



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.
F.11(2134)/DERC/2023-24/7866

Petition No. 34/2023

In the matter of: Petition under Section 86(1)(b) of the Electricity Act, 2003 in terms of the liberty granted by the Hon'ble Appellate Tribunal for Electricity vide its Order dated 07.08.2023 in Original Petition No. 03/2023.

Tata Power Delhi Distribution Ltd.

...Petitioner

CORAM:

Hon'ble Shri Justice (Retd.) Jayant Nath, Chairperson

Appearance:

Mr. Shri Venkatesh, Advocate, TPDDL

ORDER

(Date of Order: 02.02.2024)

1. The instant Petition has been filed by TPDDL in terms of the liberty granted by the Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal") vide its Order dated 07.08.2023 in Original Petition No. 3 of 2023 ("O.P. No. 3 of 2023") to approach the Commission to allow the full capitalization after truing up the capital expenses for FY 2005-06 to FY 2016-17 and FY 2018-19 to FY 2021-22 in an expeditious manner.
2. The Petitioner has made the following prayers:
 - (a) Allow the complete capitalization after truing up the capital expenses for FY 2005-06 to FY 2016-17 in a time bound manner, i.e., by 12.12.2023;
 - (b) Allow the complete capitalization after conducting the time bound truing up of the actual capitalization done by the Petitioner for the period FY 2018-19 to FY 2021-22;
 - (c) Quantify the impact of capitalization claims outstanding for the Petitioner (with carrying cost) on account of pending physical verification or finalization of draft audit reports or other reasons and determine the financial impact through appropriate order to be passed in the present petition along with its consequential impact to be allowed in the upcoming tariff order for the Petitioner;

- (d) Conduct physical verification for future control period(s) in a time bound manner not beyond the True Up of financial year in which the expenditure is incurred.

Petitioner Submissions

3. The Petitioner has only been allowed partial capital expenditure on account of pending physical verification for the past 17 years, which has led to the provisional disallowance of an exorbitant amount of Rs. 716 Crores [excluding impact on associated components like Return on Capital Employed ("RoCE"), depreciation, Operation and Maintenance ("O&M") expenses etc and Carrying Cost] for the period FY 2005-06 to FY 2018-19. Aggrieved by the issue of pending physical verification, the Petitioner approached the Hon'ble Tribunal on by filing an Original Petition (O.P. No. 3 of 2023) seeking the following relief:
 - "(a) Direct the Ld. DERC to undertake truing up for FY 2005-2022 in a time bound manner i.e., Within 6 months;*
 - (b) Direct the Ld. DERC to conduct time bound truing up of the actual capitalisation done by the Petitioner on an annual basis;*
 - (c) Direct Ld. DERC to quantify the impact of capitalisation claims outstanding for the Petitioner (with carrying cost) on account of pending physical verification or finalization of draft audit reports or other reasons whatsoever along with specifying its time bound implementation roadmap including associated components of tariff forthwith;*
 - (d) Direct the Ld. DERC to conduct physical verification for future control period(s) in a time bound manner not beyond the financial year in which the expenditure is incurred;"*
4. The Original Petition was filed on 13.03.2023 and was listed before the Hon'ble APTEL on 07.08.2023, wherein, the Hon'ble Tribunal was pleased to grant liberty to the Petitioner to approach this Commission in view of the fact that the Hon'ble Supreme Court has appointed Chairperson for this Commission.
5. Therefore, the Petitioner has approached this Commission seeking expeditious conclusion of the true-up process by completing the physical verification of the assets pending for 17 years and pass on the financial impact in the upcoming tariff order.
6. The Petitioner is aggrieved by the non-consideration of capital expenditure on actuals as reflected in its books of accounts/ partial capitalisation being allowed on provisional basis as the physical verification of assets for FY 2005-06 to FY 2016-17 and FY 2018-19 to FY 2021-22 is pending by the Commission.

7. The Petitioner is unable to recover the tariff components like RoCE, Depreciation & other associated costs including O&M expenses on its assets due to the delay in completion of true up process.
8. The Petitioner is under a statutory mandate to ensure uninterrupted supply of electricity in terms of Section 43 of the Act read with stringent standards of performance norms laid down by the Commission. This compliance involves laying down, maintaining a robust distribution network which requires commensurate expenditure to be incurred by the Petitioner. The provisional disallowance of the capital expenditure has resulted in the Petitioner being constrained to incur capital expenditure without any suitable recovery till date, leaving the Petitioner uncertain of its fate qua such capital expenditure recovery.

Commission Analysis

9. The provisional disallowance of capitalization is Rs. 651 Cr. is for the period FY 2005-06 to FY 2015-16 as against Rs. 716 Cr for the period FY 2005-06 to FY 2018-19.
10. Based on the Commission's directive to review the final reports of M/s Shridhar & Associates and M/s Feedback Infra, the external consultants engaged by the Commission for Physical Verification, and comments received from TPDDL; the reports have been finalized from FY 2004-05 to FY 2015-16.
11. The report submitted by the Engineering Division of the Commission indicates significant amount of Rs.398.88 Cr pertaining to 1851 nos. of non-approved schemes. Though TPDDL had submitted these schemes for *In-principle* approval of the Commission, no approval was accorded by the Commission. DISCOMs are required to take prior approval of all major capital scheme as per Clause No. 10.4 of "License for Distribution & Retail Supply of Electricity", which reads as under:
"..."
10.4 The licensee shall make an application to the Commission for obtaining prior approval of the Commission for schemes involving major investments as per the procedure which the Commission may specify from time to time and demonstrate the satisfaction of the Commission that:
(a) There is a need for the major investment in the Distribution System which the licensee proposes to undertake;
(b) The licensee has examined the economic, technical and environmental aspects of all viable alternative to the proposal for investing in or acquiring new Distribution System assets to meet such needs; and
(c) The licensee has explored all possible avenues and is sourcing funds in the

most efficient and economical manner.

...”

However, the schemes have been verified on site and benefits have been taken by the consumers. Since TPDDL has capitalized these schemes without DERC approval, this will fall under violation of Clause 10.4. Despite violation as stated above, the Commission, without taking a strict view, is allowing capitalization based on the physical verification.

12. The 1851 nos. of schemes from FY 2005-06 to 2015-16 with cost of Rs.398.88 Cr include, (i) one scheme which exceeds by Rs 3.76 Cr from Rs. 30 Cr bucket; (ii) 4 Nos. of “Direct” schemes of Rs 1.08 Cr pertaining to non-approved schemes. These 1851 nos. of schemes were further analyzed by the Engineering Division along with TPDDL representative where it was explained by TPDDL that 566 schemes were related to deferred capitalization which were part of the schemes that were capitalized earlier. Therefore, the balance 1285 nos. of schemes (1851-566) including 1 no. from Rs. 30 Cr bucket & 4 nos. from “direct” or “Ready to use” schemes have been finalized as executed, without formal pre-approval of the Commission.

13. Under Section 142 of the Electricity Act 2003, the maximum penalty is of Rs. 1 lakh for Non-compliance of Commission directives. The Commission considers appropriate the levying of penalty at a rate of Rs 1 lakh per scheme. Thus, total penalty of Rs. 12.85 Cr for 1285 nos of schemes to be levied on the Petitioner. The relevant extract from Electricity Act, 2003, is reproduced as under:

“....

Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

...”

14. After considering various reports/analysis/comments of the external consultants as well as analysis done by Engineering division, the Commission approves a total disallowance of 45.45 Cr from FY-2004-05 to FY 2015-16, detailed as under:

FY	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total
Provisionally approved in TOs	241	157	200	151.82	328.66	217.79	561.56	324.15	200.88	220	318.51	362.75	3284.12
Disallowance on behalf of capex review	0.00	9.12	2.50	3.25	5.21	2.26	2.51	31.30	33.52	-45.94	4.92	-3.22	45.45
Finally Allowed Capitalization	241	313.57	274.78	261.20	331.95	373.54	387.51	314.34	323.75	389.21	313.44	365.97	3890.24

15. Accordingly, the impact of differential amount to be allowed for capitalization based on Physical Verification will be provided in the ensuing Tariff Order. For the balance financial years i.e., 2016-17 and 2018-19 to 2021-22, the exercise of Physical Verification is underway.
16. Ordered accordingly.

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson