

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017

No. F.11 (542) DERC/2008-09/ C.F No. 2332

Petition No.01/2010

In the matter of: Refund of Consumer Contribution received for Deposit Works.

BSES Rajdhani Power Limited
Through its: **CEO**
BSES Bhawan, Nehru Place,
New Delhi-110 019

...Petitioner

Petition No.02/2010

In the matter of: Refund of Consumer Contribution received for Deposit Works.

BSES Yamuna Power Ltd.
Through its: **CEO**
Shakti Kiran Building,
Karkardooma
New Delhi – 110092

...Petitioner

Petition No.03/2010

In the matter of: Refund of Consumer Contribution received for Deposit Works.

Tata Power Delhi Distribution Ltd.
Through its: **CEO**
Hudson Lane, Kingsway Camp,
New Delhi – 110009

...Petitioner

Coram:

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

Appearance:

1. Ms. Priti Aggarwal, Mgr. BYPL
2. Ms. Pooja Aggarwal, Mgr. BYPL
3. Jyoti Vats, BYPL
4. V.P. Singh, Advocate BRPL
5. Mr. Paresh Lal, Adv. BRPL

6. Ravi, AM, BRPL
7. Ajay Kapoor, CEO TPDDL
8. Anurag Bansal, Sr. Mgr. TPDDL
9. Dhiraj Benjani, Sr. Mgr. TPDDL
10. Sakya Chaudhuri, Advocate TPDDL

ORDER

(Date of Order 11.03.2014)

1. The issue before the Commission is regarding refund of Consumer Contribution received by the Discoms for capital work under the Deposit schemes. The Commission vide its letter dated 03.12.2009 had observed that retaining the refundable amount for a long time and utilizing the same on global basis for financing of capital investment en-bloc is surely not only a wrong accounting practice but also a dishonest one and had directed the Discoms that :
 - i. The DISCOMS shall finalize the accounts of the deposit works already executed by them and approved by the Electrical Inspector (wherever applicable) and refund the amounts due to agencies on whose behalf the work has been carried out within a period of one month of energisation.
 - ii. The DISCOMs shall send reconciled account to all such consumers and refund them the due amount, along with penal interest of 12% per annum. The interest will be to the account of DISCOMs only and cannot be booked to ARR because this has become payable of their fault.
 - iii. In all future cases, the accounts be finalized immediately after completion of works and refunds made to the consumers within three months of energization. A quarterly report shall be submitted to the Commission in this regard in the format enclosed.
2. Aggrieved by the aforesaid order regarding refund of the unspent consumer's contribution, the Discoms filed petitions before the Commission. In the petition, the Discoms have sought following relief from the Commission:

- a) To reconsider its statement made in the letter dated 03.12.2009 and expunge the term “financing of capital investment en bloc is surely not only a wrong accounting practice but also a dishonest one”;
 - b) To suitably modify its letter dated 03.12.2009 and consider implementing the principles prospectively.
3. The main plea of the petitioner is that the consumer's contribution is being treated as “means of finance” and this had been approved by the Commission in its various orders. It is argued by the petitioner that:
- a) The Hon'ble Commission has in its various orders expressly provided not only the funding of capital works but also the priority in which the various means of finance available with the petitioner are to be utilized for undertaking the said capital works. The methodology prescribed used the said means to arrive at how much of the Annual Revenue Requirement of the petitioner (ARR) was to be met through tariff increase after discounting the funds lying with the petitioner.
 - b) Further the Hon'ble Commission while responding to the objections raised by the stakeholders against the MYT petition filed by M/s NDPL in its order dated 23.02.2008 has stated that:
“In the policy Direction period, the Hon'ble Commission has provided means of finance for the total capital investment for the year. Therefore, the Hon'ble Commission believes that total consumer contribution should be considered as a source of funding for capital investment irrespective of asset capitalized or not.”
 - c) The amount of consumer contribution pertaining to schemes which have not been capitalized or lying with the petitioner unspent, is being used to finance capital work in progress ((CWIP) (en-bloc) and hence the benefit of the same has been passed on to the consumers by way of lower interest during construction (IDC).

- d) Thus the unutilized portion of the consumer contribution, till date, is no longer retained by the petitioner but used in tariff for capital investment financing on en-bloc basis and the benefit of these contributions has therefore been entirely passed on to the consumers through tariff. It is further submitted that, while determining the ARR of the petitioner had the Hon'ble Commission preferred to consider only the portion of the consumer Deposit to the extent utilized instead of utilizing the unutilized portion on a global basis towards financing of capital investment on en-bloc basis, the petitioner would have been more than happy to refund the unutilized portion of the consumer to the concerned consumer.
- e) Thus, the accounting and regulatory practice followed by the petitioner is transparent and cannot be termed as "dishonest" as observed by the Hon'ble Commission in its letter dated 3rd December 2009. We humbly request the Hon'ble Commission to reconsider and expunge its observation made in the letter dated 3rd December 2009.
- f) Further, now that the Hon'ble Commission has rethought de novo on the basic principles adopted so far in all the previous Tariff Order's issued so far and has observed that it is incorrect to use the entire consumer contribution on global basis towards financing of capital investment, the Hon'ble Commission may allow to recompute the means of Finance allowed so far, along with carrying cost and allow the amount of consumer contribution to be refunded to the consumers in the Aggregate Revenue Requirement along with interest, if any.
4. The Commission, vide its Order dated 17.05.2012, directed the respondent to "show cause" why the unutilized consumer contribution scheme-wise since 2002-03 should not be ordered to be refunded to the original consumers with interest, as it was apparent that the unutilized portion of consumer contribution received for a specific project has been diverted to CAPEX for other projects.

5. After considering the reply filed by the Discoms against the Show Cause notice, the Commission vide order dated 23.08.2012 directed the petitioner to refund the unutilized consumer contribution, scheme-wise from financial year 2012-13 onwards to the consumers, with Interest payable from the date of issuance of certificate by the Electrical Inspector.
6. It was also decided that the issue of treatment to be given to utilization of consumer contribution prior to FY 2012-13 would be taken up for detailed hearing and examination.
7. Accordingly, the matter was further heard on 11.09.2012 for deciding on the issue of refund of consumer contribution prior to FY 2012-13. In order to examine the case threadbare, the Commission decided that the available information is not enough and some more information/comments may be required from the Discoms. Accordingly a meeting was held with the officials of Discoms on 28.09.2012. Subsequently, through a communication dated 01.10.2012, Discoms were asked to provide following information:
 1. Scheme-wise and year-wise consumer contribution received and capitalized;
 2. Break-up of other liabilities and;
 3. Break-up of cash flow with respect of consumer contribution.

The reply furnished by the Discoms were examined and vide letter dated 07.05.2013, further information about unspent balance of consumer contribution since 2002-03 to till 2011-12 and treatment given to such unspent balance along with supporting documents was called for from the Discoms. A reminder was issued on 14.06.2013 to the Discoms, after which Discoms provided the requisite information. However, as there were certain points left to be clarified. Vide letter dated 06.08.2013, further clarification on the treatment to the consumer contribution was sought for. The Discom could provide clarification on 30.08.2013.

8. After considering the submissions made by the Discoms and examination of the issue, the Commission is of the view that the consumer contribution was considered as "a source of finance" by the Commission for the capital expenditure schemes as mentioned in the tariff order dated 26.06.2003 as well as later tariff orders issued by the Commission. However, the Commission never expressly permitted that the unspent consumer contribution be retained by the DISCOMS. It was never brought to the knowledge of the Commission by the Discoms that they are retaining the balance consumer contribution and not refunding it back to the consumers who deposited the money for their respective deposit works.
9. The Commission observed that:-
- i. The Commission in MYT order dated 23.2.2008 has made order that the total consumer contribution, in policy direction period should be considered as a source of funding for capital investment irrespective of assets capitalized or not. This was in respect to the observation of stake holders that consumer contribution used by the Commission against means of finance was lesser than actual consumer contribution received by the petitioner. The petitioner, in response has submitted that it has shown consumer contribution as a source of funding only against the capitalized asset. The reference to an order dated 23.02.2008 cannot be read to imply that unused consumer contribution should also be used for further asset creation.
 - ii. The contention of DISCOMs that the global benefits have been passed on to consumer for the period through tariff is not within the tenets of established law and practice. The amount by the DISCOMs is for a specific purpose and is to be utilized for the same with the condition the balance, if any, is to be refunded to the concerned consumer, as per the system on which a contract operates. The Commission while taking the amount received as consumer contribution for capital works as part of Means of Finance for meeting the ARR for respective DISCOMs for the various years has allowed it to be utilized specifically for that purpose under the assumption, it is at best a resource item to meet expenses related to that year. Any balance i.e. the difference between

the amount collected by the Discom from the consumers for a scheme and the amount actually spent in capitalization of the scheme is to be refunded within the provision of express/implied contracts executed by respective organizations/consumers for the purpose.

- iii. Additionally, the contract to create the assets out of consumer contribution received for capital works was between the two parties without any involvement of the Commission. As per the related provision of Doctrine of privity of contract, the parties to the contract have the recourse for its performance, unless they have renounced their rights in the favour of the party, which is not affected by the performance of the contract. As the Commission is not a party to any of these contracts, it cannot be requested to change the terms of contract among the concerned parties.
- iv. The practice of not refunding the unspent consumer contribution is against the direction of the Commission to reconcile the account with the consumer and therefore is not acceptable and legally untenable. It is a clear cut violation of the directions of the Commission.
- v. That there is no cogent reason for not refunding the unspent portion of consumer contribution for a particular scheme after its completion and instead utilizing it for other CAPEX works as the consumer contribution is for a specific deposit work as requested by a particular consumer.
- vi. That after the work is completed the amount is to be reconciled and the consumer is to be informed and excess amount has to be refunded along with interest @ 12% p.a. from the date of completion of work as per the certificate from Electrical Inspector.

10. For the reasons recorded above, the Commission finds no reason to review or modify the order contained in letter dated 03.12.2009. However, the request of the petition to expunge the remark "*Financing of capital investment en-bloc is surely not only a wrong accounting practice but also a dishonest one*" is acceded to the limited extent that the words 'but also a dishonest one' are expunged. The revised extract in the sentence

would read as follows "Financing of Capital investment en-bloc is a wrong accounting practice". The Commission also directs the respondents to comply with the above orders and submit a compliance report to the Commission within four weeks from the date of this Order.

11. Ordered accordingly.

Sd/-

(J. P. Singh)
Member

Sd/-

(P. D. Sudhakar)
Chairperson