

Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

F.11(134)/DERC/2004-05/

PETITION NO. 78/2004, 79/2004 & 80/2004.

IN THE MATTER OF : **Payment of interest on Consumer Security Deposit.**

AND

IN THE MATTER OF :

1. North Delhi Power Ltd.
Through : its **CEO**
Sub-Station Building,
Hudson Lines,
Kingsway Camp,
Delhi-110009.
2. BSES Rajdhani Power Ltd.
Through its : **CEO**
BSES Bhawan, Nehru Place,
New Delhi-110019.
3. BSES Yamuna Power Ltd.
Through its : **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

VERSUS

DELHI POWER COMPANY LIMITED ("DPCL")
Shakti Sadan, Kotla Marg,
New Delhi-110002.

Coram :

Sh. K. Venugopal, Member & Sh. R. Krishnamoorthy, Member.

ORDER

(Date of Order : 23.04.2007)

1. All the three Distribution Companies, namely, the North Delhi Power Limited, the BSES Rajdhani Power Limited and the BSES Yamuna Power Limited had filed petitions before the Commission in October 2004 regarding interest to be paid to consumers against Consumer Security Deposit. In their petitions, the Distribution Companies have submitted that in accordance with Section 47(4) of the Electricity Act, 2003, a Distribution Licensee is to pay interest to the consumers on the security deposit held with the Utility. Insofar as the above-mentioned Distribution Companies are concerned, the

opening balance sheets indicate that the aggregate security deposit held by them was to the extent of Rs. 29 crore only. As per the notification of the Govt. of NCT of Delhi issued vide reference no F.11(99)/2001-Power/2867 dated 20th November 2001, while NDPL held a Security Deposit of Rs. 10 crore, the balance Rs. 19 crore was held with the two BSES companies. The rest of the liability on account of the Consumer Deposit was transferred to the Holding Company i.e. the Delhi Power Company Limited (DPCL). It is the Licensees' contention that according to the DVB's Books of Accounts, the security deposit from the consumer, as on 31.03.2001 was in the region of about Rs. 175 crore. As against this, the amount transferred to the Distribution Companies was only Rs. 29 crore and therefore, the Distribution Companies cannot be held liable to pay interest on the Deposits which were never held by them.

2. The Distribution Companies have submitted before the Commission that Schedules D, E and F of the Transfer Scheme clearly mention the assets and the liabilities of the Distribution Companies. The Distribution Companies have further submitted that in Schedule G of the Transfer Scheme, while describing the assets and liabilities to the Holding Company, it is clearly mentioned that the Holding Company will be responsible for "all liabilities of the erstwhile Board including all the contingent liabilities other than those specifically included in the Schedules B,C,D, E and F". It is the submission of the Distribution Companies that since only a part of the security deposit held by the erstwhile DVB, was transferred to the Petitioners, they are unable to identify the list of consumers whose security deposits had been transferred to the Petitioners.
3. The Distribution Companies have thus prayed before the Commission that the Petitioners' liability to pay interest on consumer security deposits should be limited to the extent of interest on Rs. 29 crore. It is also prayed that directions be issued to the DPCL to pay interest on the security deposits held by them which can be disbursed by the Petitioners on behalf of DPCL. Alternatively, the DPCL can transfer the amount of consumer deposits held by them so as to enable the Petitioners to remit the interest for all the consumers.
4. The DPCL, in response to the petitions filed by the Distribution Companies have submitted that while the Electricity Act came into being in 2003, the unbundling of the power sector in Delhi was already effected in July 2002 and that there is nothing in the Electricity Act 2003 which suggests that

there shall be retrospective application. The Act mentions that interest has to be paid by the Distribution Licensee and defunct organizations like the DVB cannot be responsible for payment of this interest. Further, the DPCL is not a Distribution Licensee but is a the Holding Company which is only concerned with the erstwhile liabilities of the defunct DVB in terms of the Schedule of the Transfer Scheme. Schedule G does not include interest on the consumer deposits which are stated under Section 47(4) of the Electricity Act, 2003. It is the contention of the DPCL that accounts as on the date of unbundling were frozen and that no new liabilities can be created against the erstwhile DVB or the Holding Company. The only exception to this are the cases where there are notes to accounts in the Schedules and the present case is not covered therein.

5. The DPCL further submits that in light of Rule 3 of the Transfer Scheme, the Board when it ceased to exist, first vested in the GNCTD and only, thereafter, to the successor Distribution Companies. It is added that the Delhi Government has never been a Distribution Licensee and so is not liable within the meaning of section 47(4) of the Electricity Act, 2003. The DPCL has stated in their rejoinder that Rule 7 and Rule 5(2) of the Transfer Scheme read with the accompanying Schedules and Section 15(7) of DERA, 2000 makes it amply clear that the liability in the present case, if any, is that of the Petitioners.
6. Another issue raised by the DPCL is that the basis of the transfer of the DVB to the Distribution Companies was the bid. The bids were based on the relevant factors which were known to the Distribution Companies. The basis of the bid cannot be altered retrospectively because this would tantamount to reopening of the contractual conditions which would not be permissible in the eyes of the law. It is the submission of the DPCL that the Commission cannot change the inter-se contractual arrangement/ terms effected at the time of unbundling and thus the relief sought is beyond the jurisdiction of the Commission. The DPCL has also denied that the major portion of the consumer security deposits are available with the Holding Company. The DPCL has also relied on the clarification given by the Government on the subject of consumer deposits vide its letter of 12.10.2004. A reference has also been made of the case of M/S Ferro Alloys Vs A.P. State Electricity Board and Others (JT 1993(3)SC 82) which had clearly held that the consumer deposits did not invite any interest.

7. The Commission has heard the parties and during the course of hearing, the parties merely submitted what they have already cited in their petitions and counter affidavit. The Petitioners prayed that they may be given an opportunity to file their rejoinder which was allowed by the Commission.
8. In the rejoinder filed before the Commission, the Petitioners have repeated their earlier submissions and added that the total consumer deposit held by the DVB, as on 31.03.2002, was about Rs. 257 crore. The Petitioners submit that this figure was made available only recently in the audited statement of accounts of the erstwhile DVB. The Distribution Companies have, therefore, reiterated their earlier submission that out of Rs. 257 crore consumer deposit, only Rs. 29 crore was transferred to them. The Distribution Companies have, therefore, sought the orders of the Commission on the interest to be paid by the Distribution Companies keeping in view that a large part of the deposits lying with the DVB was never transferred to them and additionally, how to treat refunds to those consumers whose deposits were never transferred. The Discoms have submitted that the payment of both, interest and refunds, would be a "pass through" in the ARR of the Distribution Companies in case the Distribution Companies are held liable for this payment. This would consequently bring unnecessary burden on the consumer. This would also be iniquitous since the deposits are being enjoyed by somebody else i.e. the DPCL.
9. The Commission has gone through the submissions made by the Petitioners and also the Respondent and has focused on each of the issues raised. The first issue which the Commission would like to take up is that of jurisdiction and in this regard, the Commission is guided by Section 86(1)(a) of the Electricity Act, 2003 which states that it is the Commission's mandate to determine the tariff of generation, supply, transmission and wheeling of electricity – wholesale, bulk or retail, as the case may be. Further, Section 61 of the Electricity Act, 2003 mentions that the Appropriate Commission shall specify the terms and conditions for determination of tariff and in doing so, shall be guided by a number of measures which, inter-alia, includes safeguarding of consumer interest. While considering the issue of jurisdiction, it would be relevant to examine the provisions of section 47 of the Act. Section 47(1) enjoins that the Distribution Licensees may require any person to give him a reasonable security as may be determined by the Regulations. Further, section 47(4) requires that the Distribution Licensee pay interest on such security. Framing Regulations with regard to quantum of security and the rate to be specified with regard to interest are functions of

the Commission and is one of the important measures of safeguarding consumer interests. Further, the Commission is also required to determine the tariff and in such determination, has to consider all types of expenses that are legitimately admissible and interest on security deposit requires to be paid to the consumer in line with the provisions of the Act. Therefore, the Commission is well within its right to adjudicate upon this issue. Therefore, the argument of the Respondent that the Commission does not have jurisdiction to decide on the matter is not legally tenable.

10. The Commission has also scrutinized the letter of Govt. of NCT of Delhi dated 12.10.2004, wherein the position with regard to consumer deposits was clarified. It has been mentioned in the said letter that “ *the opening balance sheet of three Discoms had mentioned specific amounts as consumer deposits under the current liability. This amount had been specified without regard to actual consumer claim and no adjustment of any nature was envisaged, based on any investigation into the actual amount of consumer deposit liability. The consumer deposit was not subject to any adjustment and the same has been estimated to be specified amount and has been accepted by all the parties notwithstanding actual liability on account of such consumer deposits as on 30.6.2002*”. The Respondent DPCL had also forwarded a copy of the office order which was issued on 13th December 1993 from the office of erstwhile DESU and in the said order, it was mentioned that the security deposits made by the consumers with DESU will henceforth be termed as ‘consumption deposits’ and no interest shall be payable by DESU on such deposits to the consumers. Further, the Respondent DPCL has also referred to the judgment of Hon’ble Supreme Court of India in the matter of M/s Ferro Alloys Vs A.P. State Electricity Board and others (JT 1993(3)SC82) where it was held that the consumer consumption deposits did not invite any interest. In fact, the said judgment was in line with the policy which existed prior to the year 2003, where no interest was payable on security deposits. It is an admitted fact that it was only after enactment of Electricity Act, 2003, that a clear provision to pay interest on security deposits was incorporated under Section 47(4). The judgment of Hon’ble Supreme Court will, therefore, not be applicable in the present case.

11. The next issue which the Commission would like to take up is that all consumers should get the benefit of the interest payable by the Distribution Companies in accordance with Section 47(4) of Electricity Act, 2003; specifically, is the interest payable to only those consumers whose deposits

are held by the Distribution Companies or is it payable to even those who had given their consumer deposits to the erstwhile DVB. The Commission is of the opinion that as a matter of equity and fairness, the benefit of interest accrued on the security deposits should be given to all consumers irrespective of whether such consumers have become consumers before or after the Electricity Act, 2003 and such sum is held with DPCL or the Discoms. The provisions of section 47(4) call upon the payment of interest on consumer deposits paid by the consumers for the purpose of procuring supply of energy. All the consumers, therefore, are entitled to interest on such security deposits.

12. The contention of the Respondent, DPCL that the interest on consumer deposits is not a liability of erstwhile DVB is recognized. However, it has to be understood that the liability under Section 47 (4) of the Act had arisen only after coming into force of the Electricity Act in the year 2003. The moot question is on what amount the interest liability is arising. It is logically on the principal amount, received as security deposits, either held by the Licensee or by the erstwhile DVB. The transfer scheme and the rules made thereunder indicate that the Holding Company, namely, DPCL was incorporated with the principal objective of holding shares in Genco, Transco and Discoms and the liabilities of the Board. As per the accounts of DVB for the period ended 31st March, 2002, an amount of Rs. 257 crore is lying as security deposits from consumers including an interest payable on consumer deposits (Rs.27 crore) which does not belong to the DVB but belongs to the consumers. Thus, the liability is recognized and indicated in the Balance Sheet of DVB as on 31st March, 2002 which has passed on to DPCL in line with the provisions of the Transfer Scheme and the rules made there under. Thus, the extent of principal amount of consumer deposits along with interest payable, is a clear known liability transferred in the books of DPCL.

13. There is no new liability sought to be created on DPCL as envisaged by it. The interest on consumer deposits is a liability which is now arising and how that is to be recognised is the point in question. The Commission has not interfered nor is attempting to make any change in the contractual arrangement/terms affected at the time of unbundling between the erstwhile Board, Govt. of NCT of Delhi, and the Distribution Companies. The petitioners have also not sought any change in the terms and conditions that were agreed to at that time.

14. Even if the business valuation model as stated were applied as a part of power sector reforms and assets were transferred on the basis of such business valuation, the current liabilities/current assets have been clearly identified and incorporated in schedules D,E &F in case of petitioners and schedule 'G' in respect of DPCL. For instance, the current liability payable to Holding Company, payable to Transco, are exact numbers which are identified and incorporated. Similarly, cash and bank balance, stores and spares and loan to personnel and receivable due, shown in the current assets are also absolute figures. This being so, the business valuation model adopted has taken into consideration, the exact identified quantum of current assets and current liabilities and on the same analogy the amount of Rs.10 crore in case of NDPL, Rs. 11 crore of BRPL and Rs. 8 crore of BYPL, has to be construed as the extent of the liability that was passed on to the Discoms towards consumer security deposits. This also is supported by the miscellaneous provision Sr. No.5 which is reproduced below:-

"Current and other liabilities and provisions to the extent to be specified in Balance Sheet – Part II, subject to adjustments as per the Notes to the Accounts of the Balance Sheet of the Transferee."

There are no specific clarifications in the Notes on Accounts as regards this item. At the same time, the Commission has to recognize the fact that an amount of Rs. 257 crore is shown as consumer security deposit and interest on security deposit in the books of account of DVB as on 31st March 2002 which liability has devolved on DPCL.

It is further supported by Sr. No.2 of Schedule 'G' which stated as follows:-

"All Liabilities of the erstwhile Board including all contingent liabilities other than those specifically included in Schedules B,C,D E &F."

From the above, it is clear that a major portion of the consumer security Deposit is held in the books of DPCL as the liability of the erstwhile DVB transferred to DPCL being a company created for this purpose. It is an accepted financial principle that any party who enjoyed the funds, has to pay for the cost of holding the funds. In the instant case, the interest liability on account of deposits made by the consumer, arises in line with the provisions of the Act and the distribution licensees are required to pay the interest to all the consumers. However, the amount of security deposits is not fully held by the Distribution Companies and a major portion is still held by the DPCL. However, the liability towards payment of interest on security deposits devolves on all the distribution licensees and the DPCL to the extent of funds held by each one of them. The funds held by the licensees and DPCL, as per records, are as follows:-

North Delhi Power Ltd.

Rs. 10 crore.

BSES Rajdhani Power Ltd.	Rs. 11 crore.
BSES Yamuna Power Ltd.	Rs. 8 crore.
Delhi Power Company Ltd.	Rs. 257 crores plus interest.

15. One of the most vital functions of the Commission is to protect the interest of the consumers in line with the provisions of the Act. As far as issuing directions to M/s DPCL to transfer the amount of security deposits held by it, to the successor distribution licensees is concerned, the Commission has decided not to issue such directions to M/s DPCL as M/s DPCL is not a regulated entity. However, the Commission after considering all relevant legal provisions and related factors, have decided to issue a statutory advice to the Govt. of NCT of Delhi under Section 86(2) of the Electricity Act, 2003, for directing M/s DPCL to transfer the amount of security deposits held by it, alongwith interest, to the successor distribution licensees after identifying the amount of consumer deposits from the records. The distribution licensees, on receipt of such amount, shall give effect to the provisions of Section 47(4) of the Electricity Act, 2003 to be read with relevant Regulations and provide necessary credit to the individual consumer account towards interest on security deposits.

16. The case is disposed of accordingly.

Sd/-
(K. Venugopal)
Member

Sd/-
(R. Krishnamoorthy)
Member

To,

Shri Rakesh Mehta,
Principal Secretary (Power)
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
New Delhi-110002.

Sub. : **Payment of Interest on Consumer Security Deposits – Statutory Advice under Section 86(2) of the Electricity Act, 2003.**

Sir,

The three Distribution Companies, namely, the North Delhi Power Limited, the BSES Rajdhani Power Limited and the BSES Yamuna Power Limited have filed petitions before the Commission regarding interest to be paid to consumers against Consumer Security Deposits. In their petitions, the Distribution Companies have submitted that in accordance with Section 47(4) of the Electricity Act, 2003, a Distribution Licensee is to pay interest to the consumers on the security deposit held with the Utility. Insofar as the above-mentioned Distribution Companies are concerned, the opening balance sheets indicate that the aggregate security deposits held by them were to the extent of Rs. 29 crore only. As per the notification of the Govt. of NCT of Delhi issued vide reference no F.11(99)/2001-Power/2867 dated 20th November 2001, while the NDPL held a Security Deposit of Rs. 10 crore, the balance Rs. 19 crore was held with the two BSES Companies. The rest of the liability on account of the consumer deposits was transferred to the Holding Company i.e. the Delhi Power Company Limited (DPCL). As per records, the Holding Company i.e. DPCL is holding an amount of Rs.257 crore on account of security deposits collected from the consumers alongwith an accumulated interest which comes to around Rs.27 crore.

2. The Distribution Companies have submitted before the Commission that Schedules D, E and F of the Transfer Scheme clearly mention the assets and the liabilities of the Distribution Companies. Schedule G of the Transfer Scheme, while describing the assets and liabilities to the Holding Company, clearly mention that the Holding Company will be responsible for “all liabilities of the erstwhile Board including all the contingent liabilities other than those specifically included in the Schedules B,C,D, E and F. It is the submission of the Distribution Companies that since only a part of the security deposits held by the erstwhile DVB, was transferred to the Petitioners, they are unable to identify the list of consumers whose Security Deposits had been transferred to them.

3. The Distribution Companies have thus prayed before the Commission that the Petitioners' liability to pay interest on consumer deposits should be limited to the extent of interest on Rs. 29 crore. It is also prayed that directions be issued to the DPCL to pay interest on the security deposits held by them which can be disbursed by the Petitioners on behalf of DPCL. Alternatively, the DPCL can transfer the amount of consumer deposits held by them so as to enable the Petitioners to remit the interest for all the consumers.

4. The Commission while disposing of the petitions of three Discoms, considered the matter in its entirety and is of the view that the Distribution Companies cannot be made liable to pay the interest on security deposits, which were never transferred to them, and continue to be held by the Holding Company i.e. the DPCL. Equity and fair play demand that the amount of

security deposits alongwith interests should be transferred to the Distribution Companies so as to enable them to give effect to the provisions of Section 47(4) of the Electricity Act, 2003. However, considering the fact that DPCL is not a regulated entity, the Commission has decided not to issue the directions to DPCL in this regard. The Commission has further decided to advise the Govt. of NCT of Delhi under Section 86(2) of the Electricity Act, 2003, to direct the Holding Company i.e. M/s DPCL to transfer the consumer security deposits, which are still held by it, alongwith interest, to the Distribution Companies in the same proportion as the security deposits were transferred to the three Discoms by virtue of Delhi Electricity Reforms (Transfer Scheme) Rules, 2001. It is also pertinent to mention here that the Commission has already finalised the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and forwarded the same to the Govt. of NCT of Delhi for notification in the official Gazette. As soon as these Regulations are notified, the Distribution Licensees would be under obligation to pay the interest on such consumer deposits in terms of the provisions of the said Regulations to be read with Section 47(4) of the Electricity Act, 2003. Therefore, till such time the Government of NCT of Delhi directs the Delhi Power Company Ltd. to transfer the entire amount of security deposits to the three Distribution Companies, the Delhi Power Company Ltd. may be directed to transfer to the three Distribution Companies, an amount equivalent to 6% on annual basis being the specified rate in the above referred Supply Code, on the existing balance of security deposits as shown in the Balance Sheet of Delhi Power Company Ltd., in the proportion, in which, the security deposits were transferred to the said three Distribution Companies under Delhi Electricity Reforms (Transfer Scheme) Rules, 2001.

5. The Commission has also disposed of the petitions filed by the Discoms in this regard and a copy of the Order dated 23.04.2007 is enclosed herewith.

6. This letter may please be treated as a statutory advice to the Govt. of NCT of Delhi under Section 86(2) of the Electricity Act, 2003.

Yours faithfully,

Encl: As above.

(Somit Dasgupta)
Secretary

Copy to :-

1. The Chief Executive Officer,
North Delhi Power Limited,
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.
2. The Chief Executive Officer,
BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place,
New Delhi-110019.
3. The Chief Executive Officer,
BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi-110 092.

4. The Chairman-cum-Managing Director,
Delhi Power Company Ltd. (DPCL),
Shakti Sadan,
Kotla Marg,
New Delhi-110 002.

(Somit Dasgupta)
Secretary