



Delhi Electricity Regulatory Commission
Viniamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi -17

No: F11(I619)/DERC/2018-19

In re: In compliance to the directions of Hon'ble Appellate Tribunal for Electricity in Appeal No:213 of 2018 filed by TPDDL against the Tariff Order issued by Commission dated 28.03.2018 in Petition no.67 of 2017, in the matter of truing up of the Aggregate Revenue Requirement (ARR) 2016-17 and Revenue available for FY 2017-18 and approved Aggregate Revenue Requirement and Tariff for FY 2018-19.

**And In the matter of
TATA POWER DELHI DISTRIBUTION LIMITED**

Coram:

**Hon'ble Sh. Justice S. S. Chauhan, Chairperson
Hon'ble Dr. A. K. Ambasht, Member**

ORDER

(Date of order: 04.02.2021)

1. This order is being passed in pursuance to the direction issued by Hon'ble Tribunal (hereinafter referred to as APTEL) in Appeal NO. 213 of 2018 filed by TPDDL against the Tariff Order dated 28.03.2018 passed by DERC (hereinafter referred to as Commission) in Petition No. 67/17.
2. The said Petition No.67/17 was filed by TPDDL for truing up the Aggregate Revenue Requirement for financial year 2016-17 and Revenue available for the financial year 2017-18 and approved Aggregate Revenue Requirement and Tariff for the financial year 2018-19. Aggrieved by certain issues in the Tariff Order TPDDL preferred Appeal No. 213/2018 before APTEL.
3. Whereas Hon'ble APTEL vide its order dated 06.01.2021 in Appeal No. 213 of 2018, IA No. 498 of 2020 and IA No. 1615 of 2020 granted four weeks' time to place on record the compliance order complying with their directions. The relevant extract of the said Order are as follows:

"It is noticed that in spite of our directions to comply with the order of this Tribunal apart from undertaking by way of an affidavit by the Commission to comply with the directions of this Tribunal, since there was no stay of the order of this Tribunal by the Hon'ble Supreme Court, the Commission has not complied with the direction except submitting that they have already commenced with the process of complying.

Learned counsel for the Appellant submits that whatever documents or data required by the Respondents was furnished much earlier and in spite of it the directions of this Tribunal are not complied with. Since the Appellant's main grievance is that if the directions are not complied with, ultimately the interest of the consumers at large would be hampered, learned counsel seeks compliance of the directions forthwith.

Mr. Pradeep Misra, learned counsel appearing for Respondent-Commission seeks four weeks time to comply with the directions and place on record the details pertaining to compliance.

In the light of such request by Mr. Pradeep Misra, we finally grant four weeks time to place on record the compliance order complying with our direction by the Respondent-Commission. "

4. Whereas Hon'ble APTEL in its Order dated 11/03/2020 in Appeal No. 213/2018 directed as follows:

"Totally 26 issues are raised in the present Appeal under 4 (four) different categories. The following Issue Nos. 1, 9 and 16 are already covered in favour of Appellant by Judgment dated 30.09.2019 in Appeal No. 246 of 2014:

Issue No. 1: Non-allowance of Financing Charges for FY 2016-17.

Issue No. 9: Non-consideration of impact of increase in rate of Service Tax for FY 2016-17.

Issue No. 16: Revision of AT & C loss for FY 2016-17 based on pending proceedings.

Pertaining to the remaining issues, the same will be heard and decided on merits.

...

In the light of the above facts and circumstances, the Respondent DERC shall take into consideration the above facts while disposing of tariff proceedings. "

5. Whereas, Hon'ble APTEL in its Order dated 18/08/2020 in Appeal No. 213/2018 and IA No. 498/2020 directed as follows:

"In terms of our Order dated 16.04.2019 pertaining to power purchase cost of four Solar Generating Stations of the Appellant has to be complied with by the Respondent-Commission, since the time granted i.e, two months was already expired. Mr. Pradeep Misra, learned counsel appearing for the Respondent-Commission fairly submits that he would advise the Commission accordingly."

6. Whereas also, Hon'ble APTEL in its Order dated 22/09/2020 in Appeal No. 213/2018 and IA No. 498/2020 has sought clarification in respect of following issues:

"DERC, by order dated 06.12.2019 had expressed that the subject matter of merit order despatch i.e. issues 15 & 25 in the above appeal would also be considered during tariff proceedings for 2020-21.

We seek clarification even on this issue from the Respondent Commission by next date of hearing."

7. Whereas, Hon'ble APTEL in its Order dated 26/11/2020 in Appeal No. 213/2018, IA No. 498/2020 and IA No. 1615/2020 directed as follows:

"The Respondent's Counsel submits that so far as issue No. 15 is concerned, it is complied with in the latest tariff order.

In the above Appeal, certain issues were considered in the light of the said issues being covered in other Appeals. It is stated by the Respondent's counsel that the Appeals are pending before the Hon'ble Supreme Court against the same issues. However, there is no stay granted till now.

In that view of the matter, the Respondent is directed to comply with the directions granted by us. In case the Hon'ble Supreme Court holds the Appeals in favour of the Respondent herein, at that time, the Respondent is at liberty to comply with the directions of the Hon'ble Supreme Court."

8. The Commission submitted before the APTEL that the issues raised by the Appellant in Appeal No. 213 of 2018 have been challenged before the Hon'ble Supreme Court of India and in case it is implemented the Civil Appeals pending before the Hon'ble Supreme Court of India for adjudication may become infructuous. In view of the direction of the APTEL, the Commission is complying the Order.
9. In view of above, it is observed that the Hon'ble APTEL has directed to implement the following issues which are however challenged by the Commission before the Hon'ble Supreme Court of India in Civil Appeal Nos. 1762/2020 and 9522-9526 of 2019:

Issue No. 1: Non allowance of financing charges for FY 2016-17

Issue No. 9: Non consideration of impact of increase in rate of Service Tax of FY 2016-17

Issue No. 16: Revision of AT & C loss for FY 2016-17; and

Power Purchase Cost of Four Solar Own Generating Stations

10. Whereas, Hon'ble APTEL has sought only clarification w.r.t. Issue Nos. 15 & 25 in Appeal No. 213/2018 and there is as such no direction from Hon'ble APTEL:

Issue No. 15: Merit Order Despatch Disallowance for FY 2013-2014

Issue No. 25: Disallowance of Rs 1.56 Crores for FY 2016-17 on account of Merit Order Despatch

11. Accordingly, issue wise compliance of the Hon'ble APTEL directions is as follows:

Issue No.1 – Non-allowance of Financing Charges for FY 2016-17 and, Issue No.9 – Non-Consideration of impact of increase in rate of Service Tax for FY 2016-17.

12. Hon'ble APTEL vide its judgement dated 30/09/2019 in Appeal No.246 of 2014 has directed the Commission as follows:

"16.4 Our findings:

*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.*

*16.4.2 We also take note of the provisions under Tariff Regulation 5.6 **which specifies that the RoCE should cover all financing cost but financing cost incurred for obtaining the loans has not at all been factored in the cost of debt.***

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 the MYT Order and, thus, cannot be considered as part of the normative increase in expenses by the Respondent Commission. It is also noticed that apart from expenses incurred due to change in law, there are certain other expenses which have been incurred for the reasons not attributable to the Appellant but in the interest of consumers (such as credit rating fee) and if such expenses were not incurred by the Appellant, it would

have burdened the consumers with higher interest, consequential higher tariff, carrying cost etc. As the judgment of this Tribunal dated 10.02.2015 has been challenged by the Respondent Commission before the Hon'ble Apex Court and no stay has been granted against the operation of the said judgment, we are of the considered view that pending decision of the Hon'ble Apex Court the various claims of the Appellant regarding statutory fee/charges should be looked into by the Respondent Commission afresh duly considering some of them as controllable and others as uncontrollable in the interest of justice and equity. Accordingly, we decide this issue in favour of the Appellant.

13. From above, it is observed that Hon'ble APTEL has categorically allowed financing cost and impact of change in Service Tax due to change in law over and above the normative expenses. In order to judicially verify the said expenses, the Commission directed TPDDL vide email dated 15/01/2021 to provide details along with workings, supporting documents, references to Schedules forming part of Audited Accounts. Documentary proofs, Auditor Certificates and Base data for O&M expenses. TPDDL has not provided the complete details. Pending submission of the details, the claims made in respect of Financing Cost & Change in Service Tax is provisionally allowed as claimed in Petition filed by TPDDL for True-up of FY 2019-20, based on the directions of Hon'ble APTEL in its judgment in Appeal No. 246/2014 and subject to outcome of the Civil Appeal filed before Hon'ble Supreme Court of India. The financial impact of the same shall be provided in subsequent Tariff Order.

Issue No. 16 – Revision of AT&C Losses for FY 2016-17

14. Based on the directions of Hon'ble APTEL in Appeal No.14/2012, the Commission in its Tariff Order dated 23/07/2014 revised the target of AT&C loss level for FY 2011-12 from 13% to 15.325% and accordingly additional benefit to the tune of Rs. 71.95 Crores was provided to TPDDL. Para 3.143 of Tariff Order dated 23/07/2014 is as follows:

“The Hon'ble APTEL has directed in the Appeal no 14 of 2012 and the relevant extract is as below “This approach taken by the Delhi Commission is not correct. It should have adopted either the normative AT&C losses trajectory or O&M expenditure as per 2007 MYT Regulations or actual. The Delhi Commission cannot adopt a method under which the Appellant is at loss under all the circumstances. Accordingly, this issue is decided in favour of the Appellant.”
15. Against the said judgement of Appeal No. 14/2012 dated 28/11/2013 of Hon'ble APTEL, the Commission filed Civil Appeal No. 5845 of 2014 before the Hon'ble Supreme Court wherein this issue has also been challenged and is sub-judice.
16. The actual AT&C loss of TPDDL for FY 2011-12 was 11.49%. TPDDL did not raise the issue of revision of AT&C loss trajectory for the period from 2012-13 to FY 2014-15 in Appeal No.171/2012 against the 2nd MYT Order dated 13/07/2012.
17. TPDDL raised up this issue in Appeal No.246/2014 and indicated that the Commission in Tariff Order dated 23/07/2014 revised the base year target of AT&C to 15.325% against earlier target of 13%, as per judgement passed in Appeal No. 14/2012. However, the Commission did not change the loss level trajectory for 2nd MYT period which was approved based on 13% loss level. The Commission has also filed a Civil Appeal No.1762 of 2020 before the Hon'ble Supreme Court against the judgment in Appeal No.246/2014 dated 30/09/2019 and the matter is pending for adjudication.
18. Now this issue has come up in Appeal No.213/2018 and Hon'ble APTEL in this Order dtd. 06/01/2021 has indicated that since there is no stay of the Order of the

Hon'ble Supreme Court, therefore, the compliance of the Order dated 11/03/2020 & 06/01/2021 has to be done.

19. In this regard it is submitted that Hon'ble APTEL in its judgment dtd. 30/09/2019 in Appeal No. 246/2014 has ruled as follows:

"12.4.2 In view of these facts, the AT&C loss trajectory beyond FY 2011-12 is required to be revised by considering the principle laid down by this Tribunal in Appeal No.14 of 2012 and, subsequently, followed by the Respondent Commission in its MYT order. Accordingly, we decide this issue in favour of the Appellant."

20. It is observed from above that the Hon'ble APTEL has indicated that AT&C loss trajectory beyond FY 2011-12 is required to be revised by considering the principle laid down in Appeal No.14 of 2012 and, subsequently, followed in MYT order. In MYT Order dtd. 13/07/2012, the Commission has considered rate of yearly reduction of 0.5% in AT&C losses as follows:

"4.55 While fixing the AT&C loss reduction targets for the Control Period (FY 2012-13 to FY2014-15), the Commission has been guided by:

(a) The achievements in AT&C loss reduction vis-à-vis targets fixed by the Commission since 2002, capital expenditure programs, review of the consumer mix of Delhi, metering status, etc.

(b) Delhi is an urban area with very small number of agricultural consumers (less than 0.1% of total sales) and with 100 percent retail consumer metering.

(c) Loss levels in similar private urban distribution licensees, such as Ahmedabad Electricity Supply Company, BEST and BSES, Mumbai, Torrent Power Limited, Gujarat and public utilities viz., MGVCL in Gujarat and BESCO in Karnataka.

4.56 Considering the past trend of AT&C loss reduction vis-à-vis targets fixed, the expectations of various stakeholders as expressed during the Public Hearings, the need is felt to continue with the trajectory of AT&C loss reduction into the next Control Period, especially in view of the fact that all distribution licensees still have areas where losses are significantly higher than the average AT&C losses achieved by them (above 40% in many areas). None of the distribution licensees have pleaded for higher AT&C loss targets on the grounds of the targets proposed by the Commission being technically incapable of being achieved. This matter, therefore, has to be seen in the context of the higher level of commercial losses for which the distribution utilities have to intensify their efforts. The Commission is of the view that it is not only desirable to fix challenging targets, but to make all efforts to see that these are achieved in the overall interest of determining tariffs which are fair and equitable and help in taking the Delhi Distribution business towards achievements of performance benchmarks set by the best distribution utilities in the country.

4.57 The AT&C loss targets as approved by the Commission for the Control Period is given below:

Table 50: AT&C Loss Targets approved by the Commission (%)

Particulars	FY 2012-13	FY 2013-14	FY 2014-15
Distribution Loss Target	12.06%	11.56%	11.06%
Collection Efficiency Target	99.50%	99.50%	99.50%
AT&C Loss Target	12.50%	12.00%	11.50%

21. Further, Hon'ble APTEL in its judgment dtd. 28/11/2013 in Appeal No. 14/2012 has ruled as follows:

“186. While fixing the targets for the AT&C losses, the Delhi Commission has considered actual AT&C losses achieved during the previous year. However, while fixing the O&M expenses, the Delhi Commission has ignored actual expenses and indexed the normative expenses as per 2007 MYT Regulations.

187. This approach taken by the Delhi Commission is not correct. It should have adopted either the normative AT&C losses trajectory or O&M expenditure as per 2007 MYT Regulations or actual. The Delhi Commission cannot adopt a method under which the Appellant is at loss under all the circumstances.

188. This issue is decided accordingly in favour of Appellant.”

22. Accordingly, the Commission implemented the directions of Hon'ble APTEL in Appeal No. 14/2012 and revised the target for FY 2011-12 from 13% to 15.325% and provided additional benefit of Rs. 71.95 Cr. to TPDDL. The target was revised considering 1.675% reduction in normative AT&C of FY 2010-11 (17%) which was earlier considered based on actual AT&C of FY 2010-11 approved in the Order dtd. 10/05/2011, as follows:

“46 In respect of fixation of AT& C loss targets for FY 11-12, the Commission noted the general trend of the trajectory for target loss reduction during the Control Period (FY 07-11) as well as the actual performance as claimed by the DISCOMs during 2010-11. The Commission also took note of the comments of various stakeholders that the formula given in public notice of target fixation was too soft & would lead to unjust enrichment of the private Discoms. The Commission felt that in public interest we may by the large follow the earlier trajectory and at the same time ensure that the target is lower than the actual achievement during 2010-11. This approach would obviate the argument by some stakeholders that the formula for loss reduction given in the public notice is too soft. The Commission observed that progressive reduction in AT&C losses is necessary for reducing power purchase so that the consumers are benefited through a reduction in ARR.

Hence, the Commission has decided that the following targets levels are reasonable and fair for both the DISCOMs and the average consumer :-

BYPL	-	18%
BRPL	-	15%
NDPL	-	13%
NDMC	-	9.6%

23. As per judgement of Hon'ble APTEL in Appeal No. 246/2014, principles of MYT & Appeal No. 14/2012 have to be followed and AT&C loss trajectory beyond FY 2011-12 is required to be revised. Accordingly, in compliance of the Hon'ble APTEL directions in its judgment in Appeal No. 246 of 2014, the AT&C Losses for the period from FY 2013-14 to FY 2016-17 is revised by considering 0.5% reduction, as per 2nd MYT Order, over the revised AT&C Loss of FY 2011-12 i.e., 15.325% (approved in Tariff Order dtd. 23/07/2014). The Petitioner has also claimed the financial impact of revision in AT&C Loss trajectory till FY 2016-17 in its True up Petition for FY 2019-20. The financial impact on account of revision in AT&C Loss trajectory shall be provided in subsequent Tariff Order which will be subject to the decision of Hon'ble Supreme Court of India in various Civil Appeals filed by the Commission.

Issue No. 19 – Power Purchase Cost of four Solar own Generating Stations

24. Hon'ble APTEL in its judgment in Appeal No. 82/2015, 136/2015, 274/2015, 285/2015 & 58/2016 dated 16/04/2019 has stated that:

“12.4 Thus, we hold that the approach of the State Commission to allow computed tariff for first two years and APCC tariff for balance 23 years is erroneous. We are of the considered opinion that in the facts and circumstances of the instant cases, the **State**

Commission ought to have computed project wise tariff based on the actual/audited cost and other associated parameters after prudence check."

The Respondent State Commission is directed to pass the consequential orders in the light of the observations made in the above paragraphs from 12.1 to 12.4 as expeditiously as possible within a period of 4 months from the date of receipt of this copy of judgment and order."

25. The Commission filed Petition before Hon'ble Supreme Court of India against above judgment of Hon'ble APTEL bearing Civil Appeal Nos. 9522-9526 of 2019. The matter being sub-judice was not implemented in the Tariff Orders. However, now Hon'ble APTEL in its Order dtd. 26/11/2020 and 06/01/2021 has directed to implement their directions mandated in judgment dtd. 16/04/2019 since there is no stay granted by Hon'ble Supreme Court of India.
26. Accordingly, M/s TPDDL was directed vide email dtd. 15/01/2021 to provide among other matters, the details related to Audited Certificate.
27. Consequently, M/s TPDDL provided the Auditor Certificates related to Capital Cost but has yet not provided break-up of year wise Tariff considering actual/audited cost as mandated in para 12.4 of the above mentioned Hon'ble APTEL judgement from date of COD till FY 2019-20.
28. Further, from the Auditor Certificate submitted by TPDDL, it is observed that the details of capital cost are shown as Fixed Cost / Fixed Cost-CWIP as on COD date. The Certificate ought to bring out the details of Capital Cost giving the break up viz.- Capital Expenditure including accrued expenses as on COD date, IDC and IEDC. Further the Certificate should be accompanied with detailed IDC calculation showing the Funding details and the IDC accrued up to the COD date.
29. In compliance to Hon'ble APTEL's judgment dtd. 16/04/2019, Order dtd. 06/01/2021 and pending submission of the revised Auditor Certificates with actual cost, the differential amount as claimed by TPDDL in the Tariff Petition for True-up of FY 2019-20 is allowed and the impact of the same shall be considered in subsequent Tariff Order. Further, the computed tariff and not APPC will be considered for future years. The said impact, however, shall be subject to outcome of the Civil Appeals filed before Hon'ble Supreme Court of India.
30. Further, with regards to issue no. 15 related to Merit Order Despatch for FY 2013-14, it is clarified that the said issue has been dealt in Tariff Order dtd. 28/08/2020 and provisionally 50% of the penalties have been reversed. Relevant extract of the said Tariff Order wherein based on the certain factors, the penalties were provisionally 50% reversed are as follows:

"3.25 The Commission takes into consideration the following facts/submissions by SLDC & DISCOMs and MOD violations post implementation of DISCOM-wise scheduling:

- a) *BRPL, BYPL and TPDDL have submitted copy of affidavit which is submitted before Hon'ble APTEL wherein they have indicated that they have conditionally withdrawn the issue related to disallowance of MOD during FY 2013-14 subject to its reversal by the Commission.*
- b) *Prior to 21/02/2014 - The requisition submitted by DISCOMs to SLDC is on lump sum basis i.e. it is not generator wise and slot wise.*
- c) *Post 21/02/2014 - The requisition submitted by DISCOMs to SLDC is generator wise and slot wise.*
- d) *SLDC vide its letter dated 22/01/2019 has certified that the Merit Order Despatch was adhered to by Delhi SLDC during FY 2013-14. However, it was*

observed that based on the data submitted by SLDC that after implementation of DISCOM wise schedule for few stations during some slots, the power scheduled was more than the MTL and in the same time slot the power was sold to exchange. Therefore, for period from 21/02/2014 till 31/03/2014 i.e., post implementation of DISCOM-wise scheduling, the violations on account of MOD for Delhi DISCOMs is as follows:"

31. Also, with regards to Issue no. 25 for Merit Order Despatch for FY 2016-17, it is observed that TPDDL in its Appeal 213/2018 has sought following relief from Hon'ble APTEL:

"Relief: -

9.2.11. It is therefore prayed before this Hon'ble Tribunal to issue directions to the Ld. Delhi Commission to clarify the basis on which the deduction has been made along with the instances wherein there has been violation on part of the Appellant attracting the disallowance of Rs. 1.56 crores. Accordingly, this Hon'ble Tribunal may also issue directions to grant an opportunity to the Appellant to make submission before the Ld. Delhi Commission and explain the circumstances which led to such Power Purchase. Apart from the above, the same will also aid the Appellant to ensure that there is no violation of the Merit Order Despatch in the future."

32. It is pertinent to state that the Commission in its Order dtd. 06/12/2019 in Petition No. 10/2014 has recognized that DISCOM wise scheduling has been implemented since Feb. 2014. The Commission based on the findings of its C&AG empanelled auditor appointed for Regulatory Audit of FY 2016-17 disallowed Rs. 1.56 Cr. related to MOD violation wherein there was DISCOM wise scheduling. Accordingly, as per directions when received from Hon'ble APTEL, the Commission shall provide the details with regards to disallowance of Rs. 1.56 Cr. under Merit Order Despatch for FY 2016-17. Further, as relief sought by TPDDL in their Appeal, they may submit, based on the directions of Hon'ble APTEL, the circumstances which led to such Power Purchase.
33. It is to be mentioned here that the Commission has filed various Civil Appeals in Supreme Court, against the judgements of APTEL dated 16/04/2019, 30/09/2019 & 28/11/2013 in Appeal Nos. 246 of 2014, 82 of 2015, 136 of 2015, 274 of 2015, 285 of 2015 & 06 of 2010 & 14 of 2012. These appeals have been admitted and are pending for adjudication. This order of compliance is subject to the outcome of the above Civil Appeals pending before Hon'ble Supreme Court of India. As and when Hon'ble Supreme Court of India decides these matters this order may be appropriately modified.
34. Hence, the compliance of Hon'ble Tribunal Order as directed are without prejudice and subject to the outcome of the Hon'ble Supreme Court decision.

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

**Sd/-
(Justice S.S. Chauhan)
Chairperson**