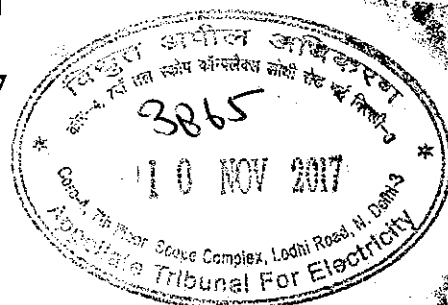


IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. OF 2017



IN THE MATTER OF:

Delhi Transco Limited

... Appellant

VERSUS

Delhi Electricity Regulatory Commission & Ors.

... Respondents

VOLUME – I

PAPER BOOK

[PAGE NO. A TO 120]

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ANAND K GANESAN/SWAPNA SESHADRI ADVOCATES FOR THE APPELLANT

OPENING SHEET
(To be enclosed at the time of filing)

Appeal/ DFR No.	Date of filing	Appellants	Respondents	Counsel of Appellants	Full DD/Cheque Details	Relief sought-briefly & accurately for permanent record purpose with provisions of law involved.
	10.11.2017	1. Delhi Transco Ltd.	1. Delhi Electricity Regulatory Commission 2. BSES Rajdhani Power Ltd. 3. BSES Yamuna Power Ltd. 4. Tata Power - Delhi Distribution Ltd. 5. New Delhi Municipal Council 6. Military Engineers Services,	Mr. Anand K. Ganesan, Mrs. Swapna Seshadri & Ms. Rhea Luthra	Bank draft No. 581256 dated 09.11.2017 for amount of Rs. 123000/- drawn on State Bank of India in favour of Pay & Account Officer, Ministry of Power, New Delhi	(a) Allow the appeal and set aside the Tariff Order dated 31.08.2017 passed by the State Commission to the extent challenged in the present appeal. (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

Remarks:-


Signature of Verificant

IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

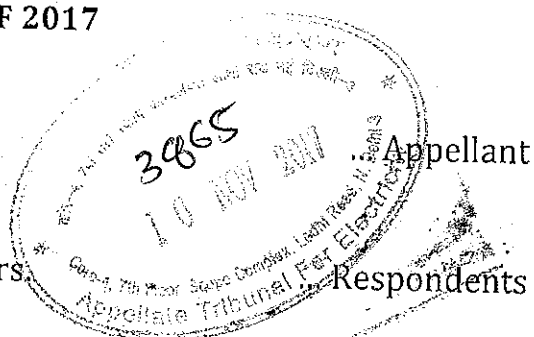
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Delhi Electricity Regulatory Commission & Ors.



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THROUGH

(ANAND K GANESAN/SWAPNA SESHADRI)

MSA PARTNERS

ADVOCATES FOR THE APPELLANT

C-66, Ground Floor, Nizammudin East,

New Delhi - 110013

DATED: 10.11.2017

PLACE: NEW DELHI

IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. OF 2017

IN THE MATTER OF:

Delhi Transco Limited

... Appellant

VERSUS

Delhi Electricity Regulatory Commission & Ors.

... Respondents

MEMO OF PARTIES

IN THE MATTER OF:

Delhi Transco Limited
Shakti Sadan Building, Kotla Road
New Delhi - 110002

...Appellant

VERSUS

1. Delhi Electricity Regulatory Commission
Through its Secretary
Viniyamak Bhavan, C-Block,
Malviya Nagar, New Delhi - 110017
2. BSES Rajdhani Power Limited,
Through its Chairman and Managing Director
BSES Bhawan, Nehru Place,
New Delhi - 110 019
3. BSES Yamuna Power Limited,
Through its Chairman and Managing Director
Shakti Kiran Building,
Karkardooma, Delhi - 110 092.
4. Tata Power - Delhi Distribution Limited
Through its Chairman and Managing Director
Grid Sub Station Building,
Hudson Lines, Kingsway Camp,
Delhi - 110 009
5. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi - 110001

6. Military Engineers Services,
Through its Chairman and Managing Director
Ministry of Defence,
Government of India,
New Delhi-110010

....Respondents

THROUGH



(ANAND K GANESAN/SWAPNA SESHADRI)

MSA PARTNERS

ADVOCATES FOR THE APPELLANT

C-66, Ground Floor, Nizammudin East,

New Delhi - 110013

DATED: 10.11.2017

PLACE: NEW DELHI

1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION

APPEAL NO. OF 2017

IN THE MATTER OF:

Appeal against the Tariff Order dated 31.08.2017 passed by the Delhi Electricity Regulatory Commission in Petition No. 18/2017

AND

IN THE MATTER OF:

Delhi Transco Limited
Shakti Sadan Building, Kotla Road
New Delhi - 110002

...Appellant

VERSUS

1. Delhi Electricity Regulatory Commission
Viniyamak Bhavan, C-Block,
Malviya Nagar, New Delhi - 110017.
2. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi - 110 019
3. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi - 110 092.
4. Tata Power - Delhi Distribution Limited
Grid Sub Station Building,
Hudson Lines, Kingsway Camp,
Delhi - 110 009
5. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi - 110001
6. Military Engineers Services,
Ministry of Defence,
Government of India,
New Delhi

....Respondents

APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003

MOST RESPECTFULLY SHOWETH:

2

1. DETAILS OF APPEAL

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against Tariff Order dated 31.08.2017 passed by the Respondent, Delhi Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 18/2017 dealing with the truing up of the financials of the Appellant - Delhi Transco Limited for the period Financial Year (hereinafter referred to as "**FY**") 2012-13 to 2015-16 and the Aggregate Revenue Requirement (hereinafter called '**ARR**') for FY 2016-17 to FY 2020-21.

A copy of the Impugned order dated 31.08.2017 is attached hereto and marked as **Annexure A**.

- 2.** The impugned order was communicated to the Appellant vide letter no. F.1(365)Estt./DERC/2017-18/1272 dated 25.09.2017 on 27.09.2017.

3. THE ADDRESS OF THE APPELLANT FOR SERVICE IS SET OUT HEREUNDER:

- i) Delhi Transco Limited (DTL)
Regd. Office Shakti Sadan Building
Kotla Road, New Delhi - 110002
- ii) Name and Address of the Counsel,
Mr. Anand K. Ganesan, Mrs. Swapna Seshadri and Ms. Rhea Luthra,
MSA Partners, Advocates,
C-66, Ground Floor Nizamuddin (East),
New Delhi - 110013
Phone: 011-41403716
Email: anand@msapartners.in, swapna@msapartners.in

4. THE ADDRESS OF THE RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:

- (i) Delhi Electricity Regulatory Commission
Viniyamak Bhavan, C-Block,
Malviya Nagar, New Delhi - 110017.
- (ii) BSES Rajdhani Power Limited,

3

BSES Bhawan, Nehru Place,
New Delhi - 110 019

- (iii) BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi - 110 092.
- (iv) Tata Power - Delhi Distribution Limited
Grid Sub Station Building,
Hudson Lines, Kingsway Camp,
Delhi - 110 009
- (v) New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi - 110001
- (vi) Military Engineers Services,
Ministry of Defence,
Government of India,
New Delhi

5. JURISDICTION OF THE APPELLATE TRIBUNAL

The Appellant declares that the subject matter of the appeal is within the jurisdiction of this Hon'ble Tribunal.

6. LIMITATION.

The impugned tariff order dated 31.08.2017 was communicated to the Appellant on 27.09.2017. The present Appeal is within the limitation period prescribed by the Electricity Act, 2003.

7. FACTS OF THE CASE

- A. The Appellant, Delhi Transco Limited is a Company incorporated under the Companies Act, 1956 and is engaged in the business of transmission of electricity in the National Capital Territory (NCT) of Delhi, having its registered office in the State of Delhi.
- B. The Appellant initially came to be vested with the functions of Transmission and Bulk supply of electricity pursuant to the unbundling of the Delhi Vidyut Board (DVB) under the provisions of the Delhi Electricity Reform Act, 2000 and the Statutory Transfer

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Scheme notified by the Government of NCT of Delhi under the said Act as was prevalent at the relevant time.

- C. The Appellant since 01.04.2007 discharges only the functions of Transmission of Electricity in NCT of Delhi, the State Transmission Utility and State Load Dispatch Centre. Prior to 01.04.2007, the Appellant was also undertaking the functions of Bulk Purchase of electricity from generating stations and Bulk Sale of electricity to Respondents No. 2 to 6 – distribution licensees in the NCT of Delhi.
- D. The Respondent No. 1 (hereinafter referred to as “**State Commission**”) is the Delhi Electricity Regulatory Commission for the State of Delhi exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
- E. The tariff orders passed by the State Commission for the previous years have been subject matter of appeals before the Hon'ble Tribunal in various appeals including the following, particularly with regard to reduction of the revenue requirements by artificially assuming revenues to the Appellant contrary to the provisions of the Transfer Scheme which were set aside by the Hon'ble Tribunal:

S. No	Appeal No.	Tariff Year	Judgment of the Hon'ble Tribunal
1.	133 of 2007	2006 - 07 and impact for the earlier period i.e. 2002-03 to 2005-06	Judgment dated 13.01.2009
2.	28 of 2008	2007 - 08 to 2010 - 11	Judgment dated 29.09.2010
3.	184 of 2011	2011 - 12	Judgment dated 27.02.2013

- F. In the meanwhile on 28.12.2012, the Appellant filed before the State Commission a petition for truing up of Revenue Requirements for the FY 2007-08 to FY 2011-12 and approval of revised Annual Revenue Requirements and tariff for the year 2013-14.

- G. By Order dated 31.07.2013, the State Commission decided the Petition No. 4 of 2013. In the said order, the State Commission while purporting to allow the DVB arrears of the past period, however substantially reduced the revenue requirements of the Appellant, resulting in a situation wherein it was becoming impossible for the Appellant to operate. In addition to the above, the Distribution Companies - Respondents No. 2 & 3 have not paid the bills of the Appellant in full from October 2010 onwards. The total dues from the Respondents No. 2 & 3 as on 30.09.2017 are Rs. 2480.71 Crore (approximately).
- H. Aggrieved by the Order dated 31.07.2013, the Appellant filed Appeal No. 255 of 2013, which Appeal was partly allowed by the Hon'ble Tribunal vide judgment and order dated 01.02.2016.
- I. Thereafter, for the subsequent tariff period, vide order dated 29/09/2015 passed in Petition No. 17 of 2015, the State Commission trued up the financials of the Appellant for the Financial Years 2012-13 and 2013-14 and Approved the Annual Revenue Requirements and determined the transmission tariff of the Appellant for FY 2015-16. Once again, there was substantial reduction in revenue requirements of the Appellant, aggrieved by which the Appellant has filed Appeal No. 08 of 2016 before the Hon'ble Tribunal.
- J. The Appellant crave leave to refer to the records of the previous appeals during the course of proceedings before the Hon'ble Tribunal.
- K. In the year 2016, the Appellant filed a petition being Petition No. 18/2017 before the State Commission for truing up of the financials of the Appellant for FY 2012-13 to FY 2015-16 and ARR for FY 2016-17 to FY 2020-21. The State Commission admitted the petition vide its Order dated 26.05.2017 subject to clarifications/additional information, if any, which would be sought from the Appellant from

time to time. A copy of the petition being Petition No. 18/2017 is attached hereto and marked as **Annexure B**.

- L. The State Commission published a Public notice indicating salient features of the petition for inviting comments from the stakeholders requesting to submit the response on the petition on or before 18.07.2017 in the given newspapers. A public hearing was also held on 19.07.2017.
- M. By the impugned order dated 31.08.2017, the State Commission has disposed of the Petition No. 18 of 2017 filed by the Appellant and has tried up the financials of the Appellant for the years 2014-15 and 2015-16 and has determined the Annual Revenue Requirements and Transmission tariff for the year 2017-18.
- N. It is respectfully submitted that in determining the financials of the Appellant for the above financial years, the State Commission failed to allow the revenue requirements in terms of law and the provisions laid down in the Multi Year Tariff (MYT) Regulations 2011 (hereinafter referred to as "**MYT Regulations, 2011**") and Tariff Regulations 2017.
- O. It is submitted that the State Commission has not fully allowed the revenue requirements of the Appellant in regard to the following:
 - (a) The State Commission has not properly considered the base amount for calculating A&G Expenses for FY 2012-13 to FY 2015-16. The State Commission has considered Rs. 19.20 Crore for FY 2011-12 against Rs. 22.19 Crore submitted by Appellant. As a result, the A&G expenses for all the years have been erroneously under-stated. Further, the State Commission has not allowed the water charges which is actually collected by the water department and which was not part of the base year expenses. No reasons have also been given by the State Commission;

- (b) The State Commission has incorrectly computed the Regulated Rate base (hereinafter referred to as "RRB") Closing value for FY 2008-09 thereby affecting the figures for all years in question. This also appears to be an arithmetical mistake on the part of the State Commission;
- (c) Income tax liability has not been allowed as per the final assessment order of the Income Tax Department for the relevant year, contrary to the decision of the Hon'ble Tribunal;
- (d) Non-tariff income for the year 2014-15 and 2015-16 have been taken to include the 25% of the Short-Term Open Access charges, contrary to the provisions in MYT Regulations 2011 of the State Commission. Further, the SLDC charges have been included in the non-tariff income of the Appellant, whereas the ARR for SLDC is separate and ought to have been accounted therein;
- (e) The impact of statutory Pay Revision shall be considered separately by the State Commission based on actual payment made by the Transmission Licensee at the time of True up for the relevant financial year, adversely affecting the cash flows of the Appellant when the pay revision already stands implemented;
- (f) The impact of Rs. 4.50 Crore on account of salary in respect of IPGCL staff deputed to the Appellant for FY 2016-17 onwards and the financial impact of approximately Rs. 28.87 Crore due to salary of staff under recruitment, have not been considered by the State Commission;
- (g) The State Commission has incorrectly computed the RRB opening value for FY 2017-18 by considering the RRB closing value of FY 2015-16 which has inherently the wrong calculations and the computation is also not in line with Tariff Regulations 2017;

- (h) Based on True up order for FY 2015-16, amount of Rs. 82.24 Crore is considered as non-tariff income for FY 2017-18, whereas the said amount is not likely to be earned in the year 2017-18. This is due to the fact that the amount of Rs. 82.24 Crore had an one-time adjustment for STOA charges, Open Access charges, etc. of Rs. 44.90 Crore for the previous year 2015-16.

P. In the circumstances and aggrieved by the Tariff Order dated 31.08.2017, the Appellant is filing the present appeal.

8. (i) FACTS IN ISSUE

- (a) Whether the State Commission has correctly considered the Administrative and General Expenses in the impugned order?
- (b) Whether the State Commission has correctly calculated the Return on Capital Employed in the Impugned Order?
- (c) Whether the State Commission has correctly considered and computed the Non-Tariff Income in the impugned order?
- (d) Whether the State Commission has correctly allowed the Income Tax to be allowed in the revenue requirements of the Appellant?
- (e) Whether the State Commission has correctly allowed the Operation and Maintenance Expenses by not considering the impact of the Pay Revision and also the salary paid to the staff deputed from IPGCL and also the impact of the staff in the process of being recruited?
- (f) Whether the State Commission has correctly computed the Non-Tariff income by considering the amount earned in the previous year 2015-16 which had one-time adjustments?

(ii) QUESTIONS OF LAW

The following questions of law arise in the present appeal:

- A. Whether the State Commission has followed the provisions of the Tariff Regulations in determining the Revenue Requirements in the true up process and also in the period for tariff determination?
- B. Whether the State Commission has followed the decisions of the Hon'ble Tribunal on the income tax to be allowed to be recovered in the revenue requirements on actual basis?
- C. Whether the State Commission is justified in not considering the employee expenses which have in fact been prudently incurred by the Appellant for its operations?
- D. Whether the State Commission has correctly computed the Return on Capital Employed and Non-tariff income in a prudent manner?

9. GROUNDS RAISED WITH LEGAL PROVISIONS

- A. The State Commission has erred in passing the impugned order wherein many of the elements of revenue requirements determined and/or trued up by the State Commission are contrary to the provisions of the Tariff Regulations as applicable. The State Commission has failed to appreciate that the Tariff Regulations are binding on all including the State Commission and there was no occasion for the State Commission to deviate from the same.
- B. The State Commission has erred in not following the binding decisions of the Hon'ble Tribunal on various issues including on the income tax to be allowed, the treatment of short-term open access charges etc. The State Commission has failed to appreciate that when the Regulations have been interpreted by the Hon'ble Tribunal, the same ought to be followed and there was no occasion for the State Commission to deviate from the same.
- C. The State Commission has failed to appreciate that the Appellant perform the statutory functions of the State Transmission utility and the functions of the Appellant are also of a public utility service. The distribution licensees have also not been paying the transmission

tariff to the Appellant and there are huge deficit and arrears payable. The State Commission has failed to enforce the payments and have also not allowed the revenue requirements of the Appellant in a prudent manner, thereby seriously prejudicing the Appellant.

I. ADMINISTRATIVE AND GENERAL EXPENSES

- D.** That the State Commission while calculating A&G Expenses for FY 2012-13 to FY 2015-16 has erroneously considered the base amount to be Rs. 19.20 Crore as against the Appellant's submissions of Rs. 22.19 Crore for FY 2011-12. No reasons have been given by the State Commission for such reduction, and there is also no justification or rationale for such reduction. The error appears to be arithmetic as the State Commission has stated that it has adopted the base A&G expense as per the audited statements of the Appellant. The Appellant had submitted the base figure of Rs. 22.19 Crore for the year 2011-12 based on the audited accounts. The State Commission has however not allowed the A&G expenses correctly. This has a consequential impact on all future years from FY 2011-12.
- E.** The State Commission has erred in disallowing the amount of Rs. 3.38 Crore claimed by the Appellant for the year 2014-15 as a part of the A&G expenses by terming the same to be part of the base year A&G expenses. The State Commission has failed to appreciate that the amount of Rs. 3.38 Crore was claimed as water arrears as claimed by the Delhi Jal Board and the details of the actual expenses were furnished to the State Commission. The said amount was not included in the base year A&G expenses and was in fact claimed by a fresh invoice by the Delhi Jal Board as water arrears. Therefore the State Commission has erred in holding that the said amount formed part of the base A&G expenses and the State Commission ought to have allowed the expenses as claimed. The details of the A&G expenses as claimed by the Appellant and which ought to have been

allowed by the State Commission as against the amounts allowed by the State Commission are as under:

(Rs. Crore)

		2011-12	2012-13	2013-14	2014-15	2015-16
DTL Petition	A&G Expenses	22.19	23.97	25.90	27.98	30.24
	Total A&G Expenses		37.19	35.20	43.22	38.74
DERC Order	Total A&G Expenses	19.20	32.03	31.70	36.05	34.62
	Less: A&G Expenses Capitalized	1.92	2.07	2.24	2.42	2.61
	Net A&G Expenses		29.96	29.46	33.63	32.01

II. RETURN ON CAPITAL EMPLOYED

- F.** The State Commission has erred in not fully allowing the Return on Capital Employed for the Appellant, on account of taking an erroneous figure as the closing value for the year 2008-09. This appears to be an arithmetical mistake on the part the State Commission. In this regard, for the year 2008-09, the State Commission has taken the correct opening RBB of Rs. 638.52 Crore. After adding the additional capitalization of Rs. 119.14 Crore and the change in working capital of Rs. 2.36 Crore and reducing the depreciation of Rs. 36.81 Crore, the resultant figure is Rs. 723.22 Crore and not Rs. 714.38 Crore. This is an arithmetical mistake which needs to be corrected for the year 2008-09 and also all consequential corrections for the future years thereafter including for the year 2017-18 for which the tariff is determined. That the State Commission has deviated from the MYT Regulations, 2011 and Tariff Regulations, 2017 for the calculation of ROCE. The State Commission failed to appreciate that the ROCE is to be calculated as per the formulae given under the MYT Regulations, 2011 and Tariff Regulations, 2017.

III. NON-TARIFF INCOME IN TRUE UP FOR 2014-15 AND 2015-16

- G. That the State Commission has erred in including the entire Short Term Open Access charges received in the non-tariff income of the Appellant to reduce the Annual Revenue Requirements. The State Commission has failed to appreciate that in terms of Regulation 6.13 of the MYT Regulations, 2011 with respect to computation of non-tariff income for the period FY 2012-13 to FY 2015-16, 25% of the charges is to be retained by the Appellant and only 75% is to be considered as non-tariff income. In this regard, Regulation 6.13 of MYT Regulations, 2011 reads as under:

" 6.13 : 25% of the charges collected from the short term open access customer shall be retained by the transmission licensee and the balance 75% shall be considered as nontariff income and adjusted towards reduction in the transmission service charges payable by the long term and medium term users."

The purpose of the above Regulation is that the Appellant performs services is providing short term open access and to compensate for such additional services the 25% is to be retained while the balance 75% is to be included in the non-tariff income. The said Regulation was followed in letter and spirit by the State Commission till the year 2013-14. However, for the years 2014-15 and 2015-16, the State Commission has erroneously included the entire short-term open access charges in the non-tariff income. Numerically, the State Commission has wrongly considered Rs. 38.44 Crore for FY 2014-15 & Rs. 44.00 Crore for FY 2015-16 which is 25% of the STOA Charges, as non-tariff income contrary to the MYT Regulations, 2011 and deducted the same from the ARR of the Appellant.

- H. The State Commission has erred including an amount of Rs. 1.33 Crore and Rs. 0.90 Crore for FY 2014-15 and FY 2015-16 respectively, as Open Access charges of SLDC as income of the Appellant. The State Commission has failed to appreciate that the functioning of the SLDC which is a statutory function is separate from the Appellant. The Revenue Requirements of SLDC is also

separately considered and approved, distinct from the Appellant. Therefore, this amount of Rs. 1.33 Crore and Rs. 0.90 Crore for FY 2014-15 and FY 2015-16 respectively, ought to be taken to the income of the SLDC and not the Appellant.

IV. INCOME TAX

- I. The State Commission has erred in not fully allowing the income tax paid by the Appellant in the revenue requirements of the Appellant. The State Commission has failed to appreciate that as settled by the Hon'ble Tribunal Judgment in Appeal No. 255 of 2013 dated 01.02.2016, the entire income tax arising out of the licensed business should be allowed to the Appellant and not restricted only on the return on equity, as under:

"45.4 In our opinion, the Commission has to consider the income tax actually paid by the Appellant with due verification and the same has to be included in the Tariff computation and shall be passed on to the beneficiaries. Further, tax on any income other than through its licensed business shall not be passed through, and it shall be payable by the Transmission Licensee itself. Accordingly, the issue is decided in favour of the Appellant and the issue is remanded back to consider the Income Tax amount paid with due verification and prudence check"

The State Commission ought to have followed the above decision of the Hon'ble Tribunal, which arises in the case of the Appellant and under the very same Regulations as the present case. The State Commission ought not to have placed further restrictions on the amounts to be allowed under the head of income tax. The State Commission has failed to appreciate that the income tax on the income earned from the transmission business of the Appellant is liable to be reimbursed on actual basis.

- J. The State Commission has erred in observing that the Appellant has paid excess advance tax and therefore the income tax would be considered only on the basis of the final tax assessment. The State Commission has failed to appreciate that no advance tax was paid by

the Appellant during the years 2012-13 to 2014-15 and the tax paid to the Income Tax Department is only the Tax Deducted at Source (TDS) which is paid by the distribution licensees while making payment/credit on account of wheeling charges, and such TDS far exceeds the income tax liability. The refund is claimed on account of excess TDS and not on account of advance tax paid by the Appellant. The Income tax as submitted by the Appellant as against the amounts approved by the State Commission are as under:

(Rs. Crore)

		2012-13	2013-14	2014-15	2015-16
DTL Petition	Total Income Tax (Actual assessment)	65.85	0.00	54.22	133.41
DERC Order	Income Tax on Actual Basis	65.85	0.00	54.22	133.41
	Return on Equity	92.97	108.03	133.11	159.25
	Grossed up return on equity	140.85	163.66	201.65	241.25
	Income Tax on Return on Equity	47.87	55.63	68.54	82.00
	Income Tax Allowed	47.87	0.00	54.22	82.00

As is evident from the above, the State Commission has substantially reduced the income tax to the Appellant and taken the lower of actual tax or tax in return on equity. The State Commission ought to have allowed the income tax on actual basis, based on the income arising out of the transmission business of the Appellant.

V. OPERATION & MAINTENANCE EXPENSES

- K. The State Commission has erred by not considering the impact of 7th Pay Commission while calculating the Operation & Management expenses (hereinafter referred to as “O&M Expenses”) for FY 2017-18. It is stated that the Appellant vide letter no. F.DTL/203/F-1/2017/Oprn.GM(C&RA)/59 dated 20.07.2017 submitted the Employee Expenses including the impact of 7th Pay Commission along with other additional details regarding the revision impact (provisional) of Rs. 20.95 Crore, copy of the said letter dated

20.07.2017 is attached hereto and marked as **Annexure C**. The State Commission has however erred in not considering the above on the ground that impact of any statutory pay revision shall be considered separately by the State Commission based on the actual payment made by the Transmission Licensee at the time of True up for the relevant financial year.

- L.** The State Commission has failed to appreciate that the impact of the 7th Pay Commission recommendations have already been implemented by the Appellant based on the provisional fixation and the amount has been paid in July, 2017 with effect from January, 2016. The Appellant has suffered the cash outflow and postponing the recovery of the same seriously prejudices the Appellant while also resulting in addition of carrying cost for the future.
- M.** The State Commission has also rejected an amount of Rs. 4.50 Crore for the FY 2016-17 on account of salary in respect of staff deputed from Indraprastha Power Generation Company Ltd (IPGCL), who actually worked for the Appellant. The State Commission has failed to appreciate that the Appellant is already seriously under-staffed. The Appellant had also vide communication dated 29.06.2017 intimated to the State Commission the details of the staff strength and the actual staff of the Appellant. The Appellant has a sanctioned strength of 2737 staff out of which only 1438 staff including 77 deputed from IPGCL were working as in June-2017. Further, recruitment of 429 employees of various categories is under progress. The details of the sanctioned staff of the Appellant as against the current staff strength alongwith a copy of the communication dated 29.06.2017 is attached hereto and marked as **Annexure D**. These are in the present situation wherein the Appellant is operating substantially larger transmission network than in the past and further the power system is more complex at present than in the past. The State Commission has not given any reasons for rejection of the amount of Rs. 4.50 Crore, when the said employees were actually working for the Appellant and have rendered services to the benefit of the beneficiaries and the public at

large. The State Commission ought to have allowed such expenditure of Rs. 4.50 Crore. The updated details of the officials of IPGCL working in DTL on diverted capacity is attached hereto and marked as **Annexure E**.

- N. The State Commission has also erred in not considering the financial impact due to salary of staff under recruitment of approximately Rs. 28.87 Crore. The said amount was additionally claimed by the Appellant on account of the likely impact of the staff in the process of recruitment which is ongoing. As stated above, the Appellant is seriously under-staffed and requires further staff to continue to provide efficient services and for further expansion of services. Further, since the revenue requirements and tariff is on Multi Year basis, the non-inclusion also affects the base figure which would affect the revenue requirements for the future also. However, none of the above was considered by the State Commission while finalizing the tariff order and the O&M expenses for the ARR of FY 2017-18.

VI. NON-TARIFF INCOME FOR 2017-18

- O. The State Commission has erred in considering the higher projections of Rs. 82.24 Crore as non-tariff income for FY 2017-18 based on True Up Order for FY 2015-16, holding that such amount likely to be earned in FY 2017-18. The State Commission has failed to appreciate that the figure of Rs. 82.24 Crore includes an amount of Rs. 44.90 Crore, which are on account of one-time adjustment of STOA charges, Open Access charges, etc. as non-tariff income for FY 2015-16. The details of the break-up of the one-time adjustments for the year 2015-16 are attached hereto and marked as **Annexure F**.
- P. The State Commission has failed to appreciate that by adopting the amount of Rs. 82.24 Crore for the year 2017-18, the Appellant's revenue requirements are being artificially reduced as the said income is not likely to be earned by the Appellant on a yearly basis.

Q. The Appellant crave leave to add to the grounds mentioned above and submits that the contentions are in the alternate and without prejudice to one another.

10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the impugned order dated 31.08.2017 passed by the State Commission.

11. GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON

As stated in Para 9 above.

12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.

N.A.

13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIUBNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL.

N.A.

14. DETAILS OF INDEX

An index containing the details of the documents to be relied upon is enclosed.

15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI.

In respect of the few of appeal.

Name of the Bank. State Bank of India Branch Chandni Chowk
payable at Delhi. DD No. 581256 Date 09/11/2017.

16. LIST OF ENCLOSURES.

Annexure A: Copy of the Impugned Order dated 31.08.2017

Annexure B: Copy of the petition being Petition No. 18/2017

Annexure C: Copy of the letter dated 20.07.2017

Annexure D: The details of the sanctioned staff of the Appellant as against the current staff strength alongwith a copy of the communication dated 29.06.2017 of the Appellant

Annexure E: The updated details of the officials of IPGCL working in DTL on diverted capacity

Annexure F: The details of the break-up of the one-time adjustments for the year 2015-16

17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED.

Yes

18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS.

Yes

19. WHETHER THE COPY OR MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.

No

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:

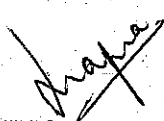
N.A.

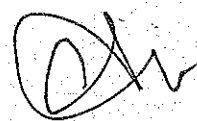
21. RELIEFS SOUGHT.

In view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8 and the grounds of appeal stated in para 9, the appellant prays for the following reliefs:

- (a) Allow the appeal and set aside the Tariff Order dated 31.08.2017 passed by the State Commission to the extent challenged in the present appeal.
- (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

Dated at NEW DELHI this 10th day of November, 2017


COUNSEL FOR APPELLANT

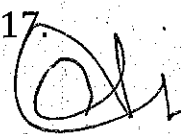

APPELLANT
Er. BIRENDRA PRASAD
 General Manager (C&RA)
DELHI TRANSCO LIMITED
 (A Govt. of N.C.T. of Delhi Undertaking)
 I. P. Estate, New Delhi-110002

DECLARATION BY APPELLANT

The Appellant above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

Verified at NEW DELHI on this 10th day of November, 2017.



COUNSEL FOR APPELLANT


APPELLANT
Er. BIRENDRA PRASAD
 General Manager (C&RA)
DELHI TRANSCO LIMITED
 (A Govt. of N.C.T. of Delhi Undertaking)
 I. P. Estate, New Delhi-110002

VERIFICATION

I, Birendra Prasad, aged about 48 years, working as General Manager (Commercial and Regulatory Affairs) in Delhi Transco Limited, do hereby verify that the contents of paras 1 to 7 and 10 to 20 are based on the records of the appellant maintained in the ordinary course of business and believed by me to be true and paras 8, 9 and 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 10.11.2017
 Place: NEW DELHI


Er. BIRENDRA PRASAD
 General Manager (C&RA)
DELHI TRANSCO LIMITED
 (A Govt. of N.C.T. of Delhi Undertaking)
 I. P. Estate, New Delhi-110002

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION**

APPEAL NO OF 2017

IN THE MATTER OF:

Delhi Transco Limited

....Appellant

VERSUS

Delhi Electricity Regulatory Commission & Others

...Respondents

AFFIDAVIT

I, Birendra Prasad, aged about 48 years, working as General Manager (Commercial and Regulatory Affairs) in Delhi Transco Limited, do hereby solemnly affirm and state as under:

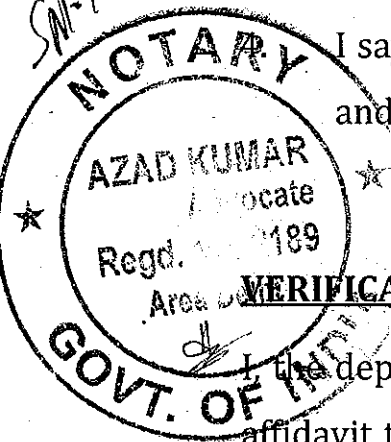
1. I say that I am General Manager (Commercial and Regulatory Affairs) in the Delhi Transco Limited and am competent to swear the present affidavit.
2. I say that I have read the contents of the above appeal filed by the appellant against the order dated 31.08.2017 passed by the State Commission and I have understood the contents of the same.
3. I say that the contents of the above appeal filed by the Appellant are based on the information available with the appellant in the normal course of business and believed by me to be true.

I say that the Annexures to the Memorandum of appeal are the true and correct copies of their original.

I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

DEPONENT
Er. BIRENDRA PRASAD
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of N.C.T. of Delhi Undertaking)
I. P. Estate, New Delhi-110002

DEPONENT
Er. BIRENDRA PRASAD
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of N.C.T. of Delhi Undertaking)
I. P. Estate, New Delhi-110002



VERIFICATION

ATTESTED

Verified at 11.0 NOV 2017 day of November, 2017

CABIN No. 33

I.T.O. Lane, Azad Bhowan Road
New Delhi-110 002

11.0 NOV 2017

BY NOTARY PUBLIC
NEW DELHI (INDIA)
AZAD KUMAR-Adv