



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

No. F.11(1812)/DERC/2020-21/6924

Case Ref. No. 43/2020

In the matter of: Petition u/s 86(1)(b) of the Electricity Act, 2003, pursuant to the Judgement and Order dated 28.05.2020 passed by the Appellate Tribunal for Electricity in Appeal No. 284 of 2015 for Indraprastha Power Generation Company Limited and Appeal No. 288 of 2015 passed for Pragati Power Corporation Limited.

Indraprastha Power Generation Co. Ltd.

Pragati Power Corporation Ltd.

.... Petitioners

Vs.

1. BSES Yamuna Power Ltd.
2. BSES Rajdhani Power Ltd.
3. North Delhi Power Limited Grid Substation
4. New Delhi Municipal Council

.... Respondents

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson

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

Appearance:

1. Ms. Swapna Seshadri, Adv., IPGCL & PPCL

ORDER

(Date of Order: 24.09.2021)

1. The instant Petition has been filed by IPGCL and PPCL pursuant to remand direction passed by the Hon'ble Appellate Tribunal for Electricity vide its Judgment and Order dated 28.05.2020 passed in Appeal Nos. 284 of 2015 and 288 of 2015.
2. **Brief facts of the case:**
 - i. The present Petitioners Indraprastha Power Generation Company Limited (IPGCL) and Pragati Power Corporation Limited (PPCL) had filed Petitions

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Nos. 14 of 2015 and 15 of 2015, respectively before the Commission for determination of Generation Tariff for the year 2015-16, approval of estimates for FY 2014-15 and truing up for the previous period FY 2012-13 to 2013-14. The Commission in exercise of powers vested under the Electricity Act, 2003 and Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2011 issued tariff orders in this regard. In the said orders dated 29.09.2015 the Commission determined the financials of the IPGCL's stations – GTPS (270 MW) and Rajghat Powerhouse (135 MW) and PPCL Plant – 330 MW Gas based Combined Cycle Power Plant (PPS-1) for determination of Tariff for the period of FY 2015-16 and True up for FY 2012-13 and 2013-14.

- ii. The Petitioners being aggrieved by the orders of the Commission approached the Hon'ble APTEL in Appeal No. 284 and 288 of 2015 for some issues. The Hon'ble APTEL vide its order dated 28.08.2020 remanded back the matter to the Commission.
3. In the aforesaid remand back matter the APTEL vide its judgement dated 28.05.2020 in Appeal No. 284 and 288 of 2015, has directed the Commission to pass consequential orders, granting the benefit of the following issues:
 - (i) Disallowance of Capital Expenditure (issue common to both appeals.)
 - (ii) Method of calculation of Energy Charges rate
 - (iii) Expenditure on Repair & Maintenance (R&M)
4. The Petitioner thereafter filed the instant petition with following prayer;
 - a. To allow an amount of Rs.0.30 Crore incurred by IPGCL on 'Turbovisory Monitoring SYS, 3500 series: and Rs.0.51 Crore towards 'Panel Control, DVR' (1150+750) x 1250 x 2295 MM) for FY 2012-13 and FY 2013-14;
 - b. To allow an amount of Rs. 0.36 crore incurred by PPCL for procurement of 'Relay Test Kit' for FY 2012-13 and FY 2013-14;

- c. To further calculate the impact of Energy Charge Rate in variable cost and fixed cost for IPGCL and PPCL as per the formula given under Regulations 7.18 of the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011;
- d. To allow the Repair & Maintenance expenditure for PPCL Plant incurred on DLN Burner and Sewage Treatment Plant for FY 2012-13 and FY 2013-14;
- e. To allow recovery of working capital on normative basis for FY 2012-13 & 2013-14 and FY 2015-16 rather than limiting it to actual/scheduled generation as per the MYT Regulations 2011.
- f. To allow recovery of all cost as per the impact of allowance of all above expenses and amount refunded by Petitioners-IPGCL and PPCL in compliance of APTEL Order dated 15.12.2015 along with carrying cost as per MYT Regulations, 2011 up to the date of recovery of said amount.

Issue wise Analysis and decisions are as follows:

Issue No. 1

5. **Disallowance of Capital Expenditure (for IPGCL and PPCL) for the FY 2012-13 and FY 2013-14**

Petitioner Submission

- 5.1 The contention of the Petitioners before the Hon'ble Tribunal was that the Commission in the Impugned Order dated 29.09.2015 has disallowed the already approved Capex Schemes for FY 2013-14 for both IPGCL and PPCL, details of which are mentioned as under:
- 5.2 **For IPGCL:** An amount of Rs. 0.30Crore incurred by the Petitioner on 'Turbovisory Monitoring SYS, 3500 series; and Rs. 0.51 Crore towards 'Panel Control, 'DVR' (1150+750) x 1250 x 2295 MM) on the basis that the same are not related to energy efficiency but are for reliability of the power plant.

- 5.3 **For PPCL:** An amount of Rs. 0.36 Crore incurred by the petitioner for procurement of 'Relay Test Kit' on the similar basis that the same is not related to energy efficiency but is for reliability for the power plant.

Commission Analysis

- 5.4 The Hon'ble Appellate Tribunal vide its order dated 28.05.2020 has remanded the matter to the Commission with following direction;

"61. On the issue of disallowance of "Capital Expenditure: -

we hold that enhancement of "reliability" is an objective of importance similar to that of "efficiency" improvement for allowing capital investment plans in relation to existing generating stations. We also hold that the "necessity" for such capital investment must be comprehensively examined by the State Commission before according "in-principle" approval, the truing-up exercise, being the final stage of approval undertaken after the expenditure has been incurred on which occasion the prudence check would involve scrutiny more from the perspective of propriety of the procurement process, including legal clearances where so required, and an audit about the actual benefits derived in light of the objectives intended to be achieved as reflected in the projections set out in the initial proposal.

(b) The orders passed by the State Commission in relation to each of the appellants, as are impugned by these appeals, to the extent thereby the expenditure on the three components mentioned earlier was disallowed at the stage of truing-up, on the ground that it related to "reliability" rather than "efficiency", are set-aside. The State Commission is directed to pass consequential orders, granting the benefit, in light of above conclusions."

- 5.5 The Hon'ble APTEL vide its judgement dated 28.05.2020, set aside the view of Commission on this issue and directed the Commission to approve the expenditure incurred on such account and give due benefit thereof to the Petitioner by factoring it in the truing-up order for the relevant period.

5.6 On consideration, this issue is allowed and the impact of the same will be provided in the subsequent Tariff order.

Issue No. 2

6. Wrongful Method of calculation of Energy Charge Rate (ECR) (For IPGCL and PPCL) for the FY 2012-13 and FY 2013-14.

Petitioner Submission

6.1 It is stated that the Commission in the Impugned Order has incorrectly trued up the variable cost and Energy Charge Rate (ECR) for FY 2012-13 and FY 2013-14 resulting in a loss of Rs. 23.99 Crore in respect of IPGCL and Rs. 4.28 Crore in PPCL.

6.2 There was an error in the methodology deduced by the Commission in computing the ECR for the Petitioners plant for the said period, wherein the Commission has calculated the ECR by taking total monthly variable cost divided by the total energy billed for FY 2012-13 and FY 2013-14. This had led to the method of averaging, which was contrary to the method of calculation of ECR given under Regulation 7.18 under the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011; (MYT Regulations 2011). As per the MYT Regulations 2011, ECR has to be calculated for a 'month to month' billing of energy charges as raised to the beneficiaries for FY 2012-13 and FY 2013-14.

Commission Analysis

6.3 The Hon'ble Appellate Tribunal vide its order dated 28.05.2020 has remanded the matter to the Commission with following direction;

"On the issue of method of calculation of "Energy Charge Rate" (ECR):-

(a) we disapprove of the method employed by the State Commission in calculating the ECR at the stage of truing-up, by computing the annual average of primary fuel cost. We hold that such computation

is to be made on monthly basis, as per actuals, in terms of the formula given in regulation no. 7.18 of 2011 MYT Regulations.

(b) Since the computation of ECR at the stage of truing-up in the impugned orders passed by the State Commission is in deviation from the prescribed formula, the said impugned orders to that extent are set aside.

(c) The State Commission is directed to pass fresh appropriate orders in this regard accordingly in relation to each of the appellants."

6.4 The Hon'ble Appellant Tribunal for Electricity vide its judgment dated 28.05.2020 held that the computation of ECR by the commission, based on annual average of primary fuel cost is erroneous and not in sync with regulation and set aside order of Commission with a direction to re-computation on this issue.

6.5 On consideration, this issue is allowed and the impact of the same will be provided in subsequent Tariff order.

Issue No. 3

7. Disallowance of Repair and Maintenance (R&M) Expenditure on Sewage Plant for the FY 2012-13 and FY 2013-14 (For PPCL).

Petitioner Submission

7.1 The contention of the Petitioner-PPCL before the Tribunal was that the Commission in the Impugned Order had wrongly disallowed the Repair & Maintenance (R&M) expenditure on account of DLN Burner and Sewage Treatment Plant (STP) for FY 2012-13 and FY 2013-14. The Commission while disallowing the said expenditure on DLN burner stated that the relevant documents have not been submitted by the Petitioner PPCL before the Commission.

7.2 The relevant information substantiating the expenses towards the said R&M expenditure for the sewage treatment plant and DLN Burner for FY 2012-13 to 2013-14 incurred by PPCL is already placed and bifurcation of the cost of the same is given as follows:

S.No.	Particulars	UoM	FY 2012-13	FY 2013-14
A	DLN Burner	Rs. in Crore	12.99	0.25
B	STP	Rs. in Crore	3.93	4.15
C	Total	Rs. In Crore	16.92	4.40

- 7.3 In this regard there has been a slight adjustment in year wise expenditure on account of DLN burner due to accounting in SAP/ERP as compared to previous submitted amount of Rs.12.38 Cr and Rs. 0.67 Cr for FY 2012-13 and FY 2013-14 respectively as shown in the table above.

Commission Analysis

- 7.3 The Hon'ble Appellate Tribunal of Electricity vide its Judgement dated 28.05.2020 has remanded the matter to the Commission holding as under:

"59. the impugned order of the State Commission, does not pass the muster of a judicious or judicial order and must be set-aside.

60. At the same time, we must observe, that given the deficiency in the factual inquiry, we refrain from recording any view on merits of the claim of the appellant on this account. We would rather, direct the State Commission to carry out a fresh inquiry into this issue and after giving all concerned a fresh opportunity to present requisite material, take an appropriate decision in light of the relevant regulations and as per law.

63 On the issue of disallowance of "expenditure on Repair and Maintenance" (R&M), the factual inquiry vis-à-vis claims of the appellant Pragati on account of Sewage Treatment Plant and DLN Burners is remitted to the State Commission for fresh adjudication in accordance with law."

- 7.4 The Commission in its Tariff Order dated 29.09.2015 has not approved the total O&M Expenses on this account. The reason for disallowance

of expenses on account of DLN Burners given in para 3.45 of the tariff order is reproduced below;

"3.45 During validation sessions/prudence check the Petitioner was directed to verify the Expenses on account of DLN Burners and Sewage Treatment Plant with the financial statements, which the Petitioner was not able to verify. Further, the Petitioner was also not able to produce the Purchase Orders and Payment Vouchers against these expenses. Therefore, the Commission has disallowed the expenses on account of DLN Burners and Sewage Treatment Plant for FY 2012-13 & FY 2013-14."

7.5 Consequent to the Judgment of Hon'ble APTEL, the Petitioner – PPCL has submitted copies of vouchers and purchase orders related to expenditure of Sewage treatment plant and DLN Burner for FY 2012-13 to 13-14. On consideration, the issue of Operation & Maintenance Expenses on this account is allowed, subject to prudence check and the impact of the same will be provided in the subsequent tariff order.

8. **Additional Submission on the Wrong Computation of the interest on working capital for FY 2012-13 and FY 2013-14**

Petitioner Submission:

8.1 In the Impugned Order, the process adopted by the Commission for computing the interest on working capital FY 2012-13 and FY 2013-14 was wrong and contrary to the MYT Regulations 2011. In this regard it is relevant to note that the MYT Regulations, 2011 clearly provided that the interest on working capital is payable on normative basis and not on actual and therefore, it cannot undergo the true up process as done by the Commission in its previous Order dated 29.09.2015.

Commission Analysis:

8.2 The petitioner has filed this Petition consequent to the Remand Order dated 28.05.2020 passed by the Hon'ble APTEL in Appeal Nos. 284 of 2015 and 288 of 2015. Since this issue was not before the Hon'ble APTEL in Appeal Nos. 284 of 2015 and 288 of 2015 nor is there any direction of

Hon'ble APTEL in this issue, therefore, the Commission is not inclined to pass any order on this issue. Accordingly, this issue is rejected.

9. The Petition is disposed off as per the directions and decisions contained in the paragraph 5 to 8 cumulatively of this Order.

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

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