schools.
 - Few shortlisted students got selected in prestigious schools viz. Delhi Public School (Mathura Road), St. Lawrence school (Dilshad Garden), Green Field Public School (Dilshad Garden), Arwachin school (VivekVihar).
 - Through EWS scheme, BYPL has been able to assist each family, tuition fees, stationary and uniform of the child till they complete the schooling.
 - Through “Mashwara” program, BYPL received outstanding dues for over 1000 consumers.
 - Positive image building amongst the residents of the areas.
 - Info Guide: Updated bi-lingual customer information guides (in English and Hindi) to create awareness about various services being offered by your Company.

11. **Animation / Corporate Films:**

- **Know your Bill:** An animation film has been made with an objective to educate and create awareness about the contents of electricity bill amongst various stakeholders (Consumers, RWAs, People representatives etc). The short films have been uploaded on BSES You tube channel and Facebook. The link for the same has also been created in the Company's website. The film has also been shared in the Whatsapp group created at the division level which has both external and internal stake holders as members.
- **Know Your Meter:** An animation film has been made with an objective to educate and create awareness about the contents of Electricity Bill amongst various stakeholders (Consumers, RWAs, People representatives etc). The short films have been uploaded on BSES You tube channel and Facebook. The link for the same has also been created in the Company's website. The film has also been shared in the Whatsapp group created at the division level which has both external and internal stake holders as members.
- **Customer Connect Programs:** A short film on various customers connects programs run by the Company has been made to create awareness amongst various stakeholders (Consumers, RWAs, People representatives etc).

12. **Assessment Test:** Introduction of assessment test for Customer Help Desk (CHD) staff and recognising the top scorer amongst Customer Care Executives (Circle wise) & top scorer amongst CCOs. The topics covered in the test were:

- DERC Supply Code and Performance Standards Regulations 2017,
- DERC Tariff Order 2018-19,
- BSES Mobi App features& BYPL Website.

13. **Promotion of Energy Efficient Electrical appliances:** BYPL has joined hands with Energy Efficiency Services Ltd (EESL) for promotion of energy efficient LED Bulbs, fans and LED tube lights to its customers. As a part of this agreement, 13298 LED Bulbs & 849 LED Tube lights were sold at subsidized rates at BYPL offices in financial year 2018-19.

To bring benefits of energy efficiency to its domestic consumers, BYPL in association with The Energy and Resources Institute (TERI) is undertaking

Consumer Behavior Study by engaging with consumers of MayurVihar area. It is a research based project to assess consumer behavior with regard to choosing energy efficient appliances and help them in adopting the same. Internal energy efficiency projects have been started to study and bring about awareness and operational efficiency.

14. **Demand Side Management:** BYPL is running DSM program to bring down consumption levels at consumer end.

15. AC replacement scheme was launched focussing on replacement of non 5 Star rated ACs with 5 Star rated Acs. The scheme has been offered after due approvals from the Hon'ble Commission and helps customers to purchase energy efficient ACs at very attractive discounts. In FY 18-19 approx 2358 nos of ACs have been replaced under this scheme.

16. **New Technology Projects**

BYPL is executing various pilot projects involving new technologies viz., Energy Storage systems, EV charging to study and evolve suitable business cases for ease in adoption by the customers. Energy storage installations have already been carried out in four of buildings in Mayur Vihar area. The energy storage systems have been connected to solar rooftop systems which are helping in significant reduction in internal consumption of these buildings. In association with various industry players four EV charging stations have been set up in your Company's offices to facilitative EV charging.

17. **Performance Improvement:** Reduction of complaints registration at various Consumer Forums in FY 18-19 with reference to financial year 2017-18.

Forum	Reduction of complaints in %
PG Commission	86
PG Cell	71
Ombudsman	50
CGRF	3
Billing Complaints	22

2A.10 KEY PROCESS IMPROVEMENTS

1. **Digitisation/ App development:** To support digitization and to ease the process with a facility to update details on spot following Mobile Apps are developed:
 - A. Surveillance App
 - B. MMG App along with feedback through Happy code
 - C. Enforcement App
 - D. DSS TF Engg. App
 - E. Online vendor registration
2. **Improvisation of Queue Management System:** To capture actual reasons of walk in, restructuring of queue management system has been done.
3. **IVRS call for intimation to consumer for energy payment before and after due date.**
4. **Out Bond Call for taking feedback from consumer after installation of meters in case of New Connection.**
5. **Restructuring of MR exception to capture field issues during meter reading, so that action can be taken pro-actively to facilitate consumer.**
6. **DT Tracking Module (DTM):** A single platform to track major activities related to business parameters (Provisional, Not Downloaded, Energy Defaulters, Enforcement Defaulters) and theft and surveillance leads.
7. **Improvement in Mobile App:**
 - Meter testing Request generation with charging of testing fees.
 - Meter shifting Request generation.
 - Improvising request status remarks for New and Existing Connections.
 - Availability of payment receipt and Provision of forwarding to consumer's E-mail ID for records.
 - Viewing of demand note along with online payment option.
8. **Standardization of procedures for:**
 - New Connection (Domestic, Non-Domestic, Industrial)

- Temporary Connection
- IGMS metering
- Energy & PD dues recovery
- Enforcement Dues Recovery
- Dues Transfer Process
- LPSC waiver guidelines
- Bill amendment Guidelines
- DTM – Activity Closure
- Queue Management System (QMS)
- Enforcement App
- KYC Process
- Burnt meter replacement guidelines
- Cheque bounce process
- Seal Management
- User Manual for report extraction from BIW
- Meter movement to LAB
- KCC New Connection process

2A.11 CSR INITIATIVES

1. Health Camps - BYPL successfully conducted 144 health camps with NGO partner PHD Rural Development Foundation and 26 camps with NGO partners HAQ Educational and Social Welfare Society (HAQ) and SOFIA Educational and Welfare Society (SOFIA) benefitting 21,278 men, women and children.

2. Sanitation, Clothes Donation & Blood Donation - BYPL undertook construction of a toilet block to upgrade sanitation facilities at the crematorium in Karawal Nagar. BYPL partnered with SOFIA'S "Aasra Sukoon" Ka campaign donating over 2500 clothing items for the needy in January 2019. Even BYPL staff and customers set new record by generously stepping forward to donate 223 units of blood at two camps in July 2018.

3. **To promote Education:**
 - Vocational Training Tuition Classes - BYPL through its NGO

partner HAQ in Quresh Nagar, Paharganj supported vocational training in cutting and tailoring for 150 women. With SASHAKT vocational training centre run by SOFIA in Daryaganj, BYPL supported vocational training in cutting - tailoring and computer accounting for 400 men and women.

- Tution classes: SASHAKT vocational training centre in Daryaganj Division conducts tuition classes for 80 Government school students.
- Mahila Shiksha Kendras (MSK) - BYPL continues to support 50 MSKs run by NGO partner Dhanpatmal Virmani Education Trust and Management Society in low income clusters of Yamuna Vihar, Daryaganj, Chandni Chowk and Paharganj Division. This year over 3300 women have learnt to read and write.

4. **Safety Talk:** BYPL Safety department organised four electrical safety awareness sessions for MSK instructors and Vocational Training beneficiaries during the 48th National Safety Week (4th-10th March 2019). Through the awareness programme, BYPL reached out to over 200 people.

2A.12 AWARDS AND RECOGNITION

The major awards received during the year are as follows:

Table No 2.4 – Awards and recognition.

Forum	Category	Award Details
ICC Innovation Impact Award	Green Energy	2nd Price in the category of Green Energy
Institution of Engineers (India)	Safety	Safety Innovation Award 2019
Golden Peacock Award by Institute of Directors	Safety	Occupational health and safety
SAN (Indian National Suggestion Schemes' Association)	QC/ Kaizen	Implementation of Kaizen/ QC
Confederation of Indian Industry, CII	Energy Conservation	20th National Award for Excellence in Energy Management 2019

Chapter -2B

Compliance to Directives

Table of Contents

1.	Compliance to directives given in Tariff Order dated March 28, 2018.....	68
----	--	-----------

The Hon'ble Commission has given various directives in Tariff Order dated March, 28, 2018. The Petitioner is hereby submitting the compliance status as follows:

1. Directive to make timely payment of bills/dues to Central and State Generating Stations and Transmission Utilities (Ref: Para 6.1 of the Tariff Order dated 28.03.2018)

The Commission directs the Petitioner to make timely payment of bills/dues to Central & State Generating Stations and Transmission Utilities. No Late Payment Surcharge shall be allowed as a pass through in the ARR, on account of delayed payments.

Compliance:

BYPL has submitted the month wise audited cash flow statement to the Hon'ble Commission. It is evident from the statements that the licensee 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 funds available with the Licensee.

Also, 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 APTEL in the matter of Appeal Nos. 27, 28 & 32 of 2014. Without prejudice to the Petitioner's submissions made in this matter, it is humbly submitted that pursuant to Hon'ble Supreme Court's order dated 23.03.2014, BYPL is making payment to Central and State Gencos and Transmission Utilities against current dues to the extent it is possible. It would not be out of place to re-iterate that these payments are being made against severe odds due to huge persisting accumulated regulatory assets.

2. Directive to directly deposit the amount as per directive (6.2) in the account of Pension Trust (Ref: Para 6.2 of the Tariff Order dated 28.03.2018)

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:

Compliance:

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

3. Directive to pension trust to intimate the total amount collected and adjust any surplus/gap in its claim for the subsequent year (Ref: Para 6.4 of the Tariff Order dated 28.03.2018)

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.

Compliance:

Not applicable to BYPL.

4. Directive to restrict cost of expensive power to the cost of regulated cheaper power (Ref: Para 6.4 of the Tariff Order dated 28.03.2018)

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.

Compliance:

The petitioner submits that the said directive is being complied with.

5. Directive to borne transmission charges in case power is regulated by DTL/Interstate Transmission Licensee (Ref: Para 6.5 of the Tariff Order dated 28.03.2018)

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.

Compliance:

The petitionersubmits that the said directive is being complied with.

6. Directive to ensure availability of power supply for meeting the demand (Ref: Para 6.6 of the Tariff Order dated 28.03.2018)

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.

Compliance:

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

7. **Directive to ensure cash limit of Rs.4000/- for bill collection at petitioners own collection Centers/mobile vans and Rs. 50,000/- for accepting payment through cash by the consumers at designated scheduled commercial bank branches (Ref: Para 6.7 of the Tariff Order dated 28.03.2017)**

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.

Compliance:

The Petitioner would like to humbly submit that the instant matter is presently sub-judice before Hon'ble APTEL in Appeal 265 of 2013 and Appeal 236 of 2014. Till such time the matter is heard and decided by Hon'ble APTEL, the Petitioner has taken measures to ensure that no cash collection exceeding Rs.4000 and Rs. 50,000 is being accepted at own collection centres/mobile vans and designated scheduled commercial bank branches respectively and is thus complying with the aforementioned directive.

8. **Directive to restrict the adjustment in units billed to a maximum of 1% of total units billed (Ref: Para 6.8 of the Tariff Order dated 28.03.2018)**

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.

Compliance:

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

9. **Directive to survey the electricity connections of hoardings and display at malls and multiplexes and ensure the billing in the category of advertisements/hoarding category (Ref: Para 6.9 of the Tariff Order dated 28.03.2018)**

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.

Compliance:

The Hon'ble Commission vide its letter no. F. No.(545) /tariff- engg/DERC/2018-19/6142/465 dated 15.05.2018 directed not to survey the electricity connections of Hoardings and display at malls and multiplexes.

10. The Commission further directs the distribution licensee as under

- 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 (Ref: Para 6.10 (a) of the Tariff Order dated 28.03.2018)*

Compliance:

The Petitioner submits that adherence to the aforesaid directive is ongoing and is being complied with.

- b. *To maintain toll free number for registration of electricity grievances and to submit the quarterly report (Ref: Para 6.10 (b) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive and quarterly progress report has been submitted to the Hon'ble Commission vide letters having:-

1. Ref No. RA/BYPL/2018-19/25 dated 01.05.2018(Q4 of FY 2017-18).
2. Ref No. RA/BYPL/2018-19/85 dated 14.07.2018 (Q1 of FY 2018-19)
3. Ref No. RA/BYPL/2018-19/159 dated 14.11.2018 (Q2 of FY 2018-19)
4. Ref No. RA/BYPL/2018-19/221 dated 31.01.2019 (Q3 of FY 2018-19)
5. Ref No. RA/BYPL/2019-20/13 dated 29.04.2019 (Q4 of FY 2018-19)

- c. *To conduct a safety audit and submit a compliance report within three months (Para 6.10(c) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide letter ref no. RA/BYPL/2018-19/55 dated 19.06.2018.

- d. *To carry out preventive maintenance as per schedule (Ref: Para 6.10 (d) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner submits that adherence to the aforesaid directive is ongoing and is being complied with.

- 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 (Ref: Para 6.10(e) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2018-19/36 dated 21.05.2018.
- ii. Letter ref no. RA/BYPL/2018-19/38 dated 21.05.2018.
- iii. Letter ref no. RA/BYPL/2018-19/62 dated 21.06.2018.
- iv. Letter ref no. RA/BYPL/2018-19/91 dated 23.07.2018.
- v. Letter ref no. RA/BYPL/2018-19/103 dated 21.08.2018.
- vi. Letter ref no. RA/BYPL/2018-19/123 dated 25.09.2018.
- vii. Letter ref no. RA/BYPL/2018-19/141 dated 22.10.2018.
- viii. Letter ref no. RA/BYPL/2018-19/168 dated 29.11.2018.
- ix. Letter ref no. RA/BYPL/2018-19/187 dated 20.12.2018.
- x. Letter ref no. RA/BYPL/2018-19/210 dated 22.01.2019.
- xi. Letter ref no. RA/BYPL/2018-19/234 dated 19.02.2019.
- xii. Letter ref no. RA/BYPL/2018-19/253 dated 19.03.2019.

- f. *To submit the energy audit report in respect of their network at HT level and above within three months (Ref: Para 6.10 (f) of the Tariff Order dated 28.03.2018);*

Compliance:

The energy audit report in respect of their network at HT level and above has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2018-19/78 dated 04.07.2018.

- g. *To submit the Auditor's certificate in respect of Form 2.1(a) on quarterly basis within the next quarter (Ref: Para 6.10 (g) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2017-18/74 dated 29.06.2018 (Q4 of FY'18).
- ii. Letter ref no. RA/BYPL/2018-19/137 dated 09.10.2018 (Q1 of FY'19).
- iii. Letter ref no. RA/BYPL/2018-19/170 dated 29.11.2018 (Q2 of FY'19).
- iv. Letter ref no. RA/BYPL/2018-19/262 dated 28.03.2019 (Q3 of FY'19).

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

(Ref: Para 6.10(h) of the Tariff Order dated 28.03.2018);

- 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,*

Compliance

The Petitioner submits that the abovementioned directive will be complied in the specified timeline.

- i. To submit annual auditor certificate in respect of power purchase details of the previous year by 30th July of the next financial year (Ref: Para 6.10(i) of the Tariff Order dated 28.03.2018);*

Compliance

The Petitioner submits that abovementioned directive has been complied with and the annual auditor certificate in respect of power purchase details for FY 2017-18 has been submitted with the Hon'ble Commission vide reference no. RA/BYPL/2018-19/58 dated 21.06.2018.

- j. To submit the reconciliation statement in respect of power purchase cost/Transmission cost on a quarterly basis with respective Generation/Transmission companies (Ref: Para 6.10(j) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- I. Letter Ref no. RA/BYPL/2018-19/20 dated 01.05.2018 (Q4 of FY'18).*
- II. Letter Ref no. RA/BYPL/2018-19/97 dated 31.07.2018 (Q1 of FY'19).*
- III. Letter Ref no. RA/BYPL/2018-19/156 dated 14.11.2018 (Q2 of FY'19).*
- IV. Letter Ref no. RA/BYPL/2018-19/225 dated 04.02.2019 (Q3 of FY'19).*
- V. Letter Ref no. RA/BYPL/2019-20/52 dated 06.06.2019 (Q4 of FY'19).*

- 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 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 paisa/kWh during the financial year. (Ref: Para 6.10(k) of the Tariff Order dated 28.03.2018);*

Compliance

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- l. *To raise the bills for their own consumption of all their installations including offices at zero tariffs to the extent of the normative self consumption approved by the Commission and exceeding the normative limit of self consumption at Non-Tariff Domestic tariff for actual consumption recorded every month (Ref: Para 6.10(l) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner submits that adherence to the aforesaid Directive is ongoing 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 (Ref: Para 6.10(m) of the Tariff Order dated 28.03.2018);*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble Commission vide letters;

- i. Letter Ref no. RA/BYPL/2018-19/18 dated 27.04.2018 (Q4 of FY'18).
- ii. Letter Ref no. RA/BYPL/2018-19/85A dated 15.07.2018 (Q1 of FY'19).
- iii. Letter Refno. RA/BYPL/2018-19/146 dated 22.10.2018 (Q2 of FY'19).
- iv. Letter Refno. RA/BYPL/2018-19/208 dated 21.01.2019 (Q3 of FY'19).
- v. Letter Refno. RA/BYPL/2019-20/26 dated 09.05.2019 (Q4 of FY'19).

- 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 (Ref: Para 6.10(n) of the Tariff Order dated 28.03.2018)*

Compliance:

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble Commission vide letters;

- i. Letter Ref no. RA/BYPL/2018-19/47 dated 31.05.2018 (Q4 of FY'18).
- ii. Letter Ref no. RA/BYPL/2018-19/99 dated 31.07.2018(Q1 of FY'19).
- iii. Letter Ref no. RA/BYPL/2018-19/173A dated 30.11.2018 (Q2 of FY'19).
- iv. Letter Ref no. RA/BYPL/2018-19/228 dated 08.02.2019 (Q3 of FY'19).
- v. Letter Ref no. RA/BYPL/2019-20/15dated 30.04.2019 (Q4 of FY'19).

Chapter -3A

True-up for FY 2018-19

Table of Contents

3	TRUE UP FOR FY 2018-19	85
3.1	Background.....	85
3.2	Legislative Provisions of Truing-up	85
3.3	Energy Sales.....	90
3.4	Distribution Loss, Collection Efficiency and AT&C Loss for FY 2018-19	98
3.5	Power Purchase Quantum	102
3.6	Power Purchase Cost	108
3.7	Rebate on power purchase and Transmission Charges.....	117
3.8	Late Payment Surcharge (LPSC).....	121
3.9	Incentive on Sale rate of Surplus Power	123
3.10	RPO Obligation.....	125
3.11	Total Power Purchase Cost for the purpose of Truing-up	128
3.12	Operation & Maintenance Expenses	129
3.13	Additional O&M Expenses.....	130
3.14	Non-Tariff Income.....	137
3.15	Income from Other Business	148
3.16	Income from Open Access.....	150
3.17	Capital Expenditure and Capitalisation.....	150
3.18	Depreciation	151
3.19	Working Capital	153
3.20	Debt and Equity	153
3.21	Regulated Rate Base (RRB).....	154
3.22	Rate of Interest on Loan.....	154
3.23	Weighted Average Cost of Capital (WACC).....	156
3.24	Return on Capital Employed (RoCE)	156
3.25	Aggregate Revenue Requirement for Truing-up of FY 2018-19.....	157
3.26	Revenue available towards ARR	157

3.27	Revenue (Gap)/ Surplus	158
------	------------------------------	-----

List of Tables

Table 3A 1Category-wise monthly bifurcation of energy sales during FY 2018-19 (MU).....	91
Table 3A 2Enforcement Units considered for Truing-up during FY 2018-19	93
Table 3A 3Comparison of Normative Self consumption and actual self-consumption during FY 2018-19	94
Table 3A 4Category-wise energy sales during FY 2018-19 (MU)	96
Table 3A 5Distribution Loss, Collection efficiency and AT&C Loss for FY 2018-19 (%)	98
Table 3A 6Revenue Billed for AT&C Loss True-up for FY 2018-19 (Rs. Crore)	98
Table 3A 7Revenue Collected for AT&C Loss True-up for FY 2018-19 (Rs. Crore)	99
Table 3A 8Computation of Distribution Loss, Collection Efficiency and AT&C Loss for FY 18-19.....	99
Table 3A 9Impact of overachievement in Distribution loss target for FY 2018-19	100
Table 3A 10Impact of overachievement in Collection efficiency target for FY 2018-19	102
Table 3A 11Correspondences with DERC regarding power purchase cost	103
Table 3A 12 Power Purchase Quantum for FY 2018-19 (MU).....	104
Table 3A 13Details of Short Term Power Purchase.....	104
Table 3A 14Details of Short Term Power Sales	105
Table 3A 15Details of Power Purchase Quantum Station wise for FY 2018-19	105
Table 3A 16 Details of Power Purchase Cost Station wise for FY 2018-19	110
Table 3A 17 Details of Short Term Power Purchase for the year FY 2018-19.....	115
Table 3A 18Details of Short Term Power Sales for the year FY 2018-19.....	116
Table 3A 19Transmission Charges (Rs. Crore) for FY 2018-19	116
Table 3A 20 Gross Power Purchase Cost before rebate during FY 2018-19 (Rs. Crore).....	117
Table 3A 21 Reconciliation with Table 3.21 (Rs. Crore)	117
Table 3A 22Details of Rebate Claimed for FY 2018-19	118
Table 3A 23Details of Total Sale Rate Incentives.....	125
Table 3A 24Details of RPO for the year FY 2018-19	126
Table 3A 25Details of upcoming Firm Renewable sources	127
Table 3A 26Power Purchase Cost during FY 18-19 based on Auditor's Certificate (Rs. Cr.).	128
Table 3A 27O&M Expenses for FY 2018-19 (Rs. Crore)	130
Table 3A 287th Pay Commission payment (Rs. Crore)	131
Table 3A 29Incremental GST Charges paid (Rs. Crore)	133
Table 3A 30Additional O&M Expenses for FY 2018-19.....	136
Table 3A 31Interest on CSD (Rs. Crore).....	137
Table 3A 32Difference on account of SLD (Rs. Crore).....	138

Table 3A 33Treatment of LPSC to various utilities in Delhi.....	141
Table 3A 34Non-Tariff Income for FY 2018-19	147
Table 3A 35Other Business Income for FY 2018-19 (Rs. Crore)	149
Table 3A 36 Gross Fixed Assets for FY 2018-19 (Rs. Crore).....	150
Table 3A 37Financing of Capitalisation for FY 2018-19 (Rs. Crore)	151
Table 3A 38 Consumer Contribution for FY 2018-19 (Rs. Crore).....	151
Table 3A 39Grants for FY 2018-19 (Rs. Crore).....	151
Table 3A 40Depreciation Rate for FY 2018-19	152
Table 3A 41Depreciation for FY 2018-19	152
Table 3A 42Cumulative Depreciation on fixed assets upto FY 2018-19(Rs. Crore).....	152
Table 3A 43Utilisation of Depreciation for FY 2018-19 (Rs. Crore)	153
Table 3A 44Working Capital Requirement (Rs. Crore)	153
Table 3A 45 Average Debt and Equity for FY 2018-19 (Rs. Crore).....	154
Table 3A 46Regulated Rate Base for FY 2018-19 (Rs. Crore)	154
Table 3A 47Margin for the Period from FY 2017-18 to FY 2019-20 (%)	155
Table 3A 48 Weighted Average Interest Rate on Loan (%)	155
Table 3A 49 Weighted Average Cost of Capital (WACC) (Rs. Crore).....	156
Table 3A 50RoCE for FY 2018-19 (Rs. Crore)	156
Table 3A 51Aggregate Revenue Requirement for FY 2018-19 (Rs. Crore)	157
Table 3A 52 Revenue for FY 2018-19 (Rs. Crore).....	157
Table 3A 53 Revenue (Gap) for FY 2018-19 (Rs. Crore)	158

List of Figures

Figure 3.1 Source-wise bifurcation of quantum percentage for FY 2018-19..... 103

3 TRUE UP FOR FY 2018-19

3.1 Background

- 3.1.1 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.
- 3.1.2 The Petitioner in this section seeks truing-up of expenditure and revenue for FY 2018-19.

3.2 Legislative Provisions of Truing-up

- 3.2.1 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.
- 3.2.2 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.
- 3.2.3 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."*
- 3.2.4 In accordance with the aforesaid, 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 target 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

Sr. No.	Distribution Licensee	2017-18	2018-19	2019-20
1	BSES Rajdhani Power Limited	10.93%	10.19%	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 based on actual power purchase cost for FY 2018-19 for the purpose of trueing up.

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 BYPL 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	4.421	4.669	4.931
2	33 kV Line	Rs. Lakh/ ckt. Km	4.421	4.669	4.931
3	11 kV Line	Rs. Lakh/ ckt. Km	1.857	1.961	2.071
4	LT Line System	Rs. Lakh/ ckt. Km	8.290	8.756	9.247
5	66/11 kV Grid S/s	Rs. Lakh/ MVA	1.045	1.104	1.166
6	33/11 kV Grid S/s	Rs. Lakh/ MVA	1.045	1.104	1.166
7	11/0.415 kV DT	Rs. Lakh/ MVA	2.296	2.425	2.561

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:

“5.11The 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 14% and ROE at the rate of 16% for computation of WACC during FY 2018-19.

f) Income-tax:

Regulation 72 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.”

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.

3.2.5 The Petitioner vide its letter ref no. RA/BYPL/2019-20/143 dated 30.09.2019 submitted the Audited Financial Statement for FY 2018-19.

3.2.6 The Petitioner prays for true-up of the financials of the Petitioner for FY 2018-19.

3.3 Energy Sales

3.3.1 The actual energy sales during FY 2018-19 was 6513.50 MU including sales on account of enforcement as explained in subsequent paragraphs.

3.3.2 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 the 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 uncontrollable factor and therefore any variation and its impact thereto ought to be allowed by the Hon'ble Commission.

3.3.3 The category-wise monthly bifurcation of energy sales during FY 2018-19 is tabulated below:

Table 3A 1 Category-wise monthly bifurcation of energy sales during FY 2018-19 (MU)

S.No	Category	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
A	Domestic	242	357	489	504	457	426	332	231	184	212	210	194	3,838
A.1	Domestic other than A2, A3 & A4	237	347	477	490	444	414	321	222	178	203	203	189	3,723
A.2	Single Delivery Point on 11 KV CGHS	1	2	2	2	2	2	2	2	1	3	1	1	21
A.3	11 KV Worship/Hospital	4	6	7	9	9	8	8	6	4	6	5	4	75
A.4	DVB Staff	1	2	2	3	2	2	2	1	1	1	1	1	19
B	Non Domestic	131	165	192	195	193	183	171	142	110	110	101	100	1,791
B.1	Non Domestic Low Tension (NDLT)	109	137	160	161	157	150	138	113	86	89	83	83	1,467
B.2	Non Domestic High Tension (NDHT)	22	28	32	34	35	32	33	29	23	21	18	17	325
C	Industrial	23	30	31	33	34	33	37	36	32	32	27	27	374
C.1	Small Industrial Power (SIP)	20	22	23	24	25	24	28	29	26	26	22	21	289
C.2	Large Industrial Power (LIP)	3	8	8	9	9	9	8	8	6	6	5	5	85
D	Agriculture & Mushroom Cultivation	0	0	0	0	0	0	0	0	0	0	0	0	0
E	Public Utilities	18	34	32	31	39	41	40	51	47	31	28	34	425
E.1	Public Lighting (Metered)	7	8	8	6	6	7	5	7	7	8	7	7	83
E.2	Public Lighting (Un-Metered)	2	2	2	2	2	2	2	2	2	2	2	2	21
E.3	DJB Supply at LT	1	1	1	1	1	1	1	1	1	1	1	1	12
E.4	DJB Supply at 11 Kv & above	8	12	11	11	12	11	13	14	13	12	10	10	137
E.5	DMRC	1	12	10	11	18	20	19	27	25	8	7	15	171
E.6	Railway Traction													
F	DIAL													

S.No	Category	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
G	Temporary Supply	3	4	4	5	5	5	4	4	3	4	3	3	46
H	Advertisement & Hoardings	0	0	0	0	0	0	0	0	0	0	0	0	0
I	Self-consumption	1	1	1	1	1	2	1	1	1	2	1	4	15
J	Enforcement	1	1	1	1	1	2	1	1	1	1	2	2	14
K	E Vehicle at LT	0	0	0	0	0	1	1	1	1	1	1	1	7
L	Net Metering Connection												2	2
Total		419	591	751	768	731	691	587	466	379	392	373	367	6,514

3.3.4 **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 misuse and 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

..."

3.3.5 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) and this Appeal is sub-judice. Without pre-judice to its aforesaid 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 is shown in the table below:

Table 3A 2 Enforcement Units considered for Truing-up during FY 2018-19

S.No	Particulars	Formula	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
A	Total Units Billed excl. enforcement (MU)	A	418	590	750	767	729	689	586	465	377	391	372	365	6,500
B	Total Amount Billed excl. enforcement *(Rs. Cr)	B	306	424	531	544	518	502	443	377	320	321	308	296	4,890
C	ABR* (Rs./KWh)	$C = B/A * 10$	7.31	7.19	7.08	7.08	7.11	7.28	7.56	8.12	8.48	8.22	8.29	8.10	
D	Twice of average billing rate (Rs./Kwh)	$D = C * 2$	14.62	14.37	14.16	14.17	14.21	14.56	15.12	16.24	16.97	16.44	16.58	16.20	
E	Enforcement Collected* (Rs. Cr)	E	1.15	1.27	1.14	1.52	1.48	2.24	1.64	1.56	2.42	1.45	2.86	2.83	21.57
F	Units Billed on account of enforcement	$F = E / D * 10$	0.79	0.89	0.80	1.08	1.04	1.54	1.08	0.96	1.42	0.88	1.73	1.75	13.96

*Net of Non energy, E-tax, LPSC and RA surcharge

3.3.6 Own 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.”

3.3.7 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.”

3.3.8 As per Regulation 23(2) of Business Plan Regulations, 2017, the Own Consumption of BYPL 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 15.50 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	6,498.00
B	Self-consumption on Normative basis 0.25% of A	16.25
C	Actual Self consumption claimed by Petitioner	15.50

Hon’ble Commission’s Directive regarding the 1% Adjustment Billing:

3.3.9 The Hon’ble Commission in its directive 6.8 of the Tariff Order dated 28.03.2018, mentioned the following:-

“6.8 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.”

3.3.10 In this regard, Petitioner would like to submit the following:-

- i. Billing Platform of Petitioner for raising and maintaining the consumer wise records is SAP-ISU. SAP-ISU has a standard feature that the entries passed in the consumer account cannot be deleted from the system to keep the audit trail. In case any change is required to be done in the consumer account on account of any reason, the complete entries so passed in the consumer account are reversed and fresh entry is made in the consumer account. This is irrespective of raising physical invoice to consumers. However, all these reversals passed is reflected in the form 2.1a under the adjustment billing column as the report is generated directly from the system.
- ii. Any norm approved by the Hon'ble Commission including the 1% adjustment Sales shall be for the controllable parameters. Hence, the reasons which are beyond the control of the petitioner should not be considered while calculation of the %adjustment sales.
- iii. The uncontrollable factors where adjustment is being made in the system are as follows:-
 - a) Adjustment on account of order of Hon'ble Commission/GoNCTD.
 - b) Adjustment on account of Open access consumers.
 - c) Adjustment on account of compliance of the provisions of Supply code 2017.
 - d) Other uncontrollable reasons.
- iv. The case wise reasons for some high value adjustment on sample basis of 55 cases (-62.73 MU) included in -78.75 MU which are beyond the control of the petitioner is annexed at **Annexure 3A.1**.
- v. Hence, the % adjustment sales as shown in the form 2.1a of FY 2018-19 after excluding the adjustment affected by uncontrollable factors is 0.24%. The same is tabulated below:-

S.No	Particulars	Formula	Figure
A	Total Current Sales		6,591.97
B	Total Adjustment		-78.47
C	Adjustment due to uncontrollable factors		-62.73
D	% Adjustment Sales	$D=(B-C)/A$	-0.24%
E	Sales	$E=A+B$	6,513.50

- vi. It is pertinent to submit that there is no rationale to limit the adjustment bills on account of long duration provisional bills etc to 1%. This issue is appealed before Hon'ble APTEL in Appeal no 214 of 2018.

3.3.11 Based on the above submissions, the category-wise energy sale during FY 2018-19 is tabulated below:

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

S. No	Category	Projections (as per Tariff Order)	Actuals	Remarks/ Reference
A	Domestic	3867	3,838.48	A=i+ii
i	Domestic -other than A (ii)	-	3,817.05	Form F2
ii	Single Delivery Point on 11 KV CGHS	-	21.43	Form F2
B	Non Domestic	1903	1,791.45	B=i+ii
i	Non Domestic Low Tension (NDLT)	-	1,466.69	Form F2
ii	Non Domestic High Tension (NDHT)	-	324.76	Form F2
C	Industrial	296	374.39	C=i+ii+iii
i	Small Industrial Power (SIP)	-	289.09	Form F2
ii	Industrial Power on 11kV SPD for Group of SIP Consumers	-		Form F2
iii	Large Industrial Power (LIP)	-	85.29	Form F2
D	Agriculture	0.26	0.23	Form F2
E	Mushroom Cultivation			Form F2
F	Public Lighting	136	103.90	F=i+ii
i	Metered		83.29	Form F2
ii	Unmetered		20.61	Form F2
G	Delhi Jal Board (DJB)	146	149.33	G=i+ii

S. No	Category	Projections (as per Tariff Order)	Actuals	Remarks/ Reference
i	DJB-Supply at LT		12.48	Form F2
ii	DJB (Supply at 11 KV and above)		136.85	Form F2
H	Delhi International Airport Limited (DIAL)	359*		Form F2
I	Railway Traction			Form F2
J	DMRC		171.48	Form F2
K	Advertisement and Hoardings		0.06	Form F2
L	Temporary Supply		45.63	Form F2
M	Others		38.54	M=i+ii+iii+iv
i	Enforcement		13.96	Form F2
ii	Self-consumption		15.50	Form F2
iii	E-Vehicles		7.19	Form F2
iv	Net metering		1.90	Form F2
N	Total Energy Sales	6708	6,513.50	Sum A to M

*Includes DMRC & Others.

3.3.12 It can be seen from the above table that the projected sales of the Hon'ble Commission did not materialised during FY 2018-19 and accordingly Petitioner was short of revenue. Further, the sales during FY 2018-19 (6513.50 MU) as compared to the previous year i.e. FY 2017-18 (6504 MU) is stagnant.

3.3.13 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.

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

3.4.1 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 11.69% and 99.50% respectively.

3.4.2 The Petitioner has achieved the actual Distribution Loss and Collection efficiency of 9.31% and 100.37% 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 Distribution Loss, Collection efficiency and AT&C Loss for FY 2018-19 (%)

S.No	Particulars	Target approved	Actual performance
1	Distribution Loss %	11.69%	9.31%
2	Collection Efficiency %	99.50%	100.37%
3	AT&C Loss %*	-	8.98%

**Derived from Distribution Loss and CE*

3.4.3 The Petitioner has billed Gross amount of Rs. 5667.37 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	5,667.37	Note 58 of the Audited Accounts
B	Less: Electricity Tax Billed	191.19	Note 58 of the Audited Accounts
C	Less: 8% RA Surcharge Billed	383.46	Note 58 of the Audited Accounts
D	Less: 3.70% Pension Surcharge	181.55	Note 58 of the Audited Accounts
E	Revenue Billed for AT&C True up	4,911.16	A-B-C-D

3.4.4 The Petitioner has collected the Gross revenue of Rs. 5699.37 Crore 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	Reference
A	Total Revenue Collected	5699.37	Note 58 of the Audited Accounts
B	Less: LPSC	16.01	Note 58 of the Audited Accounts
C	Less: Electricity Tax	192.09	Note 58 of the Audited Accounts
D	Less: 8% RA Surcharge	382.45	Note 58 of the Audited Accounts
E	Less: 3.70% Pension Surcharge	179.65	Note 58 of the Audited Accounts
F	Revenue Collected for AT&C True up	4929.17	A-B-C-D-E

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

Table 3A 8 Computation of Distribution Loss, Collection Efficiency and AT&C Loss for FY 18-19

S.No	Particulars	UoM	Figure	Remarks/ Reference
A	Energy Input	MU	7,182.26	
B	Energy Billed	MU	6,513.50	
C	Amount Billed	Rs. Cr	4,911.16	
D	Average Billing Rate	Rs. / kWh	7.54	$D = C / B * 10$
E	Distribution Loss	%	9.31%	$E = (A-B) / A$
F	Amount Collected	Rs. Cr	4,929.17	
G	Collection efficiency	%	100.37%	$G = F / C$
H	Units Realized	MU	6,537	$H = G * B$
I	AT&C Loss Level	%	8.98%	$I = (A-H) / A$

3.4.6 Based on the Distribution 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 Distribution 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:

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

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.

3.4.7 Accordingly, in line with the incentive computation in tariff order dated 31.08.2019, the impact of overachievement of Distribution Loss target is tabulated below:

Table 3A 9 Impact of overachievement in Distribution loss target for FY 2018-19

S.No	Particulars	UoM	Figure	Remarks
A	Distribution Loss Target in previous Year	%	13.00%	As per BPR 2017
B	Distribution Loss Target in Current Year	%	11.69%	As per BPR 2017
C	Actual Distribution Loss	%	9.31%	
D	50% of (previous year target - current year target)	%	0.66%	50%*(A-B)
E	Distribution loss target - 50% of (previous year target - current year target)	%	11.04%	B-D
F	Actual Energy Input at Distribution periphery	MU	7,182.26	
G	Average Power purchase Cost	Rs/KWh	4.66	
H	Total Incentive	Rs. Cr	79.67	(B-C)*F*G/10
I	Petitioner Share 1 of incentive (less than Loss Target-50%*(PYT-CYT)	Rs. Cr	7.31	(B-E)*F*G/10*(1/3)
J	Petitioner Share 2 of incentive (up to Loss Target-50%*(PYT-CYT)	Rs. Cr	38.49	(E-C)*F*G/10*(2/3)
K	Total Incentive to Petitioner	Rs. Cr	45.80	I+J
L	Incentive to Consumer	Rs. Cr	33.87	(B-E)*F*G/10*(2/3)+(E-C)*F*G/10*(1/3)

3.4.8 The Petitioner would like to submit that there is a conflict in the calculation of Distribution loss incentive in Tariff Regulations 2017 viz-a-viz Business Plan Regulations 2017. Petitioner has preferred Appeal in Hon'ble ATE in this regard on the issue. Without prejudice to our contention in DFR no 2333 of 2019, the above calculation in table 3.9 is made considering the approach of the Hon'ble Commission while truing up of FY 2017-18 in tariff order dated 31.07.2019. As per Business Plan Regulations 2017, the petitioner share's incentive on account of Distribution loss reduction for FY 2018-19 is Rs 51.71 Cr as against Rs 45.80 Cr.

3.4.9 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.

3.4.10 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.	4,911.16	4,911.16
2	Collection Efficiency	%	99.50%	100.37%
3	Amount collected	Rs. Cr.	4,886.61	4,929.7
4	Over-achievement	Rs. Cr.		42.56
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.		12.28
6	Entire 100% to be retained for achievement over 100%	Rs. Cr.		18.01
7	Total Incentive to be retained by DISCOM	Rs. Cr.		30.29

3.5 Power Purchase Quantum

3.5.1 The Petitioner purchases almost 71% 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 to BYPL as per its orders dated 31-03-2007.

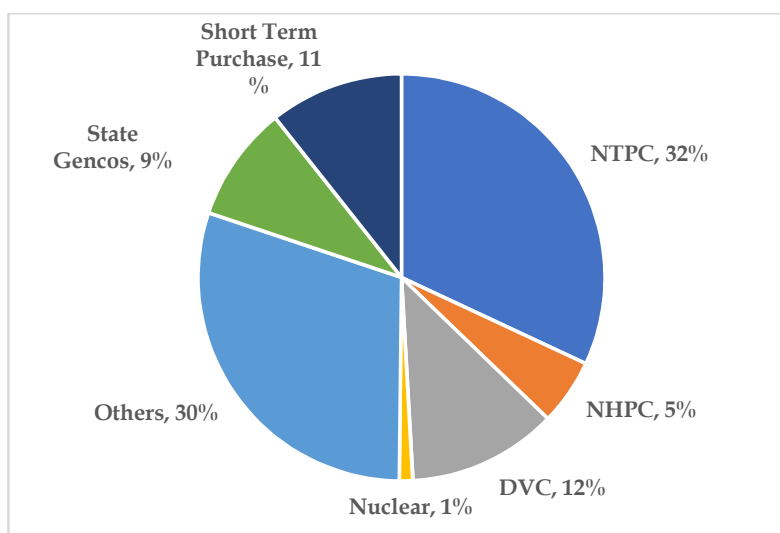
3.5.2 The Petitioner vide its below listed letters has already submitted to the Hon'ble Commission the details of monthly invoices of power purchase cost raised by Generating companies and Transmission companies for the period April 2018 to March 2019.

Table 3A 11Correspondences with DERC regarding power purchase cost

S.No.	Month	Letter Ref. no.	Submission Date
1	Apr-18	RA/BYPL/2018-19/44	25/05/2018
2	May-18	RA/BYPL/2018-19/67	27/06/2018
3	Jun-18	RA/BYPL/2018-19/87	17/07/2018
4	Jul-18	RA/BYPL/2018-19/112	28/08/2018
5	Aug-18	RA/BYPL/2018-19/132	04/10/2018
6	Sep-18	RA/BYPL/2018-19/140	18/10/2018
7	Oct-18	RA/BYPL/2018-19/171	27/11/2018
8	Nov-18	RA/BYPL/2018-19/191	26/12/2018
9	Dec-18	RA/BYPL/2018-19/205	18/01/2019
10	Jan-19	RA/BYPL/2018-19/237	20/02/2019
11	Feb-19	RA/BYPL/2018-19/259	26/03/2019
12	Mar-19	RA/BYPL/2018-19/09	31/05/2019

3.5.3 The Petitioner vide its letter no. RA/BYPL/2019-20/86 dated July 12, 2019 has a submitted the Power Purchase Cost Statement for the period April 2018 to March 2019 duly certified by the Statutory Auditor. All the PPAs were submitted to the Hon'ble Commission vide letters dated June 20, 2016 and December 30, 2016 and approved by the Hon'ble Commission vide its letter dated July 06, 2016 and January 27, 2017 respectively.

3.5.4 Further details of PPA have also been submitted through I Business plan submissions dated 21.10.2019.

**Figure 3.1Source-wise bifurcation of quantum percentage for FY 2018-19**

3.5.5 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	8,826.47	Includes Net Banking
ii	Power sold to other sources	1,332.45	
iii	Net Power Purchase	7494.02	i-ii
B	Transmission Loss:		
i	Inter-State Transmission Loss	311.76	
ii	Intra-State Transmission Loss		
iii	Total transmission loss	311.76	
C	Net power available after Transmission Loss*	7182.26	A-B

*Excluding Open Access

The Petitioner has enclosed the SLDC statement showing the details of DISCOM-wise energy input for FY 2018-19 (enclosed as **Annexure 3A.2**).

Short term Purchase

3.5.6 During FY 2018-19, the Petitioner has procured a total of 1064.07 MU 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 13Details 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	47	6%	27	3%	1	0.1%
B	Banking	534	73%	805	83%	1019	96%
C	Exchange	51	7%	69	7%	8	1%
D	Intra-State	38	5%	10	1%	5	0.4%
E	UI	60	8%	59	7%	31	3%
F	Total	730		970		1064	

3.5.7 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 97% 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

3.5.8 During FY 2018-19, the Petitioner has sold total of 2489.2 MU under short term sale through Bilateral/Banking/Intrastate/UI mode. The source-wise details of sale of surplus power are tabulated below:

Table 3A 14Details 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	224	29%	18	2%	77	3%
B	Banking	188	25%	867	74%	1157	46%
C	Exchange	347	45%	275	24%	1245	50%
D	Intra-State	10	1%	1	0%	3	0%
E	UI	-2	0%	6	1%	7	0%
F	Total	767.6		1168.3		2489.2	

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

Table 3A 15Details of Power Purchase Quantum Station wise for FY 2018-19

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
Central Sector Generating Stations (CSGS)				
A	NTPC	*	*	
i	Anta Gas			1.85

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
ii	Auraiya Gas			2.11
iii	Dadri Gas			12.78
iv	Dadri – I			291.23
v	Dadri – II			1004.14
vi	Farakka			31.13
vii	Kahalgaon – I			81.52
viii	Kahalgaon – II			254.90
ix	Rihand – I			0.00
x	Rihand – II			229.63
xi	Rihand – III			377.28
xii	Singrauli			493.62
xiii	Unchahar – I			37.11
xiv	Unchahar – II			71.90
xv	Unchahar – III			42.59
xvi	AravaliJhajjar			308.32
	Sub Total			3240.12
B	NHPC			
i	BAIRASIUL P S			9.54
ii	SALAL P S			95.18
iii	CHAMERA I P S			48.66
iv	TANAKPUR P S			10.99
v	URI P S			81.75
vi	DHAULIGANGA PS			35.69
vii	CHAMERA - II PS			49.51
viii	DULHASTI PS			71.84
ix	SEWA-II			16.44
x	CHAMERA - III PS			32.48
xi	URI II			52.56
xii	PARBATI-III			19.50
	NHPC Regulation credit			0.00
	Sub Total			524.13
C	THDC			
i	Tehri HEP			0.00
ii	Koteshwar			0.00
	Sub Total			0.00
D	DVC			
i	Mejia Units -6 (LT-4)			112.60

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
ii	DVC Chandrapur 7 & 8 (LT-3)			490.46
iii	Mejia Units -7			584.90
	Sub Total			1187.97
E	NPCIL			
i	NAPS			-0.13
ii	RAPP			106.63
	Sub Total			106.50
F	SJVNL			
i	Naptha-Jhakri			153.80
	SJVNL-Credit			0.00
	Sub Total			153.80
G	Others			
i	Tala HEP			18.97
ii	Sasan UMPP			2467.19
	Sub Total			2486.16
H	Total CSGS			7698.69
Delhi Generating Stations				
i	BTPS	*	*	258.94
ii	Rajghat			-1.52
iii	Gas Turbine			46.25
iv	Pragati – I			235.11
v	Pragati -III, BAWANA			597.42
	Sub Total			1136.20
Renewables				
i	SECI			43.06
ii	EDWPCL			14.78
iii	MSW			26.46
J	Grand Total			8919.19

Total generation and energy received at Delhi periphery is to be received from SLDC. BYPL sought the details vide its letter dated 29.11.2019.

3.5.10 In view of the above, it is prayed that the Hon'ble Commission may kindly consider the actual gross power purchase quantum of 8919 MU during FY 2018-19 as submitted in the above table.

3.6 Power Purchase Cost**a) Long Term Power Purchase**

3.6.1 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:

3.6.2 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, and Delhi Discoms allocation is around 10%-30% in significant number of Plants. Since allocation of these Plants are on shared basis and operation of the same is on the basis of aggregation of demand and

keeping into account the Grid Security, therefore, 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 and the same was submitted to the Hon'ble Commission (on monthly basis).

3.6.3 Besides above uncontrollable situation, the Petitioner strictly follows of Merit Order Dispatch (MOD) while scheduling power on daily basis.

3.6.4 Hence, there should be no disallowance on account of Merit Order Dispatch (MOD).

Power Purchase Cost

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

Table 3A 16 Details of Power Purchase Cost Station wise for FY 2018-19

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
Central Sector Generating Stations (CSGS)									
A	NTPC								
I	Anta Gas	2	6	1	0	0	6	30.99	
II	Auraiya Gas	2	8	1	0	0	9	41.34	
III	Dadri Gas	13	10	4	1	0	15	11.54	
IV	Dadri – I	291	40	107	0	-7	141	4.83	
V	Dadri – II	1004	179	344	2	-7	518	5.16	
VI	Farakka	31	3	7	0	0	10	3.37	
VII	Kahalgaon – I	82	9	18	0	0	28	3.39	
VIII	Kahalgaon – II	255	31	55	0	-1	85	3.35	
IX	Rihand – I	0	0	0	0	0	0		
X	Rihand – II	230	16	30	0	-1	45	1.97	
XI	Rihand – III	377	55	50	0	-1	104	2.77	
XII	Singrauli	494	34	68	0	0	101	2.05	
XIII	Unchahar – I	37	4	11	0	-1	15	3.95	
XIV	Unchahar – II	72	8	21	0	-1	28	3.90	
XV	Unchahar – III	43	7	12	0	-1	18	4.30	

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears	Total Charges	Average Rate	Remarks/Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
xvi	Koldam HPS-I		0	0	0	5	5	0.00	
xvii	AravaliJhajjar	308	73	104	4	-11	170	5.52	
	Aravali-Credit	-	0	0	0	-0.46	-0.46	0.00	
	Sub Total	3240	482	835	7	-27	1298	4.01	
B	NHPC								
i	BAIRASIUL P S	10	1	1	0	0	2	2.07	
ii	SALAL P S	95	8	6	8	0	21	2.24	
iii	CHAMERA I P S	49	4	5	0	0	9	1.92	
iv	TANAKPUR P S	11	3	2	0	0	5	4.15	
v	URI P S	82	8	7	2	0	17	2.02	
vi	DHAULIGANGA PS	36	5	4	0	0	9	2.52	
vii	CHAMERA - II PS	50	5	5	0	0	10	2.07	
viii	DULHASTI PS	72	17	18	2	0	37	5.16	
ix	SEWA-II	16	5	4	0	0	8	5.12	
x	CHAMERA - III PS	32	8	7	0	0	15	4.60	
xi	URI II	53	15	10	3	0	28	5.29	
xii	PARBATI-III	19	5	5	0	0	10	5.14	
	NHPC Regulation credit	-	0	0	0	0	0	0.00	
	Sub Total	524	82	74	15	0	171	3.27	
C	THDC								
i	Tehri HEP	0	0	0	0	0	0	0.00	
ii	Koteshwar	0	0	0	0	19	19	0.00	
	Sub Total	0	0	0	0	19	19	0.00	
D	DVC								
i	Mejia Units -6 (LT-4)	113	17	33	0	1	51	4.50	
ii	DVC Chandrapur 7 & 8 (LT-3)	490	79	92	0	-1	170	3.47	
iii	Mejia Units -7	585	90	154	0	3	247	4.23	
iv	DVC Credit from Regulated power								

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
	Sub Total	1188	186	280	0	3	468	3.94	
E	NPCIL								
i	NAPS	0	0	0	0	0	0	-27.85	
ii	RAPP	107	0	42	1	0	43	4.05	
	Sub Total	107	0	42	1	0	44	4.09	
F	SJVNL								
i	Naptha-Jhakri	154	22	19	0	1	42	2.72	
ii	SJVNL Credit	0	0	0	0	0	0	0.00	
	Sub Total	154	22	19	0	1	42	2.72	
G	Others								
i	Tala HEP	19	0	4	0	0	4	2.16	
ii	Sasan UMPP	2467	35	284	28	1	347	1.41	
	Sub Total	2486	35	288	28	1	351	1.41	
H	Total CSGS	7699	808	1537	52	-3	2393	3.11	(A+B+C+D+E+F+G)
I. Delhi Generating Stations									
i	BTPS	259	28	103	0	12	143	5.53	
ii	IP	0	0	0	0	17	17	0.00	
iii	Rajghat	-2	0	-1	0	0	-1	3.78	
iv	Gas Turbine	46	11	23	0	0	33	7.19	
v	Pragati – I	235	27	117	0	1	144	6.13	
vi	Pragati -III, BAWANA	597	165	227	0	0	392	6.56	
	Sub Total	1136	231	469	0	12	729	6.41	
J. Renewables									
i	SECI	43	0	24	0	0	24	5.51	
ii	EDWPCL	15	0	5	0	0	5	3.21	
iii	Delhi MSW	26	0	19	0	0	19	7.03	
	Reactive Energy	0	0	2	0	0	1	0.00	
	Sub Total	84	0	47	0	0	49	5.76	
K	Grand Total	8919	1038	2055	52	25	3170	3.55	(H+I+J)

3.6.6 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. The Petitioner would also like to submit that due to better power procurement and planning the increase in average power purchase cost vis-a-vis FY 2017-18 is mere 1%.

3.6.7 The aforesaid Power Purchase Cost may vary as and when the 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 the Hon'ble CERC. Recently, the Hon'ble CERC has issued Tariff order on PPCL-III in petition 221/GT/2015 dated 26.11.2019, which have a huge financial impact on Delhi DISCOMS.

b) Short Term Power Purchase

3.6.8 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 fluctuating. 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.

3.6.9 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.

Overlapping of banking transactions:

3.6.10 As regards banking transactions, it is submitted that banking of power is done ex-ante based on estimates and forecasts done at the beginning of a period. Power so banked is used only for the consumers of the Licensee and is not used elsewhere.

3.6.11 Further, the Hon'ble Commission in the interest of consumers has emphasised on purchase and sale of surplus power through banking transactions. While complying with the directions of the Hon'ble Commission, there may be few instances when there is overlapping of banking transactions to meet the demand. Accordingly, the Petitioner needs to purchase power in few slots during the day rather than RTC purchase.

3.6.12 However, The Petitioner further submits that there is no violation by the Petitioner on account of banking overlapping within the period of 3 months.

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

UI Charges below 49.7 Hz frequency:

3.6.14 The Hon'ble Commission in Tariff Order dated July 13, 2012 deducted the additional UI Charges borne below 49.5 Hz frequency based on the recommendations given by Forum of Regulators (FOR). The Petitioner had challenged the issue of additional UI Charges borne on account of UI power purchased below 49.50 Hz before Hon'ble ATE. The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177& 178 of 2012) has given its observations on the said issue against the Petitioner. However, the Petitioner has preferred a statutory appeal before the Hon'ble Supreme Court against the aforesaid Judgment of the Hon'ble ATE dated March 2, 2015, which is sub-judice. Without pre-judice to its aforestated Appeal, and without admitting or

waiving any of its contentions against the said Judgment dated March 2, 2015 or this Hon'ble Commission's order dated July 13, 2012 insofar as the decision on additional UI Charges is concerned, the Petitioner has considered the actual UI purchase while computing the power purchase cost.

3.6.15 The source-wise details of short term power purchase cost during FY 2018-19 are tabulated below:

Table 3A 17 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	2.88	13.4	3.33	9.0	3.58	0.40
B	Banking	3.92	209.7	3.98	320.6	4.24	432.4
C	Exchange	3.94	20.1	4.37	37.1	4.32	3.4
D	Intra-State	2.06	7.7	2.18	2.1	2.57	1.2
E	UI	2.79	16.7	3.34	19.8	5.12	16.0
F	Total	3.67	267.8	4.01	388.6	4.26	453.4

3.6.16 In view of the above, we request the Hon'ble Commission to kindly allow the power purchase cost of Rs. 453.4 Crore during FY 2018-19 from short term sources as submitted in the above table.

c) Sale of Surplus Energy

3.6.17 The Petitioner put its all-out efforts to maximize the revenue through sale of surplus power. However, the Petitioner has realized the revenue of Rs. 936.93 Crore from sale of surplus power during FY 2018-19.

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

Table 3A 18Details 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	2.98	66.7	3.65	6.6	4.92	38.0
B	Banking*	3.99	75.1	3.58	310.5	3.78	437.6
C	Exchange	2.08	72.3	3.08	84.8	3.73	464.5
D	Intra-State	2.03	2.1	2.17	0.3	2.50	0.7
E	UI	14.14	-2.4	0.87	0.5	5.44	-3.9

*Notionally shown as short term sale , quantum was arranged in previous/present year.

3.6.19 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:

3.6.20 The Petitioner has considered the Transmission charges for FY 2018-19 as under:

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

S. No	Particulars	Submission	Reference
	Transmission Charges		
i	Power Grid Corp. of India Ltd.	323.45	
ii	Delhi Transco Ltd. Wheeling Charges	259.40	
lii	Other Transmission etc.	7.52	BBMB, DVC,SECI, NTPC, others
iv	Open Access & SLDC Charges	89.21	
v	Total Transmission charges	679.58	Sum I to V

e) Gross Power Purchase Cost:

3.6.21 Based on the above submissions, the Petitioner has considered the gross power purchase cost of Rs. 3848.79Crore during FY 2018-19 which is tabulated below:

Table 3A 20 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)		
i	Purchase of Energy	3169.21	Note 35 of Audited Accounts (excl. LPSC)
ii	Transmission cost	679.58	
B	Total Gross Power Purchase Cost excluding LPSC (i+ii)	3848.79	

3.6.22 The reconciliation of the Power cost as per Audited accounts in the break-up of the same as per requirement by the Hon'ble Commission is submitted in the following reconciliation table-

Table 3A 21 Reconciliation with Table 3.21 (Rs. Crore)

S. No	Particulars	FY 2018-19	Reference
A	Long Term Power Purchase	3170.39	
B	Short Term Power Purchase	453.44	
C	Less: Banking Sale	437.60	
D	Total	3186.23	As per Audit Certificate
E	Transmission cost	679.58	
F	Less: Rebate	18.89	
G	Add: Net Metering	1.03	
H	Add: Self Generation (at BYPL Roof Top)*	0.84	
I	Total Gross Power Purchase Cost excluding LPSC and rebate	3848.79	D+E-F+G

* Self Generation @ Rs 5.36/unit vide Hon'ble DERC order dt. 26.02.18

3.7 Rebate on power purchase and Transmission Charges

3.7.1 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 22Details of Rebate Claimed for FY 2018-19

S. No.	Party/Company	Rebatable Amount	Non Rebatable Amount	Actual Rebate Claimed
1	NTPC*	1,266.75	4.29	10.17
2	NHPC	155.97	15.23	2.61
3	Nuclear	43.22	0.38	
4	SJVNL	41.78	-	
5	THDC	-	19.36	
6	Tala HEP	4.10	-	
7	DVC	467.42	0.68	
8	Power stations in Delhi			
8.1	PPCL	535.99	-	
8.2	IPGCL	49.48	-	
9	ARAVALI	177.25	(7.39)	
10	SASAN	321.19	26.15	5.69
11	SECI	-	23.71	
12	EDWPCPL	4.74	-	0.08
	DMSWSL	18.60	-	0.35
A	Total Long Term Purchase	3,086.51	82.40	18.89
11	Short Term Purchase	-		
2	Short Term sale	-		
13	Transmission Charges			
13.1	Power Grid Corp. of India Ltd.	323.45	-	
13.2	Delhi Transco Ltd.	259.40	-	
13.3	Bhakra Beas Manegment Board		0.07	
13.4	NTPC	4.18	-	

S. No.	Party/Company	Rebatable Amount	Non Rebatable Amount	Actual Rebate Claimed
13.5	Arawali Power Company Private Ltd.	-	(0.60)	
13.6	Damodar Valley Corporation	1.31		
13.7	SECI		1.89	
13.8	DTL Pension Trust		-	
B	Total Transmission Charges	588.33	1.36	
C	Net Rebate	3,674.84	83.76	18.89

3.7.2 As regards, it is respectfully submitted that the normative rebate ought not be applied at the time of true-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. 2677 Crore upto FY 2017-18 as Regulatory Asset (as per Tariff Order dated 31.07.2019);
 - 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 has not opened 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:

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}**

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

3.7.4 Additionally, BYPL 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 BYPL.

3.7.5 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.

3.8 Late Payment Surcharge (LPSC)

3.8.1 Petitioner has filed the 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 Hon'ble Commission vide order dated

13.05.2019 has disposed off the said Petition. However, the Petitioner has filed Review Petition bearing no. 59 of 2019 which is pending for adjudication before the Hon'ble Commission.

3.8.2 Without prejudice to the submissions made in the said Review Petition, the Petitioner 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 lacuna is that the beneficiaries are liable to pay LPSC at fixed rate whereas the Gencos and Transcos avail loans at floating rate.

3.8.3 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.

3.8.4 As depicted from above, 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.

3.8.5 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% per annum vis-a-vis

carrying cost is very low.

- 3.8.6 Hence, in view of the above the petitioner request Hon'ble Commission to consider the petitioner's submission while adjudicating the Review Petition.

3.9 Incentive on Sale rate of Surplus Power

- 3.9.1 Regulation 157 and 165 of Tariff Regulations, 2017 states as along with relevant clauses of Business Plan Regulations, 2017 states as follows:

"157. The Utility shall be subject to incentive or dis-incentive, as the case may be, based on the performance vis-a-vis target achieved by the respective Utility:

(c) In case of a Distribution Licensee incentive/penalty shall be applicable on the basis of:

(i) Distribution Loss;

(ii) Collection Efficiency; and

(iii) Sale of Surplus Power.

165. Any financial impact of over realization on account sale of Surplus Power as, specified in Regulation 123 of these Regulations, shall be adjusted as per the mechanism indicated in the Business Plan Regulations of the control period:

Provided that any financial impact of under realization account sale of Surplus Power as specified in Regulation 123 of these Regulations shall be to the account of distribution licensee."

Further, in Business Plan Regulations, 2017, Regulation 29 on incentive sharing mechanism for sale rate of surplus power stipulates as follows:

"(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)."

3.9.2 On the above Regulations, The Hon'ble Commission issued the Clarificatory letter dated 16.11.2018. The Clarificatory letter infact ignores/nullifies incentive on banking transactions. It is submitted that the Petitioner is entitled for incentive on banking transactions as well. The computed incentive based on the above letter is tabulated below:

Table 3A 23Details of Total Sale Rate Incentives

S. No	Particulars	UOM	Amount	Remarks
1	Total Incentive earned	Rs. Crore	50.69*	Detailed Calculation in Annexure 3A 3
2	DISCOM Share (1/3rd as per BPR 2017)		19.22*	

**Excludes banking incentive; same will be submitted additionally*

3.10 RPO Obligation

3.10.1 Regulation 27 of Business Plan Regulations, 2017 regarding the targets for Renewable Purchase Obligation (RPO) states as follows:

"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%

.."

3.10.2 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 24Details of RPO for the year FY 2018-19

S.No.	Particulars	Solar	Non-Solar	Total	Reference
i	Sales (MU)	6513.5			Actual Sales
ii	Hydro Purchases (MU)	696.90			
iii	Base for RPO (MU)	5,816.60			i-ii
iv	RPO Target (%)	4.75%	9.50%	14.25%	
v	RPO target (MU)	276.29	552.58	828.87	iii * iv
	RPO met				
vi	EDWPCL		14.78	14.78	
vii	DMSW		26.46	26.46	
viii	SECI	43.06		43.06	
ix	Self-Generation	0.27		0.27	
x	Solar roof-top gross generation from Net metering consumer*	13.1		13.1	
xi	REC				
xii	Open Access		13.3	13.3	
xiii	Sub-Total - RPO met	56.33	54.24	110.57	
xiv	Shortfall (MU)	219.96	498.34	718.29	v-xiii

*The Gross generation by the net metering consumer is 13.1 MU and 2.5 MU fed in the Petitioner's grid

3.10.3 BYPL 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 31st March, 2019, BYPL had successfully issued 303 net metering connections for a cumulative capacity of 17MW solar rooftop projects developed by individual developers.

3.10.4 Although BYPL is looking at all possible options/solutions to avail renewable power and meet the RPO targets but as Hon'ble Commission is aware that BYPL 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 BYPL 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, BYPL 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.

3.10.5 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.

3.10.6 Further, the Petitioner has signed various PPA's for fulfilments of Solar and Non-Solar obligations in the coming future. The details are shown hereunder:

Table 3A 25Details of upcoming Firm Renewable sources

S. No.	Particular/ Description		BYPL- Allocation (MW)	BYPL- Date of Signing of PPA	COD/ Expected COD
1	SECI	SECI-Solar_Rajasthan	150	02.08.2018	Oct'20
		SECI-Solar_Rajasthan	150	17.06.2019	Apr'21
		SECI	20	27.02.2015	May'2040
		Solar Sub Total	320		
		SECI-Wind_Gujrat	50	03.04.2018	Apr'20
		SECI-Wind_TN	100	26.06.2018	Apr'20
		SECI-Wind_Gujarat	100	16.01.2019	July'20
		Wind Sub Total	250		
		Total	570		
2	SDMC	Tehkhand-Okhla		20.11.2018	Mar'21

3.10.7 The above mentioned PPAs shall start operating from FY 2020-21 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 the limited availability of RE power and other factors beyond the control of the licensee, as proposed in the Business Plan submitted on 21.10.2019 for the next Control Period filed before Hon'ble Commission.

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

3.11.1 Based on the above submissions, the power purchase cost claimed during FY 18-19 is shown below:

Table 3A 26Power Purchase Cost during FY 18-19 based on Auditor's Certificate (Rs. Cr.)

S. No.	Particulars	Submission	Reference
A	Power Purchase Cost		
i	Gross Power Purchase Cost	3186.23	
ii	Power sold to other sources	499.33	
iii	Net Power Purchase Cost	2686.90	i-ii
B	Transmission Charges		
i	Inter-state transmission charges	330.97	PGCIL – 323.45 , NTPC Ltd – 4.18, SECI – 1.89, BBMB – 0.07, Others
ii	Intra-state transmission charges	259.40	
iii	Other Transmission/OA charges	89.21	
iv	Total Transmission charges	679.58	i+ii+iii
C	Rebate		
i	Power Purchase Rebate	18.89	
ii	Rebate on Transmission Charges		
iii	Total rebate	18.89	i+ii
D	Add: Net Metering	1.03	
	Add: Self Generation (BYPL Roof Top Solar)*	0.84	

S. No.	Particulars	Submission	Reference
E	Net Power Purchase Cost including Transmission charges net of rebate	3349.46	A+B-C+D
G	Incentive on short term Sale	19.22	
H	Total Power purchase including incentive	3368.68	

* Self Generation @ Rs 5.36/unit vide Hon'ble DERC order dt.26.02.2018.

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

3.12 Operation & Maintenance Expenses

- 3.12.1 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 9: O&M Expenses for BYPL for the Control Period

Particulars	Unit	2017-18	2018-19	2019-20
66 kV Line	Rs. Lakh/ckt. km	4.421	4.669	4.931
33 kV Line	Rs. Lakh/ckt. km	4.421	4.669	4.931
11kV Line	Rs. Lakh/ckt. km	1.857	1.961	2.071
LT Line system	Rs. Lakh/Ckt. km	8.29	8.756	9.247
66/11 kV Grid S/s	Rs. Lakh/MVA	1.045	1.104	1.166
33/11 kV Grid S/s	Rs. Lakh/MVA	1.045	1.104	1.166
11/0.415 kV DT	Rs. Lakh/MVA	2.296	2.425	2.561

..."

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.

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

Table 3A 27O&M Expenses for FY 2018-19 (Rs. Crore)

Particulars	Capacity as on 31.03.2019	O&M expenses per unit		O&M expenses
66 kV Line (ckt km)	225	Rs. Lakh/ckt. km	4.669	10.5
33 kV Line (ckt km)	381	Rs. Lakh/ckt. km	4.669	17.8
11kV Line (ckt km)	2869	Rs. Lakh/ckt. km	1.961	56.3
LT Line system (ckt km)	5460	Rs. Lakh/Ckt. km	8.756	478.1
66/11 kV Grid S/s (MVA)	1765	Rs. Lakh/MVA	1.104	19.5
33/11 kV Grid S/s (MVA)	2013	Rs. Lakh/MVA	1.104	22.2
11/0.415 kV DT (MVA)	3366	Rs. Lakh/MVA	2.425	81.6
Total				686.0

3.12.3 The Petitioner requests the Hon'ble Commission to allow the normative O&M expenses of Rs. 686.0 Crore during FY 2018-19 as submitted in the above table as per the DERC Business Plan Regulation, 2017.

3.13 Additional O&M Expenses

3.13.1 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."

3.13.2 Accordingly, the Petitioner hereby claims item wise amount on account of additional O&M expenses which are uncontrollable in nature as well as 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

3.13.3 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. 36.16 Crore as interim relief during FY 2018-19 and also provided Rs. 18.16 Crore towards Leave Salary Contribution & Pension Contribution corresponding to the interim relief as shown below.

Table 3A 287th Pay Commission payment (Rs. Crore)

S.No	Particular	Amount
1	Interim relief paid during FY 2018-19	36.16
2	Leave Salary Contribution & Pension Contribution corresponding to the interim relief	18.16
Total		54.32

3.13.4 The Petitioner requests the Hon'ble Commission to allow an impact of Rs. 54.32 Cr. on account of payment of interim relief of 7th Pay Commission as the expenses are beyond the control of the Petitioner.

b) Impact of Revision in Minimum Wages

3.13.5 GoNCTD vide Notification No. F. No. 12(142)/02/MW/VII/3064 dated October 16, 2018 and No. PA/Addl.LC/Lab/2018/269 dated October 26, 2018 (enclosed as Annexure 3A.4) has notified the revised minimum wages effective from date of notification. Accordingly, the Petitioner has intimated the Hon'ble Commission for the said notification on 30.01.2019 (enclosed as Annexure 3A.5). Based on the notification, the paid expenses related to manpower based contract have an incremental effect of minimum wages of Rs. 3.06 Cr.

3.13.6 Accordingly, the Petitioner has paid Rs. 3.06 Crore on account of impact of revision

in minimum wages during FY 2018-19. The Petitioner requests the Hon'ble Commission to allow the same.

c) Property Tax

3.13.7 The Hon'ble Supreme Court has passed the 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. 1.16 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

3.13.8 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.

3.13.9 It is further submitted that as per Regulation 87 of the DERC Tariff Regulations, 2017, any statutory levies and taxes shall not form part of normative O&M expenses. Also, 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.

3.13.10 Accordingly, the GST charges paid by the Petitioner during FY 2018-19 are Rs. 45.15 Crore. The differential amount of Rs.20.18 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	Total Service Tax paid during FY 16	21.2			
2	Escalation Factor		5.61%	5.61%	5.61%
3	Service tax		22.39	23.65	24.97
5	GST paid during FY 2018-19				45.15
6	Net Impact (GST)				20.18

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

e) Communication Expenses (SMS Charges and Short Code Expenses)

3.13.12 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. 0.54 Crore in FY 2018-19.

3.13.13 Since, the Hon'ble Commission vide its Letter No. F.17(47)/Engg./DERC/2014-15/4741/2352 dated 21.02.2017 directed all DISCOMs to implement short code '1912' toll free services for electricity grievances in Delhi. These expenses are incurred as per the directions of the Hon'ble Commission and are over and above the normative expenses. Accordingly, the Petitioner incurred Rs. 0.42 Crore on account of Short Code expenses as a part of additional expenses.

f) Loss on Sale of Retired Assets

3.13.14 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."

3.13.15 In view of the above and as per the methodology provided in the Tariff Regulations, 2017, the Petitioner claims Rs. 9.02 Crore for retirement of assets for the year FY 2018-19.

g) Legal Expenses

3.13.16 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."

3.13.17 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) 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.

3.13.18 Out of the total expenses, merely 0.78 Cr. pertains towards filling the appeal against the orders including the Tariff orders to protect the stakeholder's interest. The legal expenses incurred by the Petitioner related to enforcement cases which were in favour of the Petitioner amounts to Rs. 2.24 Cr. The category wise total legal expenses amounting to Rs. 12.28 Cr. is summarised in Form 7(a). Further,

3.13.19 Accordingly, the Petitioner requests the Hon'ble Commission to allow the legal expenses as over and above the normative O&M expenses.

h) Water Charges

3.13.20 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.”

3.13.21 In accordance with the above regulation, the water charges paid by the Petitioner during FY 2018-19 are Rs. 0.91 Crore and requests the Hon’ble Commission to allow the same.

i) Ombudsman Fees

3.13.22 As per the directions of the Hon’ble Commission, the Petitioner has incurred an expenditure related to Ombudsman fees of Rs. 0.19 Crore for the year FY 2018-19. Accordingly, the Petitioner is claiming incremental ombudsman expenses of Rs. 0.08Crore (Actual paid - Rs. 0.19 Crore minus normative cost of Rs. 0.11 Crore).

j) KYC expenses

3.13.23 GoNCTD vide letter dated 28.05.2018 (enclosed as **Annexure 3A.6**) directed the Petitioner to submit the detailed information of consumers getting electricity subsidy and to prepare the future road map to further maximise the benefit of the subsidy in terms of energy efficiency among domestic consumers of Delhi. Accordingly, the Petitioner has carried out the said activity and incurred Rs. 2.61 Crore on account of KYC expenses for the FY 2018-19. Hence, the Petitioner requests the Hon’ble Commission to allow the same.

k) DSM related Charges

3.13.24 The Petitioner submitted an application for implementation of DSM based Energy Efficient Air Conditioner program in Delhi under DSM programme. Considering the calculation of cost benefit analysis for AC Replacement Scheme, the Hon’ble Commission approved the said scheme for DSM based Energy Efficient Air

Conditioner program in Delhi. The Hon'ble Commission has also clarified on the expenses to be incurred on account of the said scheme in its Order dated 18.05.2018 (enclosed as **Annexure – 3A.7**) stated as under:

“vi. Expenses in ARR:

The expenses on account of floating tender, hiring of implementation agency, administrative costs and the rebate cost along with interest thereon are allowed additionally in the Annual Revenue Requirement (ARR) of the petitioner to be recovered under the head of Demand Side Management (DSM) budget or any other head.”

3.13.25 As evident from the above, the rebate under DSM AC Replacement schemes in FY 2018-19 is Rs. 1.15 Cr.

3.13.26 Further, as per the directive 6.10(f) mentioned in the Tariff Order dated 28.03.2018, the Petitioner has performed an energy audit activity in FY 2018-19 which amounts to Rs. 0.17 Cr. The remaining amount i.e. Rs. 0.69 Cr. pertains to the Consumer Awareness program initiative which comes under DSM schemes.

3.13.27 Thus, the Petitioner has incurred total amount of Rs. 1.24 Crore related to DSM Charges for the year FY 2018-19 and requests the Hon'ble Commission to allow the same.

3.13.28 In view of the above submissions, the additional O&M expenses claimed as a part of true-up requirement for FY 2018-19 are shown below:

Table 3A 30 Additional O&M Expenses for FY 2018-19

S. No	Particulars	Amount (Rs. Cr.)	Reference
1	Loss on Sale of Retired Assets	9.0	Note 39 of Audited Accounts
2	Arrears paid on account of 7th Pay Commission revision	54.3	Note 36 of Audited Accounts
3	Impact of Revision in Minimum Wages	3.1	Note 36 and Note 39 of Audited Accounts

S. No	Particulars	Amount (Rs. Cr.)	Reference
4	Water Charges	0.9	Note 39 of Audited Accounts
5	Property Tax	1.2	Note 39 of Audited Accounts
6	GST Charges	20.1	
7	SMS Charges & Short Code Expenses	0.9	Note 39 of Audited Accounts
8	Legal Expenses	12.3	
9	Ombudsman Fees	0.1	Note 39 of Audited Accounts
10	KYC expenses	2.6	Note 39 of Audited Accounts
11	DSM charges	1.2	Note 39 of Audited Accounts
12	Total	105.8	Sum(1 to 12)

3.13.29 The Petitioner requests the Hon'ble Commission to allow the amount of Rs. 105.9 Crore while truing up the expenses for FY 2018-19.

3.14 Non-Tariff Income

3.14.1 The items which have been added apart from the income shown as per Audited Accounts are as under:

i. Interest on Consumer Security Deposit

3.14.2 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 31 Interest on CSD (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks/ Reference
A	Opening Balance of CSD	432.51	
B	Closing Balance of CSD	466.99	
C	Average Balance	449.75	$C = (A+B)/2$
D	Interest Rate	14.00%	
E	Interest on CSD	62.97	$E = CXD$

S. No	Particulars	FY 2018-19	Remarks/ Reference
F	Interest booked in Audited Accounts	35.94	
G	Net Interest to be considered	27.02	G = E-F

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

3.14.3 The Hon'ble Commission in Tariff Order dated September 29, 2015 ruled as under:

"3.355 The Commission has observed from the audited financial statements (Note 8) that the service line charge received from the consumers amounting to Rs.23.76 Crore is remained unadjusted and kept in deposit account. These service line charges are collected from the consumers and by deferring and not treating as nontariff income will inflate the ARR by the same extent which tantamount to collection of the same from the consumers again through tariffs."

3.14.4 The Petitioner has challenged the aforesaid issue before Hon'ble ATE in Appeal 290 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 32Difference on account of SLD (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks
1	Received during the year	19.74	Note 24 Service Line Deposits
2	SLD Appearing in Other Income	22.23	
	Difference Considered	-2.49	

3.14.5 Accordingly, the Petitioner has adjusted Rs. (2.49) Crore during FY 2018-19 for the purpose of computation of Non-Tariff Income.

3.14.6 The explanation for each of the item not to be considered as Non-Tariff Income is as under:

iii. Late Payment Surcharge:

3.14.7 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.

- 3.14.8 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.
- 3.14.9 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.
- 3.14.10 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.

3.14.11 The 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.

3.14.12 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 33 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"> LPSC @ 1.5% per month; LPSC collected allowed to Gencos and Transcos irrespective of actual cost of financing delay in payment; Therefore, LPSC not considered as Non-Tariff Income. 	<ul style="list-style-type: none"> LPSC @ 1.5% per month; Only financing cost of delayed payment by computing principal 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	<ul style="list-style-type: none"> Same treatment continued. 	<ul style="list-style-type: none"> LPSC @ 1.5% proportional to number of days of delay; Same formulae for computing principal amount despite of change in treatment;

3.14.13 As per the aforesaid submissions, the Petitioner requests the Hon'ble Commission to allow entire LPSC of Rs. 16.01 Crore during FY 2018-19 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

iv. Rebate on Power Purchase Cost and Transmission Charges:

3.14.14 Since the actual rebate on power purchase and transmission charges has been deducted for the purpose of calculation of net power purchase cost, same ought to be deducted from Non-Tariff Income. Accordingly, the Petitioner has deducted rebate on power purchase and transmission charges from Non-Tariff Income in order to avoid double accounting.

v. Write-back of Miscellaneous Provisions:

3.14.15 The Hon'ble Commission in Tariff Order dated July 31, 2019 did not consider the write-back of miscellaneous provisions and stated as under

"3.457 The similar issue is sub-judice under Appeal no. 297 of 2015 before Hon'ble APTEL. The A&G expenses have been benchmarked for the base year FY 2010-11 for the purpose of 2nd MYT period FY 2012-13 to FY 2016-17 without adjusting provision for miscellaneous expenses. The miscellaneous provisions now being written back pertain to the prior periods, for which the A&G expenses have been allowed on a normative basis. Any reversal of the

expenses under the normative head should remain within the Licensee revenue. Accordingly, the Commission considers the write back of miscellaneous provisions created prior to FY 2017-18 as part of Non-Tariff Income."

- 3.14.16 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

"3.428 The Commission has already dealt this issue in detail in previous tariff orders, therefore, the provisions written back has not been allowed to be reduced from Non Tariff Income of the Petitioner."

- 3.14.17 The Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

"3.542 The A&G expenses for the base year FY 2011-12 have been benchmarked for the purpose of MYT period FY 2012-13 to FY 2015-16 on the basis of A&G Expenses indicated in the Audited Financial Statement without considering whether the amount has been actually spent or provisioned. Therefore, the Commission is of the view that the provisions written back are to be included in the Non Tariff Income."

- 3.14.18 In this regard, it is submitted that the amount of Rs. 19.62 Crore appearing as Excess provisions written back in Note -34 of the Audited Accounts is an accounting entry reversing the amount of excess Provisions (shown as "Provisions" in the Audited Accounts) created 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. 19.62 Crore ought not to be considered as part of Non-Tariff Income for FY 2018-19.

vi. Short term gain:

- 3.14.19 The Hon'ble Commission in Tariff Order dated August 31, 2017 has ruled as under

"3.544 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 ...”

3.14.20 Accordingly, the Petitioner requests the Hon’ble Commission to allow the Petitioner to retain the income of Rs. 6.71 Crore on account of interest received on fixed deposits during FY 2018-19 and reduce the same from the Non-Tariff Income.

vii. Transfer from Consumer Contribution and Capital works:

3.14.21 The Hon’ble Commission in Tariff Order dated July 31, 2019 has allowed transfer from consumer contribution for capital works to be reduced from NTI for FY 2017-18 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.

3.14.22 Accordingly, the Petitioner requests the Hon’ble Commission to reduce the amount of Rs. 16.76 Crore from the Non-Tariff Income during FY 2018-19.

viii. Income on account of bad debts recovered:

3.14.23 The Hon’ble Commission in Tariff Order dated August 31, 2017 has ruled as under:

“3.552 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 are reduced from Non Tariff Income.”

3.14.24 Accordingly, the Petitioner requests the Hon’ble Commission not to consider Rs. 2.52 Crore of income recovered on account of bad debts (shown in Note 34 of

Audited Accounts) as Non-Tariff Income during FY 2018-19.

ix. Incentive towards Street Light Maintenance:

3.14.25 The Hon'ble Commission in Tariff Order dated July 31, 2019 has stated that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner.

3.14.26 Accordingly, the Petitioner requests the Hon'ble Commission to allow the Petitioner to retain the amount of Rs. 0.50 Crore as incentive towards the maintenance of Street Light. It is further submitted that the total amount of maintenance charges under the head "Other Income" as appearing in Note -34 of the Audited Accounts is inclusive of the incentive amount of Rs. 0.50 Crore. Therefore, the amount of Rs. 0.50 Crores ought to be reduced from the Non-Tariff income during FY 2018-19.

x. Commission on Electricity Duty:

3.14.27 The Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

"The Commission is of the view that collection of electricity duty is not a separate function/job and electricity duty is collected with electricity bills as normal collection of electricity dues billed by the Petitioner. Therefore, the Petitioner's submission that there is extra cost on account of collection of electricity duty is neither indicated in the audited financial statement nor justified. Accordingly, amount on account of Commission on Electricity Duty has not been reduced from Non Tariff Income."

3.14.28 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.

3.14.29 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.

3.14.30 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.

3.14.31 The Petitioner in its 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, had submitted 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 Order (refer to Para No. 3.562) 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.

3.14.32 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.

3.14.33 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.

3.14.34 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.

3.14.35 Therefore, the commission received on account of collection of Electricity Duty i.e., Rs. 5.76 Crore ought to be deducted from Non-Tariff Income.

3.14.36 Based on the above submissions, the Non-Tariff Income during FY 2018-19 is tabulated as under:

Table 3A 34 Non-Tariff Income for FY 2018-19

S. No	Particulars	Amount (Rs. Cr.)	Reference
A	Other Operating Income	66.67	Note 33 of Audited Accounts
B	Other Income	63.89	Note 34 of Audited Accounts
I	Total Income as per Accounts	130.56	(A+B)
C	Add: Interest on CSD	27.02	Table 3A 32
D	Add: Differential in SLD	-2.49	Table 3A 33
II	Total Other Income	155.09	(I+C+D)

S. No	Particulars	Amount (Rs. Cr.)	Reference
E	Less: Income from other business		
a	<i>Pole Rental Income</i>	1.59	
III	Net Income to be considered	153.51	(II-E)
A	Less: LPSC	16.01	Note 32 of Audited Accounts
B	Less: Rebate on Power Purchase and Transmission Charges	0.0	Note 32 of Audited Accounts
C	Less: Write-back of misc. Provisions	19.62	Note 33 of Audited Accounts
D	Less: Short term gain	6.71	Note 33 of Audited Accounts
E	Less: Transfer from Consumer contribution for capital works	16.76	Note 32 of Audited Accounts
F	Less: Bad debts recovered	2.52	Note 34 of Audited Accounts
G	Less: Incentive towards Street Light	0.50	Note 33 of Audited Accounts
H	Less: Commission on collection of Electricity Duty	5.76	Note 32 of Audited Accounts
I	Net Non-Tariff Income	85.63	(III-sum A to I)

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

3.15 Income from Other Business

3.15.1 The Hon'ble Commission in its Order dated 06.10.2006 in Petition No. 4 of 2005 filed by NDPL has stated that the DISCOM's LT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee for generating revenue. The relevant extract of the Order is reiterated as below:

"29. The Commission is therefore, of the opinion that the poles other than the Central Verge and the HT Poles can be used for laying the cable TV network and

such usage can be done by way of an agreement between the cable operator and the Licensee. Any revenue generated thereto shall be subject to the Regulations made by the Commission on the Treatment of Income from Other Business.”
Emphasis laid

3.15.2 Regulation 5(5) of DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) (First Amendment) Regulations, 2017 is as follows:

“5(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:

(a) 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

(b) 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;

Provided that any deficit on account of such other business shall be to the account of the licensee.”

3.15.3 The Petitioner had earned total income of Rs. 1.59 Crore during FY 2018-19 on account of rent from the cable operators for using BYPL LT poles for laying their cables/set up. It is further clarified that Proper agreements have been executed between BYPL and the operator for such usage in terms of the above Order of the Hon’ble Commission.

Table 3A 35 Other Business Income for FY 2018-19 (Rs. Crore)

S. No	Particulars	Total Income	Consumer's Share	Petitioner's Share
A	Pole Rental Income	1.59	0.95	0.63
B	Total	1.59	0.95	0.63

3.16 Income from Open Access

3.16.1 In addition to the income received from Other Business, the income of Rs. 1.12 Crores (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.

3.17 Capital Expenditure and Capitalisation

3.17.1 The Petitioner has considered the Closing GFA for FY 2017-18 as opening GFA for FY 2018-19.

3.17.2 Actual capitalisation and de-capitalisation as per the Audited Accounts for FY 2018-19 has been considered to derive the closing balance of GFA as under:

Table 3A 36 Gross Fixed Assets for FY 2018-19 (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening GFA	3428.70	Table 3B 20
B	Capitalisation during the year	338.28	Note 3 of the Audited Accounts
C	De-capitalisation	23.43	Note 3 of the Audited Accounts
D	Closing GFA	3743.56	A+B-C
E	Average GFA	3586.13	(A+D)/2

Funding of Capitalisation

3.17.3 During FY 2018-19, the Petitioner has capitalised Rs. 338.3 Crore which includes Rs. 19.1 Crore on account of Consumer Contribution capitalised during the year. The Petitioner has sought financing of Capitalisation (net of de-capitalisation and Consumer Contribution) through debt and equity in the ratio of 30:70 as shown below:

Table 3A 37 Financing of Capitalisation for FY 2018-19 (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Total Capitalisation	338.28	
B	De-capitalisation	23.43	
C	Consumer Contribution	19.05	Note 23 of the Audited Accounts
D	Balance Capitalisation	295.81	A-B-C
E	Debt	207.06	70% of D
F	Equity	88.74	30% of D

Consumer Contribution

3.17.4 The average Consumer Contribution for FY 2018-19 is tabulated below:

Table 3A 38 Consumer Contribution for FY 2018-19 (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening Balance*	286.78	
B	Additions during the year	19.05	
C	Closing Balance	305.83	A+B
D	Average Consumer Contribution	296.31	(A+C)/2

*includes Grants

Details of Grants

3.17.5 The average Grants for FY 2018-19 is tabulated below:

Table 3A 39 Grants for FY 2018-19 (Rs. Crore)

S. No	Particulars	FY 2018-19	Remarks/ Ref.
A	Opening Balance	16.2	
B	Additions during the year	-	
C	Closing Balance	16.2	A+B
D	Average Grants	16.2	(A+C)/2

3.18 Depreciation

3.18.1 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.

3.18.2 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	3399.30	Note 3 of Audited Accounts
B	Closing GFA as per audited accounts	3714.14	
C	Average of GFA	3556.72	(A+B)/2
D	Depreciation as per Audited Accounts	182.52	P&L account
E	Average depreciation rate	5.13%	(D/C)*100

3.18.3 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.

3.18.4 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	3586.13	
B	Average Consumer Contribution and Grants	296.31	
C	Average assets net of consumer contribution & Grants	3289.82	A-B
D	Average rate of depreciation	5.13%	Table -3A 39
E	Depreciation	168.82	C*D

3.18.5 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	1160.50	Table 3B 24

S. No	Particulars	FY 2018-19	Remarks/ Ref.
B	Additions during the year	168.82	Table -3A 40
C	Closing balance of cumulative depreciation	1329.33	A+B

3.18.6 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	168.82	
B	Depreciation utilised for debt repayment	168.82	

3.19 Working Capital

3.19.1 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	4662.4	
A1	Receivables equivalent to two months average	777.1	A/6
B	Power Purchase Expenses	3368.7	
B1	Less: 1/12th of power purchase expenses	280.7	B/12
C	Working Capital	496.3	A1-B1
D	Opening Working Capital	489.0	Table 3B 30
E	Change in Working Capital	7.4	D-E

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

3.20 Debt and Equity

3.20.1 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	1270.98	1089.95	Table- 3B 32 and 3B 33
B	Additions during the year			
i	Capex	207.06	88.74	
ii	Working capital	7.37		
C	Less: Repayment	127.10		
D	Closing	1358.32	1178.69	A+B-C
E	Average	1314.65	1134.32	Average(A,D)

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

3.21 Regulated Rate Base (RRB)

3.21.1 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	2401.81	Table- 3B 35
B	ΔAB (Change in Capital Investments)	140.07	C-D+E-F
C	Investments Capitalized	314.86	Table 3A 36
D	Depreciation	168.82	Table 3A 41
E	Add: Depreciation on De-capitalised Assets	13.09	Note 3 of Audited Accounts
F	Consumer Contribution	19.05	Table 3A 37
G	Change in WC	7.37	
H	RRB Closing	2,549.25	A+B+G
I	RRB (i)	2,479.22	

3.22 Rate of Interest on Loan

3.22.1 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%”

3.22.2 Accordingly, the margin for the Control Period i.e., from FY 2017-18 to FY 2019-20 is computed as shown below:

Table 3A 47 Margin for the Period from FY 2017-18 to FY 2019-20 (%)

S. No.	Particulars	Rate	Remarks/Reference
A	Weighted average rate of interest as on 01.04.2017*	14.14%	A
B	SBI MCLR as on 01.04.2017	8.00%	B
C	Margin for the Control Period	6.14%	C = (A-B)

*Audited Certificate enclosed an **Annexure 3A.8**

3.22.3 Regulation 77 of Tariff Regulations, 2017 states that:

“77. The rate of interest on loan shall be based on weighted average rate of interest for actual loan portfolio subject to the maximum of bank rate as on 1st April of the year plus the margin as approved by the Commission in the Business Plan Regulations for a Control Period
Provided that in no case the rate of interest on loan shall exceed approved rate of return on equity”

3.22.4 The weighted average rate of interest has been computed considering the rate of interest on loan and outstanding loan as on 01.04.2017. The details of the same has been shown in the table below:

Table 3A 48 Weighted Average Interest Rate on Loan (%)

S. No.	Particulars	Rate	Remarks/Reference
A	Margin for the Control Period	6.14%	A
B	SBI MCLR as on 01.04.2018	8.15%	B
C	Total	14.29%	C = (A+B)
D	Rate of Interest for FY 2018-19	14.00%	Min(C, 14%)

3.22.5 Further, the weighted average rate of interest on loan as per actual loan portfolio is 14.29% equivalent to the bank rate plus margin. Hence, the weighted average rate of interest on loan is 14% as the rate of interest on loan shall be limited to approved base rate of return on equity i.e.14%.

3.22.6 Accordingly, the Petitioner requests the Hon'ble Commission to approve the rate of interest on loan (rd) as 14% for FY 2018-19.

3.23 Weighted Average Cost of Capital (WACC)

3.23.1 The Petitioner has considered the actual rate of interest of loans during FY 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:

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."

3.23.2 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 49 Weighted Average Cost of Capital (WACC) (Rs. Crore)

S. No.	Particulars	Rate
A	Average Equity	1134.32
B	Average Debt	1313.63
C	Return on Equity	16.00%
D	Income Tax Rate	21.55%
E	Grossed up Return on Equity	20.39%
F	Rate of Interest	14.00%
G	Weighted average cost of Capital	16.96%

3.24 Return on Capital Employed (RoCE)

3.24.1 Based on the aforesaid submissions, the RoCE for FY 2018-19 is computed as below:

Table 3A 50 RoCE for FY 2018-19 (Rs. Crore)

Particulars	FY 2018-19	Remarks/ Ref
Weighted Average Cost of Capital (WACC)	16.96%	Table 3A 48

Particulars	FY 2018-19	Remarks/ Ref
RRB (i)	2479.22	Table 3A 47
RoCE	420.52	A*B

3.24.2 The Petitioner requests the Hon'ble Commission to allow RoCE based on the above computations:

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

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

Table 3A 51 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	3368.68	
B	O&M Expenses	686.01	
C	Additional O&M Expenses	105.77	
D	Depreciation	168.82	
E	Return on Capital Employed (RoCE)	420.52	
F	Sub-total	4749.81	Sum (A to G)
G	Less: Non-Tariff Income	85.63	
H	Less: Income from other business	0.63	
I	Less: Income from Open Access	1.12	
J	Aggregate Revenue Requirement	4662.43	F-(G+H+I)

3.26 Revenue available towards ARR

3.26.1 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	4929.17	Net of LPSC, Etax, 3.70% Pension Surcharge and 8% RA Surcharge
B	Less: Amount to be retained by Petitioner on account of overachievement of Distribution Loss Targets	45.80	Table 3A 9

S. No	Particulars	Submission	Reference/ Remark
C	Less: Amount to be retained by Petitioner on account of Overachievement of Collection Efficiency Targets	30.29	Table 3A 10
D	Less: Carrying Cost	306.81	
E	Revenue available towards ARR	4546.89	A-B-C-D

3.27 Revenue (Gap)/ Surplus

3.27.1 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	4662.43	Table-3A 50
B	Revenue available towards ARR	4546.89	Table-3A 51
C	Revenue (Gap)/Surplus	(115.55)	B-A

3.27.2 The Petitioner requests the Hon'ble Commission to true up for FY 2018-19 as submitted above.

Chapter -3B

True up of Past Claims upto FY 2017-18

3.28 Truing-up of Past Claims upto FY 2017-18

3.28.1 The present Chapter pertains to claims which have been raised by the Petitioner in previous years but have not been allowed by the Hon'ble Commission. For the sake of convenience of the Hon'ble Commission, these claims have been categorised 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. 31 of 2018
 - Tariff Order dated 31.07.2019- Petition No. 64 of 2019
- E. Category-5: Directions of Hon'ble Tribunal given in various Judgments:
 - Which have attained finality
 - Although challenged before the 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

- 3.28.2 It is submitted that these past claims are being raised before the Hon'ble Commission, inter alia, on the confluence of two settled principles, one of law and the other of fact, namely:-
- a) Each year's tariff determination is a self-contained determination and does not operate as res-judicata to the next year's determination; and
 - b) Ex necessitus, the impact of most, if not all, tariff items for a particular year will have a cascading effect on the determination of the subsequent years. Hence an erroneous determination in one year will be carried through in the subsequent years. The earlier such errors were corrected, the better it is for both the Discom's and the consumers.
- 3.28.3 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 of this Petition. These claims except Category-4 are also pending in various appeals before the Hon'ble APTEL etc., if the Hon'ble Commission were graciously be pleased to grant the relief on these items, the Petitioner take steps in accordance with the law to ensure that the same are not agitated before the Appellate Forums.

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

- 3.28.4 This part deals with the issues where inconsistent treatment has been given in past Tariff Orders issued by the Hon'ble Commission.
- 3.28.5 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."

3.28.6 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 Control Period.

3.28.7 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-1.1: 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:

DETAILED SUBMISSIONS:

3.28.8 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 31st March 2011;*

..." (Emphasis added)

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

3.28.10 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 1st 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."

3.28.11 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 1st April 2007 till 31st March 2011 based on actual O&M Expenses of FY 2006-07.

3.28.12 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.

3.28.13 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 31st 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.”

- 3.28.14 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.
- 3.28.15 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. 24Crore as compared to the employee expenses approved for FY 2007-08 which means a reduction of 11% instead of inflation factor of 4.66%. Such a treatment, in respectful submission of the Petitioner, is contrary to the above Regulations.
- 3.28.16 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;*
- 9.. *“Control Period” means a multi-year period fixed by the Commission, **from the date of issuing Multi Year Tariff order till 31st March 2011;***
- ...” (Emphasis added)*

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

3.28.18 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.

3.28.19 In view of the aforesaid, the additional Employee and A&G Expenses from FY 2008-09 to FY 2011-12 by applying inflation of 4.66% over the increase in O&M Expenses approved for FY 2007-08 is tabulated below:

Table 3B 1: Increase in O&M Expenses from FY 08-09 to FY 11-12 (Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	O&M Expenses for base year	28.43				
2	Inflation factor (%)		4.66%	4.66%	4.66%	4.66%
3	Incremental O&M Expenses		29.8	31.1	32.6	34.1

3.28.20 The aforesaid impact along with carrying cost is tabulated below:

Table 3B 2: Impact along with carrying cost for first 11 months of FY 07-08

(Rs. Crore)

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	32	69	113	167	192	220	254	291	334
2	Additions	30	31	33	34						
3	Closing Balance	30	63	102	147	167	192	220	254	291	334
4	Average	15	47	85	130	167	192	220	254	291	334
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	2	6	11	19	25	29	33	38	43	47
7	Grand closing balance	32	69	113	167	192	220	254	291	334	381

PRAYER(S):

- 3.28.21 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the additional Employee and A&G Expenses from FY 2008-09 to FY 2011-12 by applying inflation of 4.66% over the increase in O&M Expenses approved for FY 2007-08.

Issue-1.2: Loss due to retirement of assets for FY 2004-05 to FY 2016-17:

- 3.28.22 The Petitioner in 2013 had filed a Petition (No. 35 of 2013) with the prayer to treat the loss on retirement of assets as per the Petitioner's books of accounts and allow the same as a pass-through in the ARR of the petitioner along with applicable carrying cost.
- 3.28.23 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.
- 3.28.24 The Hon'ble Commission disposed of the Petition vide Order dated May 28, 2018 and 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.”

- 3.28.25 Accordingly, the Petitioner vide its letter dated 24.08.2018 submitted the requisite information and its claim with clear specification of the reasons given under Regulation-45 of DERC Tariff Regulations, 2017 stated 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.”Accordingly, vide its letter dated 24.08.2018 the Petitioner submitted the requisite information and its claim for consideration of the Hon’ble Commission.

- 3.28.26 The amount on loss on retirement of assets along with carrying cost is tabulated as under:

Table 3B 3: Amount due to retirement of assets (Rs. Crore)

S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
1	Opening Balance	0	0	2	3	4	5	6	7
2	Additions	0	2	1	1	1	0	0	1
3	Closing Balance	0	2	2	3	4	5	6	8
4	Avg. Balance	0	1	2	3	4	5	6	8
5	Carrying Cost	9%	9%	9%	13.68%	13.75%	13.11%	13.38%	14.88%
6	Carrying Cost	0	0	0	0	1	1	1	1
7	Grand Balance	0	2	3	4	5	6	7	9

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	9	27	33	41	63	82
2	Additions	15	1	4	14	9	
3	Closing Balance	25	29	36	56	72	82
4	Avg. Balance	17	28	34	48	67	82
5	Carrying Cost	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying Cost	3	4	5	7	10	11
7	Grand Balance	27	33	41	63	82	93

- 3.28.27 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the next the Tariff Order.

PRAYER(S):

- 3.28.28 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.
- 3.28.29 The total impact of issues on account of category-1 is tabulated below:

Table 3B 41: Total impact issues falling under Category-1

(Rs. Cr.)

S. No	Particulars	P	CC	Total
1	Revision in Employee and A&G Expenses of FY 09 to FY 12-Truing-up of FY 08 (11 Months)	128	253	381
2	Loss on account of retirement of assets FY 04-05 to FY 16-17	49	44	93
	Sub-total	176	298	474

B. Category 2 - Issues related to Statutory Levies/Change in Law:

- 3.28.30 This part deals with the issues which pertains to Statutory levies/ change in law. Such expenses are uncontrollable and are incurred by the Petitioner generally on account of the following:

Directions given by Statutory authority including but not limited to Government, Ministries; Regulatory Bodies in different areas of Electricity Sector (for instance, in case of, Energy Efficiency) etc;

Notifications/Regulations/Statutory directions/Statutory Orders issued by any Government agency.

Issue-2.1: Revision in Minimum wages

DETAILED SUBMISSIONS:

- 3.28.31 The Hon'ble Commission on 31.01.2017 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 statements shall not form part of Normative O&M expenses.**" (Emphasis added)*

- 3.28.32 Further, GoNCTD vide Notification No. F. Addl.LC/Lab/MW/2016/4859 dated 3rd March, 2017 has notified the revised minimum wages effective from the date of notification under Section 5(2) of the Minimum Wages Act, 1948 (hereinafter "the 1948 Act"). Accordingly, the Petitioner has paid expenses related to manpower based contract which has an incremental effect of minimum wages.
- 3.28.33 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)*

- 3.28.34 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-3B.1**.
- 3.28.35 The Petitioner 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 is also attached as Annexure 3B.2.
- 3.28.36 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)**

- 3.28.37 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.
- 3.28.38 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 7th 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 7th 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 "7th 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)

3.28.39 Further, the Petitioner in its Petition for Truing-up of FY 2016-17 and ARR of FY 2018-19 at Para-3.10.8 and 3.10.9 claimed the impact of Rs. 2.2 Cr. on account of increase in cost due to revision in Minimum wages for one month of FY 2016-17 i.e. March, 2017. Based on the verification of the substantial documents and prudence check by The Hon'ble Commission, the impact of incremental impact of minimum wages was allowed for March, 2017 in its Tariff Order dated 28.03.2018.

3.28.40 The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR of FY 2019-20 at Para-3.13.5 and 3.13.6 claimed the impact on account of Minimum

wages. However, the Hon'ble Commission in Tariff Order dated 31.07.2019 stated as under:

"3.359 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."

3.28.41 As regards above, the Petitioner would like to submit the following:

- a) The Petitioner vide its letter dated 11.04.2017 submitted the incremental impact of minimum wages due to notification of Labour Department, GoNCTD's dated 03.03.2017. Further, the GoNCTD Order dated 11.04.2017 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 disrespect 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

...

(a) “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., BYPL 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 have 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. 27.77 Cr. which includes minimum wages impact of Rs. 0.79 Crore on account of its own employees specified in note to Note-36 of employee expenses and Rs. 26.98 Crore on account of Contractual employees specified in note to Note-39 of R&M and A&G Expenses. However the Hon'ble Commission has disallowed entire Rs. 27.77 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.

- 3.28.42 The impact on account of minimum wages during FY 2017-18 along with carrying cost is tabulated below:

Table 3B 2: Impact of minimum wages along with carrying cost

(Rs. Cr.)		
S. No	Particulars	FY 18
1	Op. balance	0

2	Additions	28
3	Cl. Balance	28
4	Average	14
5	Rate of interest	14.00%
6	Carrying cost	2
7	Grand Cl. Balance	30

PRAYER(S):

- 3.28.43 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-2.2: GST Charges

- 3.28.44 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 statements shall not form part of Normative O&M expenses.**"*
(Emphasis added)

- 3.28.45 The GST Act was notified on 01.07.2017 and as per Section 2(10) thereof, 01.07.2017 constitutes the 'appointed date' for the said legislation. In other words, liability to pay GST commenced w.e.f. 01.07.2017. From 01.07.2017, for the services covered under the GST Act, the Petitioner is, by law, required to pay GST as opposed to earlier Service Tax.
- 3.28.46 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. The 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:

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."

3.28.47 As evident from above, the O&M Expenses from FY 2011-12 to FY 2015-16 have 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.

3.28.48 Accordingly the Petitioner in its Petition for True-up of FY 2017-18 and ARR and Tariff for FY 2019-20 at Para-3.13.8 to 3.13.11 claimed the increase in expenses on account of change in tax regime from service tax to GST.

3.28.49 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."

3.28.50 As regards aforesaid, the Petitioner would like to submit the following:

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)*

3.28.51 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.

3.28.52 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.

3.28.53 There is considerable difference between GST and VAT (system under which taxes were levied). The differences between GST and VAT are tabulated below:

Table 3B 3: Comparison between VAT and GST

Parameter	VAT	GST
Structure	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.
Basis of Levy	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.
Registration	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.
Validation	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

Parameter	VAT	GST
		utilisation.
Filing of Returns and Collection of Tax	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.
Service Tax	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.
State VAT	Under VAT, all commodities apart from those exempt are taxed.	Under GST, the State GST subsumes this tax.
Excise Duty	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.
Basic Customs Duty	Under VAT, the centre charges tax on imports under a separate act.	No change.
Special Additional Duty	Under Vat, the centre charges tax on imports separately.	Under GST, this duty is subsumed by State GST.
Entry Tax	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.
Central Sales Tax	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.
Tax on Export of Commodities and Services	Under VAT, this tax is exempt.	No change.

Parameter	VAT	GST
Tax on Inter-State Transfer of Commodities to Agent or Branch	Under VAT, this tax is exempt against Form F.	Under GST, this tax is levied but dealers will have access to full credit.
Cross Set-Off of Levy	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.
Tax on Transfer of Commodities to Agent or Branch	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.
Disallowance of credit on certain items	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.
Disallowance of inputs or input services utilised in exempted commodities or services	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.
Cascading Effect	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.
Threshold limits for levy of tax	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.
Levy of tax on NGOs and government bodies	Under VAT, certain government bodies, non-profit organisations and PSUs will be covered.	No changes.
Exemptions	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.

3.28.54 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."

3.28.55 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.

3.28.56 The increase due to GST during FY 2017-18 is tabulated below:

Table 3B 4: Increase due to GST during FY 2017-18

(Rs. Cr.)				
S. No	Particulars	FY 2015-16	FY 2016-17	FY 2017-18

S. No	Particulars	FY 2015-16	FY 2016-17	FY 2017-18
1	Service tax paid	21.2		
2	Esc. Factor		5.61%	5.61%
3	Service tax		22.4	23.7
4	Service tax for 9 months			17.8
5	GST paid during 9 months			32.8
6	Net impact			15.1

3.28.57 The impact on account of increase due to GST during FY 2017-18 along with carrying cost is tabulated below:

Table 3B 5: Impact of increase due to GST along with carrying cost

(Amt 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):

3.28.58 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-2.3: SMS Charges

3.28.59 The Hon'ble Commission vide letter dated 13.01.2016 directed the Petitioner to provide information through SMS 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.”

3.28.60 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-3B.3

3.28.61 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 6: Expenses incurred on account of SMS Charges

(Rs. Cr.)			
S. No	Particulars	FY 2016-17*	FY 2017-18
1	Expenses incurred for providing service of SMS	0.7	1.0

**Expenses related to SMS services is already filed in Review Petition 31 of 2018*

3.28.62 The Hon'ble Commission in its 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 does 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-3.13.12 for FY 2017-18 and Review Petition no. 31 of 2018 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.”

3.28.63 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.

The Petitioner has filed the Review Petition seeking clarification on the above issue and to allow the consequential impact of providing SMS services to the consumers for FY 16-17. 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..."

3.28.64 The claim on account of SMS Charges along with carrying cost is tabulated below:

Table 3B 7: SMS Charges along with carrying cost

(Rs. Cr.)		
S. No	Particulars	FY 18
1	Op. balance	0
2	Additions	1.0
3	Cl. Balance	1.0
4	Average	0.5
5	Rate of interest	14.00%
6	Carrying cost	0.1
7	Grand Cl. Balance	1.1

PRAYER(S):

3.28.65 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 2.4: Cost of Auditor's Certificates:

3.28.66 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)

S. No	Particulars	Petitioner's Submission
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
	Total (In Crores)	3.6

...

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."

3.28.67 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 8: 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	0.17	0.15	0.13	0.14	0.18

3.28.68 The impact along with carrying cost is tabulated below:

Table 3B 9: 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	0.19	0.37	0.57	0.81	1.12
2	Additions	0.17	0.15	0.13	0.14	0.18	
3	Cl. Balance	0.17	0.34	0.50	0.71	0.98	1.12
4	Average	0.09	0.26	0.44	0.64	0.90	1.12
5	Rate of interest	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.01	0.04	0.07	0.09	0.13	0.16
7	Grand Cl. Balance	0.19	0.37	0.57	0.81	1.12	1.27

PRAYER(S):

3.28.69 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 2.5: DSM Charges

- 3.28.70 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 includes undertaking an Energy Audit (Section-14 (i)).
- 3.28.71 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 01.04.2016.
- 3.28.72 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.
- 3.28.73 Further the Bureau of Energy Efficiency vide its letter dated 08.08.2017 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.
- 3.28.74 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.
- 3.28.75 The Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff of FY 2019-20 at Para-3.13.20 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:

“3.387 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.”

3.28.76 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.

3.28.77 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 3B10: Impact of audit fees incurred during FY 2017-18 along with carrying cost

		Amt (Rs.Cr.)
S. No	Particulars	FY 18
1	Op. balance	0
2	Additions	0.11
3	Cl. Balance	0.11
4	Average	0.05
5	Rate of interest	14.00%
6	Carrying cost	0.01
7	Grand Cl. Balance	0.12

PRAYER(S):

3.28.78 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon’ble Commission to allow the impact in the ARR.

3.28.79 The total impact of issues on account of category-2 is tabulated below:

Table 3B11: Total impact issues falling under Category2

S. No	Particulars	Amt(Rs. Cr.)		
		Principal	Carrying Cost	Total
1	Minimum wages	28	2	30
2	GST	15	1	16
3	SMS Charges	1	0.1	1
4	Cost of auditor certificates	1	1	1
5	DSM Charges	0.1	0.01	0.1
6	Sub-total	45	4	48

C. Category 3 - Issues which have attained finality and have been suo-moto reopened:

3.28.80 This category pertains to 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 3.1: Re-opening of debt-equity ratio stipulated in transfer scheme and erroneous net-worth computations:

3.28.81 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 12:Debt-Equity ratio as per Transfer Scheme

S. No	Particulars	Amount (Rs. Cr.)	Percentage
1	GFA	360	
2	Accumulated Depreciation	70	19%
3	Equity	116	32%
4	Debt	174	48%

3.28.82 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.

3.28.83 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.);

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)

- 3.28.84 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 23, 2008.

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)

- 3.28.85 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 48% to 32%.

- 3.28.86 Further the Hon'ble APTEL vide Judgment dated November 28, 2014 (Appeal No. 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 RoCE payable to the Appellant. The issue is decided in favour of the Appellant.”

- 3.28.87 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.

Based on the above discussionsBased on the above, the funding of capitalisation is tabulated below:

Table 3B 13: Means of finance for Policy Direction Period (Rs. Crore)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Capex	56	88	414	299	209
2	Closing sundry creditors				104	85
3	Financing Required	52	88	414	403	295
4	Means of finance					
a	Consumer contribution	8	14	34	17	21
b	APDRP Grants		16			
c	APDRP Loans		16			
d	Depreciation	8	9	9	38	43
e	Internal accruals	-102	-28	28	-20	112
f	Loan	25	23	227	231	194
g	Sundry creditors			104	85	
5	Gap left in funding	113	38	12	51	-76

Table 3B 14: 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	133	156	98	103	50	23	140
B	Working Capital	42	6	-4	-10	-1	0	54
C	Total	175	163	94	94	50	23	194
D	Means of Finance							
1	Consumer contribution	2	10	23	62	11	9	27
2	Equity	-121	122	10	220	173	-235	239
3	Debt	-125	499	215	-84	-272	240	128
4	Total	-244	631	248	197	-88	15	394

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
E	Gap left in funding	419	-468	-154	-104	138	9	-200

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.

- 3.28.88 Accordingly, the Petitioner in its Petition for True-up of FY 2016-17 and ARR and Tariff for FY 2018-19 raised the said issue but the Hon'ble Commission in Tariff Order dated 28.03.2018 directed the Petitioner as under:

"3.319 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."

- 3.28.89 Accordingly, the Petitioner in its Petition for Truing-up of FY 2017-18 and ARR and Tariff for FY 2019-20 at Para-3.27.362 to Para-3.27.369 raised this issue and also submitted detailed computation of Debt-equity and RoCE. 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:

"3.199 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."

- 3.28.90 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. Copy of Statutory advice enclosed as **Annexure-3B.4**.
- 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.

3.28.91 The impact on account of correction of aforesaid error has been considered

along with impact of other capex related issues at Para-3.28.178 to 3.28.237 of the Petition.

PRAYER(S):

- 3.28.92 Without prejudice to the contentions in the pending Appeal(s), the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.
- 3.28.93 The total impact of issues on account of category-3 is considered with other CAPEX related issue.

D. Claims on account of arithmetical/computational errors and omissions sought in Review Petitions

- 3.28.94 There are certain arithmetical/computational errors, apparent errors and omissions in the Tariff Order dated 28.03.2018 and 31.07.2019 which requires reconsideration by the Hon'ble Commission.
- 3.28.95 The Petitioner had filed a Petition 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 31.07.2019 on such issues.
- 3.28.96 All submissions with respect to the issues raised therein have already been submitted before the Hon'ble Commission and are not reiterated in the Petition for the sake of brevity.
- 3.28.97 Accordingly, the impact on account of such issues raised in Review Petitions is tabulated below:

**Table 3B 15 Impact on account of issues raised in Review Petitions
Review Petition No. 31 of 2018-Tariff Order dated 28.03.2018**

S. No	Particulars	P	CC	Total
A	Review Petition No. 31 of 2018-Tariff Order dated 28.03.2018			
1	Omission in considering impact of issues allowed by the Hon'ble Commission in Order dated 22.03.2017 passed in Review Petition No. 66/2017			
a	<i>Error in allowing the amount of Depreciation on Consumer contribution for capital works considered as NTI during FY 11-12 to FY 13-14</i>	15	17	32
b	<i>Error in consideration of Rebate from DTL as NTI during FY 2013-14</i>	10	8	18
2	Omission to allow UI Interest considered as part of NTI for FY 2009-10 to FY 2011-12	42	84	126
3	Error in consideration of impact on account of R&M and A&G expenses for FY 2004-05 to FY 2006-07	28	109	136
4	Error in non consideration of impact on account of change in service tax for FY 2012-13 to FY 2016-17	41	20	61
5	Error in consideration of write-back miscellaneous provisions as part of NTI for FY 2007-08 to FY 2016-17	218	407	624

S. No	Particulars	P	CC	Total
6	Omission to deduct the amount of LPSC from Revenue for FY 2008-09	10	23	33
7	Error in consideration of impact on account of Merit Order Dispatch for FY 2013-14	54	46	100
8	Omission to withdraw / recall the Efficiency Factor for FY2015-16	17	7	23
9	Error in computation of Opening RRB for FY 2016-17	3	1	4
10	Error in rate of carrying cost while computing the impact of APTEL Judgments and Review Order in Table 98	7	2	9
11	Error in Revenue Billed for computation of AT&C loss for FY 2016-17	2	1	3
12	Omission to allow actual expenses incurred on account of Statutory levies while truing up for FY 2016-17	15	3	18
13	Error in allowing SVRS Pension amount as part of O&M costs for FY 2016-17	1	0	1
14	Sub-total	461	726	1187

Review Petition-Tariff Order dated 31.07.2019

S. No	Particulars	P	CC	Total
B	Review Petition-Tariff Order dated 31.07.2019			
1	Carrying cost on Anta, Auraiya and Dadri	0	69	69
2	Sales on account of Net Metering	0	0	0
3	Erroneous computation of deemed revenue in excess of 1% cap on billing adjustments during FY 2017-18	4	1	4
4	Advance Against Depreciation*	286	386	671
5	Sub-total	290	456	745

E. Claims on account of directions of Hon'ble APTEL given in various Judgements

3.28.98 This category deals with the issues which have been decided by the Hon'ble APTEL 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 APTEL on which the Petitioner is basing the present set of claims is set out hereunder:

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. 178 of 2012)	To conduct physical verification of assets and complete exercise within 6 months
		September 30, 2019	Issue of capitalisation is required to be re-examined by the Commission in consideration of

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
		(Appeal No. 246 of 2014)	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. 178 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. 62 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. 178 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. 62 of 2012)	To consider repayment of loans while computing WACC
		March 2, 2015 (Appeal No. 178 of 2012)	To consider repayment of loans while computing WACC
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. 62 of 2012)	Implement the directions in letter and spirit
		March 2, 2015 (Appeal No. 178 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. 111 of 2014)	Matter remanded giving liberty to the Appellant's/ 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	Direct to follow instructions given in Judgment

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
		(Appeal No. 104 of 2017)	dated February 23, 2015
7	Truing-up of FY 2007-08-First 11 months	July 12, 2011 (Appeal No. 147 of 2009)	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1.
		November 28, 2014 (Appeal No. 62 of 2012)	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1.
		March 2, 2015 (Appeal No. 178 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. 62 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. 62 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. 178 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. 178 of 2012)	To allow the impact on account of arbitrary determination of efficiency factor for FY 2010-11
13	Incorrect revision of R&M Expenses by revising "K" factor	March 2, 2015 (Appeal No. 178 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. 62 of 2012)	To allow the carrying cost in debt-equity ratio of 70:30 by considering prime lending rates
		March 2, 2015 (Appeal No. 178 of 2012)	To allow the carrying cost in debt-equity ratio of 70:30 by considering market lending rates

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
		of 2012)	
15	Financing cost of LPSC based on SBI PLR	March 2, 2015 (Appeal No. 178 of 2012)	To allow LPSC at prevalent market lending rates
16	Own Consumption-reversals	March 2, 2015 (Appeal No. 178 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. 178 of 2012)	To allow UI charges incurred above 49.5 Hz in FY 2010-11

Issue-5.1: To allow the capitalisation on account of non-availability of EIC:

ISSUE IN BRIEF:

3.28.99 The grievance of the Petitioner is that the Hon'ble Commission has not implemented the directions of the Hon'ble APTEL, as contained in its judgment dated October 6, 2009 in Appeal No. 36 of 2008 and Judgment dated March 2, 2105 in Appeal No. 178 of 2012 by not allowing capitalisation on account of non-availability of Electrical Inspector Certificate. The Hon'ble Commission failed to implement the direction of the Hon'ble APTEL 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. This is despite the fact that these assets are already in place and have been serving the consumers of Delhi for providing 24x7 uninterruptable power supply, as also noted by the Hon'ble APTEL in its judgments.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No.	Date	Event
1.	06.10.2009 and 30.10.2009	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 APTEL 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 th day of submission of the said application for EIC. Pertinently, this judgment pertained to the period FY 2004-05 to FY 2006-07.
2.	02.12.2009	Subsequent to the Appeal 36/37 Judgment, the Petitioner made

S.No.	Date	Event
		a claim in that regard before the Hon'ble Commission by way of a separate petition filed on 02.12.2009.
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 20.11.2013 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 02.12.2009. In the said order, the Hon'ble Commission <i>inter alia</i> held that the issues raised by the Petitioner in its Petition dated 02.12.2009 have already been raised in the proceedings before the Hon'ble APTEL, 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 & 231 /2014, which is part of the batch of matters being led by Appeal 235 & 236 of 2014, and the same is presently pending before the Hon'ble APTEL.</p>
6.	02.03.2015	By its Appeal 178 Judgment, the Hon'ble APTEL 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 the Hon'ble Tribunal in the Appeal 36/37 Judgment within 6 months of the date of the said judgment.
7.	20.01.2015	<p>In point of fact, the EI Certificates for the assets capitalized in FY 2004-05 and FY 2005-06 have in fact been furnished to the Respondent Commission under cover of various letters, between 5.12.2008 to 23.05.2011.</p> <p><i>Vide</i> its letter dated 20.01.2015, the Petitioner once again submitted the EICertificates 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 APTEL 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 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 the Hon'ble APTEL's judgments.
10.	26.07.2017	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 13 box files.
13.	26.02.2018	The Petitioner, <i>vide</i> its letter, submitted schemewise details of capitalization along with copy of EIC received.
14.	28.03.2018	The Hon'ble Commission, in 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 was further stated by the Hon'ble Commission that 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 regarding the issue.

S.No.	Date	Event
15.	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.
16.	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:

3.28.100 The Hon'ble Commission in the Tariff Order dated February 23, 2008 disallowed capitalisation of Rs. 300 crores, pending clearance for the capital schemes by the Electrical Inspector for the FY 2004-05 to FY 2006-07. The capital assets have been put to use by the Company, and are servicing more than 16 lakh consumers. However, since FY 2004-05 the Company has been deprived of the costs of such expenditure.

3.28.101 The Hon'ble APTEL 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.."

3.28.102 The said decision was upheld in the judgment dated 30.10.2009 passed by the Hon'ble APTEL in Appeal 37 of 2008 (BYPL's appeal against Tariff Order dated 23.02.2008).

3.28.103 The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 of 2012 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)*

3.28.104 As regards the aforesaid issue, the Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

*"3.15 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)*

3.28.105 However the Hon'ble Commission in Tariff Order dated March 28, 2018 stated as under:

*"3.43 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)*

3.28.106 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 3.B.1: 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

S.No	Date	Event
		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 26.07.2017 and 26.02.2018.

3.28.107 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 present Tariff Order, the Hon'ble Commission has once again taken an untenable plea that it is in the process of conducting additional physical verification of assets to deny the Petitioner is legitimate claims. Pertinently, the Hon'ble Tribunal had, in its Judgment dated March 2, 2015 (Appeal 178 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 the 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. 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 entitlement 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.

3.28.108 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 including letter dated 26.02.2018.
- ii. 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.
- iii. The aforesaid submissions are made without prejudice to the stand of the Petitioner in RP No. 17 of 2015 in Appeal No. 178 of 2012, wherein it is *inter alia* contended that the physical verification directed in the Appeal 178 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.

- 3.28.109 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.

- 3.28.110 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:

"3.391 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.0.28 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."

- 3.28.111 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):

- 3.28.112 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.
- 3.28.113 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 Para-3.27.179 to Para-3.1.254.

Issue-5.2: To allow the capex and capitalisation pertaining to REL Purchases:**ISSUE IN BRIEF:**

3.28.114 The Petitioner submits that the Hon'ble Commission has failed to implement directions of the Hon'ble APTEL as contained in its judgments dated October 6, 2009 in Appeal No. 36 of 2008 and Judgment dated March 2, 2015 in Appeal 178 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 APTEL to this effect.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	23.02.2008	The Hon'ble Commission in its Tariff Order dated 23.02.2008 disallowed 37% of the capital expenditure, i.e., Rs. 171 Crore out of Rs. 365 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	Aggrieved by the MYT Order, the Petitioner challenged the issue before the Hon'ble APTEL in Appeal No. 36/37 of 2008. The Hon'ble APTEL in its Appeal 36 Judgment ruled as under: <i>"57) The NDPL submitted its records before the Commission simultaneously with the appellant during the tariff hearing of the relevant year. <u>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.</u> 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</i>

S.No	Date	Event
		<p><i>account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vender rating etc. <u>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.</u></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 APTEL 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 APTEL in the Appeal 36 Judgment.
5.	26.08.2011	The Hon'ble Commission did not implement the directions of this Hon'ble APTEL 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 the Hon'ble APTEL. The Petitioner filed Appeal No. 178 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 the Hon'ble Tribunal even in its Tariff Order dated 31.07.2013. The Petitioner has filed Appeal No. 265 of 2013, challenging the said Tariff Order dated 31.07.2013, which is presently pending before the Hon'ble APTEL.
8.	23.07.2014	The Hon'ble Commission once again failed to implement the directions of the Hon'ble APTEL 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.

S.No	Date	Event
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 APTEL in Appeal No. 178 of 2012. The Hon'ble APTEL pronounced the Appeal 178 Judgment on 02.03.2015. In the said Judgment, the Hon'ble APTEL 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. 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."</i></p> <p>(Emphasis supplied)</p>
13.	09.03.2015	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).
14.	11.03.2015	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

S.No	Date	Event
		based on which the capital expenditure was approved by the Hon'ble Commission. The Petitioner, vide letter number RA/ BYPL/2015-16/1127 dated 17.03.2015 informed the Hon'ble Commission about the same and requested to provide another opportunity for inspection of files relevant for the purpose of comparison.
15.	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 APTEL in its Appeal 177 Judgment. The Petitioner once again requested for another opportunity to inspect the relevant documents, as sought in Petition 50/ 2007.
16.	17.03.2015	The Hon'ble Commission conducted a meeting on 17.03.2015 to discuss the implementation of Hon'ble APTEL'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.
17.	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.
18.	23.04.2015	The Petitioner duly and promptly visited the office of the Respondent Commission at given time to inspect the documents. The documents shown during 2 nd inspection on 23.04.2015 contained <u>only the relevant covering letters</u> referring to Purchase Orders, Invoices, BOQs but not the copies of Purchase Orders, Invoices, BOQs which are actually required for comparison with TPDDL (NDPL).
19.	05.06.2015	The Petitioner, vide letter number RA/BYPL/2015-16/71 dated 05.06.2015 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

S.No	Date	Event
		accordance with Conduct of Business Regulations, 2001.
20.	29.09.2015	<p>The Hon'ble Commission did not respond to the Petitioner's letter dated 05.06.2015. Instead, in the Tariff Order dated 29.09.2015, the Hon'ble Commission stated as under:</p> <p><i>"3.10 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 available in the office of the Commission 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></p> <p>(Emphasis supplied)</p>
21.	7.03.2016	<p>The Appeal 178 Judgment directed the necessary information to be provided within one month thereof. Even after one year of the Appeal 178 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 178 Judgment. Interestingly, these were the same documents which had been offered for inspection.</p>
22.	04.07.2016	<p>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.</p>
23.	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 the Hon'ble Tribunal in the Appeal 178 Judgment. The Hon'ble Commission has held as under:</p> <p><i>"3.23 The Commission has not considered this issue in this</i></p>

S.No	Date	Event
		<i>Tariff Order because the Petitioner has failed to comply with the directions of the Hon'ble APTEL in Appeal No. 178 of 2012. This aspect has also been submitted before the Hon'ble APTEL in Appeal No. 290 of 2015."</i>
24.	28.03.2018	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 to the Commission by the consultants for examination and further deliberation for taking a final view regarding the issue.
25.	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:

3.28.115 The Hon'ble Commission in Tariff Order dated February 23, 2008 disallowed capital expenditure of Rs. 170.84 crores, since the goods were purchased by the Petitioner from REL for Rs. 364.87 crore during FY 2004-05 & FY 2005-06. The goods purchased have been put to use by the Petitioner, and are servicing more than 16 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 16: 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	6.37	41.08	65.92	57.47	6.37

3.28.116 The Hon'ble APTEL 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."

3.28.117 The Petitioner vide its letter dated September 13, 2013 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 APTEL. 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.

3.28.118 Based on the information as obtained from the market sources, the Petitioner furnished documents which demonstrate that out of Rs. 364.87 cr., being the value of total goods purchased from REL, the price paid for goods worth Rs. 169.22 cr. i.e. ~ 46% were lower than the price paid by TPDDL.

3.28.119 The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 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)*

3.28.120 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.

- 3.28.121 The Petitioner vide letter number RA/ BYPL/2015-16/ 71 dated June 05, 2015 informed the Hon'ble Commission about the incomplete documents shown at the time of inspection on April 23, 2015.
- 3.28.122 The Hon'ble Commission vide its letter dated March 7, 2016 only provided to BRPL 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 178 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 the Hon'ble Tribunal in the Appeal 178 Judgment by its letter dated March 7, 2016. The Appeal 178 Judgment directed the necessary information to be provided within one month thereof.
- 3.28.123 The Petitioner vide its letter dated July 4, 2016 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 the 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 the Hon'ble Tribunal.
- 3.28.124 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 the Hon'ble Tribunal in the Appeal 178 Judgment. The Hon'ble Commission has held as under:

“3.23 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. 178 of 2012. This aspect has also been submitted before the Hon’ble APTEL in Appeal No. 297 of 2015.”

- 3.28.125 Further the Hon’ble Commission in Tariff Order dated March 28, 2018 held as under:

*“3.43 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)*

- 3.28.126 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.”

3.28.127 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.

3.28.128 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)*

3.28.129 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.

3.28.130 As regards above, it is respectfully submitted that the aforesaid direction of the Hon'ble Tribunal was a matter of limited remand and the Hon'ble Commission was directed to provide the relevant data for comparison of prices. However the Hon'ble Commission instead of providing the data has suo-moto linked the issue of disallowance of REL Purchases with physical verification of assets.

PRAYER(S):

3.28.131 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.

3.28.132 Without prejudice to the above contentions in the Appeal(s), the implementation of the aforesaid direction shall translate to increase in RoE, Interest and 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 Para-3.27.178 to Para-3.27.237.

Issue-5.3: True-up of rate of interest on loans:

ISSUE IN BRIEF:

3.28.133 The Petitioner submits that the Hon'ble Commission has not implemented the directions of the Hon'ble APTEL in Judgment dated November 28, 2014 in Appeal No. 62 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.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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. 36/37 of 2008. The Hon'ble APTEL 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"</i>

S.No	Date	Event
		<i>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 62 of 2012 filed against Tariff Order dated 26.08.2011 (1 st 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.
4.	13.07.2012	<p>The Hon'ble Commission vide its Order dated 13.07.2012 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 62 of 2012) with respect to the rate of interest during first control period was pending adjudication before the Hon'ble Tribunal which would lead to revision in cost of debt approved from FY 2012-13 to FY 2014-15. As mentioned hereinbelow, in the judgment in Appeal Nos. 61/62 of 2012 pronounced on November 28,</p>

S.No	Date	Event
		<p>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.	11.07.2013	The Petitioner vide letter number RA/BYPL/2013-14/470 dated 11.07.2013 submitted the informations in support of the interest rates of loans availed from FY 2007-08 to FY 2011-12.
6.	01.09.2014	The Petitioner vide letter number RA/BYPL/2014-15/897 dated 01.09.2014 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.
7.	28.11.2014	<p>The Hon'ble APTEL in its Appeal 62 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 224avour of the Appellants."</i></p> <p>(Emphasis supplied)</p>
8.	19.12.2014	Subsequent to the pronouncement of the Appeal 62 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 APTEL in the Appeal 62 Judgment for the first control period.
9.	10.02.2015	<p>Meanwhile, on the issue of rate of interest for working capital loans, the Hon'ble APTEL vide its Appeal 171 Judgment ruled as under:</p> <p><i>"13.4 We find that the State Commission has considered</i></p>

S.No	Date	Event
		<p>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></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>On the issue of rate of interest for long term debt, the Hon'ble APTEL in the said Judgment ruled as under:</p> <p><u>"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%. 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></p> <p>[...]</p> <p><u>14.7.... The Appellant is now making submissions which they should have presented before the State Commission</u></p>

S.No	Date	Event
		<i>at the time of the submissions of the petition and the proceedings before the Commission. 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.”</i> (Emphasis supplied)
10.	10.06.2015	The Petitioner vide letter number RA/BYPL/2015-16/80 dated 10.06.2015 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 APTEL in the Appeal 62 Judgment, will tantamount to revision in interest rates of loans during second control period.
11.	06.07.2015	The Petitioner vide its letter number RA/BYPL/2015-16/101 dated 06.07.2015 submitted the audited interest statement for FY 2013-14.
12.	29.09.2015	Despite the Appeal 62 Judgment of the Hon’ble APTEL, by way of the Tariff Order dated 29.09.2015, the Hon’ble Commission neither revised 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 and 28.03.2018 simply relied upon its findings in the Tariff Order dated 29.09.2015.

DETAILED SUBMISSIONS:

3.28.134 The Hon’ble Commission in Tariff Order dated February 23, 2008 ruled as under:

“4.224 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.”

3.28.135 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 the Hon’ble Tribunal in Appeal 62 of 2012.

3.28.136 The Hon’ble APTEL 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)*

3.28.137 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 Technical validation session held on July 21, 2017. The Petitioner vide letter dated July 26, 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:

“3.28 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)*

- 3.28.138 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:

*"3.51 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.**"(Emphasis bold and underlined)*

- 3.28.139 The Petitioner requests the Hon'ble Commission to implement the directions of Hon'ble Tribunal and its own observations at Para-4.224 of Tariff Order dated February 23, 2008 in true letter and spirit.
- 3.28.140 Further the Hon'ble APTEL 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.”

3.28.141 The Petitioner vide its letter dated June 10, 2015 requested the Hon’ble Commission to revise the rate of interest for the Second Control Period 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 cost 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 9.54%, 9.89% and 10.17% 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 the Hon’ble Tribunal in Judgment dated 28.11.2014 (Appeal No. 62 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 APTEL 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 approved 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 correct data.

3.28.142 The Petitioner craves leave to refer to and rely upon the analysis of the interest rates of Scheduled Commercial Banks placed before the Hon'ble Commission in the previous tariff proceedings.

3.28.143 The Petitioner has considered the actual rates of interest for the purpose of computation of RoCE from FY 2007-08 to FY 2016-17 which are as under:

Table 3B 17: Rate of Interest for ROCE computation FY 2007-08 to FY 2016-17

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
Rate of Interest	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.16%	13.84%

PRAYER(S):

3.28.144 Therefore, 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 62 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 Para-3.27.178 to Para-3.27.237.

Issue-5.4: Repayment of loans to be considered while computing WACC:

ISSUE IN BRIEF:

3.28.145 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 APTEL vide its Judgment in Appeal No. 62 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 a methodology whereby the Hon'ble Commission erred in computing the actual available equity.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event																
1.	20.11.2001	<p>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:</p> <p style="text-align: center;">TABLE – 1</p> <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>290</td><td></td></tr><tr><td>2</td><td>Equity</td><td>116</td><td>40%</td></tr><tr><td>3</td><td>Debt</td><td>174</td><td>60%</td></tr></table> <p>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.</p> <p>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</p>	S. No	Particulars	Amount (Rs. Cr.)	%	1	Net Fixed Assets	290		2	Equity	116	40%	3	Debt	174	60%
S. No	Particulars	Amount (Rs. Cr.)	%															
1	Net Fixed Assets	290																
2	Equity	116	40%															
3	Debt	174	60%															

S.No	Date	Event
		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.
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 the working capital funding entirely through debt (in paras 4.221- 4.223 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	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).
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 3.162, Table 53 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>

S.No	Date	Event																														
		<div>TABLE – 2</div> <div>(Rs. Cr.)</div> <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>39.91</td><td>44.19</td><td>22.95</td><td>12.81</td><td>13.65</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>93.31</td><td>103.11</td><td>53.54</td><td>29.89</td><td>31.84</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	39.91	44.19	22.95	12.81	13.65	Internal Accruals (%)	30%	30%	30%	30%	30%	Loan	93.31	103.11	53.54	29.89	31.84	Loan (%)	70%	70%	70%	70%	70%
Particulars	FY 08	FY 09	FY 10	FY 11	FY 12																											
Internal Accruals	39.91	44.19	22.95	12.81	13.65																											
Internal Accruals (%)	30%	30%	30%	30%	30%																											
Loan	93.31	103.11	53.54	29.89	31.84																											
Loan (%)	70%	70%	70%	70%	70%																											
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 hence reducing the return on equity allowable to the Petitioner.</p> <p>By its judgment in the said appeal (“Appeal 62 Judgment”)cthe 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 62 Judgment contained a limited remand to the Hon’ble Commission – “.. to re-evaluate the WACC considering the repayment of loans during the period and recomputed RoCE payable to the Appellant...”</p>																														
8.	22.06.2015	<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/BYPL/2015-16/88 dated 22.06.2015.</p> <p>This letter was not acknowledged by the Hon’ble Commission in</p>																														

S.No	Date	Event
		Table 1.1 of its Tariff Order, which gives the list of letters supposedly sent to the Hon'ble Commission.
9.	29.09.2015	<p>The Tariff Order dated 29.09.2015, (paras 3.31-3.35) 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 3.31) held that it had already clarified the said issue in the Tariff Order dated 29.09.2015 (Para nos. 3.32 to 3.35) and the matter was therefore not deliberated as it is <i>sub-judice</i> before the Hon'ble APTEL in Appeal No. 290/ 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. 3.32 to 3.35 and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon'ble APTEL in Appeal No. 290/2015".</i></p>
11.	31.10.2017	<p>The Hon'ble Commission had filed a Clarificatory Application in Appeal 178 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	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

S.No	Date	Event
		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.

DETAILED SUBMISSIONS:

3.28.146 As per DERC Tariff Regulations, 2007 and DERC Tariff Regulations, 2011, depreciation shall be considered towards repayment of loans.

3.28.147 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.

3.28.148 The issue was challenged before Hon'ble APTEL in Appeal 62 of 2012. The Hon'ble APTEL in the Appeal 62 Judgment dated November 28, 2014 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."

3.28.149 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.

3.28.150 The Petitioner in its Petition for True-up of FY 2016-17 and ARR and Tariff of 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:

"3.39 This matter is sub judice before Hon'ble Supreme Court of India and the same has also been clarified by Hon'ble APTEL vide 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."

3.28.151 As regards aforesaid, it is respectfully submitted that there is no bar on the Hon'ble Commission to implement the directions of Hon'ble APTEL in Judgment dated November 28, 2014 (Appeal 62 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 62 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.

3.28.152 It is respectfully submitted that the remand in terms of Judgment dated November 28, 2014 (Appeal 62 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. JagatMohini 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.

3.28.153 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.

PRAYER(S):

3.28.154 Therefore, 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 62 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 Para-3.27.719 to Para-3.27.252.

Issue-5.5: Financing of Working Capital in debt-equity ratio of 70:30:

ISSUE IN BRIEF:

3.28.155 This issue pertains to the non-implementation of the Judgment of the Hon’ble APTEL 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.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	31.05.2011	The Hon'ble APTEL directed Hon'ble Commission to compute the WACC by considering working capital to be funded in the debt equity ratio of 70:30
2.	31.07.2013 & 23.07.2014	In the Tariff Order dated 31.07.2013 and Tariff Order dated 23.07.2014, the Hon'ble Commission did not implement the directions of the Hon'ble APTEL.
3.	28.11.2014	The Hon'ble APTEL upheld its directions given in judgment dated 31.05.2011 and directed the Hon'ble Commission to implement our directions in letter and spirit.
4.	29.09.2015	The Hon'ble Commission in its Tariff Order dated 29.09.2015 purported to implement the directions of Hon'ble APTEL. However the Hon'ble Commission instead of implementing the directions of Hon'ble APTEL has chosen to allow the funding of working capital based on the formulae of net-worth as which is contrary to the directions of the Hon'ble APTEL.
5.	31.07.2019	The Hon'ble Commission in Tariff Order dated 31.07.2019 in para nos. 3.41 & 3.42 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:

3.28.156 The Hon'ble APTEL 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."

3.28.157 In view of the directions of the Hon'ble APTEL, 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 62 of 2012.

3.28.158 The Hon'ble APTEL once again in its Judgment dated November 28, 2014 (Appeal 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."

3.28.159 The Petitioner in its Petition for True-up of FY 2016-17 and ARR and Tariff of 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:

"3.33 The Commission has already clarified this issue in Tariff Order dtd. 29/09/2015 in para nos. 3.22 to 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.

3.34 Further, it is clarified that the Commission has implemented its MYT Regulations, 2007 & 2011 and directions of Hon'ble APTEL in letter and spirit. The formula specified in MYT Regulations, 2007 & 2011 does not provide opening Working Capital requirement to be part of opening RRB instead for the 1st year of the Control period change in WC shall be taken as the normative working capital requirement of the 1st year."

3.28.160 The Petitioner respectfully submits that there is no stay on the operation of the Judgment of the Hon'ble APTEL 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):

3.28.161 In these circumstances, it is respectfully submitted that without prejudice to the contentions in the Appeal, the Hon'ble Commission may be pleased to allow the impact on account of the said issue. The implementation of the aforesaid direction shall translate to revision in WACC and hence the 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 Para-3.27.179 to Para-3.257.

Issue-5.6: Re-casting of means of finance based on actual consumer contribution capitalised:

ISSUE IN BRIEF:

3.28.162 This issue pertains to the non-implementation of the Judgment of the Hon'ble APTEL 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.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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 the 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>
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</p>

S.No	Date	Event
		<p>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"> <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> <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> <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>
4.	05.01.2010	<p>The Petitioner filed a petition before the 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 the Hon'ble Commission being Petition No. 02/2010. In the said Petition, the Petitioner inter alia sought the following reliefs from the Hon'ble Commission:</p> <ol style="list-style-type: none"> 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.'

S.No	Date	Event
		ii. Suitably modify its letter dated December 9, 2009 and consider implementing the principles prospectively.
5.	11.03.2014	The Hon'ble Commission vide its order dated March 11, 2014 passed in Petition No. 02/2010, was pleased to partly allow the Petition filed by the Petitioner. The Hon'ble Commission vide its Order dated March 11, 2014 was pleased to expunge the remark ' <i>...but also a dishonest one,</i> '. However, the Hon'ble Commission declined to interfere with the directions of the Hon'ble Secretary (DERC) as contained in the letter dated December 3, 2009.
6.	----	<p>Being aggrieved by the order dated March 11, 2014 passed by the 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. 111 of 2014. Briefly put, the Petitioner's case before the Hon'ble Tribunal was that the 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 the Hon'ble Commission to adopt either of the following methodologies:</p> <ul style="list-style-type: none"> i. consider making its directions with respect to the refund of the unspent portion of the consumer contribution, prospective or, ii. in the event the Petitioner was required to refund the unspent consumer contribution since inception, then the 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 the 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.
7.	23.02.2015	The Hon'ble APTEL was pleased to allow the Appeal with the following directions:

S.No	Date	Event
		<p>“18. Summary of findings:</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><i>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 & 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.”</i></p>
8.	23.12.2015	<p>The Hon’ble Commission disposed off the matter related to consumer contribution with the following ruling:</p> <p><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</i></p>

S.No	Date	Event
		<i>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.	17.03.2016	The Petitioner, vide letter number RA/BYPL/2015-16/355 dated 17.03.2016 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.	30.06.2016	The Petitioner, vide letter number RA/BYPL/2016-17/91 dated 30.06.2016 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.	02.2017	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

S.No	Date	Event
		23.02.2015.
14.	08.2017	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. 2 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 of previous years upto FY 2015-16 have already been trued up and it would not be desirable to recast ARR 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."</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:

3.28.163 The Hon'ble Commission in respective TariffOrders 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.

3.28.164 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.

3.28.165 The Petitioner on January 5, 2010 filed a petition bearing No.02/2010 before the Hon'ble Commission requesting to modify its letter dated December 3, 2009 and consider implementing the principles prospectively.

3.28.166 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.

3.28.167 The said issue was challenged by all DISCOMs including the Petitioner, BRPL and TPDDL before Hon'ble APTEL in Appeal 109, 110 and 111 of 2014. The Hon'ble APTEL 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 extend 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...."

3.28.168 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."

3.28.169 With reference to the aforesaid directions, the Petitioner vide its letter dated March 17, 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.

3.28.170 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 were 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.

3.28.171 The Petitioner vide its letter dated June 30, 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).

3.28.172 However the Hon'ble Commission despite the clear instructions of remand by the Hon'ble Tribunal to examine the Accounts of the Petitioner to find out whether the excess amount of consumer 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 the 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.

3.28.173 The issue was challenged before Hon'ble APTEL in Appeal No. 104 of 2017. The Hon'ble APTEL 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 Comission (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."

3.28.174 The aforesaid Judgment was challenged by the Hon'ble Commission before Hon'ble Supreme Court. The Hon'ble Supreme Court vide Judgment dated

October 3, 2017 dismissed the appeal. Therefore, the direction of Hon'ble Tribunal in Judgment dated February 23, 2015 has attained finality. The Order dated 18.06.2018 does not in any way feter the Commission from re-casting the ARR's for the simple reason that the Order dated 18.06.2018 was a *quoram non-judices* since the same had been passed while the Commission was functus officio in a disposed off proceeding.

- 3.28.175 The Hon'ble Commission has issued Tariff Order on 28.03.2018 after the aforesaid Judgment of Hon'ble Supreme Court. However, the means of finance has yet not been re-casted in respective ARRs.

PRAYER(S):

- 3.28.176 Without prejudice to the contentions in the Appeal, the Petitioner once again requests the Hon'ble Commission to re-cast the ARRs of respective years by considering the impact on account of the aforesaid direction.
- 3.28.177 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 paragraphs.

Impact on account of the directions related to capitalisation from FY 02-03 to FY 16-17:

- 3.28.178 The Petitioner has considered the capital expenditure and capitalisation from FY 2002-03 to FY 2016-17 as per the directions of Hon'ble APTEL given in Judgment dated October 6, 2009 (Appeal 36 of 2008) and March 2, 2015 (Appeal 178 of 2012) which is the law as of date. The Hon'ble APTEL 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.”

3.28.179 Also the Hon’ble Commission has tendered an unconditional apology on Affidavit before Hon’ble APTEL 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 APTEL. 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.”

3.28.180 However the implementation of directions of Hon’ble APTEL in various Judgments has not found any place till now in previous Tariff Orders.

3.28.181 Since the implementation of APTEL 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:

3.28.182 The REL Disallowances as considered by the Hon’ble Commission in Tariff

Order dated February 23, 2008 is tabulated below:

Table 3B 18: Year-wise REL Disallowances (Rs. Crore)

S. No	Particulars	FY 05	FY 06	FY 07	FY 08
1	REL Disallowances	6.37	41.08	65.92	57.47

EIC Disallowances:

3.28.183 As regards the issue of allowance of capitalisation based on EI Certificates, the Hon'ble APTEL 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.."

3.28.184 Since the cost incurred on account of capitalisation pertaining to FY 2004-05 to FY 2006-07 is yet to be recovered from over 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.

3.28.185 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.

3.28.186 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. 35 of 2013.

3.28.187 Consequently the Closing GFA as on March 31, 2007 will get revised which is tabulated as under:

Table 3B 19: GFA from FY 2002-03 to FY 2006-07 (Rs. Crore)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Opening GFA	360.0	382.7	461.5	687.2	1,043.9
2	Opening CWIP	-	33.7	42.5	232.5	229.9
3	Investment during Year	56.4*	87.7*	415.8	358.2	282.6
4	Assets capitalised	22.7*	78.8*	225.8	360.8	237.3
5	Closing WIP	33.7	42.5	232.5	229.9	275.2
6	Less: Retirements	-	-	0.1	4.1	1.9
7	Closing GFA	382.7	461.5	687.2	1,043.9	1,279.3

* Includes amount transferred from R&M and A&G expenses to capex(as considered by the Hon'ble Commission in Tariff Order dated 26.03.2003 & 09.06.2004).

Capital Expenditure and Capitalisation from FY 2007-08 to FY 2017-18:

3.28.188 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 have not been considered as it is expected that the Hon'ble Commission will implement Hon'ble APTEL Judgment dated October 6, 2009.

3.28.189 Further, the Petitioner has also considered de-capitalisation of assets from FY 2007-08 to FY 2016-17 provided that the Hon'ble Commission also allows the loss on retirement of assets as per the Petition No. 35 of 2013.

3.28.190 Accordingly the GFA from FY 2007-08 to FY 2017-18 is tabulated below:

Table 3B 20: Gross Fixed Assets from FY 2007-08 to FY 2015-16 (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
A	Opening GFA	1279.3	1526.3	1801.7	1988.8	2196.2	2287.5	2310.8	2451.1	2676.1	2892.1	3109.6
B	Capitalisation during FY	249.2	276.7	188.3	208.9	97.0	69.1	148.6	245.0	261.9	242.2	347.0
C	De-capitalisation	2.3	1.3	1.3	1.4	5.7	45.8	8.2	20.0	45.9	24.7	27.9
D	Closing GFA	1526.3	1801.7	1988.8	2196.2	2287.5	2310.8	2451.1	2676.1	2892.1	3109.6	3428.7
E	Average GFA	1402.8	1664.0	1895.3	2092.5	2241.8	2299.1	2381.0	2563.6	2784.1	3000.9	3269.2

3.28.191 The Petitioner requests the Hon'ble Commission to allow the GFA from FY 2002-03 to FY 2017-18 as submitted in the above tables.

3.28.192 The financial impact on account of revision in capitalisation and other capex related claims discussed in the subsequent paras of this Petition is computed as follows:

Depreciation

3.28.193 During Policy Direction Period, the depreciation was allowed only on opening GFA and not on the additions during the year. The implementation of directions of Hon'ble APTEL 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 21: Revised depreciation for Policy Direction Period (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Opening GFA	360.0	382.7	461.5	687.2	1,043.9
B	Additions	22.7	78.8	225.8	360.8	237.3
C	De-capitalisation	-	-	0.1	4.1	1.9
D	Closing	382.7	461.5	687.2	1,043.9	1,279.3
E	Depreciation@6.69%	18.1*	25.6	30.9	46.0	69.8
F	Depreciation allowed	18.1*	25.6	30.9	43.0	48.6
G	Difference (E-F)	0.0	0.0	0.0	3.0	21.2

**For 9 months*

3.28.194 As regards the depreciation from FY 2007-08 to FY 2017-18, 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 22: 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

S. No	Particulars	Audited Accounts	Regulatory books
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

3.28.195 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 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."

3.28.196 Accordingly, the Petitioner has calculated the depreciation after excluding consumer contribution from the Gross Fixed Assets in accordance with DERC MYT Regulations, 2011 as under:

Table 3B 23: Revised depreciation for the period FY 2007-08 to FY 2017-18 (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
A	Average GFA	1,402.8	1,664.0	1,895.3	2,092.5	2,241.8	2,299.1	2,381.0	2,563.6	2,784.1	3,000.9	3269.2
B	Average Consumer Contribution and Grants	29.4	41.3	59.7	99.9	134.1	143.8	162.0	188.4	209.3	226.4	261.1

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
C	Average assets net of consumer contribution & Grants	1,373.4	1,622.7	1,835.6	1,992.6	2,107.8	2,155.4	2,218.9	2,375.2	2,574.9	2,774.5	3008.1
D	Average rate of depreciation*	3.89%	3.86%	3.83%	3.81%	3.81%	3.81%	3.80%	3.80%	3.79%	3.96%	5.23%
E	Depreciation	53.4	62.7	70.3	75.9	80.3	82.0	84.4	90.3	97.6	109.8	157.5
F	Depreciation allowed	51.7	43.6	52.0	57.7	62.1	53.9	75.0	74.1	81.7	95.0	136.8
G	Difference (E-F)	1.7	19.1	18.3	18.2	18.2	28.1	9.3	16.2	15.9	14.8	20.7

*computed in terms of MYT Regulations 2007 and 2011

Table 3B 24: Cumulative depreciation upto FY 2017-18 (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
A	Opening balance of cumulative depreciation	196.4	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6	893.2	1003.0
B	Additions during the year	53.4	62.7	70.3	75.9	80.3	82.0	84.4	90.3	97.6	109.8	157.5
C	Closing balance of cumulative depreciation	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6	893.2	1003.0	1160.5

Means of finance:

3.28.197 The Petitioner has considered the funding of capitalisation from FY 2002-03 to FY 2016-17 in debt-equity ratio of 70:30 after deducting actual consumer

contribution capitalised from FY 2002-03 to FY 2016-17 (unspent consumer contribution not considered) in terms of Hon'ble APTEL directions in Judgment dated February 23, 2015.

a) Funding of capital expenditure from FY 2002-03 to FY 2006-07:

- 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 25: Funding of capex from FY 03 to FY 07 approved by the Commission in Tariff Order dated February 23, 2008 (Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Capital Expenditure	56	88	414	299	209
B	Closing value of sundry creditors				104	85
C	Financing Required	52	88	414	403	295
	Funding					
D	Consumer Contribution	8	14	34	17	21
E	APDRP Grants		16			
F	APDRP Loans		16			
G	Depreciation	8	9	9	38	44
H	Internal accruals	11	10	40	31	36
I	Loan	25	23	227	231	194
J	Closing value of sundry creditors			104	85	
K	Total	52	88	414	403	295

- 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.

- In case of EI, only capitalisation was disallowed. However in case of REL Purchase, both capital expenditure and capitalisation was disallowed.
- As regards the consumer contribution utilised for means of finance, it is humbly submitted that the amount of consumer consumer contribution received during the year was utilised towards the funding of capex. Despite that the Hon'ble Commission vide its Order dated March 11, 2014 directed the Discoms to refund the unutilised consumer contribution to the respective consumers along with interest @ 12%. Aggrieved by the said Order, the Petitioner filed an Appeal before Hon'ble APTEL wherein the Hon'ble APTEL vide judgment February 23, 2015 remanded the matter back to the Hon'ble Commission giving liberty to the Appellant 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. The Petitioner has already submitted the data pertaining to consumers contribution for capital works upto FY 2016-17 vide its letter dated Jule 08, 2018. Accordingly, the Petitioner has considered the amount of consumer contribution for FY 2002-03 to FY 2016-17 as under:

Table 3B 26: Average Consumer contribution during FY 03 to FY 17 (Rs. Crore)

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
Opening	0	1	4	9	18	32	55	113	123	132	159	185	201	219
Capitalised during the year	1	3	5	9	15	22	58	10	9	27	26	16	18	51
Closing	1	4	9	18	32	55	113	123	132	159	185	201	219	271
Average	1	2	6	13	25	43	84	118	128	146	172	193	210	245

- The Petitioner has received APDRP grant of Rs. 16.22 Crores in FY 2003-04.

- 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 27: Revised Utilisation of depreciation from FY 03 to FY 07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Depreciation Available for the year	18.1	25.6	30.9	46.0	69.8
1	<i>Utilised for repayment of loan</i>			2.5	4.8	5.2
2	<i>Utilised for working capital requirement</i>	10.1	14.4	17.3		
3	<i>Utilised for Capital Investment</i>	7.9	11.3	11.1	41.2	64.7

- Balance funds are assumed to be funded in the debt to equity ratio of 70:30.
- Revised means of finance from FY 2002-03 to FY 2006-07 after considering REL purchase is tabulated below:

Table 3B 28: Revised means of finance from FY 03 to FY 07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Financing Required	56.4	87.7	415.8	358.2	282.6
	Funding					
B	Consumer Contribution	-	-	1.0	2.7	5.0
C	APDRP Grant		16.2			
D	APDRP Loan		16.2			
E	Depreciation	7.9	11.3	11.1	41.2	64.7
F	Equity	14.5	13.2	121.1	94.3	63.9
G	Loan	33.9	30.8	282.6	220.0	149.1
H	Total	56.4	87.7	415.8	358.2	282.6

b) Funding of capitalisation from FY 2007-08 to FY 2017-18:

- For calculation of debt-equity during respective Financial Years, the amount of consumer contribution capitalised has been deducted from the capitalisation during the year 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 APTEL Directions in various Judgments.

- The financing of investment capitalised from FY 2007-08 to FY 2017-18 has been tabulated below:

Table 3B 29: Financing of Investment capitalised from FY 2007-08 to FY 2017-18 (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
A	Capitalisation	249.2	276.7	188.3	208.9	97.0	69.1	148.6	245.0	261.9	242.2	347.0
B	De-capitalisation	2.3	1.3	1.3	1.4	5.7	45.8	8.2	20.0	45.9	24.7	27.9
C	Consumer contribution	9.0	14.7	22.2	58.3	10.0	9.4	27.2	25.5	16.3	18.0	51.4
D	Net	238.0	260.8	164.9	149.2	81.2	13.9	113.2	199.5	199.7	199.5	267.7
E	Equity (30%)	71.4	78.2	49.5	44.7	24.4	4.2	34.0	59.8	59.9	59.8	80.3
F	Debt (70%)	166.6	182.5	115.4	104.4	56.9	9.8	79.2	139.6	139.8	139.6	187.4

Working Capital

3.28.198 The Working Capital from FY 2007-08 to FY 2017-18 has been calculated in accordance with the MYT Regulations, 2007 and MYT Regulations, 2011 as under:

Table 3B 30: Working Capital Requirement (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	O&M Expenses	224	204	339	270	285						
A	O&M Expenses- 1 Month	19	17	28	22	24						
2	Receivables	1365	1563	2348	3076	3504	3325	3801	4236	4479	4436	4621
A	Receivables-2 Months	228	260	391	513	584	554	633	706	746	739	770
3	Less: PP Cost	962	1134	1655	2330	2765	3482	3634	3701	3083	3225	3375
A	PP Cost- 1 Month	80	95	138	194	230	290	303	308	257	269	281
4	Total WC Requirement	166	183	282	341	377	264	331	397	490	471	489
5	Opening WC	42	166	183	282	341	377	264	331	397	490	471
6	Change in WC	124	17	99	59	36	-113	67	67	92	-19	18

3.28.199 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.

c) 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:

- 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 the Hon'ble APTEL 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)

As evident from above, the Hon'ble APTEL 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 APTEL 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 APTEL.

- Therefore, the funding of working capital has been considered in debt-equity ratio of 70:30 based on the directions given by Hon'ble APTEL 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:
- 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.

- 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 the 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;
- NaniShavs 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);

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)

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.

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

- 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. 41.79 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. 41.79 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. 41.79 Crore is considered as a part of equity from FY 2007-08 to FY 2011-12 as per directions given by Hon'ble APTEL 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?

3.28.200 Accordingly, 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.

Debt and Equity

3.28.201 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 31: Debt-Equity ratio as per Transfer Scheme

S. No	Particulars	Amount (Rs. Cr.)	Percentage
1	GFA	360	
2	Accumulated Depreciation	70	19%
3	Equity	116	32%
4	Debt	174	48%

3.28.202 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.

3.28.203 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)

3.28.204 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 23, 2008.

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)

3.28.205 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 48% to 32%.

3.28.206 Further the Hon’ble APTEL vide Judgment dated November 28, 2014 (Appeal No. 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 RoCE payable to the Appellant. The issue is decided in favour of the Appellant.”

3.28.207 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.

3.28.208 Based on the above discussions, the revised debt and equity for FY 2002-03 to FY 2017-18 is tabulated as under:

Table 3B 32: Average Equity upto FY 2017-18 (Rs. Crore)

S. No	Financial Years	Opening	Capex	Working Capital	Closing	Average
1	FY 2002-03	116	15		131	123
2	FY 2003-04	131	13		144	137
3	FY 2004-05	144	121		265	204
4	FY 2005-06	265	94		359	312
5	FY 2006-07	359	64		423	391
6	FY 2007-08	423	71	37	532	477
7	FY 2008-09	532	78	5	615	573
8	FY 2009-10	615	49	30	694	655
9	FY 2010-11	694	45	18	757	725
10	FY 2011-12	757	24	11	792	774
11	FY 2012-13	792	4		796	794
12	FY 2013-14	796	34		830	813
13	FY 2014-15	830	60		890	860
14	FY 2015-16	890	60		950	920
15	FY 2016-17	950	60		1010	980
16	FY 2017-18	1010	80		1090	1050

Table 3B 33: Average debt upto FY 2016-17 (Rs. Crore)

S. No	Financial Years	Opening	Capex	Working Capital	Repayment	Closing	Average
1	FY 2002-03	174	34		17	190	182
2	FY 2003-04	190	31		19	202	196
3	FY 2004-05	202	283		20	465	333

S. No	Financial Years	Opening	Capex	Working Capital	Repayment	Closing	Average
4	FY 2005-06	465	220		46	638	551
5	FY 2006-07	638	149		64	723	681
6	FY 2007-08	723	167	87	72	905	814
7	FY 2008-09	905	183	12	90	1009	957
8	FY 2009-10	1009	115	69	101	1092	1050
9	FY 2010-11	1092	104	41	109	1129	1111
10	FY 2011-12	1129	57	25	113	1098	1114
11	FY 2012-13	1098	10	-113	110	885	992
12	FY 2013-14	885	79	67	88	942	914
13	FY 2014-15	942	140	67	94	1055	998
14	FY 2015-16	1055	140	92	105	1181	1118
15	FY 2016-17	1181	140	-19	118	1184	1182
16	FY 2017-18	1184	187	18	118	1271	1227

Advance against depreciation

3.28.209 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.

3.28.210 Accordingly, the Petitioner in its Petition filed for Truing-up upto FY 2016-17 and ARR for FY 2018-19 has submitted the claim for AAD and provided the details of actual loan repaid from FY 2002-03 to FY 2016-17 in Form F3b forming part of the said ARR Petition.

3.28.211 The Hon'ble Commission in the Tariff Order dated March 28, 2018 has acknowledged the submissions made by the Petitioner but didnot allowed the impact stating that *"the Commission is in the process of verification of all the information required for the purpose of computation of AAD and impact, if any, shall be considered based on the prudence check in subsequent tariff order."*

3.28.212 Accordingly, the Petitioner in this Petition is again submitting its claim of AAD for kind consideration of the Hon'ble Commission and allowance in the next Tariff Order. The computation of AAD for FY 2007-08 to FY 2016-17 is tabulated as below:

Table 3B 34: AAD for the period FY 2007-08 to FY 2016-17 (Rs. Crore)

Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
1/10 of the Opening loan (A)		72.3	90.5	100.9	109.2	112.9	109.8	88.5	94.2	105.5	118.1
Debt Repayment for capex loans (B)		21.0	100.5	138.6	246.7	162.3	166.7	218.3	194.9	201.5	112.3
Minimum of A&B		21.0	90.5	100.9	109.2	112.9	109.8	88.5	94.2	105.5	112.3
Depreciation as per ARR routed for repayment of loans		53.4	62.7	70.3	75.9	80.3	82.0	84.4	90.3	97.6	109.8
Excess of Min (A,B) over Depreciation		-32.4	27.8	30.6	33.3	32.6	27.8	4.1	3.9	7.9	2.5
Cumulative Repayment (C)	374.4	395.4	496.0	634.6	881.2	1043.5	1210.2	1428.5	1623.4	1824.9	1937.1
Cumulative Depreciation (D)	196.4	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6	893.2	1003.0
Excess of (C) over (D)		145.7	183.6	251.9	422.6	504.7	589.3	723.2	827.8	931.7	934.1
AAD	26.9	0.0	27.8	30.6	33.3	32.6	27.8	4.1	3.9	7.9	2.5

Regulated rate Base (RRB)

3.28.213 Based on the above discussions, the Regulated Rate Base (RRB) upto FY 2017-18 is also revised as tabulated below:

Table 3B 35: Regulated Rate Base (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 of OCFA	1279										
2	Opening balance of WC	42										
3	Opening Balance of Accumulated Depreciation including AAD	223										
4	Opening Balance of Accumulated CC & Grants	25										
5	RRB -Opening	1073	1383	1571	1735	1835	1844	1665	1764	1952	2170	2254
6	Net Capitalisation during the year	247	275	187	207	91	23	140	225	216	218	319
7	Depreciation	53	90	101	109	113	110	88	94	105	112	157

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
	including AAD											
8	CC and grants	9	15	22	58	10	9	27	26	16	18	51
9	Add: Depreciation on De-capitalised Assets	2	1	1	1	4	30	7	16	32	15	19
10	Change in WC	124	17	99	59	36	-113	67	67	92	-19	18
11	ΔAB	186	171	65	41	-27	-65	32	122	126	103	130
12	RRB - Closing	1383	1571	1735	1835	1844	1665	1764	1952	2170	2254	2402
13	RRB (i)	1290	1486	1702	1815	1858	1698	1748	1891	2107	2202	2337

Weighted Average Cost of Capital (WACC)

3.28.214 Based on the rate of interest of debt given in the subsequent paragraphs, the revised WACC for the Period FY 2007-08 to FY 2017-18 is tabulated as below:

Table 3B 36: Weighted Average Cost of Capital (WACC)

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Average Equity	477	573	655	725	774	794	813	860	920	980	1050
Average debt	814	957	1050	1111	1114	992	914	998	1118	1182	1227
Rate of debt for capex loans	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.16%	13.84%	13.67%
Rate of RoE	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%	20.39%
WACC	12.70%	13.07%	13.18%	13.64%	14.87%	15.25%	15.17%	15.13%	14.99%	14.82%	16.77%

Rate of Interest from FY 2007-08 to FY 2011-12:

3.28.215 As discussed in Para-3.B.134 to 3.B.145, 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 for 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:

3.28.216 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 37: Rate of Interest on Loan (%)

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	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.14%	13.84%

Rate of Interest for FY 2017-18:

- 3.28.217 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."

- 3.28.218 As per the aforesaid Regulation, the interest on working capital is required to be trued-up based on bank rate as on 1st April of the year plus margin as specified by the Hon'ble Commission for control period.
- 3.28.219 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%.
- 3.28.220 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.”

3.28.221 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 38: Variations in SBI MCLR

S. No	Particulars	Percentage
1	SBI MCLR as on 1 st April 2017	8%
2	SBI MCLR as on 1 st April 2018	8.15%
3	SBI MCLR as on 1 st April 2019	8.55%

3.28.222 Therefore in terms of Tariff Regulations, 2017 even if a true-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 true-up rate of interest for working capital loan would be 14.10% capped to 14%.

3.28.223 However, weighted average rate of loan considered for computation of WACC is 13.67% as approved in Tariff Order dated 31.07.2019.

3.28.224 Accordingly the weighted average cost of capital from FY 07-08 to FY 17-18 is tabulated below:

Table 3B 39: Revised WACC from FY 07-08 to FY 17-18

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Average Equity	477	573	655	725	774	794	813	860	920	980	1050
Average debt	814	957	1050	1111	1114	992	914	998	1118	1182	1227
Rate of debt for capex loans	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.16%	13.84%	13.67%
Rate of RoE	16%	16%	16%	16%	16%	16%	16%	16%	16%	16%	20.39%
WACC	12.70%	13.07%	13.18%	13.64%	14.87%	15.25%	15.17%	15.13%	14.99%	14.82%	16.77%

Return on Capital Employed (RoCE)

3.28.225 Return on Equity and Interest on Debt from FY 2002-03 to FY 2006-07:

Table 3B 40: RoE from FY 2002-03 to FY 2006-07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Average Equity	123.3	137.1	204.3	312.0	391.1
2	RoE @16%	14.8	21.9	32.7	49.9	62.6
3	RoE approved	7.9	0.0	0.0	0.7	8.1
4	Difference	6.9	21.9	32.7	49.3	54.5

Table 3B 41: Interest on Debt from FY 2002-03 to FY 2006-07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Average Debt	182.2	196.4	333.4	551.4	680.8
2	Interest rate as approved in T.O. dated 23.02.2008	11.00%	9.94%	6.80%	8.35%	8.76%
3	Interest	15.0	19.5	22.7	46.1	59.6
4	Interest allowed	1.0	4.1	6.4	25.5	73.9
5	Difference	14.0	15.4	16.2	20.6	-14.3

3.28.226 Therevised RoCE from FY 2007-08 to FY 2017-18 is tabulated below:

Table 3B 42: RoCE from FY 2007-08 to FY 2017-18 (Rs. Crore)

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
RRB(i)	1290	1486	1702	1815	1858	1698	1748	1891	2107	2202	2337
WACC	12.70%	13.07%	13.18%	13.64%	14.87%	15.25%	15.17%	15.13%	14.99%	14.82%	16.77%
RoCE @16%	163.9	194.1	224.4	247.4	276.3	259.0	265.1	286.2	315.9	326	392
RoCE allowed	79.7	105.9	126.6	139.9	179.9	168.8	179.4	211.7	231.4	245	312
Difference	84.2	88.2	97.8	107.6	96.3	90.2	85.7	74.5	84.4	81.5	79.6

3.28.227 The Petitioner requests the Hon'ble Commission to allow the costs including RoCE based on above computations.

Income-tax:

- 3.28.228 The Hon'ble Commission in respective truing-up Orders has allowed Income-tax for respective years from FY 2007-08 to FY 2016-17 based on lower of actual income-tax paid or income-tax as per ROE approach. The Petitioner has challenged the same before Hon'ble APTEL in Appeal 265 of 2013, Appeal 236 of 2014, Appeal 290 of 2015, Appeal 70 and 71 of 2017 and Appeal 214 of 2018. The same is pending adjudication before Hon'ble APTEL.
- 3.28.229 Without pre-judice to the pending appeals filed before Hon'ble APTEL, it is submitted that since the RoCE shall increase after implementation of various directions of Hon'ble APTEL as discussed above, the income-tax for years wherever allowed on ROE basis shall also increase.
- 3.28.230 Accordingly, without pre-judice to the contentions raised in Appeal pending before APTEL, the Petitioner request the Hon'ble Commission to allow the income-tax as per the entitlement after implementation of Hon'ble APTEL Directions from FY 2007-08 to FY 2016-17.

R&M Expenses from FY 2007-08 to FY 2016-17:

- 3.28.231 As regards truing-up of R&M Expenses, the Hon'ble Commission in Tariff Order dated February 23, 2008 ruled as under:

"4.152 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."

- 3.28.232 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 APTEL in Appeal 265 of 2013. Similarly TPDDL, another Distribution Licensee supplying electricity in Delhi also challenged the same issued before Hon'ble APTEL in Appeal 271 of 2013. While Petitioner's

appeal 265 of 2013 is pending adjudication before Hon'ble APTEL, Judgment has been pronounced in TPDDL's Appeal 271 of 2013 on July 20, 2016. In the said Judgment, Hon'ble APTEL has rejected the contentions of TPDDL and upheld the treatment given by the Hon'ble Commission in Tariff Order dated July 31, 2013.

3.28.233 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:

"3.258 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.

3.259 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."

3.28.234 Without pre-judice to the contentions in Appeal 265 of 2013, the Petitioner is now claiming R&M Expenses based on revised GFA estimated after the implementation of Hon'ble APTEL directions with respect to capitalisation from FY 2007-08 to FY 2016-17 as under:

Table 3B 43: R&M Expenses from FY 2007-08 to FY 2017-18 (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
1	Opening GFA	1279	1526	1802	1989	2196	2287	2311	2451	2676	2892
2	K factor	3.70%	3.70%	3.70%	3.70%	3.70%	3.61%	3.61%	3.61%	3.61%	3.61%
3	R&M Expenses	47.3	56.5	66.7	73.6	81.3	82.6	83.4	88.5	96.6	104.4
4	R&M Expenses	32.0	41.9	53.6	60.9	68.6	70.8	71.6	76.7	85.0	88.6

S. No	Particulars	FY 08*	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
	approved by DERC										
5	Difference	15.3	14.5	13.1	12.7	12.7	11.8	11.8	11.8	11.6	15.8

*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

3.28.235 Without prejudice to the contentions in the Appeal, the Petitioner requests the Hon'ble Commission to allow the impact based on revision in GFA.

3.28.236 The total impact on account of capitalisation related issues as discussed above along with carrying cost is tabulated below:

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	22	63	120	224	319	471	696	957	1,268	1,629	2,043	2,469	2,957	3,523	4,161
2	Additions	21	37	49	90	71	101	150	160	172	160	158	111	106	120	115	100
3	Closing	21	59	112	210	296	420	621	855	1,129	1,428	1,787	2,154	2,576	3,077	3,638	4,261
4	Average	10	41	87	165	260	370	546	776	1,043	1,348	1,708	2,099	2,523	3,017	3,581	4,211
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	1	4	8	15	23	51	75	102	140	201	257	315	382	446	524	590
7	Grand Balance	22	63	120	224	319	471	696	957	1,268	1,629	2,043	2,469	2,957	3,523	4,161	4,851

3.28.237 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-5.7: Truing-up of FY 2007-08 (11 Months) as per Regulation-12.1:

ISSUE IN BRIEF:

3.28.238 This issue pertains to the non-implementation of the Judgment of the Hon'ble APTEL with respect to the truing up for the 11 month period for FY 2007-08.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	30.05.2007	Regulation-12.1 of the MYT Regulations, 2007 states as under: <i>“12.1 Performance review and adjustment of variations of the Distribution Licensees for year FY 2006-07 and period between 1st 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>
2.	28.05.2009	The Hon’ble Commission 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.
3.	12.07.2011	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 147 of 2009. The Hon’ble Tribunal in Judgment dated 12.07.2011 directed the Hon’ble Commission as under: <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</i>

S.No	Date	Event
		<i>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 true 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." (Emphasis added)</i>
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.
6.	31.07.2013	The Hon'ble Commission in its Tariff Order dated 31.07.2013 stated as under: <i>"3.16 The Commission is Truing up for FY 2011-12 and determining ARR for FY 2013-14 in accordance with the MYT Regulations, 2007 & 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>
7.	2013-2014	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.
8.	23.07.2014	However, the Hon'ble Commission in Tariff Order dated 23.07.2014 stated as under:

S.No	Date	Event
		<p><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></p> <p><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></p> <p><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&L statement only where in no information was submitted pertaining to capital investment.” (Emphasis added)</i></p>
9.	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.
10.	01.10.2014	The Petitioner, vide letter number RA/BYPL/2014-15/941 dated October 01, 2014 submitted the Audited Statements for 11 months in the requisite format.
11.	28.11.2014	<p>This Hon'ble APTEL, in its Appeal 62 Judgment, once again directed the Hon'ble Commission as under:-</p> <p><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 (ATE) 1196 in Appeal No.</i></p>

S.No	Date	Event
		<p>142 & 147 of 2009, wherein this Tribunal directed the Delhi Commission to true up the financials from 01.04.2007 to 28.02.2008.</p> <p>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.</p> <p>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."</p>
12.	2.03.2015	<p>This Hon'ble APTEL, once again, in its Appeal 178 Judgment, held as under:-</p> <p>"12. The ninth issue is regarding refusal to consider claims for truing up for the period 01.04.2007 to 28.02.2008.</p> <p>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.</p> <p>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.</p> <p>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.</p>

S.No	Date	Event
		<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 carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying cost. Accordingly, the issue is also decided with the same directions." (emphasis supplied)</i>
13.	28.03.2018	The Hon'ble Commission has, in the tariff order simply stated, in Para 3.73 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. 290 of 2015.
14.	31.07.2019	The Hon'ble Commission at Para 3.87 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 in sub-judice before Hon'ble Tribunal.

DETAILED SUBMISSIONS:

3.28.239 The Hon'ble APTEL 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."

3.28.240 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.”

3.28.241 The Petitioner vide letter dated October 01, 2014 submitted the audited accounts for first 11 months of FY 2007-08.

3.28.242 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:

“3.61 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:

Table 3.12: 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	71.37	Audited financial statements
B	Opening GFA for FY 2007-08	1249.92	
C	Rate of Depreciation (%)	5.70	A/B
D	Rate of depreciation (%) as per MYT Regulations, 2007	3.60	
	Average Rate of depreciation (%) for		

Sl. No.	Particulars	Amount	Remarks
	FY		
E	2007-08 considering 11 months as per audited statements and 1 month as per MYT Regulations, 2007	5.53	(C*11/12)+(D/12)

”

3.28.243 Since the Hon’ble Commission changed its approach in Tariff Order dated September 29, 2015, the Petitioner sought the actual rate of depreciation 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.

3.28.244 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:

“3.76 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.).”

3.28.245 The Petitioner in Petition for True-up of FY 2016-17 and ARR and Tariff for FY 2018-19, stated that as per Hon’ble Commission’s own statement in Tariff Order dated September 29, 2015, 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 5.53% derived from audited statements of FY 2007-08 (11 Months).

3.28.246 However, the Hon’ble Commission in Tariff Order dated 28.03.2018 stated as

under:

“3.73 The Commission has already clarified this issue in Tariff Order dtd. 29/09/2015 in para nos. 3.60 to 3.64 and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon’ble APTEL in Appeal No. 297/2015.

3.28.247 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., 5.53% 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 APTEL by refusing to include the assets capitalized without the EICs and those procured from REL.

3.28.248 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 APTEL directions as under:

Table 3B 44: Depreciation during first 11 months of FY 2007-08

S. No	Particulars	Amount (Rs. Cr.)
1	Opening GFA	1279.3
2	Rate of depreciation	6.69%
3	Depreciation for first 11 months	85.6
4	Depreciation allowed by DERC in Order dt. Sep 29, 2015	48.8
5	Difference to be allowed now	36.7

3.28.249 The depreciation allowed by the Hon'ble Commission during first 11 months of FY 2007-08 is tabulated below:

Table 3B 45: 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	865.5	865.5	865.5
2	Additions to asset during the year	270.4	270.4	270.4
3	De-capitalisation during the year	2.3	2.3	2.3
4	Net assets capitalised	268.2	268.2	268.2
5	Closing GFA	1133.7	1133.7	1133.7
6	Average GFA	999.6	999.6	999.6
7	Less: Average Consumer Contribution	64.7	64.7	64.7
8	Average GFA net of CC	934.9	934.9	934.9
9	Rate of depreciation	5.70%	3.60%	5.53%
10	Depreciation	53.3	33.7	51.7

3.28.250 The impact on account of truing-up of first 11 months of FY 2007-08 along with carrying cost is tabulated below:

Table 3B 46: 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	0.0	39.2	44.6	50.5	57.3	65.8	75.7	87.0	100.2	115.0	131.8
2	Additions	36.7										
3	Closing Balance	36.7	39.2	44.6	50.5	57.3	65.8	75.7	87.0	100.2	115.0	131.8
4	Average	18.4	39.2	44.6	50.5	57.3	65.8	75.7	87.0	100.2	115.0	131.8
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	2.5	5.4	5.9	6.8	8.5	9.9	11.4	13.2	14.8	16.8	18.5
7	Grand closing balance	39.2	44.6	50.5	57.3	65.8	75.7	87.0	100.2	115.0	131.8	150.3

3.28.251 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 the next Tariff Order.

Issue-5.8: Computation of AT&C Loss for FY 2009-10:

ISSUE IN BRIEF:

3.28.252 This issue pertains to the non-implementation of the Judgments of the Hon'ble APTEL 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.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	26.08.2011	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 22.81 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.

S.No	Date	Event
		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.
2.	28.11.2014	The aforesaid findings in the above Order dated 26.08.2011 were set aside by the Hon'ble Tribunal vide its Appeal 62 Judgment.
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&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>

S.No	Date	Event
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.	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.62 of 2012 where it was held that the Hon'ble Commission has erred in computing kWh based on kVAh and power factor.</p>
6.	31.10.2017	The Hon'ble Tribunal vide its judgment dated 31.10.2017

S.No	Date	Event
		has dismissed the said Clarificatory Application of the Hon'ble Commission.
7.	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.
8.	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:

3.28.253 The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 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."

3.28.254 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."

3.28.255 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."

3.28.256 The Hon'ble Tribunal vide Judgment dated October 31, 2017 dismissed the clarificatory application filed by the Hon'ble Commission.

3.28.257 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."

3.28.258 In Tariff Order dated July 31, 2019, the Hon'ble Commission has simply reiterated the statement given in Tariff Order dated March 28, 2018.

3.28.259 As regards aforesaid it is submitted that the there is no stay on implementation of Hon'ble Tribunal's Judgment dated November 28, 2014.

3.28.260 It is further submitted that the Hon'ble Tribunal in Judgment dated November 28, 2014 (Appeal 62 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):

3.28.261 Therefore, the Petitioner requests the Hon'ble Commission to implement the direction of Hon'ble APTEL as per Judgment dated November 28, 2014. The computation of AT&C Loss for FY 2009-10 is tabulated below:

Table 3B 47: AT&C Loss for FY 2009-10

S. No	Particulars	Units	FY 2009-10
A	Units consumed at BYPL Periphery	MU	5708
B	Units billed	MU	4310
C	Amount billed	Rs. Cr.	1944
D	Distribution Loss	%	24.50%
E	Amount collected	Rs. Cr.	1959
F	Collection efficiency	%	100.76%
G	Units realised	MU	4343
H	AT&C Loss level	%	23.92%

3.28.262 The Hon'ble Commission determined the AT&C Loss Target for FY 2009-10 as 26.26%. Since the actual AT&C Loss during FY 2009-10 is 23.92%, 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 48: Over-achievement of AT&C Loss during FY 2009-10

Particulars	UoM	MYT Order	Actuals	Reference
AT&C Loss	%	26.26%	23.92%	A
Over achievement/ (Under achievement)	%		2.34%	B
Energy Input	MU	5708	5708	C
Units realised	MU	4209	4343	D=C*(1-A)
Average Billing Rate	Rs./ kWh	4.51	4.51	E
Amount realised	Rs. Cr.	1899	1959	
Over-achievement	Rs. Cr.		60	
Proposed to be transferred to consumers	Rs. Cr.		30	
Proposed to be retained	Rs. Cr.		30	
Less: E. Tax	Rs. Cr.		82	
Less: LPSC	Rs. Cr.		21	
Total revenue	Rs. Cr.		1796	

3.28.263 The impact on account of re-computation of AT&C Loss of FY 2009-10 is tabulated below:

Table 3B 49: Impact on account of Re-computation of AT&C Loss during FY 2009-10 (Rs. Crore)

(Rs. Cr.)

S. No	Particulars	FY 2009-10
1	Revenue submitted by Petitioner	1796
2	Revenue considered in Tariff Order	1817
3	Net Impact	21

3.28.264 The total impact including carrying cost is tabulated below:

**Table 3B 50: Impact along with carrying cost on account of revision of
AT&C Loss during FY 2009-10 (Rs. Crore)**

S. No	Particulars	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY18
1	Opening balance	0	22.5	25.5	29.3	33.7	38.8	44.6	51.2	58.7
2	Additions	21								
3	Closing Balance	21	22	26	29	34	39	45	51	59
4	Average	10.6	22.5	25.5	29.3	33.7	38.8	44.6	51.2	59
5	Rate of interest	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	1.4	3.0	3.8	4.4	5.1	5.9	6.6	7.5	8.2
7	Grand Closing Balance	22.5	25.5	29.3	33.7	38.8	44.6	51.2	58.7	66.9

3.28.265 The Petitioner requests the Hon'ble Commission to consider the impact on account of the same.

Issue-5.9: Revision in AT&C Loss Target of FY 2011-12

ISSUE IN BRIEF:

3.28.266 This issue pertains to the non-implementation of the directions of the Hon'ble APTEL wherein the Hon'ble Commission was directed to re-fix the AT&C Loss targets for FY 2011-12 to 21% by relying on the promise held out by the Hon'ble Commission *vide* its letter dated March 8, 2011.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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 22%.

S.No	Date	Event
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&C loss target for 2011-12 would be as under:-</p> <p><i>“ The AT&C loss target for FY 2011-12 will be the lower of the following two figures.</i></p> <p><i>i. Actual AT&C loss for 2010-11 &</i></p> <p><i>ii. Reduction at 1% over the AT&C target for FY 2010-11”.</i></p> <p>Since the AT&C loss targets for FY 2010-11 was 22%, the AT&C loss target for FY 2011-12 in terms of the said letter dated 08.03.2011 was to be 21% i.e. (i.e. 22%-1%).</p>
3.	10.05.2011	<p>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 18%.</p>
4.	26.08.2011	<p>In the Tariff Order for the ARR and Tariff for FY 2011-12, the Hon'bleCommission determined the targeted loss level for FY 2011-12 at 18%. The Hon'bleCommission 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 10th May, 2011 has fixed the AT&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</p>

S.No	Date	Event
		Hon'bleCommission 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 18%.
5.	28.11.2014	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 62 of 2012 (" Appeal 62 Judgment ") the Hon'ble Tribunal was at para 72 <i>inter alia</i> pleased to direct the Hon'bleCommission to re-fix the AT&C loss level for FY 2011-12 as per its letter dated 08.03.2011 and gave consequential relief to the Petitioner.
6.	18.12.2014	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 62 Judgment and the Appeal 178 Judgment of the Hon'ble Tribunal.
7.	02.03.2015	In the subsequent judgment in Appeal No. 178 of 2012 (" Appeal 178 Judgment "), the Hon'ble Tribunal, in para 30.12 was <i>inter alia</i> pleased to record the fact that the AT&C loss target for FY 2011-12 has to be refixed to 21% for the Petitioner as per the decision of the Hon'ble Tribunal in Appeal No.61-62/2012.
8.	29.09.2015	In the Tariff Order dated 29.09.2015, the Hon'bleCommission 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'bleCommission has already given effect to the Appeal 14 Judgment. Further, the Hon'bleCommission 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'bleCommission 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 the Hon'ble Tribunal.
9.	31.08.2017	The Hon'bleCommission in its tariff order dated 31.08.2017 has merely referred to its finding in the Tariff Order dated 29.09.2015.

S.No	Date	Event
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:

3.28.267 The Hon'ble APTEL 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."

3.28.268 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"

3.28.269 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 APTEL. Similar stand has been taken by the Hon'ble Commission in Tariff Order dated August 31, 2017. The Hon'ble

APTEL vide Judgment dated October 31, 2017 has dismissed clarificatory application filed by the Hon'ble Commission.

- 3.28.270 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:

"3.106 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)."

- 3.28.271 As regards aforesaid, it is submitted that there is no stay on implementation of Hon'ble Tribunal's Judgment dated November 28, 2014.
- 3.28.272 The directions of Hon'ble APTEL regarding AT&C loss target for FY 2011-12 in Judgment dated March 2, 2015 (Appeal 178 of 2012) and November 28, 2014 (Appeal 62 of 2012) gives an understanding that the 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 ought to be 21%, i.e., 22% minus 1%.
- 3.28.273 The Hon'ble Commission in Tariff Order dated July 31, 2013 had trued-up actual AT&C Loss for FY 2011-12 as 22.07% and computed the under-achievement of Rs. 129 Crore from the AT&C Loss Target of 18%.
- 3.28.274 The revised computation on account of difference between original and revised AT&C Loss Target of FY 2011-12 in line with the directions of Hon'ble APTEL in Judgment dated November 28, 2014 (Appeal 62 of 2012) is as under:

Table 3B 51: Impact due to revision in AT&C Loss Target for FY 2011-12

S. No	Particulars	UoM	Target	Revised
1	AT&C Loss	%	21.00%	22.07%
2	Over achievement/ (Under achievement)	%	-1.07%	
3	Energy Input	MU	6203.2	6203.2
4	Units realised	MU	4900.6	4834.2

S. No	Particulars	UoM	Target	Revised
5	Average Billing Rate	Rs./ kWh	5.1	5.1
6	Amount realised	Rs. Cr.	2504.2	2470.3
7	Under-achievement	Rs. Cr.		33.9
8	Considered in TO dt. July 31, 2013	Rs. Cr.		129.1
9	Impact to be allowed	Rs. Cr.		95.2

PRAYER(S):

3.28.275 It is requested that the above amount ought to be allowed along with carrying cost as under:

Table 3B 52: Impact due to revision in AT&C Loss Target for FY 2011-12 along with carrying cost (Rs. Crore)

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	0.0	102.3	117.6	135.3	155.7	178.8	204.9
2	Additions	95.2						
3	Closing Balance	95.2	102.3	117.6	135.3	155.7	178.8	204.9
4	Average	47.6	102.3	117.6	135.3	155.7	178.8	204.9
5	Carrying cost rates	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	7.1	15.4	17.7	20.5	23.0	26.2	28.7
7	Grand closing balance	102.3	117.6	135.3	155.7	178.8	204.9	233.8

3.28.276 Accordingly, the Petitioner requests the Hon'ble Commission to allow the impact on account of revision in AT&C Loss targets for FY 2011-12.

Issue-5.10: Non-revision of AT&C Loss for FY 2012-13 and FY 2015-16:**ISSUE IN BRIEF:**

3.28.277 This issue pertains to non-implementation of the directions of the Hon'ble APTEL wherein the Hon'ble Commission was directed to re-fix the AT&C Loss targets for the second MYT Control Period (FY 2012-13 to FY 2014-15) based on the revised targets for FY 2011-12 (in terms of APTEL directions in Appeal 62 Judgment).

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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&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&C Loss trajectory for second control period.</p>
2.	02.03.2015	<p>The said finding was challenged in Appeal 178 of 2012. The Hon’ble APTEL in Judgment dated March 2, 2015 (Appeal 178 of 2012) at Para-30.12 re-fixed the AT&C Loss target from FY 2012-13 to FY 2014-15.</p>
3.	29.09.2015	<p>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 62 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 the Hon’ble Tribunal.</p>
4.	31.08.2017	<p>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.</p>
5.	31.10.2017	<p>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.</p>
6.	28.03.2018	<p>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</p>

S.No	Date	Event
		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:

3.28.278 The Hon'ble APTEL 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."

3.28.279 The Hon'ble Commission in Tariff Order dated March 28, 2018 ruled as under:

"3.113 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."

3.28.280 As regards aforesaid, it is submitted that there is no stay on implementation of Hon'ble APTEL's Judgment dated March 2, 2015. The Petitioner is not repeating the submissions made in Para-3.27.360 for the sake of prolixity and brevity.

3.28.281 The directions of Hon'ble ATE regarding revision of AT&C loss targets for FY 2012-13 to FY 2014-15 and FY 2011-12 in Judgment dated March 2, 2015 (Appeal 178 of 2012) and November 28, 2014 (Appeal 62 of 2012) are as under:

- a) 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%. Hence the AT&C loss for FY 11-12 works out to 21% (Target of 2010-11 at 22% -1%)
- b) AT&C Loss from FY 2012-13 to FY 2014-15 to be re-determined based on the revised target for FY 2011-12.

3.28.282 Further, the Hon'ble Commission in the Tariff Order dated September 29, 2015 has approved the AT&C loss target for FY 2015-16 based on the loss reduction trajectory approved for FY 2012-13 to FY 2014-15 i.e. at 13.33% (Target for FY 2014-15 at 14.50% -1.17%), the same also ought to be revised based on the revised targets for FY 2011-12 and FY 2012-13 to FY 2014-15. Accordingly, the AT&C Loss Target for FY 2012-13 to FY 2015-16 works out as under:

Table 3B 53: AT&C loss target for FY 2012-13 to FY 2015-16

S.No.	Particulars	DERC	Submission based on ATE judgment
1	AT&C Loss for FY 2011-12 (base year)	18.00%	21.00%
2	AT&C Loss for FY 2012-13	16.82%	19.62%
3	AT&C Loss for FY 2013-14	15.66%	18.27%
4	AT&C Loss for FY 2014-15	14.50%	16.92%
5	AT&C Loss for FY 2015-16	13.33%	15.55%

3.28.283 The impact on account of revision in AT&C loss target from FY 2012-13 to FY 2015-16 is tabulated below:

Table 3B 54: Impact on account of revision of AT&C Loss Target from FY 2012-13 to FY 2015-16 (Rs. Crore)

Particulars	FY 12-13		FY 13-14		FY 14-15		FY 15-16	
	Revised Target	Actual	Revised Target	Actual	Revised Target	Actual	Revised Target	Actual
AT&C loss (%)	19.62%	21.14%	18.27%	22.19%	16.92%	19.44%	15.55%	15.96%
Over/under achievement (%)		-1.52%		-3.92%		-2.52%		-0.41%
Units Input (MU)		6333		6577		6717		6780
ABR (Rs./Unit)		6.31		6.85		7.38		7.64
Impact on account of Underach. (Rs. Cr)		-61		-177		-125		-21
Underach. Approved in respective True up Orders		-173		-294		-245		-136
Impact to be allowed		112.0		117.6		119.8		115.1

3.28.284 The aforesaid impact along with carrying cost is tabulated below:

Table 3B 55: Impact due to revision of AT&C Loss Target from FY 2012-13 to FY 2015-16 along with carrying cost (Rs. Crore)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	0.0	120.4	264.9	433.9	621.7	721.6
2	Additions	112.0	117.6	119.8	115.1		
3	Closing Balance	112.0	238.0	384.7	548.9	621.7	721.6
4	Average	56.0	179.2	324.8	491.4	621.7	721.6
5	Carrying cost rates	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	8.4	26.9	49.1	72.7	91.0	99.8
7	Grand closing balance	120.4	264.9	433.9	621.7	712.6	812.6

PRAAYER(S):

3.28.285 Accordingly the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the next Tariff Order.

Issue-5.11: To allow increase in employee expenses corresponding to increase in consumer base:

ISSUE IN BRIEF:

3.28.286 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 Petitioner's licensed area as has also been upheld by the Hon'ble APTEL in Appeal No. 36/37 of 2008 judgment.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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 the Hon'ble Tribunal in its Appeal 36 Judgment. In para 73 of its Appeal 36 Judgment whereinat</p>

S.No	Date	Event
		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.
2.	26.08.2011	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 3.96 to para 3.103, 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.
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 4.175 to para 4.185 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 employee expense co-related with the increase in consumer base for all the 3 DISCOMs and found that the increase in employee 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 FY 2013-14 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 hereinbelow:-</p> <p><i>"3.94 As regard true up of the employees expenses to the</i></p>

S.No	Date	Event
		<p><i>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. <u>The impact will be given once the benchmarking exercise is completed.</u>"</i></p> <p style="text-align: right;"><i>(emphasis supplied)</i></p>
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'bleCommission 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, theHon'bleCommission 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'bleCommission, 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:

3.28.287 In the Petitioner's licensed area of supply, consumer base has increased by 37% in FY 12 as compared to FY 2006-07 (FY 07: 8.9 Lakhs, FY 12; 12.3 Lakhs) and units billed have grown by 58 % in FY 2011-12 as compared to FY 2006-07

(Units billed 2007: 359 MU, 2012: 4844 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 APTEL order, the Hon'ble Commission is required to factor in the increase in employee cost required due to increase in consumer base.

3.28.288 The Hon'ble APTEL 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..... "

3.28.289 The Hon'ble Commission in Tariff Order dated July 31, 2013 stated as under:

"3.95 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."

3.28.290 The aforesaid benchmarking exercise has not found place in any of the tariff orders issued after July 31, 2013.

3.28.291 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.

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"

3.28.292 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 the 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.

- 3.28.293 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 APTEL 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)

- 3.28.294 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 APTEL cannot be a reason for denial of requisite relief for the Petitioner.

- 3.28.295 Further, the Hon'ble Commission did not also provide the findings 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 to implement the directions of Hon'ble Tribunal.

3.28.296 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. In the proceedings leading upto the Tariff Order dated 23.07.2014 for FY 2014-15 (subject matter of Appeal No.235-236). 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.

3.28.297 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. 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.

3.28.298 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.

3.1.1 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).

3.28.299 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.

3.28.300 It is further respectfully submitted that the Hon'ble Commission has selectively quoted its past orders, including in the Tariff Order dated 29.09.2015 as well as the Order dated 31.8.2017, while overlooking the fact that it has, in its Order dated 31.07.2013, recognized the need for benchmarking the employee costs against the consumer base of the Petitioner. In the said order, the Hon'ble Commission had sought to do this benchmarking for all three DISCOMS and found that the increase in employee expenses of the Petitioner as the most reasonable. Further, the Hon'ble Commission had done so on the basis of numbers for the entire period of FY 2006-07 to FY 2011-12 and had said that it would allow an increase upon the

conclusion of its benchmarking exercise. Therefore, to now quote its Tariff Order dated 29.09.2015 as well as the Order dated 31.8.2017 to justify denial, is in the respectful submission of the Petitioner, incorrect. It is submitted that the only reason why the entitlement was given was not the principle of benchmarking being irrelevant, as is now being sought to be contended in the Tariff Order dated 29.09.2015 (by relying on the order dated 26.08.2011), but on account of non-completion of the benchmarking exercise. It may be noted that the order of 26.08.2011 does not even consider the increase in consumer base, which was directed by Hon'ble Tribunal as a basis for the benchmarking exercise. Hence, any statement to the effect that Appeal 36 Judgment was complied, without a material yardstick of analysis for compliance, namely, increase in consumer base being considered, is incorrect.

- 3.28.301 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.
- 3.28.302 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 the Hon'ble Tribunal in Appeal No. 36 of 2008 and Appeal No. 147 of 2009, the situation today of the actual expenses being allegedly less than the revised normative claim would not have arisen.
- 3.28.303 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.
- 3.28.304 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.
- 3.28.305 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.

- 3.28.306 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."

3.28.307 Further, in terms of the aforesaid judgment, the MYT Regulations, 2007 of the Hon'ble Commission themselves specify 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,

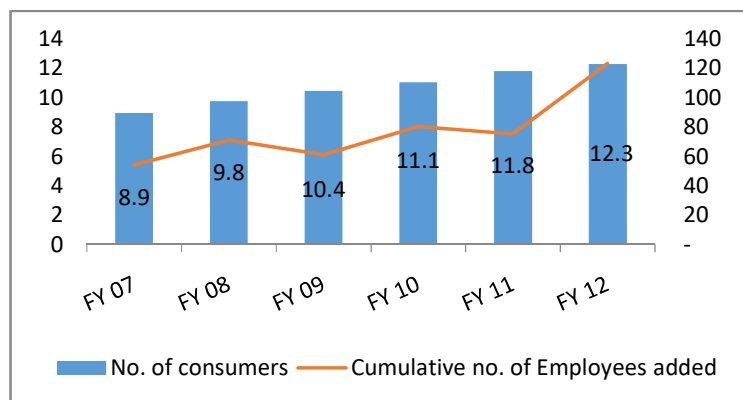
(i) Any surplus or deficit on account of O&M expenses shall be to the account of the Licensee and shall not be trued up in ARR; and

(ii) Depreciation and RoCE shall be trued up at the end of Control Period”

3.28.308 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 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 the 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.

3.28.309 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 the 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.

3.28.310 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 2: Additional recruitment to meet business growth

3.28.311 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 APTEL. The impact of increase in consumer base on the employee cost is estimated below:

Table 3B 56: 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	139					
2	No. of Consumers served during base year	894,928					
3	Employee Expenses per consumer in the base year	1,556					

S. No	Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
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		1,628	1,704	1,783	1,867	1,954
6	Actual number of consumers served during first Control Period		975,043	1,044,821	1,105,289	1,181,539	1,227,755
7	Increase in number of consumers served y-o-y basis		80,115	69,778	60,468	76,250	46,216
8	Increase in employee Expenses based on number of consumers		13.0	11.9	10.8	14.2	9.0

Table 3B 57: 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	Opening Balance	0.0	13.0	26.7	41.0	60.6	78.7	90.6	104.2	119.9	137.7	157.8
2	Additions	12.2	11.1	10.1	13.3	8.4						
3	Closing Balance	12.2	24.2	36.8	54.3	69.1	78.7	90.6	104.2	119.9	137.7	157.8
4	Avg. Balance	6.1	18.6	31.8	47.6	64.9	78.7	90.6	104.2	119.9	137.7	157.8
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	0.8	2.6	4.2	6.4	9.7	11.8	13.6	15.8	17.7	20.1	22.1
7	Grand Balance	13.0	26.7	41.0	60.6	78.7	90.6	104.2	119.9	137.7	157.8	179.9

Note To the extent of increase in consumer base

PRAYER(S):

3.28.312 In view of the aforesaid, the Hon'ble Commission is required to expeditiously implement the Hon'ble APTEL judgment and to true-up the employee expenses to the extent of increased cost by increase in consumer base along with carrying costs.

Issue-5.11: Efficiency factor for FY 2010-11:**ISSUE IN BRIEF:**

3.28.313 This issue pertains to the non-implementation of the Judgments of the Hon'ble APTEL in Appeal No. 178 of 2012, whereby the Hon'ble Commission was directed to reconsider the efficiency factor of 4% for FY 2010-11.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	02.03.2015	This issue relates to the incorrect imposition of efficiency factor while determining the O&M expenses for true-up of FY 2010-11. The Hon'ble Tribunal in its judgment dated March 2, 2015 in Appeal No.178 of 2012("Appeal 178 Judgment"), in para 44 thereof has directed the Hon'ble Commission to reconsider the efficiency factor of 4% for FY 2010-11.
2.	29.04.2015	The Petitioner vide its letter dated April 29, 2015 <i>inter alia</i> requested the Hon'ble Commission to implement the said Appeal 178 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.
3.	31.08.2017	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 the Hon'ble Tribunal has upheld the methodology for Efficiency Factor in case of TPDDL in its judgment in Appeal No. 14 of 2012.
4.	28.03.2018	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.
5.	31.07.2019	At Para 3.131 and 3.132 of the Tariff Order, the Hon'ble Commission has reiterated its findings in the tariff order dated 28.03.2018.

DETAILED SUBMISSIONS:

3.28.314 The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 of 2012) has directed the Hon'ble Commission as under:

"44. The 36th 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. 62 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."

3.28.315 The Hon'ble Commission in Tariff Order dated March 28, 2018 ruled as under:

"3.157 The Commission has already clarified this issue in tariff order dated 31/08/2017 as follows:

"3.144 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."

3.145 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...."

3.146 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."

3.158 In view of the above the Commission has not re-considered this issue."

3.28.316 It is submitted that the Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 of 2012) has set aside the efficiency factor for FY 2010-11. Further, the Hon'ble APTEL 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 178 of 2012). The impact on account of efficiency factor for FY 2010-11 is tabulated below:

S. No	Particulars	FY 2010-11
1	Employee Expenses	268.9
2	Eff. Fact. %	4%
3	Eff. Factor	10.8

3.28.317 The impact on account of the said issue along with carrying cost is tabulated below:

Table 3B 58: Impact on account of efficiency factor during FY 2010-11 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	Opening Balance	0.0	11.5	13.2	15.2	17.4	20.1	23.0	26.4
2	Additions	10.8							
3	Closing Balance	10.8	11.5	13.2	15.2	17.4	20.1	23.0	26.4
4	Average Balance	5.4	11.5	13.2	15.2	17.4	20.1	23.0	26.4
5	Rate of Carrying Cost	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying Cost	0.7	1.7	2.0	2.3	2.6	3.0	3.4	3.7
7	Grand Balance	11.5	13.2	15.2	17.4	20.1	23.0	26.4	30.1

PRAYER(S):

3.28.318 Therefore the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

Issue-5.13: Incorrect revision of R&M expenses by revising K factor:

ISSUE IN BRIEF:

3.28.319 This issue pertains to the non-implementation of the Judgments of the Hon'ble APTEL in Appeal No.178 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 the Hon'ble Tribunal.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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&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) $O\&M_n = (R\&M_n + EMP_n + A\&G_n) * (1 - X_n)$</i></p> <p><i>Where,</i></p> <p><i>(i) $R\&M_n = K * GFAn-1$;</i></p> <p><i>...</i></p> <p><i>(vii) $R\&M_n$ – 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&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&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 178 of 2012 in case of Petitioner, Appeal 178 of 2012 in case of BYPL and Appeal 171 of 2012 in case of TPDDL.</p>
3.	10.02.2015	<p>The Hon'ble Tribunal in Judgment dated February 10, 2015 directed the Hon'ble Commission as under:</p> <p><i>“11.4... The tariff order might have been passed on 23.02.2008, but the opening GFA and R&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</i></p>

S.No	Date	Event
		<i>the basis of 'K' factor for the FY 2007-08 to 2011-12."</i>
4.	02.03.2015	<p>In the case of the Petitioner, the Hon'ble APTEL, in its Judgment in Appeal No. 178 of 2012 in para 36 thereof held as under:</p> <p><i>"...Therefore, the Commission should take into account the K factor for 2007-08 also and re-determine the K factor and the R&M expenses for the Control Period. Accordingly, directed."</i></p>
5.	29.09.2015	<p>In the Tariff Order dated 29.09.2015, at para 3.163 to 3.168 & Table 3.42, 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.</p>
6.	31.08.2017	<p>In the tariff order dated 31.08.2017, (Para 3.183 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.</p>
7.	28.03.2018	<p>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:</p> <p><i>"3.187 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 challenged by the</i></p>

S.No	Date	Event
		<i>Petitioner in Appeal No. 290/2015 before Hon'ble APTEL and is sub judice. Further, R&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:

3.28.320 The Hon'ble APTEL in Judgment dated March 2, 2012 (Appeal 178 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)

3.28.321 As evident from the aforesaid, the Hon'ble APTEL 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 3.37% instead of 3.61% which was to be allowed as per Hon’ble APTEL directions.

- 3.28.322 Aggreived from the above, the Petitioner challenged the same before Hon’ble APTEL in Appeal No. 290 of 2015. Same is pending adjudication before Hon’ble APTEL. In reply to the Appeal 290 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.”

- 3.28.323 However, despite the above statement, the Hon’ble Commission in Tariff Order dated August 31, 2017 ruled as under:

“3.207 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. As the matter is sub judice, 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.”

- 3.28.324 The Petitioner claimed the R&M Expenses during second control period in Petition for True-up of FY 2014-15 and ARR and Tariff of FY 2016-17. However, the Hon’ble Commission in Tariff Order dated March 28, 2018 stated as under:

“3.183 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 challenged by the Petitioner in Appeal No. 297/2015 before Hon’ble APTEL and is sub judice. Further, R&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."

3.28.325 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 290 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.

3.28.326 As per the said direction, the "K" factor for the Petitioner is tabulated below:

Table 3B 59: Revised "K" factor as per Judgment in Appeal 178 of 2012

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	Average
1	Opening GFA	871.63	1,189.20	1,539.20	1,789.20	2,014.20	
2	Total R&M Expenses	48.09	43.47	37.86	55.95	66.16	
3	K Factor	5.52%	3.66%	2.46%	3.13%	3.28%	3.61%

3.28.327 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 3.11% 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 3.61%.

3.28.328 However, the Hon'ble Commission has completely changed the methodology and has derived new "K" factor as 3.37% based on re-determined R&M

Expenses for FY 2011-12 instead of 3.61% as per the directions of the Hon'ble Tribunal.

3.28.329 The remand by the Hon'ble Tribunal in Judgment dated March 2, 2015 (Appeal 178 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.

3.28.330 The Petitioner has computed the R&M Expenses based on "K" factor as per the direction of the Hon'ble APTEL and GFA considered by the Hon'ble Commission in Tariff Order dated July 13, 2012 as under:

Table 3B 60: Difference in R&M Expenses due to revised "K" factor (Rs. Crore)

S. No	Particulars	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
1	GFA allowed at the time of truing-up	1,960.9	1,984.2	2,124.5	2,354.5	2,783.0
2	K Factor	3.61%	3.61%	3.61%	3.61%	3.61%
3	R&M Expenses	70.8	71.6	76.7	85.0	100.5
4	Allowed in MYT Order	66.1	66.9	71.7	79.4	88.6
5	Difference	4.7	4.7	5.0	5.6	11.9

3.28.331 The aforesaid impact along with carrying cost is tabulated below:

Table 3B 61: Impact on account of difference in R&M Expenses along with carrying cost (Rs. Crore)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening Balance	-	5.1	10.9	17.9	26.5	43.3
2	Additions	4.7	4.7	5.0	5.6	11.9	-
3	Closing Balance	4.7	9.7	15.9	23.5	38.5	43.3
4	Average Balance	2.4	7.4	13.4	20.7	32.6	43.3
5	Rate of Carrying Cost	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying Cost	0.4	1.1	2.0	3.1	4.8	6.1
7	Grand Balance	5.1	10.9	17.9	26.5	43.3	49.3

PRAYER(S):

3.28.332 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the next Tariff Order

Issue-5.14: Lower rates of carrying cost:**ISSUE IN BRIEF:**

3.28.333 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 147 of 2009), November 28, 2014 (Appeal 62 of 2012) and March 2, 2015 (Appeal 178 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.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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 147 of 2009.
2.	30.07.2010	The Hon'ble Tribunal in its Judgment dated July 30, 2010 in Appeal 153 of 2009, NDPL Vs. DERC (" Appeal 153 Judgment "), in para 51 thereof directed the Hon'ble Commission as under: <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>
3.	12.07.2011	The Hon'ble Tribunal in Judgment dated July 12, 2011 in Appeal No. 147 of 2009, in para 11.1 thereof directed the

S.No	Date	Event
		Hon'ble Commission to determine the rates of carrying cost in terms of the directions given in Judgment dated July 30, 2010.
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>"3.146 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>3.147 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>
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 ("MYT Regulations, 2011") 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>

S.No	Date	Event
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 3.186-3.190 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>
9.	23.07.2014	<p>The Hon'ble Commission in its Tariff Order, in para 4.166 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 2nd 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. 236 of 2014 which is pending adjudication before Hon'ble Tribunal.</p>
10.	28.11.2014	Aggrieved by the aforesaid treatment in the tariff order dated August 26, 2011, the Petitioner challenged the same in Appeal 62 of 2012. The Hon'ble Tribunal in Judgment dated November 28, 2014 ruled as under:

S.No	Date	Event
		<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>
11.	2.03.2015	<p>Aggrieved by the treatment in its Tariff Order dated July 13, 2012, the Petitioner challenged the same in Appeal 178 of 2012. The Hon'ble Tribunal in Judgment dated March 2, 2015 ("Appeal 178 Judgment") 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 333ecomputed 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>
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</p>

S.No	Date	Event
		<p>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"> 30% of Capitalisation If left after funding of capitalization then, 30% of working capital If left after funding of capitalization and working capital, then 30% of Regulatory Assets. <p>At Table-3.54 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"> 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; Restricts the claim for the RoE on the equity component of funding to 14%, for which it relies upon the judgment of the Hon'ble Tribunal in Appeal 271 of 2013.
14.	28.03.2018& 31.07.2019	<p>In its tariff order dated 28.03.2018 and 31.07.2019, the Hon'ble Commission has merely reiterated its findings in its tariff order dated 31.08.2017.</p>

DETAILED SUBMISSIONS:

3.28.334 The Hon'ble APTEL 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. "***

3.28.335 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:

"3.319 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."

3.28.336 As evident from aforesaid, the Hon'ble Commission did not deal with the submissions of the Petitioner and the 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 APTEL in Judgments dated October 6, 2009 (Appeal 36 of 2008), July 12, 2011 (Appeal 142 of 2009), November 28, 2014 (Appeal 62 of 2012) and March 2, 2015 (Appeal 178 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.

- 3.28.337 It is further submitted that the Hon'ble APTEL 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)

- 3.28.338 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 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).

3.28.339 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 considering ROE as 16% and rate of interest as SBI PLR while computing the impact.

3.28.340 Accordingly the rates of carrying cost are tabulated below:

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%

3.28.341 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."

3.28.342 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.

3.28.343 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%.

3.28.344 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:

"4.116The 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. The rate of interest has been considered at 14% based on the Regulation 77 of DERC Tariff Regulations 2017 that Provided that in no case the rate of interest on loan shall exceed approved rate of return on equity.

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	Approved
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	2327.00
E	Surcharge @ 8%	358.65
F	Carrying Cost	278.24

”

3.28.345 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 13.74% when clearly the rate of interest as per the prescribed formula in the Hon'ble Commission's own Regulations, ought to have been 14.14%,(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 13.74%.

3.28.346 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 6.15% 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.

3.28.347 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 62: Variations in SBI MCLR

S. No	Particulars	Percentage
1	SBI MCLR as on 1 st April 2017	8%
2	SBI MCLR as on 1 st April 2018	8.15%
3	SBI MCLR as on 1 st April 2019	8.55%

3.28.348 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 6.14% (Margin) plus applicable MCLR, i.e., 8%. Hence the trued-up rate of interest would be 14.14% capped to 14%. It could not be 13.74% 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%.

3.28.349 The carrying cost on already recognised Regulatory Assets upto FY 2017-18 is tabulated below:

Table 3B 63: Impact due to difference in rates of carrying cost (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
A	Opening Level of (Gap)	159										
B	Adjustmen	-118										

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
	t in Opening balance of RG on account of PDP adjustments											
C	Opening Balance of Revenue Gap/(Surplus)	40	20	-160	39	888	2310	2976	3336	3540	3274	3685
D	Adjustments: Contingency Reserve				7							
E	Revenue gap/(Surplus) during the Year	-24	-171	207	798	1201	535	199	27	-804	-511	-336
F	Adjustment from surcharge						237	280	306	333	353	377
G	Closing	16	-151	47	830	2088	2607	2895	3057	2403	2409	2972
H	Average	28	-65	-57	434	1488	2458	2936	3196	2972	2842	3329
I	Carrying cost	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
J	Carrying cost	4	-9	-7	58	221	370	441	483	440	416	466
K	Grand Closing balance	20	-160	39	888	2310	2976	3336	3540	2843	2825	3438
L	Additional true-up past impact									432	860	133
M	Total balance									3274	3685	3571
N	RA approved in TO dated 31.08.2017											2677
O	Diff. In CC											894

3.28.350 There is difference of Rs. 894Crore above closing balance, i.e, Rs. 3571Crore when compared with Regulatory Assets recognised up to FY 2013-14, i.e., Rs. 2677.2Crore.

PRAYER(S):

3.28.351 The Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issue in next Tariff Order.

Issue-5.15: Financing cost of LPSC based on SBI PLR:**ISSUE IN BRIEF:**

3.28.352 This issue pertains to the implementation of two principles laid down by the 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. 147 of 2009 in case of the Appellant); and (B) the funding of LPSC has to be on the prevailing market lending rates (Judgment in Appeal No. 178 of 2012, para 4.8) and erred in relying upon the judgment in Appeal No. 14 of 2012.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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 the 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.147/2009 (" Appeal 147 Judgment "), in para 10 thereof, referring to the Appeal 153 Judgment.
3.	02.03.2015	In the Judgment dated March 2, 2015 in Appeal No. 178 of 2012, in para 39 thereof (" Appeal 178 Judgment ") 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 Appellant 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 3.30, 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>
5.	31.08.2017	<p>In the In its tariff order dated 31.08.2017, (Para Nos. 3.160 – 3.161), the Hon'ble Commission has held as under:</p> <p><i>"3.160 The Commission has already dealt this issue in its Tariff Order dtd. 29/09/2015 as follows:</i></p> <p><i>"3.42 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 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>3.161 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</p>

		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.
6.	31.10.2017	The Hon'ble Commission had filed a Clarificatory Application in Appeal 178 of 2012 seeking clarification/ review of ten tariff issues including the present one. On 31.10.2017, the Hon'ble Tribunal has dismissed the said Clarificatory Application.
7.	28.03.2018	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.
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.

DETAILED SUBMISSIONS:

3.28.353 The issue of financing cost of LPSC arose for the first time in Appeal 147 of 2009 which was filed with respect to Tariff Order dated May 28, 2009. The relevant extracts from Judgment dated July 12, 2011 (Appeal 147 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)

- 3.28.354 Further the Hon’ble APTEL in Judgment dated March 2, 2015 (Appeal 178 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)

- 3.28.355 The Petitioner raised the issue of lower financing cost of LPSC allowed in various Tariff Orders in its Petition for true-up of FY 2016-17 and ARR and Tariff for FY 2018-19. 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 APTEL 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 Ratesince 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 periodkeeping in view the prevailing **Prime Lending Rate**"***

(Emphasis supplied)

3.28.356 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:

S. No	Financial Year	Rates considered in Tariff Order	SBI PLR rates	Actual rates
1	FY 2007-08	9.30%	12.69%	11.63%
2	FY 2008-09	9.57%	12.79%	11.66%
3	FY 2009-10	9.89%	11.87%	11.02%
4	FY 2010-11	10.34%	12.26%	11.62%
5	FY 2011-12	12.72%	14.40%	13.31%
6	FY 2012-13	9.99%	14.61%	15.39%
7	FY 2013-14	9.89%	14.58%	15.41%
8	FY 2014-15	10.44%	14.75%	15.53%
9	FY 2015-16	10.47%	14.28%	14.57%
10	FY 2016-17	10.47%	14.05%	14.25%

3.28.357 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 APTEL direction is still pending to be implemented.

3.28.358 Accordingly the Petitioner has computed the financing cost of LPSC based on SBI PLR as under:

Table 3B 64: Difference in financing cost of LPSC due to rate of interest

S. No	Particulars	UoM	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	Delayed Payment Surcharge	Rs. Cr.	26.7	20.7	20.9	17.3	28.4	24.1

S. No	Particulars	UoM	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
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.	148.1	114.9	115.9	96.3	157.5	134.1
5	SBI PLR	%	12.69%	12.79%	11.87%	12.26%	14.40%	14.61%
6	Financing Cost of LPSC	Rs. Cr.	18.8	14.7	13.8	11.8	22.7	19.6
7	Allowed by DERC	Rs. Cr.	13.8	11.0	11.5	10.0	20.0	12.8
8	Difference	Rs. Cr.	5.0	3.7	2.3	1.8	2.6	6.8

3.28.359 The aforesaid difference has been considered along with carrying cost as under:

Table 3B 65: Impact on account of difference in financing cost of LPSC along with carrying cost (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	Op. balance	0	5.4	10.1	13.8	17.6	23.1	33.8	38.9	44.8	51.4	59.0
2	Additions	5.0	3.7	2.3	1.8	2.7	6.8					
3	Cl. Balance	5.0	9.1	12.3	15.6	20.3	29.9	33.8	38.9	44.8	51.4	59.0
4	Average	2.51	7.2	11.2	14.7	18.9	26.5	33.8	38.9	44.8	51.4	59.0
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	0.3	1.0	1.5	2.0	2.8	4.0	5.1	5.9	6.6	7.5	8.3
7	Grand Cl. Balance	5.4	10.1	13.8	17.6	23.1	33.8	38.9	44.8	51.4	59.0	67.2

PRAYER(S):

3.28.360 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the next Tariff Order.

Issue-5.16: Incorrect treatment on account of Zero Billing during FY 2010-11:

ISSUE IN BRIEF:

3.28.361 This issue pertains to the incorrect implementation of Hon'ble APTEL

judgment by disallowing 122MU on account of Zero billing on extrapolated [prorated] basis.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

S.No	Date	Event
1.	January 2011 to March 2011	At the time of true up of FY 2010-11, the Petitioner submitted the data to the Hon'ble Commission of 40.85 MU as zero rate billing posted for the months of January 2011 to March 2011. The energy sales so accounted for (without any corresponding revenue) for the three months of January to March 2011 was 40.85 MU. "zero billing" denotes the situation where some entries were made in the accounting software of the Appellant where energy sold was accounted for without any corresponding revenue billed (i.e. "zero bill"). The energy sales so accounted for (without any corresponding revenue) for the three months of January to March 2011 was 40.85 MU.
2.	13.07.2012	<p>Hon'ble Commission vide tariff order dated 13th July 2012 disallowed units billed of 40.84 MU on account of zero rate billing. Extract of para 3.19, of the tariff order thereof, dated 13th July 2012, is extracted as follows:-</p> <p><i>"3.19 The Commission directed the Petitioner to extract consumer-wise record for billing in the Month of March 2011 from the SAP database. On analysing the consumer-wise record for March 2011, the Commission observed that a large number of bills were raised at zero rates. The Commission directed the Petitioner's officials for explanation; however the Petitioner could not provide any explanation. The Commission directed the Petitioner to submit details of all such cases where energy has been billed at zero rates. The Petitioner through its letter dated April 25, 2011 submitted that it had billed 40.85 MU at zero rate in SAP and EBS database between January – March 2011 during FY 2010-11.</i></p>

S.No	Date	Event
3.	08.2013	This was challenged by a consumer Mr. A.K. Dutta in Appeal No 195 of 2013 (Appeal 195 Judgment) on the ground that the Respondent Commission must check for the whole year instead of only 3 months (January to March 2011) of FY 2010-11.
4.	.12.2014	The Hon'ble Commission in its response before the APTEL also submitted that they found no discrepancy in the period April 2010 to December 2010 and sought details for the period January 2011 to March 2011 wherein they have detected the huge variations in the average rate of sale of energy.
5.	09.02.2015	<p>This Hon'ble Tribunal vide its Judgment dated February 9th, 2015 in para 12.3(b) and para 12.3(c) of Appeal No 195 of 2013 (Appeal 195 Judgment), was inter alia, pleased to hold as under (Para 12.3 (b) and (c) relevant extracts as reproduced below:</p> <p><i>"12.3 (b) The State Commission while analyzing the aforesaid data observed variation in the average rate for sale of energy (revenue billed on account of energy charges excluding fixed charges divided by energy billed) for some consumer category. As observed in para 3.18 of the impugned order, the State Commission after analyzing the average rate for sale of energy, found the same to be lower than the tariff approved by the State Commission in the Tariff Order. The State Commission did not find any discrepancy in the average rate for sale of energy and Tariff approved in the Tariff Order for the months April to December, 2010. Accordingly, the State Commission directed BYPL to give clarification for the same with supporting data. By letter dated 25.04.2011, BYPL submitted the complete data before the State (both <u>consumer wise</u> and month wise) indicating that certain units corresponding to the previous year's billing were considered during FY 2010-11 as adjustments accounted at zero rate during the last three months of the financial year. This was done for the purpose of correction and proper accounting in terms of energy billed and amount billed to the consumer.</i></p> <p><i>14.3 c) The Commission duly analyzed the data submitted by BYPL and verified that there is no variation in the actual average rate of sale per unit and the rate approved by the Commission in Tariff Order for the period April 2010 to</i></p>

S.No	Date	Event
		<p><i>December 2010. Therefore, there was no question of bills raised in that period with Zero rate. The Commission verified the entire data and found that total of 40.85 MUs were billed at zero rate during a particular period of January to March 2011 only. Accordingly, the Commission disallowed the said units. Hence, there cannot be any grievance to the Appellant on this account...”</i> (emphasis supplied)</p> <p>However, since the data had been analysed only for those three months, the matter was remanded to the Hon’ble Commission. The extract of this Hon’ble Tribunal’s Judgment in para 12.5 of Appeal 195 of 2013 thereof (Appeal 195 Judgment) is as follows:-</p> <p><i>12.5 We find from above that the State Commission has scrutinized the <u>consumer-wise data</u> for only March 2011 and has only relied on the statement of the Respondent no.2 that 40.85 MU has been billed at zero rate between January – March 2011 during 2010-11. <u>The Learned State Commission in its written submissions has also not given a clear statement that it has scrutinized the data for the entire year or has extrapolated the scrutinized date over the entire financial year.</u> On the other hand it has stated it that for further analysis it has sought the data for the period January – March 2011. While the State Commission in the written submissions has stated that the zero billing has been applied to entire FY 2010-11, it is not borne out by the impugned order and the written submissions read comprehensively.</i></p> <p><i>12.6 In view of above, <u>we remand the matter to the State Commission to consider the discrepancy for the entire FY 2010-11, if not already done, and decide the matter accordingly.”</u></i> (emphasis supplied)</p>
6.	01.04.2015	The Hon’ble Commission sought details of category wise and month wise Billing details for FY 2010-11 through an Email dated April 1 st , 2015.
7.	08.04.2015	The Petitioner submitted the aforesaid details to the Hon’ble Commission vide its letter dated April 8 th , 2015. Since the Hon’ble Commission required only “category wise” and “month-wise” billing data that is precisely what the Petitioner submitted. It is however important to note that the analysis referred to in the judgment dated 09.02.2015 as also

S.No	Date	Event
		the remand as directed was for an analysis of the “consumer-wise” data. Neither the Hon’ble Commission neither sought for any further details nor gave any opportunity to the Petitioner for justifying the claim. Hence, the Petitioner was not even aware as to how or what the Hon’ble Commission was considering. In point of fact, in one meeting with the Hon’ble Commission on 25.05.2015, the Petitioner pointed out the “consumer-wise” data to the Respondent Commission. However, as far as the Petitioner is aware, this meeting was never minuted.

DETAILED SUBMISSIONS:

- 3.28.362 In terms of the remand Order of the Hon’ble APTEL the Hon’ble Commission was required to consider the “consumer-wise” data and not what they required [i.e. the category-wise/month-wise data]. Since the Hon’ble Commission only called for such data and had never required the Petitioner to submit the “consumer-wise” data, this was never formally submitted to the Respondent Commission.
- 3.28.363 As per the consumer-wise [i.e. CA] data, the month wise energy billed at zero rate for the whole of FY 2010-11 is tabulated below:-

Month	SAP (Units Billed MU)	EBS (Units Billed MU)	Total MU
Apr-10	-0.01	-	-0.01
May-10	0.14	0	0.14
Jun-10	0	-	0
Jul-10	0	0	0
Aug-10	0	0	0
Sep-10	0	-	0
Oct-10	0	-	0
Nov-10	0	-	0
Dec-10	0	-	0
Jan-11	0	0.94	0.94
Feb-11	2.57	2.32	4.89
Mar-11	22.93	3.7	26.63
TOTAL	25.63	6.96	32.59

- 3.28.364 It is evident from the above table that for the remainder of the year, i.e. April 2010 to December 2010, there was no “zero-billing”.
- 3.28.365 The Petitioner had submitted that 40.85 MU have been posted during the period January 2011 to March 2011. The figure from the CA wise data arises to be 32.46 MU instead of 40.85 MU's. The reason behind the variation is due to the bi-monthly billing in the EBS data where 8 MU was posted in March 2011 and billed in April 2011 due to which it accounted for in FY 2011-12.
- 3.28.366 However the Hon'ble Commission in its Tariff Order dated 29.09.2015, purportedly in compliance with this Hon'ble Tribunal's Judgment in Appeal No. 195 of 2013, disallowed the zero rate billing of 122 MU for the period April 2010 to December 2010 on extrapolated [prorated] basis and stated as under:

“3.132 As per the direction of Hon'ble APTEL in appeal no. 195 of 2012, the Commission has revised the AT&C Loss Computation for FY 2010-11. It is observed that the petitioner had submitted total quantum of zero billing at 40.85 MU for the period between Jan'11 to Mar'11. The Petitioner was directed to submit the details of zero billing entire FY 2010-11 in view of the APTEL's direction. The Petitioner has submitted that total quantum of zero billing during FY 2010-11 which was lesser than earlier submission during the technical validation in true up of FY 2010-11 in tariff order dated 13.07.2012. Therefore, the Commission has decided that total quantum of zero billing basis be prorated for the entire year based on the three months information as provided while true up of FY 2010-11. Accordingly, the total impact of an amount of Rs. 57.98 crore on account of under achievement in AT&C loss target has been added into the revenue available towards ARR in FY 2010-11.

- 3.28.367 The aforesaid impact along with carrying cost is tabulated below:

Table 3B 66: Impact on account of prorated zero billing 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	0.0	61.9	71.1	81.7	94.0	108.2	124.2	142.4
2	Additions	57.98							
3	Cl. Balance	58	62	71	82	94	108	124	142
4	Average	29.0	61.9	71.1	81.7	94.0	108.2	124.2	142.4
5	Rate of interest	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	3.9	9.2	10.7	12.3	14.2	16.0	18.2	19.9
7	Grand Cl. Balance	61.9	71.1	81.7	94.0	108.2	124.2	142.4	162.4

3.28.368 The Petitioner requests the Hon'ble Commission to allow the above impact in next Tariff Order.

Issue-5.18: Additional UI Charges above 49.5 Hz:

ISSUE IN BRIEF:

3.28.369 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 the Hon'ble Tribunal as contained in its judgment in Appeal No. 178 of 2012 on this issue.

Given hereunder in the form of a LIST OF DATES are the brief facts necessary and relevant for the matter at hand:

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</i></p>

S.No	Date	Event
		<p>generators, generation business of the Distribution Licensee and others, for supply to consumers of Retail Supply Business;</p> <p>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;</p> <p>[...]"</p>
2.	23.07.2009	<p>Press Release of the Forum of Electricity Regulators (hereinafter referred to as "FOR") recommendations provides as follows:-</p> <p>"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>Emphasis supplied</i>)</p>
3.	13.07.2012	<p>The Hon'ble Commission, in its Tariff Order, in para 3.76 and Table 11 thereof did not consider additional UI Charges in power purchase cost and held:</p> <p>"3.76 The Commission further observes that UI charges paid by the Petitioner also includes Penal UI charges of Rs 0,41 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."</p>
4.	31.07.2013	<p>The Hon'ble Commission, in its Tariff Order, in para 3.76 and Table 17 thereof did not consider additional UI charges in power purchase cost and held:</p>

S.No	Date	Event
		<i>"3.76 On a query from the Commission the Petitioner submitted that the UI charges paid by the Petitioner also includes penal UI charges of Rs. 1.39Crore. 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>
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. 0.18Crore 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>
6.	02.03.2015	<p>The Hon'ble Tribunal, in its judgment in Appeal 178 of 2012 ("Appeal 177 Judgment"), 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</i></p>

S.No	Date	Event
		<p><i>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 penal charges for UI are leviable. Accordingly, decided.”</i></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></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</p>

S.No	Date	Event
		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>
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.	10.08.2015	<p>The Petitioner, vide its letter dated 10.08.2015, submitted the details of total additional UI amount below 49.5 Hz and up to 49.2 Hz totalling to Rs. 0.41 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 178 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 the Hon'ble Tribunal's Appeal 178 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 10, 2015 duly certified by the SLDC.
10.	31.08.2017	In its tariff order dated 31.08.2017 (para 3.476& 3.479) 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.
11.	28.03.2018	The Hon'ble Commission, in its tariff order dated 28.03.2018 (para 3.388-3.197-198) stated that the matter does not merit consideration and that the Hon'ble

S.No	Date	Event
		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.
12.	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:

3.28.370 The Hon'ble APTEL in Judgment dated March 2, 2015 (Appeal 178 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."

3.28.371 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:

*"3.114 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."

*3.115 In view of the above, **the Commission has not considered any impact on the same. (Emphasis added)***

- 3.28.372 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.
- 3.28.373 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.
- 3.28.374 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 178 of 2012).
- 3.28.375 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.
- 3.28.376 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)*

- 3.28.377 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.

- 3.28.378 It is submitted that the Hon'ble Commission may be pleased to note the Judgment of the Supreme Court in Central Power Distribution Co. (Appeal No.2104 of 2006) wherein the Hon'ble Supreme Court has opined as under on the nature of UI Charges:-

“

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.

- 3.28.379 It is further submitted that in the years under consideration, 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 overdrawal from its system.
- 3.28.380 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.
- 3.28.381 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.
- 3.28.382 It is further submitted that the 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.
- 3.28.383 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 the 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.

3.28.384 Accordingly the Petitioner requests the Hon'ble Commission to allow UI Charges above frequency 49.2 Hz along with carrying cost as under:

Table 3B 67: 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	Opening Balance	0.0	0.4	2.0	3.2	3.6	4.2	4.8	5.5
2	Additions	0.4	1.4	0.8					
3	Closing Balance	0.4	1.8	2.8	3.2	3.6	4.2	4.8	5.5
4	Average Balance	0.2	1.1	2.4	3.2	3.6	4.2	4.8	5.5
5	Rate of Carrying Cost	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying Cost	0.0	0.2	0.4	0.5	0.6	0.6	0.7	0.8
7	Grand Balance	0.4	2.0	3.2	3.6	4.2	4.8	5.5	6.3

3.28.385 The Petitioner requests the Hon'ble Commission to allow the above in the next Tariff Order.

Issue-19: Bank Charges/ Syndication fees:

3.28.386 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.

3.28.387 As regards the issue of allowance of bank charges/ syndication fees, the Hon'ble Commission in Tariff Order dated March 28, 2018 and August 31,

2017 has stated as under:

“3.284 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 capitalisation. Further, the matter is sub-judice before Hon’ble APTEL in Appeal No. 290/ 2015 against the Commission’s direction in Tariff Order dtd. 29/09/2015. Therefore, the matter does not merit consideration at this point of time.”

3.28.388 Further, the Hon’ble Commission in the same Tariff Order dated 28.03.2108 while addressing the issue for FY 2016-17 has stated that:

“3.404 The Commission has already dealt this issue in tariff order dated 29.09.2015 as follows:

“As per Regulation 5.6 of the MYT Regulations, 2011, “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”.

3.405 As per Accounting standard (AS 16 - Borrowing Costs) issued by Institute of Chartered Accountants of India and notified by Companies amendment Act 1999,

“6. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation should be determined in accordance with this Statement. Other borrowing costs should be recognised as an expense in the period in which they are incurred.”

3.406 Conjoint reading of all the three extracts above, the Commission is of the view that the borrowing costs directly related to the capital assets shall be added to the cost of such capital assets.

3.407 The Commission is of the view that only the borrowing cost will be considered at the time of final true up of capitalisation. Accordingly, the Commission has not considered the syndication and documentation charges claimed by the Petitioner. Accordingly, the Commission has not considered syndication fees etc. of Rs.31.19 Crore as part of miscellaneous expenses.

3.408 Accordingly, the Commission has not considered the Syndication fees/ Bank Charges and other borrowing costs claimed by the Petitioner and the same shall be considered at the time of final true up of capitalisation for the relevant year. “

3.28.389 It is respectfully submitted that :-

- a. The Petitioner is not claiming syndication charge and bank charges as a part of its capitalization. Hence, the Hon'ble Commission's finding that only actual borrowing costs will be considered for the true up of capitalization is not relevant to the issue at hand. Admittedly, the Petitioner is seeking recovery of such syndication/bank charges as part of miscellaneous expenses and not as part of capitalization.
- b. 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.
- c. 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.
- d. 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.

- e. 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.
- f. 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.

3.28.390 Further, the Hon'ble Commission 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. Then 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.

3.28.391 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.”

However the borrowing costs/ syndication fees are not being capitalized and are charged to Profit and Loss Account as finance/other borrowing 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 and previous ARR Petitions 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
<i>Total Opening Net Loan</i>	689.59	395.76		459.93
<i>Repayment during the period</i>	109	53.15		59.06
<i>Additional Capitalisation of Borrowed loan during</i>	108.47	97.18		92.37

Particulars	FY 2010-11		FY 2011-12	
	Petition	Approved after Final Truing-up	Petition	Approved after Final Truing-up
<i>the year</i>				
<i>Addition/ (Reduction) in normative loan during the year</i>	0	20.14		18.58
<i>Total Closing Net Loan</i>	689.06	459.93		511.83
<i>Average Loan during the year</i>	689.33	427.85		485.88
<i>Weighted Average Interest Rate</i>	9.55%	9.62%		10.09%
<i>Interest Expenses for the period</i>	65.85	41.17		49.02
<i>Add: Interest payment on Consumer Security Deposit</i>	33.13	30.71		34.7
<i>Add: Legal, Bank, Guarantee and Other Charges</i>		2.35		2.69
<i>Add: Adjustment on a/c of term loan from financial institution</i>				(2.99)
<i>Total interest and finance charges</i>	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	48.78	20.23	140.56	87.14	147.58	87.14

Parameter	2010-11		2011-12		2012-13	
	Petition	Commission	Petition	Commission	Petition	Commission
Charges						
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
Finance Charges & Lease Rental	2	1	6	10
Gross Interest Charges	593	314	326	1233
Interest Expenses Capitalized	0	0	0	0

Particulars	Approved 11/11/11	Approved 11/11/11	Approved 11/11/11	Total
<i>Total Interest & Financing Charges</i>	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)

3.28.392 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.

3.28.393 Borrowing costs pertaining to non-capex Loans are directly linked to Regulatory Assets:

In absence of any time bound amortization plan of Regulatory Assets, the Petitioner is required 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 21, 2011 and April 30, 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.

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.

3.28.394 **Borrowing cost have not been included in A&G Expenses:**

The Hon'ble Commission itself has stated 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)*

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 68: A&G Expenses considered from FY 07 to FY 11 (Rs. Crore)

S. No	Particulars	Reference	FY 07	FY 08	FY 09	FY 10	FY 11
1	Gross A&G cost submitted by the Petitioner	Table-92, of TO dt. July 13, 2012	100.5	121.55	74.44	125.05	123.54
a	Less: Bad Debts		-	-	-	86.64	61.77
b	Less: Provision for Doubtful Debts		61.89	76.52	28.58	2.44	10.88
c	Less: Loss On Sale / Discarding Of Assets		0.6	0.73	0.58	0.3	0.29
d	Less: SLA moved to A&G cost		-	-	-	-	6.93
e	Less: Loss on Foreign Exchange Fluctuation		-	-	1.09	0.04	0
f	Add: Lease Rental transferred from R&M		1.27	1.26	1.24	1.24	1.24
2	Net A&G Expenses considered by Commission for benchmarking		39.28	45.55	45.44	36.88	44.9
3	A&G Expenses as per Audited Accounts	Respective Audited Accounts	100.50	121.55	75.50	125.05	123.54
4	Financing charges as per Audited Accounts[#]	Respective Audited Accounts		1.59	2.31	3.10	6.69

not included in Sr. No. 2 and appearing in separate schedule of Audited Accounts

3.28.395 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 2016-18 and are required to be allowed separately.

3.28.396 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.

3.28.397 Accordingly the Petitioner is claiming syndication fees/ borrowing cost incurred during respective years as under:

Table 3B 69: Impact on account of syndication fees/ borrowing cost along with carrying cost (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	Op. Balance	0	1.7	4.4	8.3	16.5	54.5	81.1	126.8	171.6	211.9	248.5
2	Additions	1.6	2.3	3.1	6.7	33.1	17.1	31.2	23.8	13.9	5.2	19.3
3	Cl. Balance	1.6	4.0	7.5	15.0	49.6	71.6	112.3	150.6	185.5	217.1	267.9
4	Average	0.8	2.9	6.0	11.6	33.1	63.1	96.7	138.7	178.5	214.5	258.2
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	0.1	0.4	0.8	1.6	4.9	9.5	14.5	21.0	26.4	31.4	36.1
7	Grand Cl. Balance	1.7	4.4	8.3	16.5	54.5	81.1	126.8	171.6	211.9	248.5	304.0

3.28.398 Without pre-judice to the contentions in the said appeals, the Petitioner requests the Hon'ble Commission to allow the impact in the ARR.

3.28.399 Based on the above submissions, the total impact claimed on account of implementation of Hon'ble APTEL Judgments (along with carrying cost upto FY 2016-17) is tabulated below:

Table 3B 70: Total impact claimed on account of implementation of Hon'ble APTEL Judgment

(Rs. Cr.)

S. No	Particulars	P	CC	Total
1	Capex related issues	1434	2745	4179
2	Impact of 11 months truing-up on account of depreciation rate for first 8 months	37	114	150
3	Computation of AT&C Loss for FY 2009-10	21	46	67
4	AT&C Loss for FY 2011-12	95	139	234
5	Revision of AT&C Loss targets from FY 2012-13 to FY 2013-14	464	348	813
6	Increase in employee expenses corresponding to increase in consumer base for FY 2007-08 to FY 2011-12	55	125	180
7	Efficiency factor for FY 2010-11	11	19	30
8	Revision of R&M Expenses by revising "K" factor for FY 2012-13 to FY 2016-17	32	17	49
9	Lower rates of carrying cost	894		894
10	Financing cost of LPSC based on SBI PLR-FY 08 to FY 13	22	45	67
11	Own Consumption-Reversals	58	104	162
12	Additional UI Charges above 49.5 Hz frequency	3	4	6
13	Syndication fees	157	147	304
	Sub-total	3284	3852	7136

PRAYER(S):

3.28.400 The Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issues in the present ARR of the Petitioner.

F. Claims contrary to Regulations/ Previous Directions:

3.28.401 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:

- a) Legal fees disallowed during FY 2017-18
- b) Interest rates for working capital and carrying cost during FY 2017-18 considered contrary to Regulations
- c) Disallowance of power purchase cost during period of regulations;
- d) Disallowance on account of overlapping banking transactions;
- e) 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;

3.28.402 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.

3.28.403 The aforesaid issues are discussed in detail as under:

Issue 6.1-Legal fees disallowed during FY 2017-18:

3.28.404 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.

3.28.405 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."

3.28.406 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. 11.41Crore for FY 2017-18 towards expenses incurred by it on account of legal charges.

- 3.28.407 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.
- 3.28.408 The Petitioner vide its letter dated 25.06.2019 submitted the details along with justification for claiming legal expenses.
- 3.28.409 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.
- 3.28.410 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]

- 3.28.411 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.

3.28.412 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.

3.28.413 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.

3.28.414 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."

3.28.415 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.

3.28.416 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 71: Legal fees and expenses along with carrying cost

(Rs. Cr.)

S. No	Particulars	FY 18
1	Opening balance	0
2	Additions	11
3	Closing	11
4	Average	5
5	Carrying cost rate	14%
6	Carrying cost	1
7	Grand closing	12

PRAYER(S):

3.28.417 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.

Issue 6.2 - Interest rates for working capital and carrying cost during FY 2017-18 considered contrary to Regulations:

3.28.418 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:"

3.28.419 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.

3.28.420 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%.

- 3.28.421 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:

"4.116 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. The rate of interest has been considered at 14.00% based on the Regulation 77 of DERC Tariff Regulations 2017 that Provided that in no case the rate of interest on loan shall exceed approved rate of return on equity."

- 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	Approved
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	2327.00
E	Surcharge @ 8%	358.65
F	Carrying Cost	278.24

"

- 3.28.422 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 13.84% and 13.74% 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 14.14%,(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 13.76%.

3.28.423 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 the rate of interest has been considered at 14% based on the Regulation 77 of DERC Tariff Regulations 2017.

3.28.424 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 72: Variations in SBI MCLR

S. No	Particulars	Percentage
1	SBI MCLR as on 1 st April 2017	8%
2	SBI MCLR as on 1 st April 2018	8.15%
3	SBI MCLR as on 1 st April 2019	8.55%

3.28.425 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 6.14% (Margin) plus applicable MCLR, i.e., 8%. Hence the trued-up rate of interest would be 14.14% capped to 14%. It could not be 13.74% 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%.

3.28.426 The impact of correction in rate of working capital of FY 2017-18 has been considered in capex related claims of the Petition

PRAYER(S):

- 3.28.427 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.

Issue-6.3: Cost disallowed on account of Regulation of Power:

- 3.28.428 As regards cost disallowed on account of regulation of power, the Petitioner would like to submit that the Hon'ble Commission in Tariff Order dated July 23, 2014 has 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.

...

3.90 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)

- 3.28.429 As evident from above, the Hon'ble Commission in 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 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 Commission staff on November 20, 2014, wherein the savings on account of regulation of energy from long term sources was demonstrated. However the Hon'ble Commission has now 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).

3.28.430 Further the Petitioner vide letter dated April 28, 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

...

*3.117 The Commission has received the claims regarding disallowance on account of regulated power in true-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.***

.....

3.257 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.

3.258 The Commission observed that the Petitioner has purchased 113.48 MU through Exchange, UI and banking during the periods of regulation. If the power was not regulated the Petitioner would have been received 876.84 MU at an average rate of Rs. 4.02/kWh. This weighted average per unit rate of Rs. 4.02/kWh has been arrived at considering current bill details of TPDDL pertaining to the period of regulation. Further, the Petitioner was directed vide email dtd. 06/05/2015 to clarify its Short Term Purchases in Regulation Period which changed from earlier submission of 118 MU to 18 MU as the purchases in case there had been no Regulation. However, the Petitioner had not submitted such reconciliation of information certified by SLDC. Therefore, for the Petitioner, similar treatment is provided for regulation of Power as was considered by the Commission in the Tariff Order dtd. 23/07/2014.

3.259 The Commission has analyzed at additional expenditure incurred for procurement of 113.48 MU by considering the average power purchase cost from various sources from which power was purchased during the period of regulation and arrived at weighted average per unit cost of Rs 2.51/kWh for 113.48 MU which were

procured by the Petitioner through short term power purchase. The Commission has considered the average per unit rate of long term power procurement cost for arriving at the said weighted average cost of Rs. 4.02 per unit keeping in view that in any case the Petitioner's power is not regulated from these stations. The Commission decides to disallow this differential amount of power procurement for 113.48 MU @ (-1.50) per unit i.e., Rs. (17.05) Crore incurred in the power purchase cost for FY 2013-14.

*3.260 As discussed above, the additional fixed cost amounting to Rs. 139.17 Crore was borne by the petitioner. In above Para, the Commission has already given the treatment to 113.48 MU out of 876.84 MU which the Petitioner would have received had his power not been regulated. The Commission, therefore, decides to disallow the prorated fixed cost against 763.36 MU (876.84 MU - 113.48 MU) which works out to Rs. 121.18 Crore (763.36 *(139.17/876.84)). (Emphasis added)"*

- 3.28.431 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 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:

"3.280 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." (Emphasis added)

- 3.28.432 The aforesaid finding of the Hon'ble Commission is true only if the Petitioner would have been able to back-down entire costly generating stations. However the Hon'ble Commission ignored the fact that the generating stations are required to be run at least at the technical minimum so as to ensure grid stability. Same has also been intimated by SLDC vide letter dated

December 13, 2013. The letter of SLDC has also been forwarded to the Hon'ble Commission vide letter dated June 16, 2017. Therefore even if the power would not have been regulated from this cheaper station of NHPC then also the Petitioner would not have the opportunity to back down costly station as the technical minimum would have been despatched. The aforesaid finding is denial of the fact that the consumers have actually benefitted from regulation of power.

3.28.433 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.

3.28.434 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:

(Rs. Cr.)

Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
Fixed cost borne during period of regulation	12	24	121	65	7	42

- 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 ,2014 only. For period prior to FY 2013-14, DISCOM-wise scheduling was not available. 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.
- 4) 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 73: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)	6333	5.64	3574	Figures as per ARR Petition
Regulated Power during FY 2012-13	253	2.59	66	253 MU @ Rs. 2.59 per kWh as per DERC Tariff Order
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2012-13)	2	3.21	1	2 MU as per short term schedule and Rs. 2.31 as per audited accounts (excl. banking)

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Power Purchase Cost assuming no regulation of power in FY 2012-13 (B)	6584	5.53	3639	
Net savings to consumers due to reduction in power purchase cost			65	B-A

3.28.435 Similarly during regulation of power during FY 2013-14, the Petitioner was able to avoid purchase of 877 MU during off-peak hours whereas the Petitioner was required to purchase additional 18 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 74: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2013-14

Particulars	Quantum (MU)	Avg. per unit rate (Rs/kwh)	Amount (Rs.Cr.)	Remarks
Actual Power Purchase (FY13-14) (A)	6577	6.00	3949	Figures as per ARR petition
Regulated Power (FY13-14)	877	4.10	359	877 MU's as per SLDC @ Rs. 4.10/Unit (Avg. derived regulated power rate as per BRPL plants during regulated period) except meija-7
Short term power purchase to make up for Regulated power	18	3.02	6	Purchase of 18 MU when Demand > Availability @ Rs 3.02/unit (Derived Short

Particulars	Quantum (MU)	Avg. per unit rate (Rs/kwh)	Amount (Rs.Cr.)	Remarks
when demand exceeds schedule(FY13-14)				<i>term wt Avg. exchange Rate based upon slot wise working)</i>
Power purchase cost assuming no regulation of power in FY13-14 (B)	7436	5.79	4303	
Avoided cost to consumer due to reduction in power purchase cost.			354	B-A

3.28.436 During regulation of power during FY 2014-15, the Petitioner was able to avoid purchase of 1596 MU during off-peak hours whereas the Petitioner was required to purchase additional 269 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 75: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2014-15

Particulars	FY 14-15			Remarks
	MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (DVC, SJVNL, NHPC) (A)	1596	4.06	647	MU as per SLDC report
Surplus Sale from Regulated Quantum (B)	1326	2.39	316	MU as per SLDC less Short term exchange purchase/ minor bilateral (1596-269)

Particulars	FY 14-15			Remarks
	MU	Rs/Unit	Rs Cr.	
				Rate as per Audit Certificate
Avoided cost (C)			331	A-B
Net Fixed Cost incurred on account of Regulated Quantum (D)			43	Fixed Cost including Regulated Credit (Rs 231 Cr- Rs 188 Cr.)
Cost of Short Term Power Purchased during Regulated period (E)	269	4.39	118	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum			161	F=D+E
Avoided cost to consumer due to reduction in power purchase cost.			170	G=C-F

3.28.437 Similarly during regulation of power during FY 2015-16, the Petitioner was able to avoid purchase of 698 MU during off-peak hours whereas the Petitioner was required to purchase additional 116 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 76: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2015-16

Particulars	FY 15-16			Remarks
	MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (DVC,	698	3.69	257	MU as per SLDC report

Particulars	FY 15-16			Remarks
	MU	Rs/Unit	Rs Cr.	
<i>SJVNL, NHPC</i> (A)				
Surplus Sale from Regulated Quantum (B)	580	2.23	130	MU as per SLDC less
				Short term exchange purchase/ minor bilateral (698-116)
				Rate as per Audit Certificate
Avoided cost			128	A-B
Nex Fixed Cost incurred on account of Regulated Quantum (D)			20	Fixed Cost including Regulated Credit (Rs 86 Cr- Rs 66 Cr.)
Cost of Short Term Power Purchased during Regulated period (E)	116	3.84	44	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum			65	F=D-E
Avoided cost to consumer due to reduction in power purchase cost.			63	G=C-F

3.28.438 Similarly during regulation of power during FY 2016-17, the Petitioner was able to avoid purchase of 823 MU during off-peak hours whereas the Petitioner was required to purchase additional 98 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 77: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2016-17

Particulars	FY 16-17			Remarks
	MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (NHPC, SJVNL, APCPL)	823	3.78	311	MU as per Draft SLDC report (to be confirmed by SLDC)
Surplus Sale from Regulated Quantum	725	2.44	177	MU as per SLDC less Short term exchange purchase/ minor bilateral (974-98)MU Rate as per Audit Certificate
Avoided cost			134	
Net Fixed Cost incurred on account of Regulated Quantum			50	Fixed Cost including Regulated Credit (Rs 108 Cr- Rs 57 Cr.)
Cost of Short Term Power Purchased during Regulated period	98	3.44	34	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum			84	
Net Avoided cost to consumer			50	

3.28.439 For FY 2017-18, the Petitioner saved energy even after the payment of the fixed charges to the generating station which has regulated/curtailed supply to the Appellant. This is illustrated by the calculation given below whereby the estimated saving to the consumers is estimated to be Rs. 126 crore for FY 2017-18. The same is tabulated as under:

Table 3B 78: Savings due to Regulation of Power during FY 2017-18

Particulars	Quantum (MU)	Avg. per unit	Amt. (Rs. Cr.)	Remarks
Regulated Power (FY 18)	325	4.36	141	325 MU (As per Respondent Commission) @ Rs. 4.36/ unit
Short term power	50	3.08	16	50 MU as per Hon'ble

Particulars	Quantum (MU)	Avg. per unit	Amt. (Rs. Cr.)	Remarks
purchase to make up for Regulated power (FY 18)				DERC analysis and Rs. 3.08/ unit as per IEX rate
Avoided cost to consumer due to reduction in power purchase cost (Savings to the consumers)			126	B-A

3.28.440 However, the Hon'ble Commission disallowed Rs. 10.23 Cr. towards additional power purchase cost during the power regulated period.

3.28.441 Without pre-judice to the Appeals pending before the Hon'ble APTEL, 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 2017-18 along with carrying cost as tabulated below:

Table 3B 79: Amount pertaining to Regulated Power from FY 11-12 to FY 17-18 (Rs. Crore)

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	13.1	52.2	172.0	280.4	339.6	436.4
2	Additions	12.2	34.6	104.1	76.6	16.5	43.9	10.2
3	Closing Balance	12.2	47.7	156.4	248.6	296.9	383.5	446.6
4	Average	6.1	30.4	104.3	210.3	288.6	361.5	441.5
5	Rate of carrying cost	14.88%	15.03%	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.9	4.6	15.7	31.8	42.7	52.9	61.8
7	Grand Closing Balance	13.1	52.2	172.0	280.4	339.6	436.4	508.4

Issue-6.4: Cost disallowed on account of Overlapping of banking transactions:

3.28.442 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."*

3.28.443 In this regard, it is respectfully submitted that the 'Banking of Power', also

termed as 'Swapping of Power' is an arrangement between two parties, through which power is traded on barter system. Thus, a banking transaction is a non-monetary transaction where excess power available with a Licensee is traded for power at a subsequent date, without any net payment of money for the power to the other party with whom such an arrangement is entered into. However, it is not always possible to conclusively confirm the complementary demand and surplus profiles to facilitate banking of power.

3.28.444 As regards FY 2014-15 and FY 2015-16, it is submitted that the Hon'ble Commission has disallowed the legitimate entitlements of the Petitioner by citing the instance of the Petitioner doing Banking purchase and sale during September'14 to Feb'16. In this regard, the Petitioner makes the following submissions:

- a. Forecasting, importing and exporting of power is on a best endeavor 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 on account of the re-allocation, which resulted in de-allocation of power to the Petitioner from these sources, the Petitioner who had forecasted its power requirement earlier from these sources, having 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 BTPS power, the Petitioner sought power from the market to make up the shortfall/ gap.
- c. The Petitioner vide e-mail dated 29.06.2017 submitted information regarding Banking and cost benefit analysis for FY 2014-15 & FY 2015-16 to the Hon'ble Commission.

3.1.1 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 80: Impact on account of disallowance of power purchase cost due to over-lapping banking transactions (Rs. Crore)

S. No	Particulars	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	2.5	4.4	5.1
2	Additions	2.3	1.5	-	-
3	Closing Balance	2.3	4.0	4.4	5.1
4	Average	1.2	3.2	4.4	5.1
5	Rate of carrying cost	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.2	0.5	0.6	0.7
7	Grand Closing Balance	2.5	4.4	5.1	5.8

3.28.445 Without pre-judice to the contentions in the Appeal, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact of Rs. 5.8Crore in the Tariff Order.

Issue-6.5: Cost disallowed on account of excessive trading at UI above contingency limit:

3.28.446 The Hon'ble Commission in Tariff Order dated August 31, 2017 disallowed the cost on account of excessive trading in UI during the month of April to June 2015 above contingency limit of 3%.

3.28.447 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 April 2015 and June 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 Electricity Act, 2003 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 Electricity Act, 2003 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 Electricity Act, 2003, 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 Electricity Act, 2003 and cannot disregard the same.
- g. In addition to the above, the Petitioner keeps a margin 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 dependant 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 drawal (as it has to follow SLDC directions) or account for the surplus power in its system for disposal (as it is dependant 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 Electricity Act, 2003 and cannot disregard the same.

3.28.448 In view of the above submissions and without pre-judice to the contentions raised in the Appeal, the Petitioner requests the Hon'ble Commission to rectify the treatment and allow the disallowed amount along with carrying cost as under:

Table 3B 81: Impact along with carrying cost (Rs. Cr.)

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	7.6	21.2	24.4	27.9
2	Additions	7.1	11.5			
3	Closing Balance	7.1	19.2	21.2	24.4	27.9
4	Average	3.6	13.4	21.2	24.4	27.9
5	Rate of carrying cost	15.01%	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	0.5	2.0	3.1	3.6	3.9
7	Grand Closing Balance	7.6	21.2	24.4	27.9	31.8

Issue-6.6: Normative rebate on Power Purchase Cost:

3.28.449 As regards the issue of normative rebate, the Hon'ble Commission in Tariff Order dated March 28, 2018 and August 31, 2017 has viewed as under:

"3.247 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 consideration."

3.28.450 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.

3.28.451 As regards above it is submitted that it is factually correct that the Hon'ble Delhi High Court has upheld DERC Tariff Regulations, 2011 and the Petitioner is not challenging the Regulations, however is requesting the Hon'ble Commission to allow the expenses in terms of the Regulations. Regulation-4.21 of DERC Tariff Regulations, 2011 provides for True-up 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;
..."*

3.28.452 In terms of the aforesaid Regulations, entire power purchase cost including normativerebate is uncontrollable. Regulation-4.21 does not carve out any exception for rebate. It includes all components of revenue, sales and power purchase costs.

3.28.453 The Hon'ble Commission has not dealt with the aforesaid contention which has repeatedly brought into the notice by the Petitioner in its Petitions, letters and during the time of Technical Validation Session.

3.28.454 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)*

As evident from the above, normative rebate of 2% was required to be assumed for the purpose of ARR.

- 3.28.455 Further Regulation-5.40 clearly states that truing-up shall be carried out in accordance with Regulation-4.21. 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;
...”*

- 3.28.456 As evident from the abovementioned Regulations, the Truing up for a particular year has to be carried out in terms of Regulation 4.21 which provides for yearly true- up of power purchase cost being an uncontrollable cost. However, the Hon’ble Commission is applying Regulation-5.24 at the time of truing-up which is contrary to the Regulations.

- 3.28.457 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 has 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)

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.

3.28.458 It is further submitted that the Hon’ble APTEL in Judgment dated July 30, 2010 (Appeal 153 of 2009) and March 2, 2015 (Appeal 178 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.”

3.28.459 Therefore the decision of Hon’ble APTEL 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.

3.28.460 In accordance with the above submissions and without pre-judice to the contentions raised in Appeal before the Hon’ble APTEL, the Petitioner requests the Hon’ble Commission to re-instate the power purchase cost disallowed by assuming normative rebate and consider the actual rebate earned from FY 2012-13 to FY 2017-18 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 2016-18 along with carrying cost as per the table given below:

Table 3B 82: Impact along with carrying cost (Rs. Cr.)

S. No	Particulars	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	61.0	118.2	201.6	298.2	406.4
2	Additions	56.8	44.6	60.9	62.2	60.2	64.6
3	Closing Balance	56.8	105.7	179.1	263.8	358.4	471.1
4	Average	28.4	83.3	148.6	232.7	328.3	438.8
5	Rate of carrying cost	15.03%	15.01%	15.13%	14.80%	14.64%	14%
6	Carrying cost	4.3	12.5	22.5	34.4	48.0	61.4
7	Grand Closing Balance	61.0	118.2	201.6	298.2	406.4	532.5

3.28.461 The Petitioner requests the Hon'ble Commission to allow the aforesaid amount in the next Tariff Order.

Issue-6.7: Income from Street Light Maintenance Business to be considered as

Other Business Income:

3.28.462 As regards Street Light Maintenance Charges, the Hon'ble Commission in Tariff Order dated March 28, 2018 has ruled as under:

"3.291 The Commission has already clarified this issue in true up of FY 2014-15 and FY 2015-16 that there is no mention of incentive on street light maintenance in the notes of the audited financial statement. Further, the expenses incurred by the Petitioner on account of street light maintenance have also not been indicated separately in the audited financial statement so as to assess that these expenditure are over and above the normative O&M expenses allowed by the Commission in the respective year. Therefore, this issue does not merit consideration."

3.28.463 The Hon'ble Commission has not dealt with any of the contention of the Petitioner. Apart from distribution licensed business, the Petitioner is also generating revenue from other business. This other businesses are being operated parallelly by the Petitioner.

3.28.464 As regards above, it is submitted that the responsibility of maintaining street light is not contained in the License of the Petitioner. 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;”

3.28.465 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.”

3.28.466 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.

3.28.467 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. 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.

- 3.28.468 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 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 only helped MCD and the Petitioner to reach a consensus to avoid dispute.
- 3.28.469 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 East and Central East Delhi.
- 3.28.470 For carrying out such maintenance services, the Petitioner optimally engages its existing manpower, Technicians, Electricians, Electric Men, Line Engineers and also outsources further manpower.
- 3.28.471 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.
- 3.28.472 The income from street light maintenance business along with carrying cost is tabulated below:

Table 3B 83: Impact on income from SLM Business along with carrying cost (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	0.0	8.3	11.2	25.4	42.0	62.3	84.8	111.0	143.4	170.4	195.3
2	Additions	7.7	1.7	11.9	12.4	13.1	12.1	12.6	14.5	5.3	11.2	10.2
3	Closing Balance	7.7	10.0	23.1	37.8	55.1	74.5	97.3	125.5	148.8	181.5	205.5
4	Average	3.9	9.1	17.2	31.6	48.6	68.4	91.0	118.3	146.1	176.0	200.4
5	Rate of 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	0.5	1.3	2.3	4.2	7.2	10.3	13.7	17.9	21.6	24.9	28.1
7	Grand Closing Balance	8.3	11.2	25.4	42.0	62.3	84.8	111.0	143.4	170.4	195.3	233.6

3.28.473 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the aforesaid amount along with carrying cost in the next Tariff Order.

Issue-6.8: 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 LPSC:

3.28.474 As regards financing cost of LPSC from FY 2013-14 onwards, the Hon'ble Commission in the Tariff Order dated August 31, 2017 has ruled as under:

"3.307 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."

3.28.475 Further, in the Tariff Order dated March 28, 2018 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.

- 3.28.476 In this regard, it is respectfully submitted that the Hon'ble Commission has referred to Hon'ble APTEL's direction in Appeal no. 61 and 62 of 2012 which was in respect of true-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 submissions 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 corresponding to number of days of delay in the payment by the Consumers.
- 3.28.477 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 as NTI.
- 3.28.478 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.
- 3.28.479 The Petitioner in its Petition for True-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 the principle amount. However, the Hon'ble Commission without referring to its' direction for change in methodology for 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.

- 3.28.480 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.
- 3.28.481 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.
- 3.28.482 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 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.

3.28.483 The Hon'ble Commission while computing the financing cost of LPSC during FY 2013-14 to FY 2016-17 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 2013-14 to FY 2016-17. 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 20th. Now the consumer pays the bill on 25th, 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 84: 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	LPSC amount	15	D=AxC

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 85: 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	LPSC amount	2.5	D=AxCx5/30

3.28.484 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 86: Comparison of financing cost allowed by the Commission in two approaches of LPSC

(Amt. 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

S. No	Principal	Case-1	Case-2	Reference
D	Rate of Carrying cost	12.50%	12.50%	
E	Financing cost of LPSC for the month	10.42	1.74	$E=CxD/12$

3.28.485 As evident from aforesaid illustration, 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 2013-14 to FY 2017-18 and the Petitioner ought to be allowed to retain entire amount of LPSC collected during 2013-14 to FY 2017-18.

3.28.486 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 amount of LPSC from FY 2013-14 onwards to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

3.28.487 The difference in LPSC amount and the amount allowed by the Hon'ble Commission from FY 2013-14 to FY 2017-18 along with carrying cost is tabulated below:

Table 3B 87: Impact on account of difference in LPSC during FY 2013-14 to FY 2017-18 along with carrying cost (Rs. Crore)

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	9.7	21.1	32.8	46.4
2	Additions	9.0	9.2	8.0	8.3	3.9
3	Closing Balance	9.0	18.9	29.1	41.0	50.3
4	Average	4.5	14.3	25.1	36.9	48.4
5	Rate of carrying cost	15.01%	15.13%	14.80%	14.64%	14.00%

S. No	Particulars	FY 14	FY 15	FY 16	FY 17	FY 18
6	Carrying cost	0.7	2.2	3.7	5.4	6.8
7	Grand Closing Balance	9.7	21.1	32.8	46.4	57.1

3.28.488 Without pre-judice to the contentions raised in the Appeals filed before APTEL, the Petitioner requests the Hon'ble Commission to allow the aforesaid along with carrying cost in the next Tariff order.

Issue-6.9: Monthly Billing Rebate for FY 2014-15 and FY 2015-16:

Disallowance on account of monthly billing rebate contrary to the affidavit submitted by the Hon'ble Commission itself in Civil Appeal 6959-60 of 2015 before Hon'ble Supreme Court:

3.28.489 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.

3.28.490 With a view of manage its working capital requirement, the Petitioner in January 2014 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 cash-flow brought in the system by the Petitioner by shifting to monthly billing cycle.

3.28.491 In accordance with the directions of the Hon'ble Commission, the Petitioner provided the monthly billing rebate to its consumers. Therefore, whatever positive impact on account of cash-flow improvement was brought in the system was paid back to the consumers at the end of financial year by way of monthly billing rebate.

3.28.492 On March 2, 2015, the Hon'ble APTEL pronounced Judgment in Appeal 178 of

2012 wherein the Hon'ble APTEL 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)

3.28.493 As evident from the aforesaid, the Hon'ble Commission has 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.

3.28.494 The Petitioner had shifted from bi-monthly billing to monthly billing during January 2014 and passed on rebate amounting to Rs. 0.78 Crore in proportion to the number of bills raised during January-March'14. The same was credited to the respective consumers in June 2014. Further the rebate amounting to Rs. 17.28 Crore in proportion to the number of bills raised during FY 2014-15 was credited to the respective consumers on March 31, 2015 and was credited into individual bills of consumers in terms of the directive of the Hon'ble Commission. Further the rebate amounting to Rs. 15.88 Crore in proportion to the number of bills raised during FY 2015-16 was credited into individual bills of consumers in bills raised during March 2016.

3.28.495 Therefore, the Petitioner requests the Hon'ble Commission that rebate of Rs.

18.06 Crore (Rs. 17.28 Cr. + Rs. 0.78 Cr.) and Rs. 15.88 Crore passed onto the consumers during FY 2014-15 & FY 2015-16 respectively ought to be allowed along with carrying cost as tabulated below:

Table 3B 88: Monthly Billing Rebate amount for FY 2014-15 and FY 2015-16 (Amt. Cr.)

S. No	Particulars	FY 15	FY 16	FY 17	FY 18
1	Opening balance	0.0	19.4	39.4	45.1
2	Additions	18.1	15.9		
3	Closing Balance	18.1	35.3	39.4	45.1
4	Average	9.0	27.4	39.4	45.1
5	Rate of carrying cost	15.13%	14.80%	14.64%	14.00%
6	Carrying cost	1.4	4.0	5.8	6.3
7	Grand Closing Balance	19.4	39.4	45.1	51.4

3.28.496 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.

3.28.497 The total impact claimed which merit considerations is tabulated below:

Table 3B 89: Total impact claimed on aforesaid issues which merit reconsideration

(Rs. Cr.)

S. No	Particulars	Principal	Carrying Cost	Total
1	Legal fees	11.4	0.8	12.2
2	Interest rates of working capital and carrying cost during FY 2017-18	Included in capex related claims		
3	Fixed charges against regulated power	297.9	210.2	508.1
4	Overlapping banking transactions	3.8	2.0	5.8
5	Cost disallowed on account of excessive trading at UI above contingency limit	18.7	2.6	21.3
6	Normative rebate from FY 13 to FY 18	349.3	183.2	532.5
7	Income from other business-SLMC	112.8	132.8	245.6
8	Financing cost of LPSC-FY 14 to FY 18	38.4	18.7	57.1
9	Monthly Rebate	33.9	17.5	51.4
11	Sub-total	866.2	567.8	1434.1

3.28.498 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:

3.28.499 Based on aforesaid submissions, the total impact on account of past claims is tabulated below:

Table 3B 90: 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	176	298	474
2	Issues which fall under statutory levies/ Change in law	45	4	48
3	Issues which tantamount to suo-motu reopening of previous orders	Impact included in capex related claims		
4	Impact of review petition	751	1182	1933
5	Impact on account of APTEL Judgments	3284	3852	7136
6	Issues which are contrary to Regulations/ previous directions	866	568	1434
7	Total	5122	5903	11025