

**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.**

**No. F.17(126)/Engg./DERC/2007-08/**

**In the matter of: Physical Verification of assets of Distribution Companies (DISCOMs) in Delhi, namely, M/s. BSES Rajdhani Power Ltd. (BRPL), M/s. BSES Yamuna Power Ltd. (BYPL) and North Delhi Power Ltd. (NDPL)**

**ORDER**

(Date of Order: 10 .12.2009)

1. In the month of June, 2009, unprecedented load shedding took place in Delhi. There was all round criticism of the power outages. Citizen groups as well as consumer activists lodged complaints against all Distribution Companies (DISCOMs) in Delhi. The Public Grievances Cell of Govt. of Delhi was flooded with complaints of load shedding. The Commission took suo moto cognizance of the unprecedented load shedding and all three Discoms i.e., BSES Rajdhani Power Limited (BRPL), BSES Yamuna Power Limited (BYPL) and North Delhi Power Limited (NDPL) along with State Load Dispatch Centre (SLDC) were directed by the Commission to explain full facts in this regard and furnish details about the load shedding done in various parts of Delhi in the month of June 2009. The Commission also directed them to appear before it for a hearing on 20.07.2009. A detailed hearing was held in the Commission on 20.7.2009 wherein submissions were made by the three DISCOMS and a presentation was made by SLDC on the load shedding resorted to by various Discoms in Delhi in June, 2009.
2. The load shedding in the case of BRPL in June 2009, having been more severe than the other two DISCOMS, a Show Cause Notice dated 06.08.2009 was issued to BRPL to explain the reasons for the rather extensive load shedding. After the reply to the Show Cause Notice was received a Public Hearing was held on 25.09.2009. During the course of the public hearing on load shedding, the consumers pointed out that the required infrastructure has not been put in place and frequent break-downs were indicative of poor distribution network despite huge CAPEX allowed to them. Similar accusations were made earlier by consumer representatives during the course of public hearing on tariff fixation for 2009-10.

3. A consumer satisfaction survey was also conducted by M/s AC Nielsen ORG – MARG Pvt. Ltd. in the month of March-April, 2009, wherein continuity of power supply was given the highest priority by consumers on satisfaction scale. Frequent break downs of the distribution network contribute in a massive way to the lack of continuity of supply of electricity.
4. During the public hearing on load shedding and on the issue of tariff fixation, the consumers have been crying hoarse that the distribution network is ramshackle especially in the areas served by BSES companies. Consumers have been pointing accusing fingers at BRPL/BYPL that the infrastructure is not being put in place and only bills are arranged to this effect. The veracity of these allegations can only be known after an enquiry but one fact is apparent that frequent break-downs have been taking place and this is indicative of poor distribution network.
5. The whole objective of privatization was to bring in efficiency in the sector which was absent in DVB time. In order to bring in efficiency and to serve the consumers better, it is necessary to have an effective distribution system in place. The Discoms in Delhi have been claiming that they have been making huge Capex to improve the distribution network. However, each summer there are innumerable break-downs of the distribution system leading to prolonged outages. This problem of prolonged load shedding reached its peak in June, 2009 when several areas had to go without power for as long as 16 hours. The major reason for this load shedding specially in BRPL areas was inadequate arrangement of power. But, weak / poorly maintained distribution network also contributed in large measure towards the black outs, which the citizens of Delhi had to face. Therefore, the assets verification of the Discoms is the need of the hour. Asset verification of the DISCOMS conducted in a transparent manner by an independent agency, would go a long way in instilling public confidence in the system.
6. As per prevailing practice, DISCOMs furnish the Business Plan for Capital Investment on yearly basis and submit Detailed Project Report (DPR) consisting of details of each scheme with Techno-Commercial justification to the Commission for 'In-principle' approval. After In-Principle approval of schemes from the Commission, DISCOMs undertake execution of work related to

strengthening and augmentation of the distribution system. After end of the year DISCOMs furnish the details of schemes executed, actual expenditure incurred with Electrical Inspector Certificates for capitalization of respective assets. The Commission approves the capital expenditure claimed by DISCOMs after prudence check.

7. The details of Capital investment claimed to have been made towards distribution network infrastructure, so far, by three DISCOMs are as under:

Year	(Rs. in Crore)		
	BYPL	BRPL	NDPL
2002-03	57.60	71.54	48.51
2003-04	85.30	114.57	299.40
2004-05	416.00	538.49	338.20
2005-06	357.40	711.16	430.93
2006-07	282.60	398.88	270.51
2007-08#	164.00	239.00	248.40
2008-09#	300.00	390.00	262.60
<b>Total</b>	<b>1662.90</b>	<b>2463.64</b>	<b>1898.55</b>

# These figures are provisional

8. At the stage of prudence check in 2008-09 it was ascertained whether competitive bidding process was followed or not by DISCOMs. In the case of M/s. BRPL/BYPL, it was noticed that they had not maintained the details in such a fashion which would enable the Commission to satisfy itself that all the assets claimed to have been put on the ground actually exist. While trying to verify whether Competitive Bidding Process has been followed or not, M/s. BRPL and BYPL were requested to give year-wise bifurcation of amount of capitalization done out of total purchases made in 2004-05 from their sister concern, the then M/s. REL, to whom an amount of Rs. 1428 crores was paid for the purpose by M/s. BRPL and BYPL put together. Despite several opportunities granted to them, they could not furnish year-wise bifurcation of capitalisation claimed out of this amount of Rs. 1428 crores in different years casting a doubt as to the reliability of the books of accounts maintained by these two companies. Similar exercise

conducted in case of NDPL also revealed that they also did not adopt transparent competitive bidding process to purchase goods.

9. On the basis of above-mentioned facts, the Commission is, therefore, satisfied that it would be fair to pass an order for comprehensive verification of assets of the three Discoms in Delhi, namely M/s. BRPL, BYPL and NDPL for the period 2002-2009. For this purpose, an order under section 128 is considered necessary particularly in view of the recent experience in the enquiry conducted by M/s. STQC in the case of inflated billing of M/s. BRPL/BYPL. M/s. STQC reported that they encountered innumerable problems in conducting the enquiry into the reasons leading to inflated billing. There was total non-cooperation of M/s. BRPL/BYPL in the enquiry conducted by M/s. STQC, which is a matter of record. Even during the course of investigation under Section 128 in the matter of load shedding in June, 2009, SCADA system was also found deficient by the Aggrawal Committee.
10. The Commission has powers under section 128 of the Electricity Act, 2003 to conduct an investigation into the functioning of the licensee. Section 128 of the Electricity Act, 2003 provides as under:

***Investigation of certain matters***

*"128. (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of this Act or rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority:*

*Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.*

*(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Appropriate Commission, cause an inspection to be made, by one or more of his officers, of any licensee or generating company and his books of account; and the Investigating Authority shall supply to the licensee or generating company, as the case may be, a copy of his report on such inspection.*

*(3) It shall be the duty of every manager, managing director or other officer of the licensee or generating company, as the case may be, to produce before the Investigating Authority directed to make the investigation under subsection (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the licensee or generating company, as the case may be, as the said Investigating Authority may require of him within such time as the said*

Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under subsection (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the licensee or generating company, as the case may be, in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Appropriate Commission to cause an inspection to be made, and may, in any other case, report to the Appropriate Commission on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission, seems reasonable, by order in writing-

- (a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or
- (b) cancel the licence; or
- (c) direct the generating company to cease to carry on the business of generation of electricity."

(7) The Appropriate Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Appropriate Commission may specify the minimum information to be maintained by the licensee or the generating company in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by licensee or the generating company in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily its functions under section.

Explanation. - For the purposes of this section, the expression "licensee or the generating company" shall include in the case of a licensee incorporated in India-

- (a) all its subsidiaries formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and
- (b) all its branches whether situated in India or outside India.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the licensee or the generating company, as the case may be, and shall have priority over the debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue."

11. In view of discussions made above and in exercise of powers conferred on the Commission under Section 128 of EA 2003, the Commission is satisfied that an Investigating Authority is required to be appointed to investigate the claims of capital investments made by DISCOMs in Delhi since privatization i.e. from 2002-03 to 2008-09. Administrative Staff College of India (ASCI) is doing similar work of physical verification of assets of distribution utilities and comparison of prices of

assets purchased, as entrusted by Maharashtra Electricity Regulatory Commission (MERC) and Forum of Regulators (FOR). They are most suited for this job and are willing to take up the job under section 128 of the Electricity Act, 2003. This has been confirmed by them. For the above stated purpose, as per the provisions of Section 128 of EA 2003, the Commission hereby appoints Administrative Staff College of India (ASCI), Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad – 500 082, to act as an "Investigating Authority" to undertake physical verification of the capital investments, including the present condition of the assets of all Discoms in Delhi (BRPL, BYPL, NDPL).

12. The Administrative Staff College of India (ASCI) shall carry out physical verification of assets with reference to each purchase Order/ work order and Electrical Inspector's certificate submitted by the Discoms in order to examine the actual delivery of such asset, place of delivery, entry of such asset in the assets register, installation of such asset, at the site, location of such asset, certificate of Electrical Inspector in respect of such asset and date on which such asset was put to use. The Investigating Authority shall examine the condition of the assets, especially the transformers and Switch Gears and, if not properly maintained, then it shall comment upon such assets. The Executive Summary of the report shall include percentage of such assets, which are not maintained as per prudent utility practices.
13. The Investigating Authority shall submit its Report to the Commission by 28.02.2010.
14. The Commission hereby directs DISCOMS, namely, BRPL, BYPL and NDPL to cooperate with the investigating Authority i.e., Administrative Staff College of India, Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad – 500082, in investigation and make available all the required data as desired.
15. The Investigating Authority shall act as per Section 128 of the EA 2003, as directed by the Commission and authorized by the Commission to do so under this Section and, whenever necessary, shall employ auditor or any other person for the purpose of assisting them in the investigation.
16. Member, Shri Shyam Wadhera has not agreed with the rationale for ordering the investigation regarding Physical Verification of Assets of Distribution Companies and Condition Monitoring thereof in certain portions of the order. His views in the

matter are reflected at Paras 17-21. The order of the Commission is contained in Para 1 to 15 in terms of Section 92(3) of the Electricity Act, 2003.

Sd/- (Subhash R. Sethi) Member	Sd/- (Shyam Wadhera) Member	Sd/- (Berjinder Singh) Chairman
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17. The MYT Regulations issued by the Commission on 30.05.07 have the following specific provisions w.r.t. Capital Investment, Targets for Controllable Parameters and True Up.

**“Capital Investment:**

- 4.13 *The Commission shall approve capital investment plan of the Licensees for the Control Period commensurate with load growth, distribution loss reduction and quality improvement proposed in the Business Plan. The investment plan shall also include corresponding capitalization schedule and financing plan.*
- 4.14 *The Commission shall review the actual capital investment at the end of each year of the Control Period Adjustment to depreciation and return on capital employed for the actual capital investment vis-à-vis approved capital investment shall be done at the end of Control Period.*

**Targets for Controllable Parameters:**

- 4.7 *The Commission shall set targets for each year of the Control Period for the items or parameters that are deemed to be “controllable” and which include:*
- (e) *Return on Capital Employed.*
- (f) *Depreciation.*

**True Up**

- 4.16 *The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:-*
- (b) *For controllable parameters,*
- (ii) *Depreciation and RoCE shall be trued up at the end of Control Period”.*
18. The rationale for ordering the physical verification of assets of the Discoms flows from the need for the Commission to undertake a prudence check during and before the end of the MYT period regarding the capitalization of assets claimed by the Discoms, based on “in-principle” approvals given by the Commission from time-to-time. Physical verification, as proposed, would also facilitate the final true

up to be done regarding the “controllable” expenses related to capitalization, at the end of the MYT period.

19. The prudence check would have to be undertaken by the Commission regardless of whether the number of breakdowns in the areas served by the various Discoms are more or less. The issue regarding the number and frequency of breakdowns is related to compliance with various provisions of the Performance Standards and Supply Code, and if the requirements of the Performance Standards are not met by the Distribution Companies, the Commission will have to consider taking appropriate action in respect of any shortfall which may come to its notice. This issue is, therefore, not merely related to physical verification of assets.
20. Para 8 of the Order refers to the issue of whether or not competitive bidding process was followed by the various Discoms in the purchase of assets, including purchases made from sister concerns. This issue to my mind is not of relevance while undertaking the physical verification of assets and needs to be deleted.
21. Several paras of the above Order are drawing conclusions on issues which are the subject of investigation. Suggestive observations in the Commission's Order could bias the investigation process and, in my view, would not be desirable.
22. I, however, agree with the appointment of the Administrative Staff College of India, Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad-500082 as investigation agency to take up Physical Verification of Assets and Condition Monitoring thereof as per the scope of work described in Paras 12-15 above.

Sd/-  
(Shyam Wadhera)  
Member