

**DELHI ELECTRICITY REGULATORY COMMISSION**  
**Viniyamak Bhawan, C-Block, Shivalik, Malviya Nagar, New Delhi-110017**



**Review Petition No 21/2003**

**CORAM : Sh. V.K. Sood**  
**Chairman**

**In the Matter of :** Review Petition in Petition No.9/2002

**AND**

**In the Matter of :**

BSES Rajdhani Power Limited  
BSES Bhawan  
Nehru Place,  
New Delhi-110019

**Date of Order: 25<sup>th</sup> November, 2003**

**Order**

(Date of Hearing-12.08.2003)

- 1 The Petitioner, BSES Rajdhani Power Limited (BRPL) has filed the present Petition dated July 25, 2003 for review of the Order of the Commission dated June 26, 2003 (Order) passed on the Petitioner's Petition no 9/2002 pertaining to the Aggregate Revenue Requirement (ARR) and tariff determination for the Financial Years 2002-03 (from July 1 onwards) and 2003-04.
- 2 The Petitioner has filed the petition under section 94 (1) (f) of the Electricity Act, 2003, seeking a review of the Order issued by the Commission.
- 3 Brief facts of the matter before the Commission are that a Petition for approval of the Aggregate Revenue Requirement (ARR) and determination of tariffs for the year 2002-03 (from July 1 onwards) and 2003-04 was filed by the applicant on November 30, 2002 and December 31, 2002, respectively. The Petition was

admitted for further processing by the Commission on March 6, 2003 after seeking additional information/clarifications on various issues. The Commission examined the material furnished by the petitioner in the petition and subsequent interactions, and the petitions/additional information filed by the Transmission Company (Transco) and the other two distribution companies (BSES Yamuna and NDPL) and also considered the views expressed by various stakeholders on the petitions. The Commission passed its final Order on June 26, 2003 and revised the Retail Supply Tariff and Bulk Supply Tariff in the State with effect from July 4, 2003. The present petition seeks a review of the above Order for reasons stated in the petition No. 21/2003 dated July 25, 2003.

- 4 Before going into the merits of the petition on various issues, the Commission first explores the powers vested in it to review its Orders in order to establish the legality of the petition. In this regard, reference is drawn to Section 10 (i) of the Delhi Electricity Reform Act, 2000 (DERA 2000), outlining the powers of the Commission. This Section vests the powers of a Civil Court under the Code of Civil Procedures, 1908 to the Commission for the purposes of any inquiry or proceedings under DERA 2000, while trying a suit in respect of specified matters. The matters specified do not include review of its decisions, directions and Orders. The Commission is, therefore, not empowered to review its decisions in the scheme of the Act. However, Section 185 (3) of the Electricity Act, 2003 over-rides the provisions of the DERA 2000, to the extent that they are inconsistent to the aforesaid Act. Section 94(i)(f) of the Electricity Act, 2003 specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under Section 114 and order XLVII of the Code of Civil Procedure, 1908 (CPC).
5. The powers available to the Commission in this connection have been defined in Section 114 and Order 47 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:
  - a) Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
  - b) Mistake or error apparent on the face of the record; or
  - c) Any other sufficient reasons.

The application for review has to be considered with great caution to necessarily fulfill one of the above requirements to be maintainable under law.

6. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be without reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given, it might possibly have altered the judgment.

With regard to mistake or error apparent on the face of the record, the error should be apparent enough to be noticed and presented before the Court to take cognizance. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings, it does not make a ground for a review (*Hem Narayan Singh v. Ganesh Singh*, AIR 1995 Patna).

With regard to any other sufficient reason, the courts have interpreted these words that such reasons should be at least analogous to those specified immediately above the Clause. The courts have interpreted this phrase on the facts and circumstances of each case.

7. It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous judgement is not a ground for review, but if the judgement or order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. [*Nathu Yeshwantrao Bhusari v. Sona wd/o Jaganath Ganar*, 1994 Mah LJ 1829]. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for a patent error (*Tungbhadra & C v. Govtt.*, 1964 SCC 1372). A review can only lie if one of the grounds listed above is made out.
8. The above legal position emerges out of various judgements of Supreme Court, notably, *Smt. Meera Bhanja Vs. Smt. Nirmla Kr. Chaudhary* [(1995) 1 SSC 170], *Ajit Kumar Rath Vs. State of Orissa and others* [(1999) 9 SSC 596] and *Devendra Pal Singh Vs. State and another* [(2003) 2 SSC 501].

### **Hearing on Review Petition**

9. The Commission conducted the hearing on the admissibility of the Review Petition filed by BRPL on July 25, 2003. The Petitioner presented his views and arguments on the grounds for the admission of the review petition. The Commission has taken due consideration of the written and oral submissions made by the Petitioner in his Petition as well as during the hearing process, while analyzing the grounds for review of each issue submitted by the Petitioner.

### **Key Aspects in ARR and Tariff Determination**

10. Before discussing the specific issues raised in the Review Petition, the Commission would like to elaborate on the following key aspects related to the ARR and Tariff Determination Process of the Transmission and Distribution Companies in Delhi for FY 2002-03 and FY 2003-04. The key issues discussed in the next three sections are as follows:
- The principles and practices followed for determining Annual Revenue Requirements for a Utility in India.
  - Delineating the evolution of the Tariff Orders that have been issued by the Commission over the three years of its existence, with a view to tracing the logical linkages and continuity in the guiding principles followed by the Commission in its various Orders.
  - 'Truing up' Mechanism.

The above three ideas are explored in detail in the following sections, to enable a better appreciation of the philosophies and principles pertaining to the issues raised by the Petitioner.

#### ***A. Annual Revenue Requirement***

11. As per the provisions of Section 28(5) of DERA 2000, a licensee is required to provide to the Commission, at least three months before the ensuing financial year, all details of its calculation of the expected aggregate revenue from the charges for that financial year, which the licensee is permitted to recover pursuant to the terms of its license. This is commonly known as Annual Revenue Requirement (ARR) of the licensee. The Commission, every year, scrutinises the ARR, which includes all the expenses required to be incurred by the licensee during that year and all the revenues, which the licensee recovers during the

corresponding period. The typical expenditure components comprising the ARR for any licensee are listed below:

- Employee expenses
- Administrative and General expenses
- Repairs and Maintenance expenses
- Interest expenditure
- Depreciation
- Return on equity
- Taxes on income

12. The Commission, after undertaking due diligence of the information provided by the Petitioner and following a public process as per the regulations framed by the Commission for conduct of its business, determines all the prudent expenses that are expected to be incurred during the financial year. The onus of proving the prudence of the expenses rests with the Licensee. Since the submission and approval of the ARR is a statutory requirement, only the revenue and the expenses being actually incurred during that period are assessed and allowed by the Commission. This practice is being uniformly followed by various Regulatory Commissions across the country.

***B. Bulk Supply Order issued on February 22, 2002 - Necessity and Relevance***

13. The Commission issued an Order for determination of Bulk Supply Tariff (BST) and opening levels of Aggregate Technical and Commercial (AT&C) Losses for Transmission Company (Transco) and Distribution Companies (Discoms) respectively on February 22, 2002. This Order was necessitated by the Policy Directions issued by the GNCTD on November 22, 2001, which laid down the framework for privatisation of the distribution business in Delhi. The salient features of the Policy Directions specific to privatisation of the distribution function are provided below:
- i. The Policy Directions proposed a methodology based on Aggregate Technical and Commercial (AT&C) Loss, and decided that reduction in the AT&C losses from the opening AT&C loss level would serve as the basis of bidding by various investors.

- ii. The Policy Directions spelt out the treatment of under-achievement and over-achievement with respect to the committed loss reduction levels by investors.
  - iii. The Policy Directions specified that, subject to all the expenses that shall be permitted by the Commission, the tariffs should be determined such that the distribution licensees earn a return of at least 16% on the issued and paid up capital and free reserves.
  - iv. In order to facilitate the bidding process for the majority share of equity capital of the three Distribution Companies to be offered to private sector through a competitive process, the Policy Directions mandated the Commission to issue a Tariff Order to determine the following:-
    - The opening level of AT&C losses, which would serve as the base for bidding.
    - The Bulk Supply Tariff applicable to each of the three Discoms for the purchase of electricity from Transco and to provide full details of the various elements (revenues and expenses) in the fixation of the tariffs.
14. It may be pertinent to mention here that prior to this development, the Commission had issued a Tariff Order on Retail Supply (RST) on May 23, 2001, for approving the ARR of the erstwhile DVB and fixing the retail tariffs in the State. As a consequence of the issue of the Policy Directions on November 22, 2001, the Transco and three Discoms (though notified but not operational) filed a Joint Petition (through a common Director of integrated DVB) with the Commission on December 22, 2001 for determination of Bulk Supply Tariffs to be charged by Transco for the period till March 31, 2002 and for determination of opening levels of AT&C losses for the three Discoms. It was also submitted by the Petitioners that since the date for the submission of the bids was January 31, 2002, therefore, the issue of BST Order by the Commission before that date was necessary to facilitate the investors to bid for majority share in the three Discoms. The Commission was required to issue the BST order only for the residual two months of FY 2001-02, i.e. February and March 2002.

15. At the time of issuance of the BST Order, no incremental information on expenses and revenues of the Discoms was available with the Commission vis-à-vis the information available at the time of issue of the RST Order of May 23, 2001. Besides, the RST Order issued on May 23, 2001 was still in force. Therefore, the Commission carried forward most of the assumptions of the RST Order of May 23, 2001 and updated only specific variables affecting the opening AT&C losses for working out the BST.

### **C. 'Truing up' Mechanism**

16. The Commission has allowed the expenses based on the data submitted by the Petitioner with due consideration to the prudence of the expenditure and the historical trends observed. At the same time, it should be kept in mind that projections, by their very nature, are forward-looking and there are bound to be variations between projections and actual expenses/revenues. These variations can be due to changes in various factors, such as, unforeseeable expenses, consumption mix, or lower/higher sales growth as compared to projections. The actual deficit/surplus between the revenues and expenses of the Petitioner can be ascertained only after the actual revenues and expenses are known. The Commission believes that the Utility should not be unduly penalised or benefited because of these variations, and has hence proposed a 'truing up' mechanism. Under this mechanism, variations, if any, between the projected and actual expenses/revenues would be considered by the Commission during the subsequent period, when details of actual expenses and revenues are available, subject to justification being provided by the Utility and their acceptance by the Commission.

In case there is surplus revenue after considering all prudent expenses and permissible return, the benefit is passed on to the consumers. On the other hand, if there is a shortfall in revenue vis-à-vis the prudent revenue requirement, the interests of the Petitioner are also protected. Thus, the 'truing up' mechanism takes into cognisance the legitimate interests of all the stakeholders in the sector.

**SPECIFIC ISSUES RAISED IN REVIEW PETITION**

The summary of the Petitioner's submission and the Commission's analysis and ruling on each issue has been discussed in detail in the following paragraphs:

**A. AT&C loss**

**Petitioner's Submission**

17. The Petitioner has referred to the relevant provisions of the Policy Directions as regards loss reduction targets and method of computation and treatment of over-achievement/underachievement of losses. The Petitioner has submitted that an over-achievement in AT&C loss in a particular year should not be counted for the succeeding year. The Petitioner has submitted that it has over-achieved the loss reduction target (compared to the accepted bid level) by 0.15% during FY 2002-03, and this over-achievement has been carried forward by the Commission while determining the ARR and tariff for FY 2003-04. It has been submitted that this method does not conform to the Policy Directions and has impacted the realized sales of the Petitioner for FY 2003-04 as shown below:

| <b>Description</b>                                       | <b>Tariff Order</b> | <b>Petitioner's Submission at AT&amp;C loss of 46%</b> |
|--|---------------------|--|
| Units Input (MU)   | 7966                | 7966   |
| AT&C loss (MU)   | 3652                | 3664   |
| Units Realized (MU)                                      | 4314                | 4302   |
| AT&C loss corresponding to accepted bid (%) for the year | 45.84 %             | 46.00%   |
| Realized sales net of Electricity Tax (Rs Crore)         | 1613                | 1609   |

The Petitioner has submitted that lower AT&C losses considered by the Commission for FY 2003-04 has resulted in increase of units and amount realized by 12 MUs and Rs 4 crore, respectively based on input energy considered by the Commission. This in turn has increased the power purchase cost of the Petitioner. The Petitioner has therefore requested the Commission to revise the AT&C loss figure for FY 2003-04 and make appropriate adjustments in the ARR and power purchase cost.

### Commission's Analysis

18. The provisions of the Policy Directions dated May 31, 2002 relevant to the methodology for computation of AT&C losses and treatment of over achievement and under achievement for the years 2002-03 to 2006-07 has been reproduced below:

1. *"AT&C losses for the purposes of tariff computation shall be based on the values of reduction in AT&C loss each year for the years 2002-03, 2003-04, 2004-05, 2005-06 & 2006-07 indicated in the bid submitted by the Purchaser and as finally accepted by the GNCTD over the opening level of AT&C loss approved by DERC for each Distribution Company in the Tariff Order dated February 22, 2002.*
2. *The following shall be the method of computation and treatment of over-achievement and underachievement for the years 2002-03 to 2006-07*
  - (i) *In the event the actual AT&C loss of a Distribution licensee in any year is better (lower ) that the level based on the minimum AT&C loss reduction levels stipulated by the Government for that years, the Distribution licensee shall be allowed to retain 50% of the additional revenue resulting from such better performance. The balance 50% of additional revenue from such better performance shall be counted for the purpose of tariff fixation.*
  - (ii) *In the event the actual AT&C loss of a distribution licensee in any year is worse (higher) than the level based on the AT&C loss reduction levels indicated in the Accepted bid for that year, the entire shortfall in revenue on account of the same shall be borne by the distribution licensee.*
  - (iii) *In the event that actual AT&C loss of a distribution licensee in any year is worse (higher) than the level based on the minimum AT&C loss reduction levels stipulated by the Government for that year but better (lower) than the level based on the AT&C loss reduction levels indicated in the Accepted Bid for that year, the entire additional revenue from such better performance shall be counted for the purpose of tariff fixation.*

*Provided further that for paras 2(i), 2(ii) and 2(iii) above for every year, while determining such additional revenue or shortfall in revenue the cumulative net effect of revenue till the end of the relevant year shall be*

*taken, in regard to over-achievement /under-achievement and appropriate adjustments shall be made for the net effect."*

19. In this context, the Commission had written to the Govt. of NCT of Delhi vide letter Reference No. F.12(1)/DERC/2001-02/683 dated May 30, 2002, seeking clarification on the "cumulative net effect", and had requested the GNCTD to elaborate the mechanism for sharing of additional revenue/revenue deficit by way of an illustrative example.

The Policy Direction issued by the GNCTD on May 31, 2002 has clarified that the cumulative net effect of revenue has to be considered. However, in the absence of an illustrative example for the sharing mechanism as suggested by the Commission, the Commission had to form its own interpretation of the Policy Directions.

Reduction in AT&C loss level is indicative of improvement in operation performance; therefore, any reduction in the loss level achieved during any particular year gets considered while setting targets for loss level reduction to be attained during subsequent year. Thus, the Commission has adopted the methodology entailing carrying forward of any over-achievement in AT&C loss during any particular year on to the next year for the purpose of tariff determination in the Tariff Order.

20. The Commission would like to highlight that though it has not been specifically stated in the Petition under what grounds the review is being sought for this issue, the gist of the issue seems to imply that the review is being sought under the grounds of "error apparent on the face of the record".

The difference between the approach suggested by the Petitioner and that adopted by the Commission in this regard stem from the interpretation of the Policy Directions. The Commission is of the opinion that there is no ground for admitting this issue under the ground of 'error apparent on the face of the record' as the difference in approach is due to interpretation of the Policy Directions.

21. However, as this is a matter of interpretation of policy directions and this issue will have substantial impact on the future ARR and Tariff Determination process, the Commission has sought clarifications from GNCTD on the methodology to be

followed for treatment of over-achievement in AT&C losses in any particular year for the future years. In the event that the view of the GNCTD does not correspond to the interpretation of the Commission as above, the Commission will take an appropriate view at that stage.

**B. Return on Equity**

(a) Calculation of Free Reserves for determination of Return on Equity

**Petitioner's Submission**

22. The Petitioner has submitted that the Commission has considered free reserves during FY 2002-03 (July 2002 to March 2003) as Rs 10.67 crore, as against the Petitioner's estimate of Rs 56.45 crore in its Petition, but the basis of computation of this figure is not evident in the Order. It has been further submitted that lowering of the figures for the free reserves has a direct adverse impact on the return available to the shareholders.

The Petitioner has stated that 10% withdrawal has been considered from reserves towards declaration of dividends, but since the actual dividend pay out shall occur in the ensuing year, entire free reserves shall be utilized in the business till the end of the FY 2002-03 and FY 2003-04. Based on this principle, the Return has been computed on the total free reserves available without considering any withdrawal.

The Petitioner has therefore requested the Commission to review the Order in terms of the free reserves considered for the computation of the Return on Equity to the Shareholders.

**Commission's Analysis**

23. The methodology adopted by the Commission for estimating free reserves invested in the business on which return is permissible is in accordance with the Policy Directions and has been elaborated in the relevant section of the Order. The provisions of the Policy Directions relevant to return on equity and free reserves are as follows:

Para 13 of the Policy Directions states, *"tariffs shall be determined such that the distribution licensees earn, at least, 16% return on the issued and*

*paid up capital and free reserves (excluding consumer contribution and revaluation reserves but including share premium and retained profits outstanding at the end of any particular year) provided that such share capital and free reserves have been invested into fixed or any other assets, ...provided further that such investment of such share capital and free reserves has the approval of the Commission".*

24. The Policy Direction clearly stipulate that the return will be applicable on the share capital and free reserves invested in the fixed assets provided that such investment has the approval of the Commission.
25. The Commission has adopted the following methodology while considering the investments and means of finance alongwith extent of free reserves to be invested in the business.
  - The Commission considered the investments made during the period July 2002 to March 2003 and the investments proposed during FY 2003-04 based on the estimates provided by the Petitioner.
  - The Commission has considered the means of finance in the following order of priority
    - Consumer Contribution
    - Unutilised Depreciation
    - APDRP Funds available during FY 2003-04
    - Balance Funds required
  - The balance fund requirement is assumed to be met through a mix of debt and equity by applying a normative debt-equity ratio of 70:30
  - Thus, Free Reserves equivalent to 30% of the funds required were assumed to be ploughed back into the business and the same figure has been considered for allowing the Return of 16% on Equity and Free Reserves to the licensee.
26. Returns are to be provided only on the reserves invested in the funding of capital assets. The Petitioner's submission that as the reserves are being 'utilised' during the year, returns should be considered on the entire free reserves is, thus, not tenable.
27. The above deliberations clearly show that there is no error apparent on the face of the record. **Due to reasons aforesaid, this issue is not admitted for review.**

(b) Return on Equity and Reserve

**Petitioner's Submission**

28. The Petitioner has submitted that the Policy Directions prescribe a 16% Return on Equity on the issued and paid up capital and free reserves outstanding at the end of any particular year to the investors in the distribution business. The Petitioner has stated that the Commission has not considered the Return on Equity on the closing balance of the equity and free reserves as stated in the Policy Directions, and has provided for return computed on the average of the opening and closing free reserves available for funding capital investments. The Petitioner has also submitted that even in the Schedule VI of the Electricity (Supply) Act 1948, the allowable return is determined on the capital base at the end of the year and not on the average capital base during a year. Further, the Commission has also allowed the return on the capital base at the end of the year in case of ARR of Delhi Transco Limited. The Petitioner has requested the Commission that the computation of free reserves and return on equity may be revised and necessary effect given in the ARR and effective Bulk Supply Tariff.
29. The Petitioner has also submitted that the Commission has not provided for any deferred tax, which is mandatory in accordance with Accounting Standards, AS 22 and this will adversely affect the return to the shareholders of the Company.

**Commission's Analysis**

30. The Commission would refer to Paragraph 13 of the Policy Directions, which states that *"tariffs shall be determined such that the distribution licensees earn, at least, 16% return on the issued and paid up capital and free reserves (excluding consumer contribution and revaluation reserves but including share premium and retained profits outstanding at the end of any particular year) provided that such share capital and free reserves have been invested into fixed or any other assets, ...provided further that such investment of such share capital and free reserves has the approval of the Commission"*.
31. The difference in approach suggested by the Petitioner and that adopted by the Commission in this regard stems from the interpretation of the Policy Directions, more precisely, from the positioning of the closing parenthesis in the aforementioned paragraph of the Policy Directions. In the Policy Directions, had the parenthesis been completed before the words "at the end of any particular

year”, then the Petitioner's claim would have had merit. However, as the closing parenthesis has been placed after these words “at the end of any particular year”, the Petitioner’s interpretation is not tenable. The various items within the parenthesis signify their inclusion (or exclusion), and do not signify that reserves at the end of the year are to be taken into account for computation of return. The Policy Directions refers to retained profit at the end of year, which will be available for investment during the following year. It is erroneous to expect that reserves that are yet to be generated will start earning a return. In any case, all investments require a prior approval of the Commission.

32. The approach of the Commission is based on the reasoning that capital investments will be spread across the year and the free reserves will also be correspondingly invested across the year. Since all free reserves (as indicated by the closing balance) would not be utilized in the business of the distribution licensee during that year, it is prudent to consider the average of the opening and closing balances of free reserves for computing the Return to be allowed in any particular year. There is no ambiguity as far as the intent and content of the Policy Directions insofar as allowing Return on Equity and free reserves, is concerned.
33. However, as this is a matter of interpretation of the Policy Directions, the Commission has written a letter to the GNCTD seeking clarification on the methodology to be followed for allowing Return on Equity to the Petitioner. In the event that the view of the GNCTD does not correspond to the interpretation of the Commission as above, the Commission will take an appropriate view at that stage.

In so far as the issue of deferred tax is concerned, it was not subject matter of the original petition and hence not admitted for review. However, for the sake of clarity on the issue of deferred tax, the views of the Commission are given hereunder:

34. The Commission is of the view that only the actual expenses incurred by the Utility should be permitted to be recovered through tariffs, as otherwise, it will lead to padding of expenses and consequently burdening the consumers with expenses which may not materialize in actual practice. In the case of NTPC too, the CERC has allowed advance tax with adjustment based on actuals. In this context, it may also be noted that on this basis, the Commission had also not considered income tax as an expense in the BST Order of February 2002 for the

Transco, as it was loss making at that point of time, and hence, was not liable to pay any income tax.

35. In the Tariff Order of June 26, 2003, the Commission has reasoned that the difference in the depreciation rate allowed under the IT Act (higher) and the Companies Act (lower), can lead to a lower quantum of taxable profits under the IT Act, and consequently a lower tax liability during a particular year. Till such time substantial capital expenditure is undertaken by the Petitioner, the depreciation under the IT Act is likely to exceed the book depreciation. It is only in later years of the life of an asset that the book depreciation tends to exceed the IT depreciation, particularly when incremental capital investment reduces. The Commission would also like to point out that in the latter years of the life of an asset, the tax shield under the IT Act would tend to be lower than under the Companies Act, and in such circumstances, for tariff purposes, the pass-through tax amount would be higher than would be shown in the books of accounts. Moreover, as the Commission has projected the expenses based on past trends, there are bound to be variations when the actual expenses are known, i.e. actual expenses could be higher or lower than the levels approved by the Commission. The Commission has hence provided for a 'truing up' mechanism, wherein the difference between the actual expenses and those considered by the Commission can be adjusted, subject to the Utility's justification for the prudence of the expenses.
36. The provision for deferred income tax liability needs to be made in the Annual Accounts under the Companies Act, 1956 and the AS-22 to more accurately reflect the matching principle of expenses and revenues. That is an obligation set upon the Petitioner to accurately indicate the accounting position of the utility, and does not bind the Commission to allow such provisions/expenses that are not actually incurred by the Utility during the accounting period under consideration. The Commission has taken a conscious decision of allowing the taxes only to the extent of actuals paid by the petitioner considering the approach taken by other Regulatory Commissions in this regard, and such that all prudent operational and financial costs expected to be incurred by the Petitioner during any particular year are recovered along with the assured return, with a reasonable tariff hike to the consumers.
37. The Commission has assured the Petitioner in the Tariff Order that in case there were to be a difference between the actual income tax liability and the income tax allowed by the Commission for tariff purposes, the Commission would

consider the same under the 'truing up' process at the end of the year, when the actual expenses and revenue figures would be available.

### **C. Payment for Reactive Power Drawal**

#### **Petitioner's submission**

38. The Petitioner has submitted that it has been informed by Delhi Transco Limited that in terms of clause 4.4 of the Commission's Order for TRANSCO, TRANSCO has been allowed to charge reactive power drawals (inductive only) from TRANSCO systems at interface points @ 2.00 paise/kVARh. . The Petitioner has submitted that the above reactive charges are not payable in view of the following:
- Bulk Supply Tariff for the Petitioner is to be determined as per para 17 of the Policy Directions vide notification F-11 (118).2001-Power/ dated November 2001
  - Bulk Power Purchase rate payable to TRANSCO has been specified at clause 5.15.3 of the Tariff Order of the Petitioner which has been computed as per Policy Directions based on paying capacity of the Petitioner. Any charges for Power Purchase including reactive power charges in excess of charges approved at 5.15.3 are therefore not payable.

#### **Commission's Analysis**

39. Being conscious that voltage profile of the Delhi grid has been poor due to poor power factor of the load and inadequate reactive compensation available in the system and also that the capacitors already installed in the system are not fully functional, the Commission in its Guidelines issued in August 2002 had envisaged introduction of kVAh based bulk supply tariff for the DISCOMS which has the built in mechanism for incentivising the capacitor installation and to maintain them fully operational. However, Transco vide their letter dated 3<sup>rd</sup> April 2003 had stated that meters provided at all interface points with DISCOMs can not record kVAh consumption and these meters will have to be replaced if Commission intend to introduce kVAh billing for the DISCOMs. It was also stated that the existing meters could record kWh and kVARh consumption only. Replacement of meters will take about a year. Based on this statement of DTL, Commission had introduced kVARh billing instead of kVAh billing in its Order on BST dated 26<sup>th</sup> June 2003.

40. As regards the Petitioner's submission that the reactive power charges are not payable in accordance with the Policy Directions as BST has to be determined based on the paying capacity of the DISCOMs, the Commission would like to clarify that BST has been determined on the basis of the capacity to pay in line with the Policy Directions. However, the tariff cannot be used to fund drawl of reactive power from grid due to non-availability of requisite capacitors in their own system. The Commission is of the opinion that the reactive power drawal from the grid by the DISCOM would not be required if the DISCOMs ensure that the requisite capacitor banks as per NREB are installed and kept operational. The Commission would also like to highlight the fact that if additional capital expenditure is required to be incurred by the DISCOMs towards the installation of requisite capacitor banks, the DISCOMs may approach the Commission for approval of the capital expenditure, and the corresponding expenditure as considered prudent by the Commission would be considered in the ARR.

Further, for the FY 2003-04, in case there is any mismatch in the revenue and expenses, the Commission will consider it at the time of 'truing up' subject to the prudence of the expenses.

**Accordingly, the issue is not admitted for review.**

41. However, the Commission has studied the bills for reactive power raised by TRANSCO for the months of July, August and September 2003 and observed that there appears to be some difference in the intent of tariff order and its interpretation by Transco.
42. The Commission, therefore, feels necessary to issue following clarifications on Reactive Power Billing contained in para 4.4 of its Order for BST dated June 26, 2003:
- In the absence of proper meters on all Inter-DISCOM feeders, reactive energy transfer over such feeders (which do not have meters for measuring reactive energy) may be estimated at average p.f. of the receiving DISCOM.
  - Reactive power generated by Capacitors installed at TRANSCO's sub-stations is not to be charged.
  - Reactive power generated by GENCO stations and stepped up to 220 kV is not to be charged. For the purpose of billing, net reactive power stepped up to 220 kV at generating stations is to be distributed among the DISCOMs in proportion to their kWh drawal from the TRANSCO system

during the period and to be adjusted in the bill for reactive power accordingly.

- Reactive power billing is to be done on the basis of net reactive power drawal from the TRANSCO system and not on point-to-point basis.
- Reactive power billing is to be done on the basis of Joint Meter Readings.

Necessary communication in the matter shall be made to Transco separately.

#### **D. Impact of Tariff Rationalization**

##### **Petitioner's Submission**

43. Referring to the tariff rationalization measures adopted by the Commission (in the form of abolishment of meter rent, minimum consumption charges, misuse charges, concept of normative consumption for levy of surcharges on account of consumption in excess of normative limit, rationalization of delayed payment surcharge, demand violation surcharge, definition of billing demand and introduction of fixed charges), the Petitioner has submitted that the measures would reduce the average billing rate, adversely impacting the revenue from sale of power to the Petitioner.

##### **Commission's Analysis**

44. The Commission would like to state that the detailed methodology and the basis of projection of revenue have been dealt with in sufficient detail in the Tariff Order. The Commission is of the view that there is no apparent error in the methodology adopted by the Commission for revenue projections. The Commission, while projecting the revenue from the approved tariff structure and tariff rates, has factored in various tariff rationalisation measures. The projections by nature are forward-looking and there are bound to be variations between projections and actual revenue on account of factors such as changes in the consumption mix. The actual gap/surplus between the revenue and expenses of the Petitioner would be known only after the actual revenue and expenses are known which would be considered by the Commission during the 'truing up' process, subject to due diligence and prudence check by the Commission. **This, however, does not furnish grounds for review of the original order therefore, the Commission does not admit this issue for review.**

**E. Energy Input**

**Petitioner's Submission**

45. The Petitioner has submitted that the Commission in the Tariff Order has approved a higher energy input for FY 2003-04, resulting in the increase in the energy realized from Rs 1539 crore to Rs 1613 crore. In this context, the Petitioner has requested the Commission to revise the units input, AT&C loss and revenue realized and provide necessary effect to the ARR and power purchase cost.

**Commission's Analysis**

46. The Commission would like to state that the detailed methodology and the basis of projection of category wise sales and energy input has been provided in the Tariff Order. The Commission has projected the category-wise sales for FY 2003-04 considering the actual categorywise sales for the period July 2002-March 2003 as submitted by the Petitioner. The Energy Input for FY 2003-04 has been projected considering the total projected sales and distribution and billing losses considered by the Commission. The Commission is of the view that there is no apparent error in the methodology adopted by the Commission. The Commission would like to further highlight the fact that projections by nature are forward looking and there are bound to be variations between projections and actual revenue on account of various factors such as change in total sales and change in sales mix. The actual gap/surplus in the revenue of the Petitioner would be known only after the actual revenue and expenses are known which would be considered by the Commission during the 'truing up' process subject to prudence check by the Commission.

**The Commission does not admit this issue for review.**

**F. Low Power Factor Surcharge**

**Petitioner's Submission**

47. The Petitioner has submitted that the Commission in its Order has cast the responsibility for specification of the capacitor banks to be installed at the consumer's end, on the DISCOM. The Petitioner has stated that the responsibility

of maintaining adequate Power Factor through installation of adequate capacitor vests with the consumer and no one else. The Petitioner has stated that the same practice is being followed in all other Utilities as well. In this regard, the Petitioner is of the opinion that instead of advising the consumer to rectify and install adequate quantum of capacitors to maintain PF, a better and more deterrent course of action would be to disconnect such installations found operating with PF below the limit prescribed in tariff schedule, and reconnect only after verifying that adequate shunt capacitors have been provided by the consumer to bring down PF to mandated levels.

48. Further, the Petitioner is of the view that if the DISCOM has the onus of providing the specifications of the shunt capacitor to be installed it may lead to litigation by the consumers for failure by the DISCOM to install the correct equipment or even for loss or damages due to incorrect specification of the equipment. It has been further stated that while the DISCOM is not averse to providing technical information if sought by the consumer, they are not in a position to determine the specifications of power factor correction equipment due to load changes by the consumer. The Petitioner has further submitted that it is not within the Petitioner's purview to police the installations of the consumers and therefore this additional burden opens up possibilities for direct or indirect contingent liabilities for the Distribution Companies.

The Petitioner has therefore requested the Commission to review the above provision of the Order and suitably modify it so that the consumer may be held liable for provision of adequate facilities for maintenance of power factor.

### **Commission's Analysis**

49. As per Transfer Scheme, the Conditions of Supply applicable at the time of erstwhile DVB will be applicable to the DISCOMs also.

*The para 34 of the Conditions of Supply states that "The Consumer shall maintain a power factor of not less than 85 percentum lagging. In the event of the power factor failing below this, he shall at his own cost and to the satisfaction of the undertaking take necessary steps to bring the power factor of his installation to 85 percentum lagging. If the consumer fails to take the necessary steps to improve the power factor to the aforesaid value within a reasonable time, the undertaking shall have the*

*right to install the necessary apparatus for improving the power factor and recover the cost thereof from the consumer"*

50. In the Order, in the above context, the Commission has not modified the basic provisions of Conditions of Supply and has only elaborated the procedure for the maintenance of required Power Factor by the consumer and imposition of Low Power Factor Surcharge.

In view of the above, the Commission is of the opinion that the provisions of the Commission's Order are in line with the Conditions of Supply. **The submissions and the contentions of the petitioner do not furnish any ground to review the Tariff Order.**

**Subject to what has been stated in the preceding paragraphs the review petition is disposed off.**

Sd/-  
**(V.K.SOOD)**  
**Chairman**

Date : 25.11.2003