

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

No. F. 11(884)/DERC/2012-13/

Petition No. 15/2013

In the matter of: **Application seeking issuance of appropriate directives from the Hon'ble Commission in relation to demand raised by IPGCL seeking payment of income tax paid by it for the FY 2011-12 and for issuance of directions allowing liberty to the Applicant to set-off the amount paid in excess from subsequent bills.**

Tata Power Delhi Distribution Ltd.
Through its **Managing Director**
Grid Sub Station Building
Hudson Lines, Kingsway Camp,
Delhi 110 009

....**Petitioner**

Vs.

Indraprastha Power Generation Co. Ltd.
Himadri, Rajghat Power House Office Complex
New Delhi 110 002

.....**Respondent**

Coram:

Sh. P. D. Sudhakar, Chairperson,
Sh. J. P. Singh, Member &
Sh. B.P. Singh, Member

Appearance:

1. Mr. Alok Shankar, Adv. TPDDL
2. Ms. Swapna Seshadri, Adv. IPGCL
3. Mr. S.M. Verma, GM(Comml.)IPGLC
4. Mr. R. K. Yadav, DGM (Comml.) IPGCL
5. Mr. Rajesh Chattarwal, Dy. Manager, IPGCL
6. Mr. Vikas Gupta, TPDDL
7. Ms. Nayantara, TPDDL

ORDER

(Date of Hearing: 27.01.2015)

(Date of Order: 11.02.2015)

1. The instant application has been filed by M/s TPDDL seeking directives from the Commission in respect of Income Tax liability of the Petitioner as per DERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2007.
2. During the last hearing the Commission has directed the Tariff Division to convene a meeting of the officers of the Petitioners and Respondent

Company to reconcile the figure of Income Tax Recovery on Return on Equity (RoE) basis as per the revised submissions being made by the Petitioner in this regard.

3. The Petitioner has since submitted the revised figure to the Tariff Division of the Commission and subsequently meetings of the officers of the petitioner, respondent and Tariff Division of the Commission was held on 02.09.2014 and 18.12.2014.
4. The Counsel for the Respondent submitted that pursuant to the decision of APTEL dated 07.04.2011 in Appeal No. 26/2008, the Commission has allowed the 'arrear' relating to employees expenses and other costs pertaining to FY 2006-07 to 2010-11 in the FY 2011-12, consequently additional Income Tax liability for previous years from 2006-07 has accrued in the year 2011-12 only. It was further argued that had the employee expenses etc. been allowed in the respective FYs, the Income Tax liability would have accrued in the respective years and the Petitioner Company would have paid in time for such additional income tax and it may be seen that in some of the financial years no income tax was recovered from the Petitioner Company.
5. The Counsel for the respondent argued that even for recovery of Income Tax on the basis of RoE, the aforesaid important fact has to be taken into consideration that additional Income Tax liability for all the previous years since 2006-07 have accrued to Respondent in the year 2011-12 and back calculations have to be made. The respondent further submitted that the assumption of the Petitioner that the Income Tax was paid at MAT Rate of tax is not correct and actually the respondent has paid the income tax at the normal rates.
6. Now, it has been deliberated and settled between the parties that the petitioner's liability for Income Tax is on Return on Equity (RoE) basis. Implementation of the order of the APTEL in Appeal No.26/2008 may result in revision of opening Gross Fixed Assets (GFA) of IPGCL and consequently Income Tax on RoE may also get revised.
7. The issue of revision of opening balance in GFA has not been addressed in the last tariff order of IPGCL issued on 31.07.2013. However, as the MYT Regulation 2011 has been extended till FY 2015-16, M/s IPGCL and M/s PPCL are expected to file tariff petitions.

8. Considering the above points the Commission has decided that the issue related to additional income tax liability will be taken up while truing up the ARR of the relevant past financial years with the current tariff petition.
9. On the issue that pending adjudication, M/s TPDDL has adjusted a portion of Income Tax paid to IPGCL against subsequent bills on the pretext that it was paid in excess, the Commission decided that this issue may also be dealt with while disposing the current tariff Petition. However, the petitioner is directed to reimburse the current Income Tax liability as per the applicable Regulations.
10. The petition is disposed off accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(J.P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson