



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

No. F.11(1588)/DERC/2018-19/

Review Petition No. 30/2018

In the matter of : Review Petition seeking review of the order dated 28.03.2018, passed by the Commission in Petition no. 68 of 2017.

BSES Rajdhani Power Limited

...Review Petitioner

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

ORDER

(Date of Order: 13.12.2019)

1. The instant Review Petition has been filed by M/s BSES Rajdhani Power Ltd. (BRPL) for review/revision/clarification of the following issues as contained in the Commission's Tariff Order dated 28.03.2018 in Petition No. 68 of 2018.
2. The Review Petitioner has sought review on the following issues:
 - i. Omission to deduct Rs.27.82 Cr. LPSC (FY 2008-09) from Revenue;
 - ii. Typographical error in "Revenue realized" for FY 2008-09;
 - iii. Omission to withdraw/Recall the efficiency factor for FY 2015-16;
 - iv. Non-consideration of carrying cost on power purchase cost incurred from Anta, Auriya and Dadri Gas stations for the period prior to FY 2012-13;
 - v. Error in Rate of Depreciation in FY 2007-08 to FY 2015-16;
 - vi. Error in consideration of rebate from DTL as NTI during FY 2013-14;
 - vii. Merit Order Despatch for FY 2013-14;
 - viii. Error in considering normative rebate for power drawn from SECI for the year 2016-17; and
 - ix. Power Purchase Cost from Anta, Auraiya and Dadri Gas stations for FY 2016-17.

3. The submissions made by the Petitioner have been considered and analysed to arrive at the decision. The issue wise analysis and decision are as follows:

3.1 **Issue No. 1.**
Omission to deduct Rs. 27.82 Cr. LPSC (FY 2008-09) from Revenue:

Petitioner's Submission:

3.1.1 The tariff Order dated 28.03.2018 omits to deduct LPSC for FY 2008-09 from the Revenue while computing the Revenue available towards ARR although the same is required to be deducted from the revenue considered for the year since

the revenue for the year has been considered on a normative basis. This, in fact, has been accepted by this Commission in para no. 3.217 of the order under review. However, in the computation in Table 16, the same treatment had not been carried through.

- 3.1.2 It is respectfully submitted that this Commission may kindly be pleased to correct Table 16 at Para 3.78 by re-calculating Revenue available towards ARR after deducting Rs. 27.82 Cr. being LPSC for FY 2008-09 from Revenue realized.

Commission's Analysis

- 3.6.1 The Petitioner has claimed that AT&C loss for FY 2008-09 was trued up on the basis of normative collective efficiency and accordingly the amount of LPSC of Rs.27.82 Cr. was not considered against the amount realized. On the other hand, the said amount of Rs.27.82 Cr. was considered as a part of Non-Tariff Income in the Tariff Order dated 26/08/2011, and therefore, the Non-Tariff Income in FY 2008-09 is to be reduced by this amount.

It is observed that in the Tariff Order dated 26/08/2011, the amount of Rs.27.82 Cr. was reduced from the revenue available for FY 2008-09, however, in the subsequent Tariff Order dated 29/09/2015, the Non-Tariff income of the petitioner for FY 2008-09 was reconsidered and the amount of Rs.14.43 Cr. as financing cost of LPSC was reduced from the Non-Tariff Income. In view of the aforesaid, the balance amount of Rs.13.39 Cr. (Rs.27.82 Cr. – Rs.14.43 Cr.) may be further reduced from the Non-Tariff Income of the Petitioner. The impact shall be given in the subsequent Tariff Order.

- 3.2 **Issue No. 2.**
Typographical error in "Revenue realized" for FY 2008-09:

Petitioner's Submission:

- 3.2.1 That there is discrepancy of the figure taken as "Revenue realized" for FY 2008-09 in Tariff Order dated 31.08.2017 and the Order under review since in the tariff Order dated 31.08.2017 and the Order under Review.
- 3.2.2 The Revenue realized as approved by this Commission is Rs.3198.53 Cr. at Table 3.99 of the Tariff Order dated 31.08.2017. However, the Revenue realized is Rs.3197.54 Cr. in Table 16 at Para 3.78 of the Order under Review.

Commission's Analysis

- 3.2.3 The Petitioner has submitted that in the Tariff Order dated 31/08/2017 the Revenue Realised for FY 2008-09 was indicated as Rs.3,198.53 Cr. whereas in the Tariff Order dated 28/03/2018 this amount is shown as Rs.3197.54 Cr.
- 3.2.4 In this regard, it is submitted that the correct figure of Revenue Realised for FY 2008-09 is Rs.3197.54 Cr., which was inadvertently indicated as Rs,3,198.,53 Cr. in

the Tariff Order dated 31.08.2017. In view of the above, the figure of Revenue Realised for FY 2008-09 in the Tariff Order dated 31.08.2017 should be read as Rs.3197.54 Cr

3.3 **Issue No. 3:**
Omission to withdraw/Recall the efficiency factor for FY 2015-16:

Petitioner's Submission:

- 3.3.1 That the petitioner had in the tariff petition prayed for recall of the efficiency factor on O&M expenses for the years FY 2011-12 to FY 2015-16. The Order under review allows to recall of the efficiency factor for the FY 2011-12 to FY 2014-15 but omits to recall the efficiency factor FY 2015-16.
- 3.3.2 The omission to give relief for FY 2015-16 is an error apparent on the face of record. Relief having been given for FY 2011-12 to FY 2014-15 on a reconsideration by this Commission, the same dispensation would have to hold good for FY 2015-16 as well.
- 3.3.3 It suffers another error apparent on the face of record since there is no reason given in the order for not extending the same dispensation to FY 2015-16.

Commission's Analysis

- 3.8.1 A clarificatory application raising, inter-alia, the issue of computation of efficiency factor was filed in the Hon'ble APTEL, which was dismissed with the observation that the directions in this regard in Appeals Nos. 61 and 62 of 2012, has already been challenged by DERC before the Hon'ble Supreme Court in Civil Appeals Nos. 8660-61 of 2015, which is pending adjudication.
- 3.8.2 Keeping in view the fact that the issue relating to computation of efficiency factor is currently sub-judice before Hon'ble Supreme Court, the effect of efficiency factor for FY 2015-16 is thus provisionally allowed subject to the outcome of the Civil Appeals Nos. 8660-61 of 2015 pending in the Apex Court.

3.4 **Issue No. 4:**

Non-consideration of carrying cost on power purchase cost incurred from Anta, Auriya and Dadri Gas stations for the period prior to FY 2012-13:

Petitioner's Submission:

- 3.4.1 The Commission has allowed the cost for power procured from Anta, Auriya and Dadri for the period prior to FY 2012-13. However, this Commission has not considered the carrying cost on the same.
- 3.4.2 The cost having been incurred in the FY 2012-13 and recovery having been permitted in FY 2018-19, the petitioner would, in law, be entitled to carrying cost for the entire period.

3.4.3 The Order under review suffers from another error apparent on the face of record wherein the other two DISCOMS have been allowed carrying cost for the same claim in the same circumstances. This would be in accord of the stated philosophy of this Commission to treat the Discoms at par.

Commission's Analysis

3.4.4 As arrear bills raised by the Petitioner for Anta, Auraiya and Dadri gas stations for the period prior to FY 2012-13 has already been allowed, the carrying cost on the arrear bills of the Petitioner for these gas stations for the period prior to FY 2012-13 is allowed from the year of receipt of such bills. The impact shall be given in the subsequent Tariff Order.

3.5 **Issue No. 5:**
Error in Rate of Depreciation in FY 2007-08 to FY 2015-16:

Petitioner's Submission:

3.5.1 That the Commission has not considered (not given any finding) on the rate of depreciation for FY 2007-08 to FY 2015-16 in terms of the DERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011. This is despite the promise held out in the Tariff Order dated 31.08.2017 in Para 3.366 which clearly states that "*....the Commission will consider the rate of depreciation as per the rates specified in MYT Regulation, 2011 for different class of assets on true up of capitalization of the relevant year....*"

Commission's Analysis

3.5.2 The Petitioner has submitted that the Commission has not considered the Depreciation rate for the period from FY 2007-08 to FY 2015-16 as per the rates specified in MYT Regulations, 2011. Further, BRPL has submitted that the Commission has indicated in its Tariff Order dated 31/08/2017 that "*...the Commission will consider the rate of depreciation as per the rates specified in MYT Regulations, 2011 for different class of assets based on true up of capitalization of the relevant year.*"

3.5.3 The true up of capitalisation for various years of the DISCOMs is under progress. The Commission may consider the rate of depreciation as per the provisions of applicable Tariff Regulations, once the capitalisation of the gross fixed assets is finalized by the Commission.

3.6 **Issue No. 6:**
Error in consideration of rebate from DTL as NTL during FY 2013-14:

Petitioner's Submissions:

3.6.2 That in FY 2006-07, the Petitioner was entitled to a rebate of Rs.6.39 crore towards power purchase cost payable to DTL. DTL did not accept the same and the Petitioner paid the amount of Rs. 6.39 Crore to DTL, under protest in FY 2006-07.

Hence, the Petitioner was entitled to receive an amount of Rs.6.39 crore plus interest from DTL. In MYT Order dated 13.07.2012, the Commission directed DTL to give credit to the Petitioner of the amount of Rs.6.39 crore plus interest in three consecutive transmission bills. DTL did not comply with the direction of the Commission and did not give credit of the said amount to the Petitioner. Hence, in the FY 2013-14, the Petitioner adjusted the amount of Rs.6.39 crore plus interest totalling to Rs.14.86 crore from certain old payable to DTL. To reflect the same, the said adjustment was thus shown as 'other miscellaneous income' under Note 26 OTHER INCOME in the books of the Petitioner for FY 2013-14. In fact, the Petitioner vide its letters dated 17.03.2015 and 08.04.2015 submitted the bifurcation of other Misc. Income and claimed the rebate due from DTL to be deducted from 'Other Income' appearing in the audited accounts of FY 2013-14 for the purposes of computing NTI. However, this income has been erroneously treated by the Commission as NTI.

- 3.6.3 The error lies in treating the said amount of Rs.6.39 crore plus interest totalling to Rs.14.86 crore as NTI when the aforesaid principal amount had never been allowed as a part of the power purchase cost in FY 2006-07, i.e. the year of payment.

Commission's Analysis

- 3.6.4 The Commission in its Review Order dated 22/03/2018 has already considered to allow the impact of the claim and the same may be considered in the subsequent Tariff Order.

3.7 Issue No. 7 Merit Order Despatch for FY 2013-14:

Petitioner's Submissions:

- 3.7.1 That the Order under Review suffers from an error as this Commission while reconsidering the MOD issue for FY 2013-14, in para 3.256 of the Order under Review has not considered DISCOM wise scheduling which was implemented by Delhi SLDC in February 2014 onwards as per the Commissions' directions on 21.11.2013.
- 3.7.2 Further, in the Order under Review, in Paras 3.255 and 3.256, the Commission has referred to and relied upon Para 3.449, the previous Tariff Order dated 31.08.2017, which does not pertain to FY 2013-14 but pertained to FY 2014-15 and FY 2015-16.

Commission's Analysis

- 3.7.3 The Commission had already revised the Dis-allowance under Merit Order for FY 2013-14 for all the DISCOMs in its Tariff Order dated 28/03/2018.

- 3.7.4 The Commission had disallowed Rs.139.39 Cr. during true up of FY 2013-14 under violation of Merit Order Despatch principle for BRPL in Tariff Order dated 29/09/2015. However, the Commission had revised such dis-allowance from Rs.139.39 Cr. to Rs.104.23Cr. as the earlier dis-allowance considered various power stations which have must run status like Nuclear & Hydro, State GENCOs which are considered in the Islanding scheme of Delhi and Eastern Region Plants where there is time delay in revision of schedule.
- 3.7.5 To deliberate on the issue, discussions were held by the officers of the Commission with SLDC and the Petitioner. During the discussion it was observed that SLDC had identified the slots, which were shared with the Petitioner. The Petitioner has sold surplus power in the Exchange while the Power plants under MOD were already operating above the Minimum Technical Limit in said slots. The Petitioner has furnished the details about the Revenue earned by selling such surplus power in the slots identified by the SLDC to arrive at the final impact of non-adherence of MOD. The additional information/statement as submitted by the Petitioner is not counter signed/certified by SLDC, Delhi.
- 3.7.6 In view of the above, during the subsequent Tariff determination exercise, on the basis of verification by SLDC regarding MoD/discom-wise scheduling, the claim of the Petitioner will be considered.

3.8 **Issue No. 8**

Error in considering Normative Rebate for power drawn from SECI for the year 2016-17:

Petitioner's Submissions:

- 3.8.3 That this Commission has erroneously considered the cost of power drawn from SECI of Rs.24.7 Cr. as a rebatable amount in the power purchase cost for FY 2016-17.
- 3.8.4 The Petitioner submits that being under the bona fide impression that the amounts towards power purchase costs towards SECI were rebatable, it had included the same as a part of rebatable items.
- 3.8.5 However, vide its letter dated 12.03.2018, SECI clarified that the Petitioner was not entitled to a rebate and hence, the Petitioner is seeking a review of the present issue requesting that this Commission may treat the amount towards SECI as a part of non-rebatable items.

Commission's Analysis

- 3.8.6 The petitioner in Tariff Petition No. 68 of 2017 had submitted the power purchased from SECI as rebatable amount and accordingly the same was considered under normative rebate. Subsequently, the petitioner made additional submission providing SECI's clarification that no rebate is allowable on

the power purchased from SECI. On the basis of the additional submission made by the Petitioner, the normative rebate considered against power purchase from SECI is allowed to the Petitioner. The impact shall be given in the subsequent Tariff Order.

3.9 **Issue No. 9**
Power Purchase Cost from ANTA, AURAIYA AND DADRI for FY 2016-17:

Petitioner's Submissions:

3.9.1 That this Commission had in the Review Order dated 22.03.2018, permitted procurement of power from Anta, Auraiya and Dadri for the year FY 2017-18.

3.9.2 In the Order under Review, at Para, 4.46 this Commission was pleased to hold that the procurement from Anta, Auraiya and Dadri was permitted from FY 2017-18 onwards due to the demand-supply gap then prevailing. However, the same has not been allowed for past years and hence the present Review Petition.

Commission's Analysis

3.9.3 The Commission has allowed Power Purchase Cost from Anta, Auraiya and Dadri Gas based stations from FY 2012-13 till FY 2016-17 vide its order dated 18.09.2018.

3.9.4 The appropriate impact has been given in the Tariff Order dated 31.07.2019. Therefore, the issue does not survive.

4 The Petition is disposed of as per the directions and decisions contained in the paragraph 3 of this order, which would be given effect to in the subsequent Tariff Order.

5 Ordered Accordingly.

Sd/-
(Justice S S Chauhan)
Chairperson