



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.**

No. F.11(1924)/DERC/2021-22/7238

**Review Petition No. 57/2021**

**In the matter of :** Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 7 of Delhi Electricity Regulatory Commission Comprehensive (Code of Conduct) Regulations, 2001 seeking review of Order dated 30.09.2021 passed by the Commission in Petition No. 03/2021 for approval of ARR for FY 2021-22 and True up for FY 2019-20.

**Tata Power Delhi Distribution Ltd.**

**Review Petitioner**

**Coram:**

**Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson**  
**Hon'ble Dr. A. K. Ambasht, Member**

**Appearance:**

1. Mr. Buddy A. Ranganadhan, Adv. BRPL

**ORDER**

(Date of Order: 09.11.2022)

1. The instant Petition has been filed by TPDDL for seeking review of the Tariff Order dated 30.09.2021 in Petition No. 03 of 2021.
2. While considering the issues raised in this Review Petition, it is important to understand the scope and applicability Petition for Review of an Order. Section 94 of the Electricity Act, 2003 provides the power of the Commission for reviewing its decision, directions and orders and is reproduced below:

*" (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters, namely:-*

- a. ....*
- b. ....*
- c. ....*
- d. ....;*
- e. ....;*
- f. reviewing its decisions, directions and orders;*
- g. ...."*

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3. The right to review has been conferred by Section 114 of Civil Procedure Code, 1908. The limitation and conditions are provided under Order 47, Rule 1 of Civil Procedure Code, 1908.

*The Order 47, Rule (1) of Code is given below: "Application for review of judgment. - (1) Any person considering himself aggrieved-*  
*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*  
*(b) ..... ,*  
*(c) ..... ,*  
*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."*

4. In this regard the Hon'ble Supreme Court of India in Lily Thomas Vs Union of India & Ors on 5th April 2000 held the following:

*"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. .... ."*

5. Therefore, it is very necessary to process the application within the above premises with utmost caution and to be seen whether the application is necessarily fulfilling one of the above requirements to be maintainable under law.
6. The Review Petitioner has sought review of the following issues:
  - a. Interest on Consumer Security Deposit for FY 2018-19.
  - b. Arrears of Maithon Power Limited.
  - c. Negative Power Purchase cost of own Solar and Rithala Power Plant.

- d. Deferment of Capitalization of FY 2017-18 to FY 2018-19 due to EI not added.
7. The Petitioner had also filed an Interim Application bearing No. IA No. 2 of 2022 before the Commission for seeking to amend the Review Petition to the extent of addition of the following additional issues:
- a. Treatment for banking import transaction for FY 2018-19; and
  - b. Allowance of loss on sale of retirement of assets due to Smart Meter.
8. The Petitioner on 12.09.2022 however, moved an application for withdrawal of IA No. 2 of 2022. The Commission, after considering the request of the Petitioner, on 13.09.2022 dismissed the Interim Application No. 2 of 2022 as withdrawn.
9. The submissions made by the Petitioner have been considered and analyzed to arrive at the decision. The issue wise analysis and decisions are as follows:

10.1 **Issue No. 1: Interest on Consumer Security Deposit for FY 2018-19**

**Petitioner's Submissions**

- 10.1.1 It has been contended that the Commission while issuing the Tariff Order dated 28.08.2020 in Petition No. 03/2020 for approval of ARR for FY 2020-21 and True up for FY 2018-19, committed a clerical error apparent on the face of record while considering the amount of Interest on Consumer Security Deposit for FY 2018-19 in computing Non-Tariff Income.
- 10.1.2 That a total of Rs. 4.79 crore was supposed to be deducted from the Non-Tariff Income for FY 2018-19 as the Petitioner has paid excess interest on Consumer Security Deposit *vis-a-vis* the normative amount determined as per the Regulations. Therefore, the amount had to be reduced from the Non-Tariff Income, but it was added instead in the Order dated 28.08.2020. It is stated that, the actual interest of Rs. 52.45 Crore on Consumer Security Deposit was higher than the Normative amount of Rs. 47.66 Crore, and thus the difference, i.e Rs. 4.79 Crore, which was supposed to be deducted from Non-Tariff income paid, was inadvertently added which lead to total financial impact of Rs. 9.58 Crores.
- 10.1.3 The Review Petitioner filed a Review Petition No. 46 of 2020 and inter-alia, raised the above issue before the Commission. The Commission vide its order dated 23.09.2021 in Review Petition No. 46 of 2020 accepted the contention

of the Review Petitioner and held that the Order was liable to be reviewed. Further, the Commission held that the impact of the same shall be provided in the subsequent Tariff Order.

10.1.4 While considering the above impact in the Impugned Order, the Commission fell into an error by considering only an amount of Rs. 0.11 Crore under the head of 'Difference to be additionally offered' instead of first reversing Rs. 4.79 Crore and then allowing revised amount of Rs. 0.11 Crore, as interest on Consumer Security Deposit for the FY 2018-19.

10.1.5 Therefore, it appears that the impact of Rs. 4.79 Crore, which was supposed to be added back to the Non-Tariff Income in the Impugned Order has been missed out by the Commission. Hence, the impact of the Order dated 23.09.2021 has not been fully passed/allowed to the Review Petitioner.

10.1.6 The error in True up of FY 2018-19 being error apparent has not been rectified and impact of the same not been provided in Impugned Order. Therefore, there is an error apparent on the face of record warranting exercise of the review jurisdiction by the Commission.

#### **Commission's Analysis**

10.1.7 In view of the above the issue regarding Interest on Consumer Security Deposit for FY 2018-19 has been analyzed and the Arithmetical Error will be accordingly rectified in the ensuing Tariff Order alongwith Carrying Cost.

#### **10.2. Issue No. 2: Arrears of Maithon Power Ltd.**

##### **Petitioner's Submissions**

10.2.1 It is contended that the Commission while passing the Impugned Order fell into an error in disallowing an amount of Rs. 25 Crore towards Arrears of Maithon Power Ltd. (MPL) based on the tariff Order dated 28.08.2020 passed in Petition No. 03 of 2020, which is sought to be reviewed by the Petitioner.

10.2.2 The Commission has provisionally decided not to consider the part sum of Rs. 25 Crore on account of Order dated 17.07.2019, passed by CERC in Petition No. 285/MP/2018. The Hon'ble CERC, while passing Order dated 17.07.2019, did not consider the impact of free spares worth Rs. 84 Crore. The Hon'ble CERC has only directed MPL to furnish the year wise details of free spares

received from BHEL, at the time of revision of Tariff and has not included the amount of Rs. 84 Crores in the Annual Fixed Charges (AFC) of the MPL.

10.2.3 The Hon'ble CERC did not deduct the amount of Rs. 84 Crore from the AFC determined by it for MPL. Accordingly, in terms of Hon'ble CERC's Order dated 01.10.2019, MPL has recovered the tariff from the Review Petitioner based on the AFC approved by Hon'ble CERC which is subject to revision based on the year-wise details of free spares. Therefore, there is no certainty on the amount which would be finally determined by the Hon'ble CERC for deduction from AFC.

10.2.4 In the present context Hon'ble CERC vide its Order dated 17.07.2019 passed in Petition No. 285/MP/2019 has not reduced the amount of Rs. 84 Crore and held that adjustment of Rs. 84 Crore will be decided in true-up proceedings. Accordingly, the Hon'ble CERC vide Order dated 01.10.2019, determined the tariff of MPL without considering the same amount.

10.2.5 Consequently, Review Petitioner has paid the amount of Rs. 25 Crore as per the above Tariff determined by the Hon'ble CERC. Hence the Commission's provisional disallowance of the amount of Rs. 25 crore paid by the Review Petitioner based on the Tariff determined by the Hon'ble CERC is against the principles of Rule 8 of the Electricity Rules, 2005 and Regulation 130 of the Tariff Regulations, 2017.

10.2.6 There is an error apparent on the face of record warranting exercise of the review jurisdiction of the Commission.

### **Commission's Analysis**

10.2.7 There is no error apparent on this issue. However, based on the CERC Order dated 08.01.2022 the amount of Rs. 25 Crore withheld in Tariff Order dated 28/08/2020 and 30/09/2021 will be considered in the ensuing Tariff Order alongwith Carrying Cost.

### **10.3. Issue No. 3: Negative Power Purchase Cost of Own Solar and Rithala Power Plant.**

#### **Petitioner's Submissions**

10.3.1 The Commission, while determining the Power Purchase Cost for the Review Petitioner, reduced the negative invoices of Rs. 2.16 Crore and Rs. 7.89 Crore raised by TPDDL-G to arrive at net Power Purchase Cost observing that the

Review Petitioner in its True up Petition was added-up this cost to arrive at Net Power Purchase Cost.

10.3.2 However, in the True-up Petition, the review Petitioner has clearly mentioned that for the purpose of Truing up of FY 2019-20, the amount of Rs. 2.16 Crores and Rs. 7.89 Crores were already excluded from the total Power Purchase Cost of FY 2019-20 by the Review Petitioner. Therefore, this commission may be pleased to consider the aforesaid submission and revisit the above findings in exercise of its review jurisdiction.

10.3.3. Further, the Commission while disallowing the claim of Review Petitioner with respect to the negative invoices raised for the Solar and Rithala Power Plant has also disallowed the fresh claim of Rs. 2.08 Crore raised by the Review Petitioner for FY 2019-20.

10.3.4 The Review Petitioner in the claim sheet pertaining to the Power Purchase Cost from solar power plants for FY 2019-20 categorically mentioned that the said cost as per Audited Certificate includes negative adjustment of Rs. 7.89 Crore on account of reversal for past period. On this account the Review petitioner requested the Commission to add the said amount of Rs. 7.89 Crore while allowing the Power Purchase Cost. However, the said fact inadvertently missed out the attention of the Commission and the said amount was not added back to the solar power purchase cost of FY 2019-20. The non-addition of the said amount resulted in financial impact of Rs. 2.08 Crore upon the Review Petitioner.

10.3.5 The Commission may be pleased to review this issue alongwith the above mentioned issue under its review jurisdiction and allow the impact of fresh claim of Rs. 2.08 Crores raised for the solar generation for FY 2019-20.

#### **Commission's Analysis**

10.3.6 There is no arithmetical error and the findings of the Commission in para 3.198 are correct. The Commission had submitted an affidavit before the APTEL in OP No 3 of 2022 that in the subsequent Tariff Order, the cost of Rithala Power Plant will be trued up for past years, and the same will be trued up for past years in the ensuing Tariff Order.

10.3.7 Further, with regards to Own Solar, the Commission will review the fresh claim of Rs. 2.08 Cr. for FY 2019-20 in the ensuing tariff order.

10.4 **Issue No. 4: Deferment of Capitalization of FY 2017-18 to FY 2018-19 due to EIC not added.**

**Petitioner's Submissions**

10.4.1 The Commission while passing the Tariff Order dated 31.07.2019 for truing up for FY 2017-18, provisionally allowed the capitalization to the tune of Rs. 359.26 Crore against the book value of Rs. 479.34 Crore. In the said Order the Commission deferred and disallowed capitalization of Rs. 52.06 Crore from the total provisionally disallowed amount of Rs. 120.08 Crore to FY 2018-19 because the Electrical Inspector Certificate (EIC) for the scheme were issued after 31.03.2018 or not provided against schemes.

10.4.2 While allowing the provisional capitalization for FY 2018-19, the Commission in the Tariff Order dated 28.08.2020 included the deferred amount of Rs. 33.76 Crores. The Commission had deferred the amount of Rs. 39.85 Crore to FY 2018-19 while provisionally determining the capitalization for the FY 2017-18 and added the deferred amount of Rs. 33.76 Crore while determining the capitalization for FY 2018-19. However, the balance Rs. 6.09 Crore has been inadvertently not allowed in FY 2018-19.

**Commission's Analysis**

10.4.3 The Commission has considered Rs. 33.76 Crore on account of Electrical Inspector Certificate (EIC) being obtained in FY 2018-19 instead of Rs. 39.85 Crore as trued up. The difference of Rs. 6.09 Crore as claimed by the Petitioner will be considered appropriately in the ensuing Tariff Order.

11. Accordingly, the Review Petition is disposed of as per the directions and decisions contained in the paragraph 10 cumulatively of this Order.

Sd/-  
(Dr. A.K. Ambasth)  
Member

Sd/-  
(Justice Shabihul Hasnain 'Shastri')  
Chairperson