



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110 017.**

No. F.11(1719)/DERC/2019-20

**R. Petition No.64/2019**

**In the matter of: Petition u/s 94(1)(f) of the EA 2003 and Regulation 57,58 and 59 of DERC (Conduct of Business) Regulations, 2001 regarding reconsideration/ review/ modification of the Tariff Order dated 31.07.2019 in Petition No. 08 of 2019.**

**BSES Yamuna Power Limited**

**.... Review Petitioner**

**Coram:**

**Hon'ble Shri Justice S. S. Chauhan, Chairperson**

**Hon'ble Dr. A. K. Ambasht, Member**

**Appearance:**

1. Mr. Buddy A Ranganadhan, Advocate, BYPL
2. Mr. Hasan Murtaza, Advocate, BYPL

**ORDER**

(Date of Order: 18.06.2021)

1. The instant Petition has been filed by M/s BSES Yamuna Power Limited (BYPL) for reconsideration/ review/ revision/ clarification of the Tariff Order dated 31.07.2019 in Petition No. 08 of 2019.
2. The review Petition has been filed subsequent to the said impugned Order and according to the Petitioner, BYPL, the said impugned Order dated 31.07.2019 in Petition No. 08 of 2019 passed by the Commission suffered from mistakes and errors, which are required to be corrected and there are sufficient reasons for review and/or modifying the Order.
3. While considering the issues raised in this review Petition, it is important to understand that while dealing with an application for a review of an Order, it is very necessary to process the application with utmost caution, as the powers of review are not ordinary powers. The Court of review has only a limited jurisdiction under Order 47 Rule 1 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:
  - a) Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
  - b) Mistake or error apparent on the face of the record; or

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**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

- c) Any other sufficient reasons.
4. The application for review has to be considered with great caution to necessarily fulfill one of the above requirements to be maintainable under law.
5. The Review Petitioner has sought review of the following issues:
- Omission to allow carrying cost on cost of power purchase from Anta, Auraiya and Dadri Gas station for FY 2012-13 to FY 2016-17;
  - Omission to consider sales on account of net metering for FY 2017-18;
  - Erroneous computation of deemed revenue in excess of 1% cap on billing adjustments during FY 2017-18; and
  - Omission to allow the claim on account of Advance against Depreciation (AAD) for FY 2007-08 to FY 2016-17.
6. 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:

#### **6.1 Issue No. 1**

##### **Omission to allow carrying cost on cost of power purchase from Anta, Auraiya and Dadri Gas station for FY 2012-13 to FY 2016-17.**

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

- 6.1.1** It is the grievance of the Petitioner that the Commission in the present Order under Review has considered the cost of Power Purchase Cost from Anta, Auraiya and Dadri Gas station for the period FY 2012-13 to FY 2016-17 and has allowed an amount of Rs. 132.9 crore. However, the Commission has only allowed the principal amount and has omitted the carrying cost component of Rs. 69 crore of the same.
- 6.1.2** The Petitioner has submitted that carrying cost is a legitimate claim and therefore recovery of such carrying cost is a legitimate claim of the distribution company.
- 6.1.3** The relevant Para 45 & 58 of the judgement dated 30.07.2010 passed by the Appellate Tribunal of Electricity in Appeal No. 153 of 2009 reported as 2010 ELR (APTEL) 0891 have been set out by the Petitioner as below:

*“45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. This principle has been well recognised in the regulatory practices as laid down by this Tribunal as well as the Hon'ble Supreme Court. In 2007 APTEL 193, this Tribunal has held that “along with the expenses, carrying cost is also to be given as legitimate expense”. Hon'ble Supreme Court in 2007 (3) SCC 33 has also held “the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure”.*

***“58 (iv): the carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company”***

**Commission's Analysis**

- 6.1.4** The Petitioner has prayed that the Commission may consider the total impact as claimed by the Petitioner and allow the carrying cost component of Rs. 69 Crores pertaining to the Power Purchase Cost from Anta, Auraiya and Dadri Gas stations for the period FY 2012-13 to FY 2016-17.
- 6.1.5** The Commission reiterates its deliberations and Order issued on the above mentioned issue in the Tariff Order dated 31.07.2019, Review order dated 30.12.2019 in Petition no. 30 of 2018 wherein the Commission has decided the issue as follows:

3.201 The Review Petition no. 30 of 2018 filed by the Petitioner under consideration of the Commission. The impact, if any, shall be considered based on the Order of the Commission in the Review Petition.

3.202 The Commission in its Order dated 18.09.2018 for the Petition no. 46/2018 decided as under,

*“In view of the aforesaid discussions and the fact that the instant petition is similar to Petition no. 34 of 2018, same relief is granted to the Petitioner and the cost of power purchase from FY 2012-13 till FY 2016-17 is allowed on the principle of Merit Order.”*

3.203 The Commission in its Order dated 04.07.2018 for the Petition no. 34/2018 decided that “as a special case, the Petitioner is allowed the cost of power purchase from FY 2012-13 till FY 2016-17 on the principle of Merit Order.”

3.204 Accordingly, the Commission has considered the cost of Power purchased from Anta, Auriya and Dadri power Stations from FY 2012-13 to FY 2016-17, which were earlier disallowed in its previous Tariff Orders as under:

**Table 3. 35: Net PPC earlier disallowed for Anta, Auraiya & Dadri Power stations (Rs. Cr.)**

S.No	Financial Year	Cost Dis-allowed		Cost Allowed		Net Impact
		Amount (Rs. Cr.)	Remarks	Amount (Rs. Cr.)	Remarks	
A	FY 2012-13	59.27	Table 3.33 of TO 29.9.15			59.27
B	FY 2013-14	60.40	Table 3.64 of TO 29.9.15			60.40
C	FY 2014-15	43.85	Table 124 of TO 31.8.17			43.85
D	FY 2015-16	48.53	Table 125 of TO 31.8.17			48.53
E	FY 2016-17	31.80	Table 118 of TO 28.3.18	19.89	Table 99 of TO 28.3.18	11.91
F	Net Cost Disallowed	243.85	Sum (A-E)	19.89		223.96

**6.1.6** Further, in Review Petition no. 30 of 2018, vide order dated 30.12.2019, the Commission decided as follows:

*“3.9.3 The Commission has allowed Power Purchase Cost from Anta, Auraiya and Dadri Gas based stations from FY 2012-13 till FY 2016-17 vide its order dated 18.09.2018.*

*3.9.4 The appropriate impact has been given in the Tariff Order dated 31.07.2019. Therefore, the issue does not survive.”*

**6.1.7** Accordingly, the carrying cost on the same cannot be considered under review as the principal cost has been allowed as a special case by the Commission in Review Order dated 04.07.2018. Therefore, the carrying cost has not been considered in the True up of FY 2017-18.

**6.1.8** Thus, the Commission is of the view that there is no error apparent on the face of record and therefore the said issue is not admitted for review.

## **6.2 Issue No. 2**

### **Omission to consider sales on account of net metering for FY 2017-18;**

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

**6.2.1** It is the grievance of the Petitioner that in the present Tariff Order under review, the net metered sales have not been considered by the Commission to be a part of the sales of the Petitioner. This finding has been premised on a statement allegedly made by the Petitioner to the effect that the Petitioner has taken the net metered units in sales inadvertently as the same has been considered in Power Purchase cost. The findings in the present Tariff Order under review proceeds on the basis that the Petitioner statement was with reference to the treatment of net metered units in sales and is therefore an error apparent on the face of the record.

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

**6.2.2** The Commission during its prudence check sessions for Tariff order dated 28.08.2020 discussed the methodology for treatment of consumption through Net Metering with the Petitioner. The Commission observed that since Net Metering consumers are connected to the network of Petitioner, mainly at LT level, therefore the treatment claimed by Petitioner to consider the consumption through Net Metering in Sales is not correct.

**6.2.3** Net Metering consumers are not new category of consumers, they are existing consumers opting Net Metering arrangement through bidirectional feature i.e., they can export as well import with the Distribution Licensee Grid. Considering their consumption in sales leads to factoring such consumption for Distribution Loss computation which is technically not correct as these Net Metering consumers are embedded in Distribution Licensee Grid itself.

**6.2.4** Further, Regulation 9 of *Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014* stipulates as follows:

*“(7) At the end of each Financial Year, any net energy credits, which remain unadjusted, shall be paid for by the distribution licensee to the consumers as per the rates notified by the Commission from time to time.”*

- 6.2.5** The Commission in Tariff Order dated 28.08.2020 has considered energy inputs from Net Metering as under: -

*“3.50 In case of net metering, the Petitioner submitted net injection at 0.29 MU. The Commission observed that the energy from net metering is for embedded generation and that there shall be no distribution loss on account of such energy. Accordingly, the same is not being considered as part of the Energy Input for the purpose of computation of Distribution Loss of the Petitioner”*

- 6.2.6** In view of above, the methodology adopted for Net metering for True up of FY 2017-18 in Tariff Order dated 31/07/2019 shall be rectified in line with the methodology indicated above in Tariff Order dated 28/08/2020. The impact of the same shall be considered in subsequent Tariff Order.

**6.3     Issue No. 3**

**Erroneous computation of deemed revenue in excess of 1% cap on billing adjustments during FY 2017-18; and**

**Petitioner's Submission:**

- 6.3.1** It is the grievance of the Petitioner that in the present Tariff Order under review, the Commission has considered the adjustment beyond 1% from 01.09.2017 of the units billed to the consumers based on the Petitioner's Average billing rate as per audited form 2.1 (a), as a result of which the financial impact of over achievement of collection efficiency for the Petitioner has been affected adversely by Rs. 3.95 Crores. The contention of the Petitioner is limited to the implementation of the 1% rule and not to challenge the 1% directive which is pending before the Tribunal.

**Commission's Analysis**

- 6.3.2** The Commission in its Tariff Order dated 28/08/2020 for True up of FY 2018-19 decided not to consider Contra Entries (being counter entries), adjustments related to Open Access consumers and Provisional Billing less than 2 months as adjustments in Units Billed. Other adjustments were considered without sign change (gross) as adjustments indicate total adjustments without +/- nature.
- 6.3.3** However, in Tariff Order dated 31/07/2019 for True up of FY 2017-18, the Commission considered total adjustments over and above 1 % without considering the impact of Contra Entries, Open Access and Provisional Billing. The error in FY 2017-18 True up shall be rectified in line with the philosophy considered in Tariff Order dated 28/08/2020 and the impact of the same shall be provided in subsequent Tariff Order.

**6.4     Issue No. 4**

**Omission to allow the claim on account of Advance against Depreciation (AAD) for FY 2007-08 to FY 2016-17**

**Petitioner's Submission:**

- 6.4.1** In the present tariff order under review, there is no finding rendered on the above issue on the ground that the above issue is pending in Appeal before the Hon'ble APTEL. From FY 2007-2008 to FY 2012-13, this Commission had been allowing Advance against Depreciation (AAD), year after year on the basis of the principles and formula laid down in the MYT Regulations, 2007 and 2011. For the first time in the Tariff Order dated 29.09.2015, this Commission was pleased not to grant AAD inter-alia holding that the Petitioner ought to place its revised claim before the Commission on the basis of the approved numbers in the Tariff Order which would be considered by this Commission upon receipt of such "additional information".

**Commission's Analysis**

- 6.4.2** The Commission in Tariff Order dated 28.03.2018 acknowledged the inputs from the DISCOM on the AAD. However, the said information was subject to prudence check by the Commission. During the prudence check of true up of FY 2018-19, the submissions by the Petitioner on the capex and non-capex loans, which form the basis of claim of AAD sought by the petitioner, were reviewed. The information provided was from FY 2006-07 to 2016-17. Since the AAD has to be reviewed on parameters which also include cumulative depreciation/cumulative repayment of loans, etc., the detail of loans will be sought for the period from FY 2002-03 to 2016-17 establishing the nature of such loans, giving bifurcation of Capex and non-capex loans along with the break up details as per Balance Sheet duly certified by the Auditors.
- 6.4.3** Thus, the Commission directs the Review Petitioner to submit the information as required in above mentioned para in order to verify its claim related to AAD.
7. The Petition is disposed off as per the directions and decisions contained in the paragraph 6 cumulatively of this Order.
8. Ordered Accordingly.

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

**Sd/-  
(Justice S. S. Chauhan)  
Chairperson**