

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

Appeal/ DFR No.	Date of filing	Appellants	Respondents	Counsel of Appellant	Full DD/Cheque Details	Relief sought-briefly & accurately for permanent record purpose with provisions of law involved.
	01.06.2018	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 & Mr. Ashwin Ramanathan	Bank draft No. 038315 dated 01.06.2018 for amount of Rs. 124000/- 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 28.03.2018 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
APPEAL NO. **224** OF 2018

IN THE MATTER OF:

Delhi Transco Limited

... Appellant

VERSUS

Delhi Electricity Regulatory Commission & Ors.

... Respondents

MASTER INDEX

S. NO.	PARTICULARS	PAGES
1.	Synopsis & List of Dates.	A-B
2.	Memo of parties.	C-D
3.	Appeal under Section 111(1) of the Electricity Act, 2003 along with supporting affidavit.	1-25
4.	Annexure A - Copy of the Impugned Order dated 28.03.2018	26-110
5.	Annexure B - Copy of the Petition No. 03/2018 filed by appellant before the State Commission	111-487
6.	Annexure C (colly) - Copy of the MYT Regulations, 2011 and Tariff Regulations, 2017	488-597
7.	Authorization letter	598
8.	Vakalatnama	599
9.	Court Fee: Demand Draft No. 038315 Dated 01.06.2018 for Rs. 124000, in favour of Pay & Accounts Officer, Ministry of Power	600

THROUGH



(ANAND K GANESAN/SWAPNA SESHADRI)
MSA PARTNERS
ADVOCATES FOR THE APPELLANT
C-66, Ground Floor, Nizammudin East,
New Delhi - 110013

DATED: 01.06.2018
PLACE: NEW DELHI

IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION
APPEAL NO. ~~224~~ **224** OF 2018

IN THE MATTER OF:

Delhi Transco Limited ... Appellant

VERSUS

Delhi Electricity Regulatory Commission & Ors. ... Respondents

INDEX

VOLUME- I (PAGES A TO 274)

S. NO.	PARTICULARS	PAGES
1.	Synopsis & List of Dates.	A-B
2.	Memo of parties.	C-D
3.	Appeal under Section 111(1) of the Electricity Act, 2003 along with supporting affidavit.	1-25
4.	Annexure A - Copy of the Impugned Order dated 28.03.2018	26-110
5.	Annexure B - Copy of the Petition No. 03/2018 filed by appellant before the State Commission	111-487

... Page No. Continue in Next Volume – II

IN THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION
APPEAL NO. **224** OF 2018

IN THE MATTER OF:

Delhi Transco Limited ... Appellant

VERSUS

Delhi Electricity Regulatory Commission & Ors. ... Respondents

INDEX

VOLUME- II (PAGES 275 TO 600)

S. NO.	PARTICULARS	PAGES
1.	Annexure B – Copy of the Petition No. 03/2018 filed by appellant before the State Commission	111-487
2.	Annexure C (colly) – Copy of the MYT Regulations, 2011 and Tariff Regulations, 2017	488-597
3.	Authorization letter	598
4.	Vakalatnama	599
5.	Court Fee: Demand Draft No. 038316 Dated 01.06.2018 for Rs. 124000, in favour of Pay & Accounts Officer, Ministry of Power	600

SYNOPSIS AND LIST OF DATES

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against the Order dated 28.03.2018 (hereinafter, '**Impugned Order**') passed by the Delhi Electricity Regulatory Commission, (hereinafter, '**State Commission**') in Petition No. 03/2018, whereby the State Commission has tried up the financials of the Appellant for FY 2016-17 and the Aggregate Revenue Requirement and Transmission Tariff for FY 2018-19.

The State Commission by way of the Impugned Order has erred in making consideration with respect to a number of issues which are as under:

- i. Employee Expenses
- ii. Administrative and General Expenses
- iii. Working Capital
- iv. Calculation of the Return on Capital Employed
- v. Computation of Non-Tariff income
- vi. Allowance of Income Tax in the revenue requirements of the Appellant

LIST OF DATES

DATE	PARTICULARS
01.04.2007	The Appellant began to discharge only the functions of Transmission of Electricity in NCT of Delhi.
24.01.2018	The Appellant filed Petition No. 03/2018 before the State Commission.
25.01.2018	Appellant's petition being Petition No. 03/2018 was admitted by the State Commission.
21.02.2018	Deadline for receiving comments from stakeholders as per the Public Notice published by the State Commission.
23.03.2018	Public hearing conducted by the State Commission.
28.03.2018	State Commission disposed of Petition No. 03/2018 by passing the Impugned Order.
19.04.2018	The copy of the Impugned Order dated 28.03.2018 was received by the Appellant.
01.06.2018	Present Appeal is being filed by the Appellant.

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. OF 2018

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,
Through its Secretary
Palika Kendra, Parliament Street,
New Delhi – 110001

6. Military Engineers Services,
Ministry of Defence, Government of India,
Through its Secretary
Kotwali Road, Delhi Cantt.
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: 01.06.2018
Place: New Delhi

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION

APPEAL NO. OF 2018

IN THE MATTER OF:

Appeal against the Tariff Order dated 28.03.2018 passed by the Delhi Electricity Regulatory Commission in Petition No. 03/2018.

AND

IN THE MATTER OF:

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

...Appellant

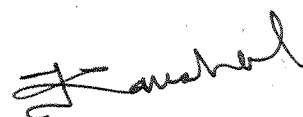
VERSUS

1. Delhi Electricity Regulatory Commission
Viniyamak Bhavan, C-Block,
Malviya Nagar, New Delhi - 110 017.
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 - 110 001
6. Military Engineers Services,
Ministry of Defence, Government of India,
Kotwali Road, Delhi Cantt.,
New Delhi-110 010

....Respondents

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

MOST RESPECTFULLY SHOWETH:



K. K. VERMA
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

1. DETAILS OF APPEAL

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against Tariff Order dated 28.03.2018 passed by the Respondent No. 1, Delhi Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 03/2018 dealing with the truing up of the financials of the Appellant - Delhi Transco Limited for the period Financial Year (hereinafter referred to as "**FY**") 2016-17, and the Aggregate Revenue Requirement (hereinafter called '**ARR**') and Transmission Tariff for FY 2018-19.

A copy of the Impugned Order dated 28.03.2018 is attached hereto and marked as **Annexure A**.

2. The impugned order was communicated to the Appellant on 19.04.2018.

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 Mr. Ashwin Ramanathan
MSA Partners, Advocates,
C-66, Ground Floor, Nizamuddin (East),
New Delhi - 110013
Phone: 011-41403716
Email: anand@msapartners.in, swapna@msapartners.in,
ashwin.ramanathan@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,
BSES Bhawan, Nehru Place,
New Delhi - 110 019



K. K. VERMA
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

- (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,
Kotwali Road, Delhi Cantt.,
New Delhi-110 010

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 28.03.2018 was communicated to the Appellant on 19.04.2018. 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 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 Appellant had on 24.01.2018 filed a petition being Petition No. 03/2018 before the State Commission for truing up of the financials of the Appellant for FY 2016-17, and determination of ARR and Transmission Tariff for FY 2018-19. The said Petition was admitted on 25.01.2018. A copy of the Petition No. 03/2018 is attached hereto and marked as **Annexure B**.
- F. 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 21.02.2018 in the given newspapers. A public hearing was also held on 23.03.2018.
- G. By the Impugned Order dated 28.03.2018, the State Commission has disposed of the Petition No. 03/2018 filed by the Appellant and has trued up the financials of the Appellant for the FY 2016-17 and has determined the Annual Revenue Requirements and Transmission Tariff for the FY 2018-19.
- H. 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 DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as “Tariff Regulations, 2017”). A copy of the MYT Regulations, 2011 and Tariff Regulations, 2017 are attached hereto and marked as **Annexure C (colly)**.

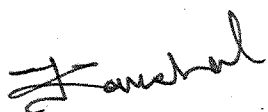
I. It is submitted that the State Commission has not fully allowed the revenue requirements of the Appellant in regard to the following:

- **True Up for FY 2016-17**

- **Operation & Maintenance Expenses for FY 2016-17**

- **Employee Expenses**

- (a) In True up of the ARR, the Appellant had considered the Employee Expenses for FY 2015-16 as approved by the State Commission in its Tariff Order dated 31.08.2017 for computing the Employee Expenses for FY 2016-17. Further the Appellant had additionally considered an amount of Rs. 15.36 Crore on account of 7th Pay Commission, and Rs. 8.52 Crore for salary of IPGCL staff deployed in the Appellant Company, as the same were not included in the base value of Employee Expenses.
- (b) The State Commission vide the Impugned Tariff Order, has erred in not considering the expenses relating to the salaries of IPGCL staff amounting to Rs. 8.52 Crore. The State Commission has erred in observing in this regard that in the True Up of IPGCL, the normative O&M expenses allowed to IPGCL was higher in comparison to the actual O&M Expenses incurred, partly due to reduced Employee Expenses burden to IPGCL.
- (c) Further, the State Commission has also erred in not considering the amount of Rs. 15.36 Crore on account of impact of 7th Pay Commission, stating that the Wage Revisions Committee is yet to issue its final recommendations, and that



actual expenditure would be considered post finalization of recommendations of the Wage Revisions Committee.

▪ **Administrative and General Expenses**

- (d) The State Commission has not considered the amount of Rs. 10.56 Crore on account of Additional Security Expenses, even after the Appellant submitted a detailed justification during the prudence check conducted by the State Commission.
- (e) Further, the State Commission has also observed that there is no indication of Security Expenses as a separate line item in the Audited Financial Statement of the base year.

○ **Working Capital Requirement**

- (f) The State Commission has made an arithmetical error while computing the Working Capital Requirement, as the value of Receivables for two months is not as per the approved value of ARR for FY 2016-17.

○ **Return on Capital Employed**

- (g) The State Commission has incorrectly considered the opening values of various components of ROCE i.e. RRB Opening, etc. and is not in line with the formulae in MYT Regulations, 2011. The State Commission has made this error 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 which needs to be corrected for the year 2008-09 and also all consequential corrections for the future years thereafter.

○ **Non Tariff Income**

- (h) The State Commission in the Impugned Tariff Order, while calculating the non-tariff income wrongly considered Short Term Open Access Charges, Reactive Energy Charges, Gain on Sale Scrap, LPSC and other miscellaneous receipts. Further, the State Commission has also made an arithmetic mistake in

7

calculation of the non-tariff income thereby increasing the same by Rs. 6.25 Crore.

○ **Income Tax Expenses**

- (i) In the true-up petition submitted by the Appellant before the State Commission, the Appellant had in terms of the Judgment of this Hon'ble Tribunal in Appeal No. 255 of 2013, considered the income tax actually paid by the Appellant in FY 2016-17.
- (j) The State Commission has not fully allowed the actual expenditure on income tax stating that the income tax returns filed by the Appellant indicate that it has paid excess advanced tax, and also that the Appellant has made claims for refund of excess tax paid during FY 2012-13 to FY 2015-16.

• **Aggregate Revenue Requirement (ARR) for FY 2018-19**

○ **Operation & Maintenance Expenses for FY 2018-19**

- (k) The State Commission in determining the O&M Expenses for FY 2018-19 has excluded the spare bays, bus-coupler bays, etc. from the normative O&M Expenses, even though the Appellant is actually incurring expenditure on spare bays and bus-coupler bays. Further, the State Commission has also not allowed O&M Expenses on account of salaries to IPGCL staff, additional security expenses and license fee for land.

○ **Working Capital Requirement**

- (l) The State Commission has made an arithmetical error while computing the Working Capital Requirement, as the value of Maintenance Spares (@15% of O&M) and O&M Expenses for 1 month are not as per the approved value of O&M Expenses for FY 2018-19.

○ **Return on Capital Employed**

- (m) The State Commission in the impugned Tariff Order while computing the ROCE has grossly erred in considering Equity

of 30% on Net GFA instead of Gross GFA. Further, the State Commission has erred in calculating debt as difference of Equity (on net GFA) and RRB Average, instead of Equity on (Gross GFA) and Gross GFA.

- (n) It is stated that even on an assumption that the values considered are correct, the State Commission has made an arithmetic mistake in computing the value of ROCE.

○ **Income Tax Expenses**

- (o) The State Commission has allowed Income Tax by grossing up the rate of return on equity to 20.61% against 21.41% as submitted by the Appellant. The State Commission has also considered effective tax rate @32.07% as per the income tax return filed by the Appellant for Assessment Year 2017-18 against 34.608% as submitted by the Appellant.

○ **Non Tariff Income**

- (p) The State Commission has projected Non Tariff Income of Rs. 70.78 Crore for FY 2018-19 as per the True Up of ARR for FY 2016-17 which has arithmetical mistake in addition.

- J. In the circumstances and aggrieved by the Tariff Order dated 28.03.2018, the Appellant is filing the present appeal.

8. (i) FACTS IN ISSUE

- (a) Whether the State Commission has correctly considered the Employee Expenses in the impugned order?
- (b) Whether the State Commission has correctly considered the Administrative and General Expenses in the impugned order?
- (c) Whether the State Commission has correctly considered the Working Capital in the impugned order?

- (d) Whether the State Commission has correctly calculated the Return on Capital Employed in the Impugned Order?


K. K. VERMA

- 9
- (e) Whether the State Commission has correctly considered and computed the Non-Tariff Income in the impugned order?
 - (f) Whether the State Commission has correctly allowed the Income Tax to be allowed in the revenue requirements of the Appellant?

(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 State Commission has failed to


K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

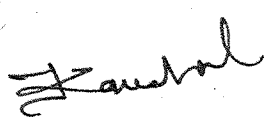
appreciate that when the Regulations have been interpreted by the

Hon'ble Tribunal, the same ought to be followed and there was no occasion for the State Commission to deviate from the same.

I. OPERATION & MAINTENANCE EXPENSES FOR FY 2016-17

o Employee Expenses

- C. In its Petition for True Up of ARR for FY 2016-17, the Appellant had considered the Employee Expenses for FY 2015-16 as approved by the State Commission in its Tariff Order dated 31.08.2017 for computing the Employee Expenses for FY 2016-17. Further the Appellant had additionally considered an amount of Rs. 15.36 Crore on account of 7th Pay Commission, and Rs. 8.52 Crore for salary of IPGCL staff deployed in the Appellant Company, as the same were not including in the base value of Employee Expenses.
- D. The State Commission vide the Impugned Tariff Order, has erred in not considering the expenses relating to the salaries of IPGCL staff amounting to Rs. 8.52 Crore. The State Commission has erred in observing in this regard that in the True Up of IPGCL, the normative O&M expenses allowed to IPGCL was higher in comparison to the actual O&M Expenses incurred, partly due to reduced Employee Expenses burden to IPGCL.
- E. The State Commission failed to appreciate that IPGCL and the Appellant being two separate entities, the trueing up of the Appellants financials should not have been affected in any way whatsoever by the true up done in case IPGCL. Further, the Appellant has already reimbursed the said expenses to IPGCL as and when claimed by IPGCL. Thus, same should be considered in the employee cost of the Appellant. The State Commission has therefore grossly erred in not allowing the salaries of IPGCL staff employed in the Appellant company for the reason that the said amounts have been allowed to IPGCL in its normative O&M Expenses.



- F. It is stated that the State Commission has not questioned prudence in employment of the staff, but has still not allowed the expenditure in this regard when the Appellant has actually incurred the expense.
- G. Further, the State Commission has also erred in not considering the amount of Rs. 15.36 Crore on account of impact of 7th Pay Commission, stating that the Wage Revisions Committee is yet to issue its final recommendations, and that actual expenditure would be considered post finalization of recommendations of the Wage Revisions Committee.
- H. The State Commission has failed to appreciate that the 7th pay commission was effective from 01.01.2016, and the Appellant has already disbursed the IR relief on 31.07.2017. Thus the expense of Rs. 15.36 Crore which pertains to FY 2016-17 was taken through provision that very year. Thus it is prudent to consider the expenses in the tariff of FY 2016-17 otherwise expenses for FY 2017-18 would be exorbitantly on higher side and may fluctuate the tariff.
- I. The State Commission has also wrongly relied on the Appellants submission in its Appeal against Tariff Order dated 31.08.2017 before this Hon'ble Tribunal wherein the Appellant has stated that the amount on account of 7th Pay Commission has been paid in July 2017 based on provisional fixation with effect from January 2016.
- J. The State Commission failed consider that even though the said amount has been paid in July 2017, the amount pertains to the previous financial year. Deferring the allowance of this amount would only add to the burden on the consumers by way of interest. There is therefore no rationale and justification in not allowing the amounts actually incurred by the Appellant on account of the 7th Pay Commission relating to FY 2016-17.

o ADMINISTRATIVE AND GENERAL EXPENSES

- K. The State Commission has not considered the amount of Rs. 10.56 Crore on account of Additional Security Expenses, even after the Appellant submitted a detailed justification during the prudence

K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

check conducted by the State Commission. Further, the State Commission has also observed that there is no indication of Security Expenses as a separate line item in the Audited Financial Statement of the base year.

- L. The State Commission failed to appreciate that in an effort to ensure safety of the personals as well as the grid, there had been an exponential rise in the security expenses on account of increase in deployment of security personnel at various installations, revision in minimum wages, etc. These are uncontrollable expenses which are borne by the Appellant, the recovery of which ought to have been allowed.

II. WORKING CAPITAL

- M. The State Commission has made an arithmetical error while computing the Working Capital Requirement, as the value of Receivables for two months is not as per the approved value of ARR for FY 2016-17.

III. RETURN ON CAPITAL EMPLOYED

- N. The State Commission has incorrectly considered the opening values of various components of ROCE i.e. RRB Opening, etc. and is not in line with the formulae in MYT Regulations 2011. The error appears to be on account of taking an erroneous figure as the closing value for the year 2008-09. In this regard, for the year 2008-09, the State Commission had taken the correct opening RRB 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 which was considered by the State Commission. This appears to be an arithmetical mistake on the part the State Commission which needs to be corrected for the year 2008-09 and also all consequential corrections for the future years


K. K. VERMA

General Manager (C&RA),
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

thereafter.

- O. As per Regulation 5.11 of MYT Regulations 2011, the formula for computation of Return on Capital Employed (ROCE) is as below:

"5.11 The Regulated ate Base for the i^{th} year of the Control Period shall be computed in the following manner:

$$RRB_i = RRB_{i-1} + \Delta AB_i / 2 + \Delta WC_i;$$

Where,

'i' is the i^{th} year of the Control Period, $i = 1, 2, 3, 4$ for the first Control Period;

RRB_i: Regulated Rate Base for the i^{th} year of the Control Period;

ΔAB_i : Change in the Regulated Rate Base in the i^{th} year of the Control Period. This component shall be the average of the value at the beginning and end of the year as the asset creation is spread across a year and is arrived at as follows:

$$\Delta AB_i = Invi - Di - CC_i;$$

Where,

Invi: Investments projected to be capitalised during the i^{th} year of the Control Period and approved;

Di: Amount set aside or written off on account of Depreciation of fixed assets for the i^{th} year of the Control Period;

CC_i: Consumer Contributions, capital subsidy / grant pertaining to the ΔAB_i and capital grants/subsidies received during i^{th} year of the Control Period for construction of service lines or creation of fixed assets;

RRB_{i-1}: Regulated Rate Base for the Financial Year preceding the i^{th} year of the Control period. For the first year of the Control Period, RRB $i-1$ shall be the Regulated Rate Base for the Base Year i.e. RRB₀;

$$RRB_0 = OCFA_0 - AD_0 - CC_0;$$

Where;

OCFA₀: Original Cost of Fixed Assets at the end of the Base Year available for use and necessary for the purpose of the Licenced Business;

AD₀: Amounts written off or set aside on account of depreciation of fixed assets pertaining to the regulated business at the end of the Base Year;

CC₀: Total contributions pertaining to the OCFA₀, made by the consumers, capital subsidy / grants towards the cost of construction of Transmission System by the Transmission Licensee and also includes the capital grants/subsidies received for this purpose;

ΔWC_i : Change in normative working capital requirement in the i^{th} year of the Control Period, from the $(i-1)^{th}$ year. For the first year of the Control Period ($i=1$), ΔWC_1 shall be taken as the normative working capital requirement of the first year."

K. K. VERMA

- P. It is submitted that the Appellant has already raised this issue in Appeal No. 15 of 2018 which is pending adjudication before this Hon'ble Tribunal.

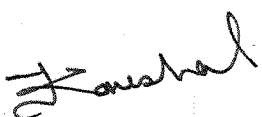
IV. NON-TARIFF INCOME

- Q. That the State Commission has erred in including the entire Short Term Open Access charges received in the non-tariff income of the Appellant. 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, 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, 2015-16, and 2016-17 the State Commission has erroneously included the entire short-term open access charges in the non-tariff income.

- R. The State Commission has also erred in considering Reactive Energy Charges in the Non-Tariff Income. The State Commission has failed to appreciate that the Appellant is required to pay the said Charges to NR Pool Account. The Appellant is only coordinating and recovering the reactive energy charges from the distribution companies.



K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

- S. It is for this reason, that Reactive Energy Charges have never been a part of Non-Tariff Income. Therefore, since the Appellant is not allowed to retain this amount, it cannot be considered for the purposes for Non-Tariff income.
- T. It is submitted that in the alternative, if at all the Reactive Energy Charges are to be considered as Non-Tariff Income, the Appellant ought to be allowed as expenses any amount which is demanded by SLDC to pay into the NR Pool on account of reactive energy charges.
- U. It is further submitted that the Appellant has not received any amount on account of LPSC during FY 2016-17. Accounting of Rs. 20.35 Crore is only on the basis of TDS deducted by DISCOMs i.e. BYPL and BRPL as per their calculation of LPSC on delayed payment of wheeling charges bills raised by the Appellant. Therefore, the same should not be considered as Non Tariff Income of the Appellant.
- V. Further, the State Commission has wrongly considered Gain on sale of scrap, and other Misc. Expenses which do not come under the description of "Non Tariff Income" as provided in the MYT Regulations 2011. In this regard Regulation 5.24 of the MYT Regulations 2011 is produced as under :-

"5.24 All incomes being incidental to electricity business and derived by the Licensee from sources, including but not limited to profit derived from disposal of assets, rents, delayed payment surcharge and miscellaneous receipts from the Beneficiaries shall constitute Non-Tariff Income of the Licensee.

5.25 The amount received by the Licensee on account of Non-Tariff Income shall be deducted from the Aggregate Revenue Requirement in calculating the net revenue requirement of such Licensee."

- W. Therefore, it is clear from the above description that only incomes that are incidental to the electricity business can be included in Non-Tariff Income. It is respectfully submitted that, Gain on sale of Scrap,

K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

and other Misc. Expenses, cannot be considered incidental to "electricity" business.

X. It is submitted that Regulation 5.26 of the MYT Regulations, 2011 provide for treatment of "Other Income of the Transmission Licensee". As per the said Regulation, the income from such business shall be calculated as per "DERC Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee Regulation 2005". In view of the said Regulation, it is submitted that the State Commission has erred in treating these incomes as non-tariff incomes.

Y. Further, the State Commission made arithmetical mistake in addition of Non Tariff Income of Rs. 6.25 Crore.

V. INCOME TAX

Z. 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's 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"

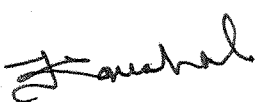
The State Commission ought to have followed the above decision of the Hon'ble Tribunal, which arises in the case of the Appellant and under the very same Regulations as the present case. The State

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.

- AA.** 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 2015-16 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	2016-17
DTLPetition	Total Income Tax (Actual assessment)	65.85	0.00	54.22	133.41	101.25
DERC Order	Income Tax on Actual Basis	65.85	0.00	54.22	133.41	101.25
	Return on Equity	92.97	108.03	133.11	159.25	175.71
	Grossed up return on equity	140.85	163.66	201.65	241.25	266.18
	Income Tax on Return on Equity	47.87	55.63	68.54	82.00	90.48
	Income Tax Allowed	47.87	0.00	54.22	82.00	90.48



K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

As is evident from the above, the State Commission has substantially reduced the income tax to the Appellant and taken the lower of

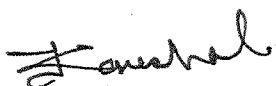
actual tax or tax in return on equity. The State Commission ought to have allowed the income tax on actual basis, based on the income arising out of the transmission business of the Appellant.

BB. As per Para 3.26 of the Tariff order, consequent upon the order passed by APTEL in Appeal No. 255/2013, the Appellant has submitted actual Income tax Expenses in its petition for true up for Financial Year 2016-17 as Rs. 101.25 Crore based on Income Tax return filed by the Appellant. The State Commission has erred in only allowing the amount of Income tax restricted to Return on Equity. (Refer Table 23 of para 3.27) for Financial Year 2016-17.

CC. It is submitted that the Appellant had paid MAT during the past years till Financial Year 2015-16 and the issue relating to tax payment is still pending before the State Commission for decision. Further, it is submitted that the State Commission has failed to appreciate that for the Financial year 2016-17, credit available to the Appellant of MAT liability paid in past had been passed on to the extent of Rs. 8.02 crores while claiming Income tax liability of Rs. 101.25 Crore in the petition filed before the State Commission and otherwise Income tax liability would have been Rs. 109.27 Crore.

VI. OPERATION & MAINTENANCE EXPENSES

DD. The State Commission in determining the O&M expenses for FY 2018-19 has excluded the spare bays, bus-coupler bays, etc. from the normative O&M Expenses, even though the Appellant is actually incurring expenditure on spare bays and bus-coupler bays. The State Commission failed to appreciate that the expenditure on these spare bays and bus-couplers have to be serviced by the Appellant even if they are not being used. The expenditure already having been incurred, there is no justification or rationale in not allowing the expenses in the ARR.

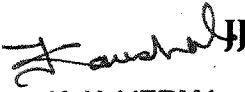


K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

- EE.** Further, the State Commission has also not allowed O&M Expenses on account of salaries to IPGCL staff, additional security expenses and license fee for land.
- FF.** The State Commission has erred in rejecting a provisional amount of Rs. 8.52 Crore for the FY 2018-19 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 not given any reasons for rejection of the amount of Rs. 8.52Crore, apart from what it has stated while disallowing the claim in true up for FY 2016-17.
- GG.** As stated above, it is submitted that IPGCL and the Appellant being two separate entities, the State Commission has grossly erred in not allowing the salaries of IPGCL staff employed in the Appellant company for the reason that the said amounts have been allowed to IPGCL in its normative O&M Expenses. It is stated that the State Commission has not questioned the prudence in employment of the staff, but has still not allowed the expenditure in this regard when the Appellant has actually incurred the expense.
- HH.** It is submitted that the truing up of the Appellants financials should not be affected in any way whatsoever by the true up done in case IPGCL.
- II.** Further, the State Commission has erred in not allowing expenses on account of Additional Security and License Fee for Land. The State Commission has not given any reason for rejection of the same. There is no justification or rationale in disallowing the said expenses, when they have actually been incurred by the Appellant and that too without any finding of imprudence on its part.

VII. WORKING CAPITAL REQUIREMENT

-  **II.** The State Commission has made an arithmetical error while computing the Working Capital Requirement, as the value of Maintenance Spares (@15% of O&M) and O&M Expenses for 1
- K. K. VERMA**
General Manager (C&RA)
DELHI TRANSCO LIMITED
Govt. of NCT of Delhi Undertaking)
P. Estate, New Delhi-110002

month are not as per the approved value of O&M Expenses for FY 2018-19.

VIII. RETURN ON CAPITAL EMPLOYED

KK. The State Commission in the Impugned Tariff Order while computing the ROCE has grossly erred in considering Equity of 30% on Net GFA instead of Gross GFA. Further the State Commission has erred in calculating debt as difference of Equity (on net GFA) and RRB Average, instead of Equity on (Gross GFA) and Gross GFA.

LL. Without prejudice to the above submission, it is stated that even on an assumption that the values considered are correct, the State Commission has made an arithmetic mistake in computing the value of ROCE. The WACC should come out to 12.89% instead of 12.87%. Further, the ROCE should come out to Rs. 472.11 Crore [12.87% (WACC) x 3668.28 (RRB Average)] instead of Rs. 450.32 Crore (as approved by the State Commission).

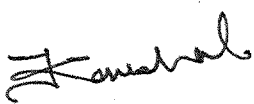
MM. Therefore, in view of the above it is submitted that the State Commission has grossly erred in computation of ROCE for FY 2018-19.

IX. Income Tax Expenses

NN. The State Commission has erred in allowing Income Tax by grossing up the rate of return on equity to 20.61% against 21.41% as submitted by the Appellant. The State Commission has also considered effective tax rate @32.07% as per the income tax return filed by the Appellant for Assessment Year 2017-18 against 34.608% as submitted by the Appellant.

OO. The State Commission has failed to appreciate that the figure of Rs. 101.25 Crore had been arrived at after adjustment of Rs. 8.02 Crore towards MAT credit available with the Appellant. Otherwise, the tax liability would have been Rs. 109.27 Crore. Therefore, it is clear that the State Commission has erred in considering the effective tax rate

at 32.07% which has been computed based on the tax payment of



K. K. VERMA

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

Rs. 101.25 Crore instead of the actual tax liability which is Rs. 109.27 Crore.

X. Non Tariff Income

PP. The State Commission has projected Non Tariff Income of Rs. 70.78 Crore for FY 2018-19 as per the True Up of ARR for FY 2016-17. It is submitted that the State Commission has therefore considered incomes from sources such as Reactive energy charges, STOA charges, and sale of scrap etc. towards Non Tariff Income in the ARR of FY 2018-19. It is submitted that the State Commission has failed to appreciate that these are one-time payments, and cannot be considered for projecting ARR for FY 2018-19.

QQ. The State Commission has failed to appreciate that by way of such projections, 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.

RR. 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.

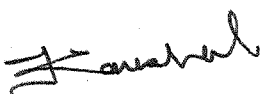
The Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the Impugned Order dated 28.03.2018 passed by the State Commission.

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 New Delhi

payable at Delhi. DD No. 038315 Date 01-06-2018 Rs 124000/-

16. LIST OF ENCLOSURES.

Annexure A: Copy of the Impugned Order dated 28.03.2018

Annexure B: Copy of the petition being Petition No. 03/2018

Annexure C: Copy of the DERC MYT Regulations, 2011 and Tariff Regulations, 2017

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 28.03.2018 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 31st day of May, 2018



COUNSEL FOR APPELLANT



APPELLANT

K. K. VERMA
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

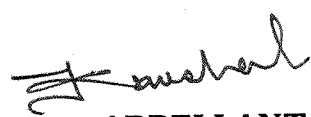
DECLARATION BY APPELLANT

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 31st day of May, 2018.



COUNSEL FOR APPELLANT



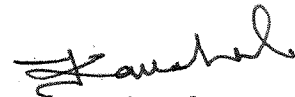
APPELLANT
K. K. VERMA
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

VERIFICATION

I, K. K. Verma, aged about 53 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: 31-05-2018

Place: NEW DELHI



Appellant/Authorized Officer

K. K. VERMA
General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

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

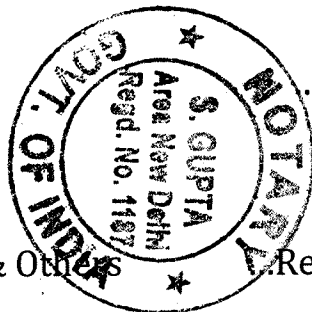
APPEAL NO OF 2018

IN THE MATTER OF:

Delhi Transco Limited

VERSUS

Delhi Electricity Regulatory Commission & Others



.....Appellant

.....Respondents

AFFIDAVIT

I, K. K. Verma, aged about 53 years, working as General Manager (Commercial and Regulatory Affairs) in Delhi Transco Limited, do hereby solemnly affirm and state as under:

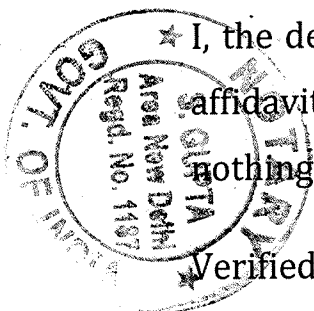
1. I say that I am General Manager (Commercial and Regulatory Affairs) in the Delhi Transco Limited and am competent to swear the present affidavit.
2. I say that I have read the contents of the above appeal filed by the appellant against the order dated 28.03.2018 passed by the State Commission and 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.
4. I say that the Annexures to the Memorandum of appeal are the true and correct copies of their original.

VERIFICATION

* 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.

31 MAY 2018

Verified at on this day of May, 2018



Notary Public, Delhi

31 MAY 2018

K.K. Verma
DEPONENT

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002

K.K. Verma
DEPONENT

General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
I.P. Estate, New Delhi-110002