



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. Gopal Jain, Sr. Adv. TPDDL
2. Mr. Alok Shankar, Adv. TPDDL
3. Mr. Kaushik, Adv. TPDDL
4. Ms. Swapna Seshadri, Adv. IPGCL
5. Mr. Ajay Kapoor, CFO, TPDDL
6. Mr. Anurag Bansal, TPDDL
7. Mr. R. K. Yadav, DGM (Comml.) IPGCL
8. Mr. Rajesh Chattarwal, Dy. Manager, IPGCL

ORDER

(Date of Hearing: 19.08.2014)

(Date of Order: 26.08.2014)

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. The Counsel for the Petitioner submitted that as per clause 6.27 of DERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2007, the petitioner company is liable for recovery of income tax on Return on Equity (RoE) component of capital employed and not on the net revenue of the generating company. It was further submitted that the respondent has recovered income tax in excess of what the petitioner company is liable to pay as per the extant regulations.
3. The Counsel for the Respondent controverted by stating that as per clause 6.24 of DERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2007 the Respondent is entitled to recover the Income Tax paid on the generation business of the generating company. The Income Tax recovery claimed by the Respondent relates to the generation business only and not on any other income or activity of the Respondent. The Income Tax paid relating to the generating business of the Respondent needs to be recovered only through the tariff of the generating stations. There is no avenue or scope for the Respondent to recover the Income Tax paid.
4. The Counsel for the Respondent further stated that because of the revisions of tariff pursuant to the decision of APTEL dated 07.04.2011 (in Appeal No. 26/2008), the tariff of the respondent Company has been revised since FY 2006-07 and 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 tariff been revised in time the Income Tax liability would have accrued in the respective years only 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 Petitioner submitted that the basic issue is whether the respondent is entitled to recover the income tax on net revenue or on RoE. It was further argued that as per the extant Regulations the recovery of income tax can only be on RoE and not on net revenue basis.

6. The Counsel for the respondent argued that even for recovery of Income Tax on the basis of RoE, the important fact that additional Income Tax liability for the all previous years since 2006-07 have accrued to Respondent in the year 2011-12 only has to be taken into consideration 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.
7. The Commission directed the Respondent and the Petitioner to have a meeting with officers of the Tariff Division of DERC to reconcile the figure of income tax recovery on RoE basis and make their revised submissions within 3 weeks.
8. Accordingly, the Tariff Division is directed to convene a meeting of the Officers of the Petitioner and Respondents Companies for the aforesaid purpose.
9. The next date of hearing will be intimated in due course.
10. Ordered accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(J.P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson