



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

No.F.11(1826)/DERC/202021/6974

**Review Petition No. 53 /2020**

**In the matter of:   Application seeking review of the Order dated 28.08.2020 in  
Petition No. 01/2020 (Tariff Order of BSES Rajdhani Power Limited  
True-up for 2018-19 and Tariff for FY 2020-21)**

**BSES Rajdhani Power Limited**

**....Review Petitioner**

**Coram:**

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

**Appearance:**

Mr. Buddy A. Ranganadhan, Advocate, BRPL

**ORDER**

(Date of Order: 23.09.2021)

1. The instant Review Petition has been filed by M/s BSES Rajdhani Power Ltd. seeking review of the Tariff Order dated 28.08.2020 in Petition No. 01/2020. According to the Petitioner, BRPL, the said impugned order passed by the Commission suffered from mistakes and errors apparent on the face of record, which are required to be corrected and there are sufficient reasons for review and/or modifying the Order.
2. While considering the issues raised in this Review Petition, it is important to understand the scope and applicability of 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. summoning and enforcing the attendance of any person and examining him on oath;
- b. discovery and production of any document or other material object producible as evidence;
- c. receiving evidence on affidavits;
- d. requisitioning of any public record;
- e. issuing commission for the examination of witnesses;
- f. reviewing its decisions, directions and orders;
- g. any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it."

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. Hon'ble Supreme Court of India vide its judgement dated 05.02.2019 in the matter Asgar vs. Mohan Varma in Civil Appeal No. 1500 of 2019 (@SLP(C) No. 1216 OF 2016) held that;

*".....The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation enures to the benefit, unfortunately for the decree holder, of those who seek to delay the fruits of a decree reaching those to whom the decree is meant."*

6. Therefore, it is very necessary to process the application with 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.
7. The Review Petitioner has sought review of the following issues:
- i. Error in computing carrying cost for past claims;
  - ii. Non-Consideration of Force Scheduling for Power Purchase;
  - iii. Erroneous Omission in certain expenses in Power Purchase Cost;
  - iv. Erroneous Consideration of Dial's own Generation in Petitioner's Energy Input;
8. The submissions made by the Petitioner have been considered and analysed to arrive at the decision. The issue wise analysis and decision are as follows:

**9.1. Issue No. 1**

**Error in computing carrying cost for past claims**

**Petitioner's Submission**

- 8.1.1 The Commission, whilst computing the carrying cost for past claims, has committed a computational error in as much as the formula applied to the figures at hand is incorrect on the face of the record.
- 8.1.2 The Commission, Historically, the formula utilized by the Commission whilst calculating the carrying cost has been as follows:

$$\frac{(\text{Opening Balance} + \text{Closing Balance})}{2} \times \text{Rate of Carrying Cost in \%}$$

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8.1.3 The Commission has, after computing the carrying cost further divided the resultant number by 2. In other words, it appears that in the Order under Review, the formula used by the Commission (hereinafter “the Incorrect Formula”) is as under:

$$\frac{(\text{Opening Balance} + \text{Closing Balance}) \times \text{Rate of Carrying Cost in \%}}{2}$$

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8.1.4 Accordingly, the Commission may kindly be pleased to correct Table 3.4 at Page 141 by re-calculating the carrying cost on the basis of the correct methodology and provide consequential relief(s) by correcting Table 5.1.

**Commission’s Analysis**

8.1.5 The Review Petitioner submitted that carrying cost formula is not in line with the methodology specified by the Commission in previous Tariff Orders. As per Regulation 154 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017:

*“The accumulated revenue gap, if approved by the Commission in the relevant Tariff Order shall be treated as Regulatory Assets:  
Provided that such revenue gap shall be computed on the basis of excess of ARR over Revenue approved after true up of the relevant financial year.”*

8.1.6 As per Regulation 155 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 read as follows:

*“Carrying cost on average balance of accumulated revenue gap shall be allowed to the Utility at carrying cost rate approved by the Commission in the ARR of the relevant financial year:  
Provided that average balance of accumulated revenue gap shall be determined based on opening balance of accumulated revenue gap and half of the Revenue Gap /Surplus during the relevant year.”*

8.1.7 It is observed in the tariff order dated 28.08.2020 that carrying cost worked out based on the methodology as above was further divided by 2 (two). Accordingly, the computational error in the carrying cost

calculated at Table 3.4 at page 141 of tariff order dated 28.08.2020 in Petition No. 01 of 2020 is rectified and the impact on account of correction shall be given in the subsequent tariff order.

## **8.2 Issue No. 2**

### **Non-Consideration of Forced Scheduling for Power Purchase**

#### **Petitioner's Submission:**

- 8.2.1 Commission in its Order under Review has made disallowances on items despite them being the result of forced scheduling.
- 8.2.2 As per, DERC Regulation 2017 and more specifically, the 3<sup>rd</sup> Proviso to Regulation 152(c), penal UI charges are not a pass through unless they are result of forced scheduling, as certified by SLDC and paid by DISCOM. While the Petitioner inadvertently submitted figures in its ARR which did not have the bifurcated figures for forced scheduling, the corrected figures are submitted in the Review Petition.
- 8.2.3 It is therefore prayed that the Commission may consider the corrected figures and allow the penal UI and other charges/incentives on the Petitioner's power purchase cost which have been presently disallowed for want of bifurcated figures on forced scheduling including an amount of Rs 4.42 crores towards the penal UI charges; 12.37 crores towards the sustained deviation charges.

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

- 8.2.4 The BRPL did not provide the forced scheduling units in their Petition filed for True up of FY 2018-19. The Commission, based on the inputs received from Delhi SLDC which were jointly signed by SLDC & BRPL, considered the additional UI Charges of Rs. 4.42 Crore and Sustained Deviation charges of Rs. 12.37 Crore. Accordingly, the said charges were disallowed from Power Purchase Cost as per Regulation 152 (c) of DERC (*Terms & Conditions for Determination of Tariff*) Regulation, 2017.
- 8.2.5 BRPL under the Review Petition, have submitted monthly quantum of forced scheduling. However, Regulation 152 (c) of DERC (*Terms & Conditions for Determination of Tariff*) Regulation, 2017, mandates

certification of SLDC in case of forced scheduling which has not been provided by BRPL.

*"152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:*

*...*

*(c) Variation in short term power purchase quantum and cost of the distribution licensee based on projected short term power purchase quantum and cost vis-a-vis actual short term power purchase quantum and cost*

*...*

*Provided that any Additional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges **other than forced scheduling of power as certified by SLDC** paid by the Distribution Licensee shall not be allowed in Power Purchase Cost;"*

8.2.6 Modification/submission/new information in Petition after the issuance of Order cannot be considered. Therefore, there is no error apparent on face of record and the claim made by BRPL is rejected.

### **8.3 Issue No. 3**

#### **Erroneous Omission in certain expenses in Power Purchase Cost**

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

8.3.1 As a part of its ARR Petition, the Petitioner submitted detailed power purchase statement for FY 2018-19 and the Commission has inadvertently omitted to consider certain expenses which formed a part of the Petitioner's power purchase statement. These elements include: (a) DTL Reactive Energy Charges; (b) PXIL (membership and other charges); and (c) IEX (membership and other charges) totalling to Rs. 6.19 crores and are a part of the Petitioner's Power Purchase costs.

8.3.2 The Commission may correct the Table 3.30 at Page No. 166 by re-computing the power purchase cost.

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

8.3.3 It is observed that the Commission has not considered expenses related DTL reactive energy charges, PXIL charges and IEX charges in Power Purchase Cost.

8.3.4 The Commission is of the view that the error in FY 2018-19 True up is rectified and the suitable impact of the same shall be provided in subsequent Tariff Order.

**8.4 Issue No. 4**

**Erroneous Consideration of Dial's own Generation in Petitioner's Energy Input**

**Petitioner's Submission:**

8.4.1 The issue pertains to an inadvertent error at Table 3.19 wherein the Commission has, whilst approving the energy input for FY 2018-19, also considered the figures from the DIAL's own solar generation even though the same do not form a part of the Petitioner's energy input.

8.4.2 Inadvertently however, it appears that while considering the Petitioner's energy input, the Commission also considered DIAL's own solar energy to the tune of 7.95 MUs totalling the Petitioner's input to 8.45 MUs (noted however as 8.35 MUs in table 3.19 presumably because of an arithmetical error.

8.4.3 The Commission may correct Table 3.19 to change the Petitioner's energy input from solar to 0.53 MUs as opposed to 8.35 MUs.

**Commission's Analysis**

8.4.4 It is observed that as mentioned in Para 3.76 of the Tariff Order dated 28.08.2020 that Commission directed Delhi SLDC and the Review Petitioner to submit Joint Signed statement for Energy Input (Net of Open Access and Net Metering) for FY 2018-19.

8.4.5 The said Joint Signed statement was submitted by the Review Petitioner wherein there was separate head of DIAL Solar Own Generation of 7.95 MU. Further, no Single Line Diagram certified by the Delhi SLDC was submitted in the True-up Petition by the Review Petitioner indicating that 7.95 MU of own generation of DIAL is not connected to their Grid. Therefore, the said quantum of 7.95 MUs was considered to be part of Energy input of the Review Petitioner and accordingly, this issue is rejected.

9. The Petition is disposed off as per the directions and decisions contained in the paragraph 8 cumulatively of this Order.

10. Ordered Accordingly.

**Sd/-**  
**(Dr. A.K. Ambasht)**  
**Member**

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