



DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, C-Block, Shivalik, Malviya Nagar, New Delhi – 110 017

F.11(1154/DERC/2014-15/4482

In the matter of: Extension of Multi Year Tariff (MYT) Regulations 2011 by one year for FY 2015-16

Coram:

**Sh. P. D. Sudhakar, Chairperson,
Sh. J. P. Singh, Member &
Sh. B.P. Singh, Member**

Appearance:

1. Mr. A.K. Datta
2. Mr. Ajay Kapoor, TPDDL
3. Mr. Hemant Goyal, TPDDL
4. Mr. J.K. Sinha, TPDDL
5. Mr. Anurag Bansal, TPDDL
6. Ms. Kiran Saini, DTL
7. Mr. K.K. Verma, DTL
8. Mr. N.K. Sharma, DTL
9. Mr. Sunil, DTL
10. Mr. Sai Prabha Krishna, BRPL
11. Mr. Sashi Goyal, BRPL
12. Mr. R.K. Yadav, IPGCL, PPCL
13. Mr. Amit Nagpal, IPGCL, PPCL
14. Mr. Rajesh Chattarwal, IPGCL, PPCL

ORDER

(Date of Hearing: 30.09.2014)

(Date of Order: 22.10.2014)

1. The Commission issued a public notice dated 05.09.2014 to seek comments from Stakeholders on extension of Multi Year Tariff (MYT) Regulations 2011 for further period of one year i.e. for FY 2015-16 and conducted public hearing on 30.09.2014 for eliciting further comments & suggestions.
2. Mr. Anurag Bansal representative of TPDDL has submitted that they have already submitted detailed comments at the time of enacting of MYT Regulations 2011, as well as comments on the proposal to extend the MYT Regulations 2011 by one year. The same are on the record of the Commission. He further submitted that the Commission has wide inherent powers to make regulations and the power to frame and extend the regulations also includes the power to amend, modify and alter Regulations. The Power to extend the Regulations in force is well vested with the Commission.

3. Mr. Bansal further requested the Commission to consider modification of MYT regulations for the extended period to resolve the concerns raised by them.
4. Specifically, Mr. Bansal raised the issues regarding amortization and liquidation of approved regulatory assets, fixation of AT & C loss level of FY 15-16 on a normative basis, fixation of O&M expenses for FY 2015-16 keeping in mind the extra expenditure ensuing from monitoring a low level of AT & C losses and also considering some uncontrollable variables such as increase in the salary of FRSR employees due to DA increase. He stressed the erroneous classification of O & M Expenses as controllable, defective efficiency factor which fully erodes the escalation through the WPI formula, return on Equity being wrongly restricted to investment in fixed Assets, truing up of working capital and interest rates as per actuals as the validity of Regulation 4.21 (b) of the MYT Regulation is erroneous to the extent that it does not provide for truing up of working capital for change in interest rates within 1% of the SBI Base Rate. He brought attention to the wrong deduction of maximum rebate from power purchase cost as Regulation 5.24 allows the Licensee to recover the net cost of power assuming maximum normative rebate available; however, under Regulation 5.15, the Licensee is only allowed working capital assuming a 30-day credit period. He spoke about the defective debt equity ratio as the assumption of a debt-equity ratio of 70:30 while computing the WACC during any subsequent year is artificial as it results in giving lesser weightage to the equity invested by TPDDL and Increase in statutory levies/duties due to implementation of Companies Act, 2013 etc.
5. Mr. Sai Prabha Krishna representative of BRPL raised various issues regarding setting more realistic AT & C loss targets and O&M expenses, as well as defective Methodology of arriving at AT & C Loss under achievement. He stated that in collection efficiency, revenue realization from electricity duty and late payment surcharge should be included for computation of collection efficiency while revenue billed should be net of bad debts written off during the financial year. He talked about the rebate on power purchase/Transmission Charges, how one month O&M expenses should be considered for calculation of working capital requirement and rate of interest on working capital should be considered equal to SBI PLR as the rates of short term loans are higher than long term loans. Furthermore, return on Equity should be increased to 17.5%, depreciation should be considered for repayment of loans and repayment ought to be reduced from loan balance while calculating average loan balance during the year. Similarly Income Tax should be given either on actual basis or ROE Method and all previous calculations should be changed accordingly, sale of scrap and penalty from contractors should not be considered as Non-Tariff Income and Ratio of sharing of profit between consumers and DISCOM should be increased from 80:20 to 30:70 so as to incentivize more income from other business. He spoke about receipts on

account of cross subsidy surcharge and additional surcharge from open access customers & Truing Up/Annual performance Review as well as misplaced emphasis on Enforcement.

6. Mr. R.K. Yadav representative of IPGCL & PPCL submitted that the current Regulations may be extended on the existing parameters of operation of power plants of IPGCL & PPCL. He further submitted that in case of capital expenditure of IPGCL & PPCL, the Commission should consider the actual GFA as available in the books of Accounts of IPGCL.
7. Mr. Yadav further submitted that interest on working capital should be the base rate of State Bank of India plus 350 basis points as on 01.04.2014 or on 1st April of the year in which the generating station or unit thereof is declared under commercial operation, whichever is earlier.
8. Mr. Yadav also raised issue of low Return on equity on the equity deployed, Tax on Return on Equity, O&M charges with suitable escalation factor, fixing of composite norms of 5.25ml/k Wh of HSD in place of LDO and LSHS for current MYT period of FY 2012-13, 2013-14, 2014-15 and extended period FY 2015-16, Station heat rate and Auxiliary Power Consumption.
9. Mr. K.K. Verma representative of DTL submitted that incase of new regulations the base year should be FY 2014-15 i.e. immediately preceding the first year (FY 2015-16) of the new control period for approving the employee expenses, A & G expenses for FY 2015-16 and to consider audited accounts of FY 2014-15 for determination of employee and A & G expenses for FY 2015-16. Mr. Verma further submitted that existing formula based Normative O&M expenses takes care of only the existing employees and inflation factor, however escalation is required to be made for increase in Employee strength as new EHV Station/Lines are being added to strengthen the Transmission capability/Capacity and addition in manpower shall be required for operation and maintenance of the same.
10. Mr. Verma further submitted that in MYT Regulations 2011 a weightage factor of "4" is being considered for static VAR Compensators (SVCs) and Bus Reactors, while computing Transmission system availability. DTL System neither has SVCs nor Bus Reactors but only the capacitor Banks. Since Commission is extending the Regulations for one year therefore the weightage factor of "1" be considered for computation of availability of capacitor Bank in Transmission system availability. The weightage factor of "1" be taken (as applicable in earlier regulations/guidelines) instead of "4" being considered by SLDC.

11. Mr. A.K. Datta, stakeholder submitted that he has no objection for the extension of the MYT regulations for one year i.e. upto 2015-16 on the same terms and conditions without prejudice to his rights in Appeal No. 195 of 2013 before ATE on the issue of interest on working capital.
12. Mr. Datta further submitted that DISCOMs have resorted to monthly billing, causing increase in expenditure of bill collection and causing immense difficulty to consumers to pay bills and no rebate on account of higher number of bills has been allowed to consumers which is in violation of Tariff Order 2013-14 and 2014-15.
13. Mr. Datta further submitted that return on capital employed should not be allowed on assets which have not been verified till date.
14. The Commission has heard the stakeholders at length. The Commission has also perused the comments of various stakeholders received in the Commission in response to the Public Notice dated 05.09.2014. The aforesaid issues pertain to specific recommendations regarding fixation of various parameters. However, the MYT Regulations only lay down broad principles governing the determination of these parameters. The extension of the Regulations for one year is only an exercise in extending those same principles during FY 2015-16. Hence the Commission feels that the Stakeholders may raise all the above aforesaid issues at the time of finalization of Regulations for the next control period. Further, the Commission has relied upon the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3902 of 2006 in the matter of PTC India Limited versus Central Electricity Regulatory Commission and also other relevant Orders of the Hon'ble Supreme Court of India and Hon'ble Appellate Tribunal for Electricity. Further, the Commission has considered the relevant provisions of the Electricity Act, 2003 Rules and Regulations made thereunder while proposing to extend the existing MYT Regulations by one year.
15. The Commission noticed that in the case of PTC India Limited versus Central Electricity Regulatory Commission, the Hon'ble Supreme Court has held that price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of Tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act. It observed that Section 61 is an enabling provision for the framing of regulations by the Appropriate Commission. If one takes "Tariff" as a subject matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the Appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of Regulations containing generic propositions in accordance with which the Appropriate Commission has to fix the tariff.

16. Further, the Hon'ble Supreme Court of India has held in Civil Appeal No. 3902 of 2006 that the power to tax is a legislative power which can be exercised by the legislature directly or subject to certain conditions. The Central Commission being the decision making authority, such decision-making under Section 79(1) is not dependent upon making of Regulations under Section 178 by the Central Commission. Therefore, functions of Central Commission enumerated in Section 79 are separate and distinct from the functions of Central Commission under Section 178. This is true also in the case of State Commissions. Further, to regulate is an exercise which is different from making of the Regulations. However, making of Regulations under Section 178 is not a pre condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a Regulation than the measure under Section 79(1) has to be in conformity with such Regulation under Section 178. This analogy of the Hon'ble Supreme Court of India is also true for State Commissions. In the case of State Commissions, measures under Section 86(1) have got to be in conformity with the Regulations under Section 181.
17. The Commission has also examined the case of SIEL Limited and Ors. versus The Punjab State Electricity Regulatory Commission and Ors. wherein, the Hon'ble Appellate Tribunal for Electricity has held as under:

"Having regard to the aforesaid discussion and the judgments of the Supreme Court, we are of the opinion that the Commission may be under a legal obligation to frame the Regulations but the existence of Regulations is not a condition precedent for determination of tariff under Section 62 of the Act of 2003. The Act of 2003 does not intend that power to determine tariff should remain in suspended animation till tariff Regulations are framed. The exercise of power conferred by the statute on the Commission to determine the tariff does not depend upon the existence of Regulations since the Statute does not provide so."

18. The Commission noticed that Section 181 of Electricity Act, 2003 empowers it to make Regulations consistent with this Act and the rules generally to carry out the provisions of this Act. Further, the Commission has also considered clause 12.02, 12.03, 12.5 and 12. 8 of Delhi Electricity Regulatory Commission(Terms and conditions of Wheeling Tariff & Retail Supply Tariff) Regulations 2011 wherein clause 12.2 provides that:

"Notwithstanding anything continued in these Regulations, the Commission shall have the authority, either suo motu or on a petition filed by any interested or affected party, to determine the tariff of any Licensee."

19. Clause 12.3 provides that :
“If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by a general or special order, not being inconsistent with the provisions of these Regulations or the Act, do or undertake to do things or direct the Licensee to do or undertake such things which appear to be necessary or expedient for the purpose of removing the difficulties. “
20. Clause 12.5 provides that:
“If a question arises relating to the interpretation of any provisions of these Regulations, the decision of the Commission shall be final. “
21. Clause 12.8 provides that:
“The Commission, for reasons to be recorded in writing, may at any time vary, alter or modify any of the provisions of these Regulations by amendment. “
22. The Commission has examined Clause 2.1(g) of the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 which provides that “Control period” means a multiyear period fixed by the Commission, from 1st April, 2012 and upto 31st March, 2015. The Commission has also examined Clause 4.1 which provides that the Commission shall adopt Multi Year Tariff framework for approval of Annual Revenue Requirement (ARR) and expected revenue from tariffs and charges. Clause 12.4 deals with power of relaxation which provides that the Commission may in public interest and for the reasons to be recorded in writing, relax any of the provisions of these regulations. Further, clause 12.5 provides that if question arises relating to the interpretation of any provision of these regulations the decision of the Commission shall be final. Thus from the above it is clear that Commission is empowered to relax any of the provisions of these regulations in the public interest. Specifically the Commission can relax the provision of clause 2.1(g) and 4.1 in order to extend the regulations for one year i.e. upto 31st March, 2016. Hence, in view of the above, Commission is of the considered view that there is no legal hurdle in extending the MYT regulations 2011 by one year i.e. for FY 2015-16.
23. In view of the above mentioned provisions of law and cited Supreme Court and other judgments, it is clear that Commission is legally empowered to extend the

MYT Regulations 2011 by one year for FY 2015-16. Further in order to avoid any doubt or ambiguity the Commission in its wisdom considers it appropriate that the MYT Regulations 2011 be extended in totality i.e. the Control Period should be extended for one year i.e. FY 2015-16. Therefore, the Commission is of the considered view that public interest is best served by extending the MYT Regulations 2011 by one year i.e. FY 2015-16.

24. The Commission observes that the preparation of MYT Regulations for specific time period beyond 1st April 2015 is likely to take time and delay the process of determination of tariff for the FY 2015-16. The Commission would like to adhere to the spirit of the Electricity Act whereby the tariff for the FY 2015-16 should preferably be announced before 31st March 2015.
25. Accordingly the Commission extends MYT Regulations 2011 for further period of one year upto 31st March, 2016.
26. Ordered accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(J.P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson