



Delhi Electricity Regulatory Commission
Viniamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi -17

F11(I619)/DERC/2018-19

In re: Review/modification of compliance Order dated 04/02/2021 of the Commission to the directions of Hon'ble Appellate Tribunal for Electricity in Appeal No: 213 of 2018 filed by TPDDL.

**And In the matter of
TATA POWER DELHI DISTRIBUTION LIMITED**

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

ORDER

(Date of order: 29.09.2021)

1. Whereas Hon'ble Appellate Tribunal for Electricity (APTEL) vide its Order dated 06/01/2021 in Appeal No. 213 of 2018, IA No. 498 of 2020 and IA No. 1615 of 2020 granted four weeks' time to place on record the compliance of the Hon'ble APTEL's directions. The Order of compliance was passed by the Commission without prejudice and subject to the outcome of the Hon'ble Supreme Court of India decision and was filed before the Hon'ble APTEL. However, the Commission while implementing the compliance noticed that two issues in the compliance Order require modification as under:

Issue No.9 – Non-Consideration of impact of increase in rate of Service Tax for FY 2016-17.

2. The Commission while implementing the above issue, found out that there is already a judgement dated 29/07/2016 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 2203 of 2012 in the matter of TPDDL vs. DERC, on this issue. Since, as per said judgment the stand of DERC has been upheld the compliance Order dated 04/02/2021 cannot be at variance. It is a settled principle that in case of conflict between the view of a constitutional Court and statutory Tribunal, the opinion of the constitutional Court will be given preference. Accordingly, we feel duty bound to implement the direction and views given in this case by the Hon'ble High Court of Delhi.

3. In view of the above, the sentences in para 13 of the Compliance Order dated 04/02/2021 – “TPDDL has not provided the complete details. Pending submission of the details, and subject to the outcome of the Civil Appeal filed before Hon’ble Supreme Court of India.” be read as under:

“The claims made in respect of Service Tax as claimed in Petition filed by TPDDL for True-up of FY 2019-20, will be appropriately considered in the True-up of FY 2019-20, based on the judgement dated 29/07/2016 passed by the Hon’ble High Court of Delhi in W.P. (C) No. 2203 of 2012 in the matter of TPDDL vs. DERC. However, as far as Financing Charges for FY 2016-17 are concerned, the same will be implemented in line with the direction of the Hon’ble APTEL in its judgment dated 30/09/2019 in Appeal No. 246/2014, which is subject to outcome of the Civil Appeal filed before Hon’ble Supreme Court of India.”

Issue No. 16 – Revision of AT&C Losses for FY 2016-17

4. That while passing the Compliance Order dated 04/02/2021, the Commission, while implementing the directions of this Hon’ble APTEL in right earnest, has revised the AT&C loss trajectory of the Appellant considering 0.5% reduction from FY 2011-12 with a target of 15.325% as determined in the MYT Order dated 13/07/2012. However, upon detailed scrutiny it has come to the notice of the Commission that with such implementation, the AT&C loss target for the Control Period ending FY 2016-17 will change from 11% to 12.83%. For the Control Period FY 2017-18 onwards, the distribution loss targets have been prescribed by the Commission under the DERC (Business Plan) Regulations, 2017.
5. While prescribing the distribution loss targets in the said regulations for TPDDL, the Commission was guided by the previous targets of the Appellant and its past performance. The Commission also took into consideration the Office Memorandum dated 13/04/2017 issued by the Ministry of Power, Govt. of India wherein the AT&C Loss trajectory for distribution licensees in Delhi was indicated till FY 2019-20. Taking into consideration various factors including the above mentioned, the Commission prescribed the distribution loss targets from FY 2017-18 till FY 2019-20 in DERC (Business Plan) Regulations, 2017, considering FY 2016-17 as the base year with AT&C losses for the Appellant at 11%. However, with the implementation of the Compliance Order dated 04/02/2021, the basis on which the targets for the Appellant have been set in the DERC (Business Plan) Regulations, 2017 would get completely disturbed and would practically render the Regulations nugatory and otiose in as much as with the said

implementation, the AT&C loss target for FY 2016-17 would change from 11% to 12.83%, thereby changing the fundamental basis of aforesaid Regulations.

6. In view of the above, para 23 of the Compliance Order dated 04/02/2021, be read as under:

“23. As per judgement of Hon’ble APTEL in Appeal No. 246/2014, principles of MYT & Appeal No. 14/2012 have to be followed and AT&C loss trajectory beyond FY 2011- 12 is required to be revised. Accordingly, in compliance of the Hon’ble APTEL directions in its judgment in Appeal No. 246 of 2014, the AT&C Losses for the period from FY 2012-13 to FY 2016-17 will be revised over the revised AT&C Loss of FY 2011-12 i.e., 15.325% (approved in Tariff Order dtd. 23/07/2014) by considering reduction in rate of 0.87 % till 2016-17 (15.325% - 11%/5) and the financial impact on account of the same shall be provided in subsequent Tariff Order which will be subject to the decision of Hon’ble Supreme Court of India in various Civil Appeals filed by the Commission.”

7. All other terms and conditions of the Order dated 04/02/2021 shall remain unaltered.

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

Sd/-
(Justice Shabihul Hasnain ‘Shastri’)
Chairperson