DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.11(1935)/DERC/2021-22

Tariff Petition No. 03/2022 (True-up part)

In the matter of: **Petition for approval of True-Up for FY 2020-21.**

BSES Rajdhani Power Ltd.
Through its: **CEO**
BSES Bhawan
Nehru Place
New Delhi – 110019

...Petitioner/Licensee

Coram:
Hon'ble Justice (Retd.) Jayant Nath, Chairperson

ORDER

(Date of Order:19.07.2024)

M/s BSES Rajdhani Power Limited (BRPL) has filed the instant Petition for approval of True-up of expenses upto FY 2020-21 and Aggregate Revenue Requirement (ARR) for FY 2022-23. The Petition was admitted by the Commission vide Order dated 17.03.2022. The Petition along with Executive Summary was uploaded on the website of the Commission and publicised through advertisement in newspapers for seeking response of the stakeholders. However, this Order pertains only to the approval of True-up of expenses upto FY 2020-21.

The comments and suggestions of the stakeholders including the submissions made during the virtual public hearing held on 12.05.2022 & 13.05.2022 and the arguments advanced by the Petitioner have been duly considered by the Commission.

In exercise of the powers vested under the Electricity Act, 2003 and Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017, the Commission hereby passes this True-up Order signed, dated and issued on 19.07.2024.

(Justice (Retd.) Jayant Nath)
Chairperson

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LIST OF ABBREVIATIONS

Abbreviation	Explanation
ARR	Aggregate Revenue Requirement
A&G	Administrative and General
AAD	Advance Against Depreciation
ABT	Availability Based Tariff
ACD	Advance Consumption Deposit
AEEE	Alliance for an Energy Efficient Economy
AMR	Automated Meter Reading
APDRP	Accelerated Power Development and Reforms Program
AT&C	Aggregate Technical and Commercial
ATE	Appellate Tribunal for Electricity
BEE	Bureau of Energy Efficiency
BEST	Brihanmumbai Electric Supply and Transport
BHEL	Bharat Heavy Electricals Limited
BIS	Bureau of Indian Standards
BPTA	Bulk Power Transmission Agreement
BRPL	BSES Rajdhani Power Limited
BST	Bulk Supply Tariff
BTPS	Badarpur Thermal Power Station
BYPL	BSES Yamuna Power Limited
CAGR	Compounded Annual Growth Rate
CCGT	Combined Cycle Gas Turbine
CEA	Central Electricity Authority
CER	Centre for Energy Regulation
CERC	Central Electricity Regulatory Commission
CFL	Compact Fluorescent Lamp
CGHS	Cooperative Group Housing Societies
CGS	Central Generating Stations
CIC	Central Information Commission
CISF	Central Industrial Security Force
CoS	Cost of Supply
CPI	Consumer Price Index
CPRI	Central Power Research Institute
CPSUs	Central Power Sector Utilities
COVID	Corona Virus Disease
CSGS	Central Sector Generating Stations
CWIP	Capital Work in Progress
DA	Dearness Allowance
DDA	Delhi Development Authority
DERA	Delhi Electricity Reform Act

Abbreviation	Explanation
DERC	Delhi Electricity Regulatory Commission
DESL	Development Environergy Services Limited
DIAL	Delhi International Airport Limited
DISCOMs	Distribution Companies (BRPL, BYPL, TPDDL & NDMC)
DMRC	Delhi Metro Rail Corporation
DPCL	Delhi Power Company Limited
DTL	Delhi Transco Limited
DVB	Delhi Vidyut Board
DVC	Damodar Valley Corporation
EHV	Extra High Voltage
EPS	Electric Power Survey
FBT	Fringe Benefit Tax
FERV	Foreign Exchange Rate Variation
FPA	Fuel Price Adjustment
GFA	Gross Fixed Assets
GIS	Geographical Information System
GoNCTD	Government of National Capital Territory of Delhi
GTPS	Gas Turbine Power Station
HEP	Hydro Electric Power
HPSEB	Himachal Pradesh State Electricity Board
HRA	House Rent Allowance
HT	High Tension
HVDS	High Voltage Distribution System
ICAR	Indian Agricultural Research Institute
IDC	Interest During Construction
IEX	Indian Energy Exchange
IGI Airport	Indira Gandhi International Airport
IPGCL	Indraprastha Power Generation Company Limited
JJ Cluster	Jhugghi Jhopadi Cluster
KSEB	Kerala State Electricity Board
LED	Light Emitting Diode
LIP	Large Industrial Power
LT	Low Tension
LVDS	Low Voltage Distribution System
MCD	Municipal Corporation of Delhi
MES	Military Engineering Service
MLHT	Mixed Load High Tension
MMC	Monthly Minimum Charge
MoP	Ministry of Power
MTNL	Mahanagar Telephone Nigam Limited

Abbreviation	Explanation
MU	Million Units
MYT	Multi Year Tariff
NABL	National Accreditation Board for Testing and Calibration of Laboratories
NAPS	Narora Atomic Power Station
NCT	National Capital Territory
NCTPS	National Capital Thermal Power Station
NDLT	Non Domestic Low Tension
NDMC	New Delhi Municipal Council
NEP	National Electricity Policy
NGO	Non Government Organisation
NHPC	National Hydroelectric Power Corporation
NPCIL	Nuclear Power Corporation of India Limited
NRPC	Northern Regional Power Committee
NTI	Non-Tariff Income
NTP	National Tariff Policy
O&M	Operations and Maintenance
OCFA	Original Cost of Fixed Assets
PGCIL	Power Grid Corporation of India
PLF	Plant Load Factor
PLR	Prime Lending Rate
PPA	Power Purchase Agreement / Power Purchase Adjustment
PPCL	Pragati Power Corporation Limited
PTC	Power Trading Corporation
PWD	Public Works Department
R&M	Repair and Maintenance
RAPS	Rajasthan Atomic Power Station
REA	Regional Energy Account
RoCE	Return on Capital Employed
ROE	Return on Equity
RRB	Regulated Rate Base
RTI	Right to Information
RWA	Resident Welfare Associations
SBI	State Bank of India
SDMC	South Delhi Municipal Corporation
SERC	State Electricity Regulatory Commission
SIP	Small Industrial Power
SJVNL	Satluj Jal Vidyut Nigam Limited
SLDC	State Load Despatch Centre
SPD	Single Point Delivery
SPUs	State Power Utilities

Abbreviation	Explanation
SVRS	Special Voluntary Retirement Scheme
TERI	The Energy and Resources Institute
THDC	Tehri Hydro Development Corporation
ToD	Time of Day
TOWMCL	Timarpur Okhla Waste Management Company (P) Limited
TPDDL	Tata Power Delhi Distribution Limited
TPS	Thermal Power Station
UI	Unscheduled Interchange
UoM	Unit of Measurement
WACC	Weighted Average Cost of Capital
WC	Working Capital
WPI	Wholesale Price Index

A1 INTRODUCTION

1.1 This Order relates to the Petition filed by BSES Rajdhani Power Limited (BRPL) (hereinafter referred to as 'BRPL' or the 'Petitioner') for True-Up of FY 2020-21 for Distribution Business in terms of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as 'Tariff Regulations, 2017') and Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2019 (hereinafter referred to as 'Business Plan Regulations, 2019').

BSES RAJDHANI POWER LIMITED (BRPL)

1.2 BSES Rajdhani Power Limited (BRPL) is a company incorporated under Companies Act, 1956 and is engaged in the business of Distribution and Retail Supply of Electricity within its area of supply (as defined in the License) in the National Capital Territory (NCT) of Delhi.

DELHI ELECTRICITY REGULATORY COMMISSION

1.3 Delhi Electricity Regulatory Commission (hereinafter referred to as 'DERC' or the Commission') was constituted by GoNCTD on 3/03/1999 and it became operational from 10/12/1999.

1.4 The Commission's approach to Regulation is driven by the Electricity Act, 2003, the National Electricity Plan, the National Tariff Policy and the Delhi Electricity Reform Act 2000 (hereinafter referred to as 'DERA'). The Electricity Act, 2003 mandates the Commission to take measures conducive to the development and management of the electricity industry in an efficient, economic and competitive manner, which inter alia includes formulation of Tariff Regulations and Tariff determination.

STATE ADVISORY COMMITTEE MEETING

1.5 The "State Advisory Committee (SAC)" have been re-constituted and notified the same vide Gazette Notification No.F.7(37)/DERC/DS/2016-19/C.F.No.5624/253 dated

23/07/2020, comprising of Chairperson and Member of DERC and Other Members of SAC (including their nominees).

1.6 The 20th State Advisory Committee Meeting was held (virtually) on 29/06/2022. Apart from the Chairperson, Member of DERC, the 20th SAC Meeting witnessed participation from DMRC, MCD, NISE, DESL, NABL, IEX, TERI, AEEE, Department of Health & Family Welfare, CER, Labour Department, GoNCTD and ICAR. The SAC was also attended by officers of the Commission.

1.7 The issue which was deliberated during the meeting is listed below: -

Table 1. 1: Issues Discussed in 20th State Advisory Committee Meeting

Sr. No.	Issues Discussed
a.	Tariff Petition for True up of FY 2020-21 for GENCOs, TRANSCO and DISCOMs

MULTI YEAR TARIFF REGULATIONS

1.8 The Commission issued Tariff Regulations, 2017 vide Gazette notification dated 31/01/2017 specifying Terms and Conditions for Determination of Tariff for Transmission of Electricity under the Multi Year Tariff (MYT) framework. Further the operational norms for Distribution utilities have also been approved by the Commission in Business Plan Regulations, 2019 under Tariff Regulations, 2017 for the period FY 2020-21 to FY 2022-23.

FILING OF PETITION FOR TRUE-UP OF FY 2020-21

FILING AND ACCEPTANCE OF PETITION

1.9 BRPL filed its Petition for the approval of Truing up of Expenses upto FY 2020-21 before the Commission on 15/12/2021.

1.10 The Petition was analyzed & various defects in the Petition were communicated to the Petitioner vide letter dated 28/12/2021. Thereafter, Petitioner submitted additional documents vide letter dated 31/12/2021. It was observed that the Petitioner had still not submitted the complete information. The Petitioner was again informed to submit

the remaining information vide letter dated 25/01/2022. The Petitioner submitted additional information vide letter dated 31/01/2022.

1.11 The Commission admitted the Petitions for True up of ARR for FY 2020-21 vide its Order dated 17/03/2022 respectively, subject to clarifications / additional information, if any, which would be sought from the Petitioner from time to time. Copy of the Admission Orders dated 17/03/2022 is enclosed as *Annexure I* to this Order.

1.12 The complete copy of the True-up Petition filed by the Petitioner along with additional information was uploaded on website of the Commission (www.derc.gov.in) and the Petitioner.

1.13 The Executive Summary and one-page snapshot Summary of True-up of FY 2020-21 was also prepared and uploaded on Commission's website (www.derc.gov.in) for quick glance of Tariff Petitions and for ease to consumers.

INTERACTION WITH THE PETITIONER AND PUBLIC HEARING

1.14 The Order has referred at numerous places about various actions taken by the "Commission". It may be mentioned for the sake of clarity, that the term "Commission" in most of the cases refers to the officers of the Commission for carrying out the due diligence on the Petition filed by the Petitioner for obtaining and analyzing information/clarifications received from the Petitioner and submitting all issues for consideration by the Commission.

1.15 The Commission relied upon the analysis conducted by various concerned Divisions of the Commission for preparation of the Order.

1.16 A preliminary scrutiny/analysis of the Petition submitted by the Petitioner was carried out. Additional information/clarifications were sought from the Petitioner as and when required. The Commission and the Petitioner discussed key issues raised in the Petition, which included details of Long Term & Short Term Power Purchase, Sales, Billing, Collection, Capital expenditure and capitalisation plan, allocation of expenses into Wheeling and Retail Supply Business, loss reduction trajectory, liability towards SVRS expenditure, etc.

1.17 The Commission also conducted multiple validation sessions with the Petitioner during which discrepancies in the Petition and additional information as required by the

Commission were sought. Subsequently, the Petitioner submitted replies to the issues raised and provided details and documentary evidence to substantiate its claims regarding various submissions.

1.18 The Commission decided to conduct Public Hearing for issuance of Tariff Order related to True up of FY 2020-21 and communicated the same through Public Notice published in leading newspapers on 31/03/2022 and also uploaded the same on Commission's website. Stakeholders were given additional time-period till 25/04/2022 or date of Public Hearing, whichever is later for submitting comments/suggestions on Tariff Petition filed by the utilities.

1.19 A soft copy of the Petition was made available in CD form on payment of Rs. 25/- per CD or a copy of the Petition was also made available for purchase from the Petitioner head-office on working day till 25/04/2022 between 11 A.M. to 4 P.M. on payment of Rs.100/- either by Cash or by Demand Draft/Pay Order.

1.20 In order to extend help to the stakeholders in understanding the ARR Petition and filing their comments, officers of the Commission viz. Joint Director (Tariff-Engineering), Joint Director (Tariff-Finance), Joint Director (Engineering), Joint Director (Performance Standards & Engineering), Deputy Director (Tariff-Economics) and Deputy Director (Tariff-Engineering) were nominated for discussion on the ARR Petitions. This was duly mentioned in the Public Notices published by the Commission.

1.21 Considering the COVID-19 situation prevalent at that time, the Commission decided to conduct Public Hearing virtually on 12/05/2022 & 13/05/2022 on Tariff Petitions for True Up of FY 2020-21.

1.22 Accordingly, the Commission scheduled a Virtual Public Hearing on Tariff Petitions for True Up of FY 2020-21 on 12/05/2022 & 13/05/2022 to take a final view with respect to various issues concerning the principles and guidelines for Tariff determination.

1.23 The Commission also received written comments from stakeholders. The comments of the stakeholders were also forwarded to the Petitioner who responded to the comments of the stakeholders with a copy of its replies to the Commission.

1.24 The issues and concerns raised by various stakeholders have been examined by the Commission. The major issues made by the stakeholders, the responses of the

Petitioner thereon and the views of the Commission, have been summarized in Chapter A2.

1.25 The Commission has therefore considered the inputs/comments received from various stakeholders along with the due diligence conducted by the officers of the Commission in arriving at its final decision.

PUBLIC NOTICE

1.26 The Commission published Public Notice in the following newspaper on 31/03/2022 inviting comments/suggestions from stakeholders on the Tariff Petitions filed by the Petitioner latest by 25/04/2022 or the date of Public Hearing, whichever is later:

(a)	Hindustan Times (English)	:	31/03/2022
(b)	The Times of India (English)	:	31/03/2022
(c)	The Hindu (English)	:	31/03/2022
(d)	The Indian Express (English)	:	31/03/2022
(e)	Navbharat Times (Hindi)	:	31/03/2022
(f)	Punjab Kesari (Hindi)	:	31/03/2022
(g)	Virat Vaibahv (Hindi)	:	31/03/2022
(h)	Roznama Rashtriya Sahara (Urdu)	:	31/03/2022
(i)	Educator (Punjabi)	:	31/03/2022

1.27 Public Notice was also uploaded on Commission's website www.derc.gov.in.

1.28 The Petitioner also published a Public Notice indicating salient features of its Petition for inviting comments from the stakeholders and requesting to submit response on the Petition latest by 25/04/2022 or the date of Public Hearing, whichever is later, in the following newspapers on the respective dates mentioned alongside:

(a)	The Times of India (English)	:	05/04/2022
(b)	The Pioneer (English)	:	05/04/2022
(c)	Nav Bharat Times (Hindi)	:	06/04/2022
(d)	Punjabi Tribune (Punjabi)	:	07/04/2022
(e)	Inquilab (Urdu)	:	07/04/2022

1.29 The Commission issued Public Notice in the following newspapers (on dates mentioned alongside), indicating the date and time of Virtual Public Hearing scheduled on 12/05/2022 & 13/05/2022 for comments by stakeholders on the Tariff Petition filed by the Petitioner latest by 13/05/2022 and also indicated the conducting of Virtual Public Hearing.

(a)	Hindustan Times (English)	:	25/04/2022
(b)	The Times of India (English)	:	25/04/2022
(c)	The Hindu (English)	:	25/04/2022
(d)	The Indian Express (English)	:	25/04/2022
(e)	Navbharat Times (Hindi)	:	25/04/2022
(f)	Punjab Kesari (Hindi)	:	25/04/2022
(g)	Virat Vaibahv (Hindi)	:	25/04/2022
(h)	Roznama Rashtriya Sahara	:	25/04/2022
(i)	Educator (Punjabi)	:	25/04/2022

1.30 Public Notice related to process for Virtual Public Hearing (VPH) was also uploaded on Commission's website. The platform for VPH was as follows:

Dates	12/05/2022 & 13/05/2022
Timings	11:00 AM to 01:00 PM and 02:00 PM to 05:00 PM
Last date for registration	9/05/2022 at 03:00 PM
Platform	Google Meet
Email ID for Registration	dercpublichearing@gmail.com

LAYOUT OF THE ORDER

1.31 This Order is organized into following Chapters:

a) **Chapter A1** provides details of the Tariff setting process and the approach of the Order.

b) **Chapter A2** provides brief of the comments of various stakeholders, the Petitioner's response and views of the Commission thereon.

c) **Chapter A3** provides details/analysis of the True up of FY 2020-21 and impact of past period true up based on judgement of Hon'ble Supreme Court & Hon'ble APTEL, if any, Review Order of the Commission, if any, and its directives on the matter.

1.32 The Order contains following Annexures, which are an integral part of the Tariff Order:

a) **Annexure I** - Admission Order.

b) **Annexure II** - List of the stakeholders who submitted their comments on True-up of expense for FY 2020-21.

c) **Annexure III** – List of Stakeholders/consumers who attended the virtual

public hearing.

d) **Annexure IV to VI** – Hon'ble Supreme Court Orders.

APPROACH OF THE ORDER

APPROACH FOR TRUE UP OF FY 2020-21

1.33 The Commission in its Business Plan Regulations, 2019 has indicated that Regulations shall remain in force for a period of three (3) years, as follows:

"1(2) These Regulations shall remain in force for a period of 3 (three) years i.e., for FY 2020-21, FY 2021-22 and FY 2022-23, unless reviewed earlier."

1.34 The Commission in its Tariff Regulations, 2017 has specified that Regulations shall be deemed to have come into effect from 1st February, 2017, as follows:

"(4) These Regulations shall be deemed to have come into force from 1st February, 2017 and shall remain in force till amended or repealed by the Commission. "

1.35 Accordingly, ARR for FY 2020-21 has been Trued up as per Tariff Regulations, 2017 and Business Plan Regulations, 2019.

A2 RESPONSE FROM STAKEHOLDERS

2.1 Summary of objections/suggestions from stakeholders, response of DISCOMs (viz. New Delhi Municipal Council (NDMC), BSES Rajdhani Power Limited (BRPL), Tata Power Delhi Distribution Limited (TPDDL), BSES Yamuna Power Limited (BYPL), and the Commission's view.

INTRODUCTION

2.2 Section 64(3) of the Electricity Act, 2003, stipulates that True-up under Section 62 of the Electricity Act, 2003 for the Distribution Licensees on consideration of all objections/suggestions received from the public and the response of the DISCOMs response thereon to the objections/suggestions of stakeholders, issue a Tariff Order accepting the applications with such modifications or such conditions as applicable may be specified in the order.

2.3 The Commission has on examination of the issues took into consideration the comments/ suggestions offered by the various stakeholders in their written statements and also the response of the Petitioners thereon.

2.4 The comments and the suggestions of stakeholders, and the Petitioners' replies/response thereon the summarized views of the Commission are appended under various subheads.

ISSUE 1: PUBLIC HEARING AND OBJECTION FILING PROCESS

STAKEHOLDERS' VIEW

2.5 DISCOMs Petitions are voluminous consisting of 2500 pages documents & 30 days time duration provided for submitting comment is not sufficient. The Commission is requested to grant more time in public hearing to submit detailed reply as per Petition filed by DISCOM.

2.6 The Commission may publish all the comments received on Tariff Petitions on its website, as the Delhi Development Authority (DDA) did in case of the suggestions for MPD.

2.7 Petitions along with the Petitioner's audited accounts should be made available to the

public and can be downloaded by anyone.

2.8 Objections of consumers should be decided on merit. If they are not accepted, their basis and reasons should be kept in public domain.

2.9 The Commission is requested to provide an opportunity of personal hearing in these matters. Offline Public Hearing should also be conducted.

2.10 Regulatory Assets and Fixed Charges should be mentioned in Executive summary.

2.11 Executive summary must be standardized so that the minimum information at a glance is made available.

2.12 Petition should be strictly filed according to the Regulations & should be signed by the Head of the Regulatory Department of the DISCOMs.

2.13 Three power DISCOMs i.e. TPDDL, BRPL and BYPL should be merged and there should be one power distribution company.

2.14 NIC issued email id should be used by all Central/State Governments & their Organization and usage of Gmail id is contravention to State Policy.

2.15 Public hearing recording should be uploaded on DERC website.

2.16 Public hearing was not conducted for draft DERC (Forum for redressal of Grievances of Consumers and Ombudsman) Regulations, 2018. The Appointment of CGRF and Ombudsman Chairman must be carried out with public hearing and not in a shoddy and hush manner.

2.17 Methodology of Tariff Order is not correct. Liability should not be on consumers.

2.18 Delhi government is an equal partner in the Distribution Company. Does it agree with the data furnished in the Petition?

PETITIONERS' SUBMISSION

TPDDL

2.19 As regards to stakeholder comment on conducting physical Public Hearing & display of all comments on its website, the Commission may decide on the same.

Procedure for virtual public hearing is uploaded at the website of DERC. The path for the same is http://www.derc.gov.in/notices/public-notice .

2.20 The basis and reasons for the decisions of the Commission are provided in the Tariff Order issued for the relevant year.

2.21 Other queries doesn't pertain to TPDDL.

BYPL

2.22 The stakeholder's plea may be duly considered by the Commission.

2.23 With regards to the comments of the stakeholder that only NIC issued email id should be used by all Central/State Governments and their Organizations, it is submitted that we are not in a position to reply on this comment.

2.24 The Audited Accounts duly approved and signed by the Board of the Petitioner is submitted along with the Petition for True-up of FY 2020-21 to the Commission. The entire Petition along with the Petitioner's audited accounts are available in the public domain and can be downloaded by anyone desirous of doing so from the website of the Commission.

2.25 With regard to the comment on merging of utilities, it is submitted that DISCOMS were awarded licenses for taking over the management and operations of Power Distribution in various parts of Delhi. Thus, there was public-private partnership for the three Distribution Businesses in Delhi, viz. BRPL, BYPL and TPDDL.

2.26 ARR Petition is filed strictly in terms with the provisions of Tariff Regulations, 2017. There is no such mandate that the ARR Petition has to be signed by the Head Regulatory Department of DISCOM. Any person who is authorized by the company under Delegation of Powers can sign the ARR Petition.

2.27 The stakeholder has submitted comments on draft DERC Forum for Redressal of Grievances of Consumers and Ombudsman) (First Amendment) Regulations, 2021 which does not pertain to the ARR Petition.

BRPL

2.28 Delhi Government nominated persons are the Board Member of the DISCOM. The Audited Accounts are finalized after approval of all the Board Member.

2.29 The stakeholder has submitted comments on draft DERC Forum for Redressal of Grievances of Consumers and Ombudsman) (First Amendment) Regulations, 2021, which does not pertain to the ARR Petition.

2.30 With regard to the comment on merging of utilities, it is submitted that DISCOMS were awarded licenses for taking over the management and operations of Power

Distribution in various parts of Delhi. Thus, there was public-private partnership for the three Distribution Businesses in Delhi, viz. BRPL, BYPL and TPDDL.

2.31 Other issue does not pertain to the ARR Petition. However, the stakeholder's plea may be duly considered by the Commission.

NDMC

2.32 The party is not in NDMC area.

COMMISSION'S VIEW

2.33 The Commission endeavors to issue Tariff Orders as per provisions of the Electricity Act, 2003.

2.34 The Commission vide its Public Notice dated 31/03/2022 sought comments/suggestions on Petitions for True-Up of Expenses for FY 2020-21 filed by Generating Companies, Transmission Licensee and Distribution Licensees by 25/04/2022 to take a final view on issues concerning the principles and guidelines for Tariff determination.

2.35 For ease of consumers, Executive Summary of Tariff Petitions which is a 10 to 15 pages document & highlights salient features of the Tariff Petition was uploaded on Commission's website. Further, a one-page snapshot summary of True-up of FY 2020-21 was also prepared and uploaded at the DERC website for quick glance of the Tariff Petitions.

2.36 The Commission decided to conduct Public Hearing for issuance of Tariff Order related to True-up of FY 2020-21 and communicated the same through Public Notice published in leading newspapers on 31/03/2022 and also uploaded the same on Commission's website. Stakeholders were given additional time period till 25/04/2022 for submitting comments/suggestions on Tariff Petition filed by the utilities.

2.37 A soft copy of the Petition was made available in CD form on payment of Rs. 25/- per CD or a copy of the Petition was also made available for purchase from the respective Petitioner head-office on working day till 25/04/2022 between 11 A.M. to 4 P.M. on payment of Rs.100/- either by cash or by demand draft/pay order.

2.38 In order to extend help to the stakeholders in understanding the ARR Petition and filing

their comments, Six officers of the Commission viz. Joint Director (Tariff-Engineering), Joint Director (Tariff-Finance), Joint Director (Engineering), Joint Director (Performance Standards & Engineering), Deputy Director (Tariff-Economics) and Deputy Director (Tariff-Engineering) were nominated for discussion on the ARR Petitions. This was duly mentioned in the Public Notices published by the Commission.

2.39 Considering the COVID-19 situation prevalent at that time, the Commission decided to conduct Virtual Public Hearing on 12/05/2022 & 13/05/2022 on Tariff Petitions for True Up of FY 2020-21.

2.40 Various Stakeholders requested the Commission to extend last date of Submission of Comments / suggestions on Tariff Petitions filed by various Utilities by at least four to five weeks as the same are voluminous and requires more time to study and preparation of comments.

2.41 Based on request received from various stakeholders to extend last date of submission of comments / suggestions on Tariff Petitions, the last date of receiving Comments / Suggestions which was earlier till 25/04/2022 was extended till 13/05/2022.

2.42 Accordingly, the Commission scheduled a Virtual Public Hearing on Tariff Petitions for True Up of FY 2020-21 on 12/05/2022 & 13/05/2022 to take a final view with respect to various issues concerning the principles and guidelines for Tariff determination.

2.43 The Commission received written comments from stakeholders. The comments of the stakeholders were also forwarded to the Petitioner who responded to the comments of the stakeholders with a copy of its replies to the Commission.

2.44 The issues and concerns raised by various stakeholders have been examined by the Commission. The major issues made by the stakeholders, the responses of the Petitioner thereon and the views of the Commission, have been summarized in Chapter A2.

2.45 The Commission therefore has provided sufficient time & considered the inputs/comments received from various stakeholders along with the due diligence conducted by the officers of the Commission in arriving at its decision.

2.46 The Commission determines the ARR for the DISCOMs as per the provisions of the applicable Regulations. The Commission in its Tariff Order has provided the break-up

of the major components considered for projecting costs of supply like Power Purchase Cost, O&M cost, CAPEX, financing cost, the gap in True-up of FY 2020-21 and carrying cost for the Regulatory Assets etc. The Petitioners submitted the audited accounts to substantiate their claims which is also made part of their Petition. The Tariff Petitions are duly scrutinized and admitted only if found in order as per the DERC (Comprehensive Conduct of Business) Regulations, 2001. The Petitioners furnished clarifications/additional information, as and when required by the Commission.

2.47 The Commission appointed C&AG Empanelled Auditors for Regulatory Audit of DISCOMs i.e. NDMC, BRPL, BYPL & TPDDL for True-up of FY 2020-21. The Regulatory Audit assignment for FY 2020-21 was awarded to Shridhar & Associates for NDMC & TPDDL, Grand Mark & Associates for BRPL and Adroit & Co. for BYPL. Based on their reports and prudence check by the Commission and after considering various components of cost mentioned in the Petitions, the True-up Order is issued with due analysis and justification.

ISSUE 2: BUSINESS PLAN & SOP REGULATION

STAKEHOLDERS' VIEW

2.48 As per Performance data, BRPL has achieved 99.91% to 100 % Collection Efficiency in their Petition, which seems incorrect.

2.49 DERC has not prepared Business Plan Regulations, 2017 and 2019 with due diligence and DISCOMs are getting benefitted.

2.50 Best Parameters of other states DISCOMs should be made benchmark for all Delhi DISCOMs.

PETITIONERS' SUBMISSION

TPDDL

2.51 Formation of Regulations in accordance with the Act is the sole prerogative of the Commission. The Commission may like to decide on the same as it may deem fit.

BYPL

2.52 The Commission while fixing the O&M norms in Business Plan Regulation, 2017 has given the detailed reasons in SOR. Further, the facts and figures mentioned by stakeholder pertains to other DISCOMs, hence, we are not in a position to respond to

the same.

2.53 The Commission in November, 2019 had issued the Public Notice along with Draft Business Plan Regulations requesting the stakeholders to provide the comments on the Draft Regulations within the specified time limit. The stakeholders including consumers were provided the opportunity to make their respective objections/suggestion on the draft including specified operational targets. Pursuant to the receipt of comments from various stakeholders, the Commission had notified the Business Plan Regulations, 2019 applicable for the Tariff period FY 2020-21 to FY 2022-23 on 27/12/2019.

2.54 Further, on 29/01/2020, the Commission issued an Explanatory Memorandum providing the basis and justification while finalization of the norms determined in Business Plan Regulations, 2019.

2.55 The Commission issues Tariff Order only after prudence check of the Petitions submitted by the DISCOMs and after considering each element of the cost projected in the Petitions with due analysis and ensuring proper justification. The Petitioner furnished clarifications/additional information, as and when required by the Commission.

BRPL

2.56 The Commission in November, 2019 issued the Public Notice along with Draft Business Plan Regulations requesting the stakeholders to provide the comments on the Draft Regulations within the specified time limit. The stakeholders including consumers were provided the opportunity to make their respective objections/suggestion on the draft including the specified operational targets.

2.57 The Commission uploaded the draft of Business Plan Regulations, 2019 on its website and had invited comments from stakeholders through Public Notices published in leading newspapers, which was also uploaded on the Commission's website. Pursuant to the receipt of comments from various stakeholders, the Commission had notified the Business Plan Regulations, 2019 applicable for the tariff period FY 2020-21 to FY 2022-23 on 27/12/2019.

2.58 Further, on 29/01/2020 the Commission had issued an Explanatory Memorandum

providing the basis and justification while finalization of the norms determined in DERC (Business Plan) Regulations, 2019.

2.59 Accordingly, the Commission has issued the Business Plan Regulations after incorporating comments of all the stakeholders.

2.60 The Commission issue Tariff Order only after prudence check of the Petitions submitted by the DISCOMs and after considering each element of cost projected in the petitions with due analysis and ensuring proper justification. The Petitioner furnished clarifications/additional information, as and when required by the Commission. Further, DISCOM submits Performance data to the Commission on periodical basis.

2.61 In accordance with Regulation 61 of the Electricity Act, 2003, the State Commission specified terms and conditions for determination of Tariff. In terms of Regulation 4 of Tariff Regulations, 2017, as follows:

"The following parameters shall be contained in the Business Plan Regulations:

(1) Rate of Return on Equity,

(2) Margin for rate of interest on Loan,

(3) Operation and Maintenance Expenses,

(4) Capital Investment Plan,

(5) Mechanism for sharing of incentive-disincentive mechanism,

(6)Allocation of overhead expenses incurred on account of Administrative Expenditure out of Operation and Maintenance Expenses for creation of Capital Asset,

(7) Generating Norms:

…….

(8) Transmission Norms:

…….

(9) Distribution norms:

(a) Distribution Loss Target;

(b) Collection Efficiency Target;

(c) Targets for Solar and Non Solar RPO;

(d) Contingency limit for Sale through Deviation Settlement Mechanism

(Unscheduled Interchange) transactions

(e) The ratio of various ARR components for segregation of ARR into Retail Supply and Wheeling Business."

NDMC

2.62 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.63 The Commission is guided by Principles of Electricity Act, 2003 and ensures to safeguard interest of consumers & ensures recovery of the cost of electricity in a reasonable manner. The relevant extract of the said Regulation is as follows:

"61. *The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

…

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;"

2.64 Further, the Electricity Tariff is determined in accordance to provisions of Section 62 of Electricity Act, 2003 as stated below:

"62. (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity."

2.65 The Commission in exercise of powers conferred under Section 181 read with Section 61 and Section 86(1)(b) of the Electricity Act, 2003 (Act 36 of 2003) notified DERC (Business Plan) Regulations, 2019. The said Regulations shall remain in force for a period of 3 (three) years i.e., for FY 2020-21, FY 2021-22 and FY 2022-23, unless reviewed earlier.

2.66 A transparent public consultation process before enactment of any Regulations keeping in mind the interest of consumers of Delhi, Distribution Licensees, Transmission Licensee and GENCOs. The DERC (Business Plan) Regulations, 2019 were notified by the Commission after following due process of law, as per the Electricity Act, 2003. The draft DERC (Business Plan) Regulations, 2019 was uploaded on DERC website and stakeholders' comments were invited via Public Notice and comments received from the stakeholders were considered in the final Business Plan Regulations approved by the Commission. After considering the comments of all stakeholders, the Commission notified DERC (Business Plan) Regulations, 2019 on 27/12/2019. These Regulations are applicable upto FY 2022-23.

2.67 Further, on 29/01/2020, the Commission had issued an Explanatory Memorandum explaining the rationale and objective behind every issue of Draft Business Plan on which comments can be given.

2.68 A detailed methodology for computing the target for Distribution Losses has been explained in the explanatory memorandum issued by the Commission for the draft Business Plan Regulations, 2017. For instance, Electric Power Transmission & Distribution Losses of various countries from the World Bank website for top 50 countries were compared over a period of 2003 to 2014 & analysis is mentioned in the statement of Reasons on Business Plan Regulations 2017. Even the Transmission & Distribution Losses are benchmarked against various states/ Private Distribution Companies like Torrent-Ahmedabad (Gujarat), Noida Power Company (Uttar Pradesh) and Maharashtra in the Statement of Reasons on Business Plan Regulations, 2017.

2.69 The stakeholder view that DISCOMs are getting benefited is not correct and Transmission & Distribution Losses are already benchmarked against DISCOMs of other states. There is also provision of penalties on DISCOMs for non-compliance to

the following parameters:

a) Renewable Purchase Obligations- Promotion of Green Energy
b) Sustained deviation- Grid Discipline
c) Additional UI changes- Grid Discipline
d) Dis-incentive / MOD violation penalties- Optimization of PPC
e) Distribution Loss Targets- Reduction of losses
f) Collection Efficiency – Improvement of Revenue Collection

2.70 Based on above, the Business Plan Regulations, 2017 & Business Plan Regulations, 2019 is competitive in nature with Incentive/ Dis-incentive based on the performance of DISCOMs against the targets set by the Commission. If any Utility doesn't meet the Targets as per the Norms defined in Business Plan Regulations, 2019 then penalty has been levied in the past against the DISCOMs, as follows:

Table 2. 1: DISCOM wise penalty levied from FY 2017-18 to FY 2019-20 (Rs. Cr.)

Parameters	BRPL			BYPL			TPDDL			NDMC		
	FY 18	FY 19	FY 20	FY 18	FY 19	FY 20	FY 18	FY 19	FY 20	FY 18	FY 19	FY 20
Non- Compliance to RPO		8.89	14.62	6.24	7.22	8.97		3.16		0.28	0.34	0.63
Additional UI	3.19	4.42	8.73	2.03	2.61	3.95	1.98	3.46		0.02		
Sustained		12.37	8.82		2.19	1.46		3.44				4.52
Sale of Power in UI above 5%	0.67	18.86	23.36			1.18	5.48			2.64	0.92	4.15
Dis-incentive / MOD violation penalties											2.21	
Impact of Regulation of	0.06											
Distribution Loss Targets										28.5		3.69
Under achievement of Collection										21	42.51	
Cash transactions above Rs. 4000/-					0.02			0.02		0.82	0.02	
Total	**103.99**			**35.87**			**17.54**			**112.25**		

2.71 Further, various penalties have been imposed in the instant Order which are discussed in Chapter 3 of this True-up order.

ISSUE 3: ADHOC O&M EXPENSES

STAKEHOLDERS' VIEW

2.72 Calculation of O&M expenses is based on Adhoc data without scientific basis and the same should be reversed.

2.73 The O&M expenses were arbitrarily increased from Business Plan Regulations, 2017 to Business Plan Regulations, 2019, which will be continued till year 2023.

2.74 Benchmarking of Operations for efficiency gain should be as per competition within the Industry.

2.75 O&M expenses are doubtful and need to be disallowed. Disallowance of Rs. 150 Crore is clearly visible in O&M Expenses of BYPL.

2.76 The normative O&M expenses needs to be revisited with strict prudence check to determine all such charges.

2.77 O&M charges includes 7th Pay commission enhancement charges and annual enhancement charges and hence no further expenses can be allowed over O&M expenses.

2.78 O&M expenses allowed by the Commission, seem to have been prepared considering 7th CPC. Hence, O&M expenses needs to be revisited with strict prudence check.

2.79 O&M expenses and Working Capital should be allowed to DISCOMs as per norms defined in Business Plan Regulations, 2019.

2.80 Savings in interest on Working Capital can be more than Rs. 100 Crores for all three DISCOMs if receivable are reduced by 15 days.

2.81 Loss on sale of retired Assets should be on account of DISCOMs.

2.82 Verify extraordinary O&M expenses of DISCOMs i.e. Legal Expenses and incremental GST impact.

2.83 The allowed O&M Charges should be based on ckt/km length of the Distribution Lines & should not be decided arbitrarily.

2.84 The old method of O&M Charges based on value of Assets should be adopted since present O&M charges were decided in arbitrary manner resulting in increased O&M expenses.

2.85 Legal charges cannot be allowed under O&M expenses. Corporate social responsibility

should also be borne from profits of DISCOM.

PETITIONERS' SUBMISSION

TPDDL

2.86 The normative O&M expenses has been set by the Commission in accordance with the Tariff Regulations, 2017 and Business Plan Regulations, 2019. Accordingly, O&M expenses are claimed and allowed to DISCOMs as per norms defined in Business Plan Regulations 2019.

2.87 Legal expense is not part of normative O&M expense, and allowed separately by the Commission as per Regulation 23 of Business Plan Regulations, 2019, as follows:

"23(7) The Distribution Licensee may claim the legal expenses separately, subject to prudence check at the time of true up on submission of documentary evidence: Provided that the legal expenses on account of cases filed against the Orders or Regulations of the Commission before any Court and the legal claims (compensation/penalty) paid to the consumer, if any, shall not be allowed."

2.88 The Business Plan Regulations, 2019 provides that

"6(3) The impact of difference of amount on account of actual implementation of Seventh Pay Revision and Interim Relief already considered for determination of norms for O&M Expenses, if any, shall be allowed separately in line with the methodology adopted for computation of norms for O&M Expenses, at the time of True up of ARR for relevant Financial year subject to prudence check."

2.89 Working Capital to DISCOMs is allowed in line with the Tariff Regulations, 2017 as also provided to Generation and Transmission Companies.

2.90 CSR is a statutory liability and any change in statutory levy is uncontrollable in the hands of the DISCOMs.

BYPL

2.91 The Petitioner, in its ARR Petition, has claimed O&M expenses for FY 2020-21 in accordance with the Regulation 23 of Business Plan Regulations, 2019.

2.92 Further, Regulation 4(3) read with Regulation 87/ 92 of the Tariff Regulations, 2017 provides that Utilities shall be allowed O&M Expenses on normative basis as specified by the Commission in its Business Plan Regulations for the respective Control Period.

Accordingly, O&M expenses for FY 2020-21 are claimed in accordance with the norms under Regulation 23 of Business Plan Regulations, 2019.

2.93 O&M expenses for a financial year is determined and approved by the Commission on normative basis as per Regulation 23 (1) of the Business Plan Regulations 2019 based on Actual Assets installed at the site and its maintenance to provide services to the consumer. O&M Expenses vary as per the consumer mix i.e., Domestic/Non Domestic/Industrial etc. & supply at different voltage levels i.e., LT/11kV/33kV/66kV. The relevant extract of the Business Plan Regulation, 2019 is reproduced here as follows:

"23. OPERATION AND MAINTENANCE EXPENSES

(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows:

Table 2. 2: Norms for O&M Expenses for BYPL for the Control Period

Particulars	Unit	2020-21	2021-22	2022-23
66 kV Line	Rs. Lakh/ckt.km	4.857	5.043	5.236
33 kV Line	Rs.Lakh/ckt.km	4.857	5.043	5.236
11 kV Line	Rs.Lakh/ckt.km	2.036	2.114	2.195
LT Line system	Rs.Lakh/ckt.km	9.173	9.524	9.890
66/11 kV Grid S/s	Rs. Lakh/MVA	1.157	1.201	1.247
33/11 kV Grid S/s	Rs. Lakh/MVA	1.157	1.201	1.247
11/0.415 kV Dt	Rs. Lakh/MVA	2.534	2.631	2.732

2.94 The Commission in Regulation 23 (6) of Business Plan Regulations, 2019 has provided that Distribution Licensee may claim the expenses for raising loan for Working Capital and Regulatory Assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence. Accordingly, such expenses are claimed in the Petition for True Up for FY 2020-21. Further, Working Capital requirement is determined by the Commission in line with the Regulation 84(4) of the Tariff Regulations, 2017, as follows:

"WORKING CAPITAL

84. The Commission shall calculate the Working Capital Requirement for:

….

(4) Distribution Licensee as follows:

(i) Working capital for wheeling business of electricity shall consist of ARR for two months of Wheeling Charges

(ii) Working capital for Retail Supply business of electricity shall consist of:

(a) ARR for two months for retail supply business of electricity

(b) Less: Net Power Purchase costs for one month

(c) Less: Transmission charges for one month; and"

2.95 The Legal expense and incremental GST impact is claimed in accordance with Business Plan Regulations, 2019 and Tariff Regulations, 2017.

2.96 The Commission has approved consumption at substation as per Regulation 23(2) of Business Plan Regulations, 2019. The Regulation 23(2) is stated as below:

"(2) The Distribution Licensee shall be allowed own (Auxiliary) consumption including e-vehicle charging stations installed at Distribution Licensee offices and sub-stations, at Zero Tariff for actual recorded consumption subject to a maximum of 0.25% of total sales excluding own consumption to its retail consumers for the relevant financial year as part of O&M expenses for the relevant year:

(3) Actual recorded own (Auxiliary) consumption in excess of 0.25% of total sales excluding own consumption to its retail consumers for the relevant financial year, shall be billed at Non Domestic Tariff of respective year's Tariff Schedule and shall form part of revenue billed and collected for the same year."

2.97 Distribution business is a regulated business under the aegis of the Commission and the right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business. Moreover, the Electricity Act, 2003, allows the Petitioner the right to avail its statutory remedies under section 111 and other applicable provisions. Therefore, all prudently incurred legal expenses without any distinction should be allowed as an expense in the ARR.

2.98 Further, the Commission while determining the norms for O&M expenses in Business Plan Regulations, 2019 has not considered legal expenses as the same shall be allowed based on prudence check at the time of true of ARR. Hence, the Petitioner has made its claim of Legal Expenses as an additional expense as provided for in Business Plan Regulations, 2019.

2.99 Further, with respect to stakeholder comment on incremental GST impact, it is submitted that the factor of prevailing Service Tax @ 12% to 15% till June, 2017 and GST @18% from July, 2017 onwards has diluted the impact for one year and three months i.e. from April, 2016 to June, 2017, while deriving the norms of O&M expenses.

2.100 Further, as per Business Plan Regulations, 2019, the Commission has allowed the GST charges on normative basis for FY 2020-21 by considering an escalation factor of 3.83% on the average value of FY 2017-18 to FY 2018-19. However, the Commission, while deriving the normative rates for O&M expenses, has considered the GST impact from July, 2017 to April, 2019 as the GST rate is applicable from July, 2017 which has diluted the impact for one year and three months i.e. from April, 2016 to June, 2017. Accordingly, the Petitioner has claimed the incremental GST charges impact over and above the actual GST paid during FY 2020-21. In order to bring the parity of the O&M expenses being incurred by the Licensee with the norms in the Business Plan Regulations, 2019, incremental GST impact is being claimed which is the difference between the actual GST paid during the year and the impact of GST/service tax present in the norm for the year.

2.101 In regard to the stakeholder comment on 7th Pay Commission arrears, it is submitted that the Petitioner has claimed the incremental impact of 7th Pay Commission during FY 2020-21 as provided in Regulation 23(6) of Business Plan Regulations, 2019.

2.102 Further, the Commission while fixing the O&M norms in Business Plan Regulation 2017 & 2019 has given the detailed reasons in respective explanatory memorandum. In the Statement of reasons (SOR), it is stated that while fixing the norms of O&M expenses, the interim relief for 7th Pay Commission has been considered as given to the employees of the Licensee while determination of norms for O&M Expenses and any impact of difference of actual amount on account of actual of Seventh Pay Revision

and such interim relief, if any, will be considered at the time of True up of ARR for relevant Financial year subject to prudence check.

2.103 Tariff Regulations, 2017 provides the methodology regarding De-capitalization of Assets before and after useful life. Said Regulations further provides for allowance of claim on account of loss/gain on such retired assets. Hence, the claim is made by the Petitioner in terms of the applicable Regulations.

2.104 Distribution business is a regulated business under the aegis of the Commission and the right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business. Moreover, the Electricity Act, 2003, allows the Petitioner the right to avail its statutory remedies under section 111 and other applicable provisions. Therefore, all prudently incurred legal expenses without any distinction should be allowed as an expense in the ARR.

2.105 Further, the Commission while determining the norms for O&M expenses in Business Plan Regulations, 2019 has not considered legal expenses as the same shall be allowed based on prudence check at the time of true of ARR. Hence, the Petitioner has made its claim of Legal Expenses as an additional expense as provided for in Business Plan Regulations, 2019.

2.106 Regulation 45 Tariff Regulations, 2017 provides for the methodology regarding De-capitalization of Assets before and after useful life, as follows:

> *"45. Loss or Gain due to de-capitalisation of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year."*

2.107 Thus, the Petitioner has claimed the loss due to retirement of assets as per Audited Accounts for FY 2020-21 as it pertains to meters which were replaced due to incompatibility to read kVA parameters.

2.108 Regulations further provides for allowance of claim on account of loss/gain on such retired assets. The claim is made by the Petitioner in terms of the applicable

Regulations.

2.109 As regard to Additional O&M Expenses – Uncontrollable Expenses, it is submitted that additional O&M expenses has been claimed in accordance with Regulation 87 of Tariff Regulations, 2017 which states as under:

"87.

…

Provided further that the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M expenses."

Also, Regulation 11 of DERC Tariff Regulations, 2017 states as under:

"11. The Distribution Licensee shall submit Annual Tariff Petition, at least, one hundred and fifty (150) days prior to the end of relevant financial year which shall contain:

...

(9) Actual and expected additional expenses on account of O&M beyond the control of Distribution Licensee for the ensuing & previous year respectively;

…"

Thus, in accordance with the above regulations, the Petitioner has claimed the additional O&M expenses which are uncontrollable in nature and not covered in the normative O&M expenses.

BRPL

2.110 O&M expenses for a financial year is determined and approved by the Commission on normative basis as per Regulation 23 (1) of the Business Plan Regulations, 2019 based on Actual Assets installed at the site and its maintenance to provide services to the consumer. The relevant extract of the Business Plan Regulation, 2019 is reproduced here as follows:

"23. OPERATION AND MAINTENANCE EXPENSES

(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3)

and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows:

Table 2. 3: Norms for O&M Expenses for BRPL for the Control Period

Particulars	Unit	2020-21	2021-22	2022-23
66 kVLine	Rs.Lakh/ckt.km	3.855	4.002	4.156
33 kV Line	Rs.Lakh/ckt.km	3.855	4.002	4.156
11 kv Line	Rs.Lakh/ckt.km	1.150	1.194	1.239
LT Line system	Rs.Lakh/ckt.km	6.148	6.384	6.629
66/11 kV Grid S/s	Rs. Lakh/MVA	1.033	1.073	1.114
33/11 kV Grid S/s	Rs. Lakh/MVA	1.033	1.073	1.114
11/0.415 kV DT	Rs. Lakh/MVA	2.563	2.661	2.763

2.111 The working capital requirement for a financial year is determined by the Commission in line with the regulation 84(4) of the DERC Tariff Regulations 2017, relevant excerpt is reproduced here as follows:

"WORKING CAPITAL

84. The Commission shall calculate the Working Capital Requirement for:

….

(4) Distribution Licensee as follows:

(i) Working capital for wheeling business of electricity shall consist of ARR for two months of Wheeling Charges

(ii) Working capital for Retail Supply business of electricity shall consist of:

(a) ARR for two months for retail supply business of electricity

(b) Less: Net Power Purchase costs for one month

(c) Less: Transmission charges for one month; and"

2.112 The per unit rates for normative O&M computation in Business Plan Regulations, 2019 was specified by the Commission after due diligence of the data submitted by Petitioner. Hence, the Commission is allowing the O&M expenses as per norms defined in Business Plan Regulation, 2019.

2.113 The Petitioner has claimed Legal expense as per Tariff Regulations, 2017.

2.114 In regard to stakeholder comment on Loss on sale of retired assets, it is submitted that Tariff Regulations, 2017 provides for the methodology regarding de-capitalization of

assets before and after useful life. Regulations further provides for allowance of claim on account of loss/gain on such retired assets. The claim is made by the Petitioner in terms of the applicable Regulations.

2.115 With respect to stakeholder comment on incremental GST impact, it is submitted that the factor of prevailing Service Tax @ 12% to 15% till June, 2017 and GST @18% from July, 2017 onwards has diluted the impact for one year and three months i.e. from April, 2016 to June, 2017, while deriving the norms of O&M expenses. In order to bring the parity of the O&M expenses being incurred by the Licensee with the norms in the Business Plan Regulations 2019, incremental GST impact is being claimed which is the difference between the actual GST paid during the year and the impact of GST/service tax present in the norm for the year.

NDMC

2.116 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.117 The Commission conducts prudence check on the issues related to O&M expenses that are submitted by the utilities for approval of O&M expenses during a control period. The period of allowance/ disallowances for additional O&M expense are available in Chapter-3 (True-up of ARR) of Tariff Order.

2.118 As regards to stakeholder comment on Legal Charges, it is submitted that the Distribution Licensee may claim legal expense as per Regulation 23 (7) of *Business Plan Regulations, 2019*, which will be subjected to prudence check at the time of True up of Petition.

ISSUE 4: PHYSICAL VERIFICATION OF ASSETS

STAKEHOLDERS' VIEW

2.119 Physical verification of Assets & True up of CAPEX of DISCOMs since privatization has not been completed under long term tenure of various DERC officers and same should be completed in a time bound manner by Sept, 2022.

2.120 The Petition for capitalization of assets for each MYT period is pending.

2.121 Physical verification of Regulatory Assets & verification of related party transaction from 2002 to 2021 to be completed urgently.

2.122 DERC could not complete GIS compliant physical verification of Assets since 2003.

PETITIONERS' SUBMISSION

TPDDL

2.123 Physical verification has already been completed by the Commission from FY 2005-06 to FY 2018-19. Physical verification for FY 2019-20 has been initiated by the Commission.

2.124 The Commission is requested to provide impact of Physical verification in the ensuing Tariff Order.

BYPL

2.125 BYPL agrees with the suggestion of the stakeholder that Commission must make Physical Verification of the Assets, True-up of capital expenses and the Commission is requested to consider the same.

2.126 Other comments of the stakeholders pertain to other Distribution Licensee and therefore, we are not in a right position to respond to the same.

BRPL

2.127 Comments of the stakeholders pertain to other Distribution Licensee, and therefore, we are not in a right position to respond to the same.

NDMC

2.128 The Party is not in NDMC area.

COMMISSION'S VIEW

2.129 The Commission endeavours to issue Tariff Orders as per provisions of the Electricity Act, 2003.

2.130 The Distribution Licensees (BRPL, BYPL & TPDDL) have claimed Capital Expenditure of Rs. 10,736 Cr. for the period from FY 2004-05 to FY 2015-16 against which the Commission has provisionally approved Rs. 8,930 Cr. in its previous Tariff Orders. The balance is under scrutiny before the Commission on account of physical verification by Consultants/in-house.

2.131 The Commission has engaged consultants for Capex Review & capitalization of the DISCOMs. External Consultants are engaged to verify the year-wise capitalization from FY 2004-05 to FY 2016-17. While verifying the year-wise capitalization, the Consultant

have to examine 100% of the documents related to tendering, evaluation, purchase orders, store documents, road restoration receipts, invoice and payments etc. for all the LT, HT & EHV schemes capitalized, and comment on compliance with the competitive bidding guidelines of the Commission as well as reasonableness of costs at which equipment have been procured. Also, examine procurement contracts representing 100% of the amount capitalized in miscellaneous schemes, and comment on compliance with the competitive bidding guidelines of the Commission as well as reasonableness of costs at which equipment has been procured, analyse various components of capitalization such as labour expense, material expense, A&G and employee expense, road restoration charges, IDC etc., with respect to approvals, guidelines and instructions issued by the Commission from time to time. Further Consultants has to physically verify 100% EHV, HT and LT schemes. The Consultant has submitted the Reports. The Commission has finalized the said reports considering the comments of DISCOMs. Accordingly, the impact of the physical verification of assets is provided in the current Financial Year whose impact has been added in the Regulatory Assets till True up of FY 2020-21.

2.132 Further, the Commission has also undertaken the physical verification of Assets post FY 2016-17 internally through its staff consultants appointed for this specific assignment. The said physical verification was completed for FY 2017-18 whose impact has been provided in the Tariff Order dated 30/09/2021. For FY 2018-19 onwards, physical verification is under process and the impact of the same. Further, as soon as year wise capitalization is completed by the Commission, the effect of the reports will be provided in the subsequent True up orders.

ISSUE 5: POWER PURCHASE COST & ENERGY SALES

STAKEHOLDERS' VIEW

2.133 Energy Purchase Cost under the Long Term Power Purchase Agreement should be optimized.

2.134 As per DISCOMs, Tariff rate should be increased because of the shortage of coal which is not acceptable.

2.135 PPAC should be adjusted in Tariff and there should not be separate head for PPAC.

2.136 DISCOMs shall open LC or make payment through NEFT for payment to Generators within 3 days of receipt of bill to avail 2% rebate.

2.137 Projections based on de-growth under certain segments on the basis of COVID-19 duration appears to be under reporting and needs to be realistic in view of improved Economic Situations.

2.138 Energy Sales should be verified during Prudence check.

2.139 Short-term & other available options should be considered for optimizing the power purchase costs to meet the energy requirements of DISCOMs. Further, Surplus Hydro RE Power should be sold over exchanges.

2.140 Cash flow of DISCOMs should be eased so that power can be purchased and there are no outages.

2.141 Redevelop Badarpur Thermal Power Station (BTPS) as Joint Venture with NTPC and BHEL as Ultra Mega Power Plant (UMPP).

PETITIONER'S SUBMISSION

TPDDL

2.142 All CERC approved available options in short term market are utilized by the DISCOMs to meet the Energy requirements.

2.143 In order to meet the peak demand of FY 2022-23, sufficient quantum of Power is planned to be purchased from the Power Exchanges and Short Term Contracts. However, as per current PPAC mechanism allows pass through of costs linked to the power procurement/sale from Long Term sources excluding variations, if any, related to any Short Term Power purchase/ sale.

2.144 TPDDL agrees with suggestion of Stakeholder that Cash flow of DISCOMs should be eased so that power can be purchased and there are no outages.

2.145 Also, Business Plan Regulation, 2019 allow Suo Moto levy of PPAC by Distribution Licensee limited to 8.75%. A Petition is required to be file Petition and seeking approval of the Commission for the recovery of balance Power Purchase Cost variation. This increases the time for recovery of PPAC and at times it gets subsumed in the True-Up Tariff Order. This delays the cash flow for DISCOMs, increases the carrying cost impact and consequently, may increase the applicable Tariff.

2.146 The Commission is requested to suitably amend the current PPAC mechanism for Automatic pass through of 100% variation in fuel and Power Procurement Cost.

2.147 Stakeholder comment regarding BTPS & Investment is Generation is not related to Tariff petition.

BYPL

2.148 BYPL continuously endeavor to optimize its Power Portfolio by buying/selling competitive rate electricity at Power Exchange as per applicable Regulations/Order of the Commission.

2.149 The concept of normative rebate is based on the assumption that the system is perfect and business is conducted as usual. However, the impact of Covid-19 pandemic, which is also acknowledged as Force Majeure condition by the Commission, there was a steep decline in the revenue collection by the Petitioner and they could not make payment of Power Purchase bills to any of the Generating Company and Transmission Licensee through LC. Therefore, the Petitioner has requested the Commission to not consider normative rebate.

2.150 Energy sales estimated for FY 2022-23 is based on prevailing trend of energy consumption and the reason of the same has been submitted in Petition.

2.151 COVID-19 affected the normal human life as well as caused slowdown in various sectors in Economy. The lockdown due to COVID-19 has severely affected the demand of Power in FY 2020-21 and FY 2021-22 and, therefore, Energy Sales of FY 2020-21 and FY 2021-22 was not considered for projecting sales for FY 2022-23. In order to estimate the energy sales for FY 2022-23, the Petitioner has considered FY 2019-20 as base year for projections instead of FY 2021-22 and applied growth factor on FY 2019-20. Therefore, demand forecast is based on the assumption that the past consumption growth trend will continue in the future also excluding FY 2020-21 and FY 2021-22..

2.152 The source wise details of electricity and charges during a year is part of the ARR Petition

2.153 With respect to Stakeholder's concern regarding exploring options to invest in Generation and redevelopment of BTPS, it is submitted that it is not under the purview of the DISCOMs and is under the purview of Central /State Government.

BRPL

2.154 The Petitioner takes a number of steps in order to reduce the burden of high cost of Power on consumers by trying to surrender costly Power. The Petitioner based on its Demand-Supply scenario has requested Hon'ble Power Minister of Delhi to surrender/re-allocate the quantum of power.

2.155 Further, with regard to the comment on optimization of Power purchase cost, it is submitted that Power Purchase cost for the Generating Stations is considered on the basis of the Generation Tariff approved by CERC.

2.156 As regards to stakeholder comment on verification of Energy Sales, it is submitted that the Commission approves the sales of the Petitioner after prudence check and verification of database of the Petitioner.

2.157 Further, determination of Electricity Tariff to be charged from consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

2.158 BRPL continuously endeavors to optimize its Power Portfolio by buying/selling competitive rate electricity at Power Exchange as per applicable Regulations/Order of the Commission.

2.159 With respect to Stakeholder's concern regarding exploring options to invest in Generation and redevelopment of BTPS, it is submitted that it is not under the purview of the DISCOMs and is under the purview of Central /State Government.

NDMC

2.160 The Party is not in NDMC area.

COMMISSION'S VIEW

2.161 The Long-Term Power Purchase Agreements (PPA) are entered into by the Petitioner considering the overall average projected demand of the consumers and likely growth in the demand vis-à-vis the likely availability of Power from various sources. The surplus/shortfall in Power availability arising due to difference in demand during peak hours and non-peak hours including seasonal variations are required to be sold /purchased by the Petitioner on need basis. The Commission has directed the Petitioner to optimize such short-term transactions and maintain transparency in its short-term power purchases and sales.

2.162 The Commission has specified in DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as well as in earlier Tariff Orders, that the Merit Order Despatch principle should be adhered strictly by the Distribution Licensees in power procurement, and there is also an incentive and disincentive mechanism for sale of surplus power to maximise the revenue from the sale of surplus power. Further, as per the provision of Business Plan Regulations, 2017 and Business Plan Regulations, 2019, the contingency limit for the sale of power under UI mechanism shall be limited to 5% of the gross power purchased by the Distribution Licensee to bring efficiency in their scheduling of power.

2.163 The Commission has already approved various Power Purchase Agreements (PPA) entered into by the utilities for procurement of power from long term sources. The Commission has also directed the DISCOMs vide its letter dated 21/10/2009 that they should endeavour to provide uninterrupted power supply to the consumers in their respective areas. The licensees shall ensure that electricity which could not be served due to any reason what-so-ever (including maintenance schedule, break-downs, load shedding etc.) shall not exceed 1% of the total energy supplied by them in any particular month except in cases of force-majeure events which are beyond the control of the Licensees.

2.164 The Commission had projected Power Purchase Cost net of the rebate as per the provisions of *DERC (Terms and Condition for Tariff Determination) Regulations, 2017*. The power purchase cost is allowed to the distribution licensee after considering maximum normative rebate available for each generating stations.

2.165 The provision for reallocation of power among Delhi DISCOMs has been made in DERC (Terms and Condition for Tariff Determination) Regulations, 2017 as follows:

> *"121.. (4) The gap between the average Power Purchase Cost of the power portfolio allocated and average revenue due to different consumer mix of all the distribution licensee:*
>
> *Provided that the Commission may adjust the gap in power purchase cost by reassigning the allocation of power amongst the distribution licensees out of the*

overall power portfolio allocated to the National Capital Territory of Delhi by Ministry of Power, Government of India."

2.166 The rebate on payment of bills of GENCO and Transmission Utilities is determined in accordance with Regulation 138 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as follows:

" For payment of bills of the generating entity and the transmission licensee through letter of credit on presentation or through NEFT/RTGS within a period of 2 days of presentation of bills by the generating entity or the transmission licensee, a rebate of 2% shall be allowed :

Provided that in case payments are made on any day after 2 days and within a period of 30 days of presentation of bills by the generating entity or the transmission licensee, a rebate of 1% shall be allowed."

2.167 As regard to stakeholder comment on no outages, DERC held an Emergency Meeting on 9/10/2021 to take stock of the situation arising out of current Coal & Gas shortage which led to non-availability of 24X7 Power in Delhi and Electricity prices soaring to extraordinary high levels at Power Exchanges. Accordingly, various relaxations were granted to NDMC, BRPL, BYPL, and TPDDL with immediate effect in order to ensure 24X7 supply of power to the consumers of Delhi, GTPS was directed to declare its availability on any alternative fuel, ensuring additional 270 MW of power in order to bridge the Gap between the current demand-supply and MoP, GoI, was requested to urgently intervene in the matter and facilitate adequate supply of fuel to the Power Plants in order to avoid any Outage and maintain continuous supply of Power to the Delhi State.

2.168 As pro-active measure, the Commission conducted Summer Preparedness Meeting with DISCOMs (BRPL, BYPL, TPDDL and NDMC), DTL, GENCOs and SLDC on 16/03/2022 and a detailed strategy was discussed to evaluate the Preparedness of the Utilities for upcoming summers.

2.169 Further, during the Power crisis due to coal shortage and supply in FY 2022-23, the Commission held an Emergency Meeting on 29/04/2022 with State Load Despatch Centre (SLDC), Delhi Transco Limited (DTL), DISCOMs (NDMC, BRPL, BYPL & TPDDL)

and State GENCOs (IPGCL & PPCL) to take stock of the current Power crisis expected to be arising out of current Coal Shortage and Skyrocketing Short Term Power Prices.

2.170 In an endeavor to mitigate such Power Crisis and safeguard the interest of the Consumers & Distribution Licensees, the Commission vide its letter dated 29/04/2022, as an interim measure, allowed intra DISCOM Banking facility, overlapping of Banking & Bilateral Transactions, pass-through of Additional Deviation & Sustain Deviation Charges etc. with immediate effect till 31/07/2022 or till further orders. Further, SLDC, DISCOMs & DTL were directed to maintain Grid Discipline, Availability of Transmission & Distribution Network and 24X7 supply of power to the consumers of Delhi.

2.171 In compliance to Hon'ble Delhi High Court Order dated 1/06/2022 in Writ Petition No. 5340 of 2022 filed by BSES DISCOMs and Writ Petition No. 6735 of 2022 filed by TPDDL, MoP, GoI vide its Office Memorandum dated 28/06/2022 reallocated around 500 MW of Delhi's share to Haryana and balance 228 MW was continued to be utilized by Delhi till 31/10/2022. The impact of Reallocation of power of Dadri-II is majorly to BRPL resulting into loss of approx. 373 MW of Power to BRPL.

2.172 Still there has been blending with Imported Coal in various Central Sector Generating Stations, regulated by Central Electricity Regulatory Commission (CERC), from which Delhi is sourcing Power. For instance, Aravali Jhajjar, Farakka-I, Dadri-II, Kahalgaon-I still have blending with Imported Coal ranging from 10% to 20% which has increased the cost of Coal from around Rs. 5000/ MT in the months of Mar '22 to around Rs. 8000/ MT in the months of Apr '22 to Jul '22. Also, ECR of Gas Power Plants have increased 3 to 4 times.

2.173 The Commission took following steps after re-allocation of 500 MW of Delhi's share in NTPC Dadri-II to Haryana to mitigate the impact of the same and provide un-interrupted 24x7 power supply to consumers of Delhi:

a) Re-allocation of Power of Aravali Jhajjar from TPDDL to BRPL: Immediately, after MoP Office Memorandum dated 28/06/2022 wherein they reallocated Dadri-II 500 MW of power of Delhi's share to Haryana and balance 228 MW was continued to be utilized by Delhi till 31/10/2022, the Commission issued an Order on 30/06/2022 and Temporary reallocated 125 MW of Power of Aravali Jhajjar from

TPDDL to BRPL w.e.f. 1/07/2022 till 31/10/2022. It was done because the impact of Reallocation of power of Dadri-II was mainly to BRPL resulting into loss of 373 MW of their Power.

b) Relaxation in Directives due to Power Crisis: The Commission vide its letter dated 2/08/2022, based on the requests of DISCOMs and due diligence thereafter, extended certain relaxations till 31/10/2022 which were earlier valid 31/07/2022 and were allowed during the period of Power Crisis of April 2022. Such extension of relaxations will catalyse DISCOMs in meeting consumer demand 24x7.

c) Petition No. 34 of 2022: The Commission vide its Order dated 18/08/2022 has accorded In-principal approval to BRPL and BYPL to initiate the process for procurement, under Section 63 of the Electricity Act, 2003, of 500 MW of Power applicable for next 7 years

2.174 Further, for long-term Power Tie-up, the Commission granted 'In-principal' approval for 255 MW Wind Solar Hybrid Power for 25 years to TPDDL vide Order dated 27/07/2022.

2.175 For Short Term Power (STP) tie-up, the Commission granted 'In-principal' approval to various LOIs such as 675 MW STP purchase for BRPL vide Order dated 25/02/2022 in Petition no. 13/2022, 200 MW STP purchase vide Order dated 13/04/2022 in Petition no. 21/2022, 200 MW STP purchase vide Order dated 11/05/2022 in Petition no. 27/2022 , upto 200 MW Short Term Power from Teesta Urja Ltd.-III vide letter dated 30/05/2022, 300 MW RTC conventional Short Term Power, 150 MW Non-Solar Power, 25 MW HPO Tender in Petition no. 22 & 23/2022 for TPDDL vide Order dated 29/04/2022.

ISSUE 6: RENEWABLE PURCHASE OBLIGATION & NET METERING

STAKEHOLDERS' VIEW

2.176 TPDDL purchased Rs. 129 Crore worth RPO certificate in FY 2019-20. Consumer should not be burdened to pay for paper certificate in lieu of Renewable Energy.

2.177 No relaxation should be given to DISCOM for non-compliance to RPO.

2.178 Introduce platform for electricity trading between consumers.

2.179 Green Tariff should be implemented in Delhi also.

2.180 Distribution Companies should be given an option of purchasing Renewable Power to

avoid purchase of REC.

2.181 Excess power from Net Metered consumers be purchased at Average Power Purchase Cost (APPC) as determined by CERC instead of present mandated higher cost.

2.182 Renewable Power option should be made available to the consumers.

2.183 Solar Energy generation scheme at Residential Houses should be provided incentives.

2.184 Solar Energy should be used & installation of Solar panels on Roof should be promoted.

2.185 Solar Power should be promoted. DERC can make policies to promote Solarization.

PETITIONERS' SUBMISSION

TPDDL

2.186 TPDDL in collaboration with a Blockchain Technology Partner, has conducted a pilot project to test the technical viability and value proposition of P2P energy trading at the identified sites, and for prosumers and consumers within their network and develop a suitable business model for Blockchain enabled Peer to Peer (P2P) energy trading in Delhi. This was in a sandbox environment without any actual financial transaction or Energy trade. Everything is virtual.

2.187 The Pilot project helped in putting together recommendations to DERC to consider a bespoke Network Tariff and trading rules to promote the P2P trading of electricity from Roof Top Solar PV in Delhi.

2.188 Benefits of P2P Trading to Prosumers are given below:

a) Increased earnings from his excess solar energy
b) Faster payments
c) Increased earnings
d) Satisfaction
e) Priority Trading Model

2.189 Sections 61(h) and 86(e) of Electricity Act mandated promotion of Renewable Energy by the Appropriate Commission. The National Tariff Policy, 2016 in its objectives, also lists the promotion of Generation of Electricity through Renewable Sources.

2.190 The Petitioner seeks to enhance the Renewable Energy consumption amongst the consumer base on voluntary basis. They also encourage procurement of Renewable Power amongst their consumers through supply of 100% Renewable Power on

payment of Green Power Tariff in the form of surcharge which will be in addition to applicable Retail Tariff as approved by the Commission from time to time.

2.191 Green Power Tariffs would not have negative impact on the existing Retail Tariffs but would operate as Cost plus model in the form of surcharge over existing Retail Tariffs and would be totally voluntary in nature. The extra charges for procurement of Renewable Power being charged from specific customers would not increase the cost to be borne by other consumers. TPDDL would be buying power at economical rates leading to reduction of Power Purchase Costs and Tariffs. The Renewable power thus provided to the consumers would help avoid buying RECs to comply the RPO targets.

2.192 CERC defines Average Power Purchase Cost (APPC) as "Pooled Cost of Purchase" which is the weighted average pooled price at which the Distribution Licensee has purchased the Electricity including cost of self-generation, if any, in the previous year from all the energy suppliers Long-Term and Short-Term, but excluding those based on Renewable Energy sources.

2.193 APPC at the National level has been worked out by CERC as Rs. 3.85/kWh while for Delhi APPC is Rs. 4.11/unit for FY 2021-22. In our licensed area, the surplus power from Net-Metering is purchased at around Rs. 5.5/kWh.

2.194 Net metering was required to promote and facilitate installations of Rooftop Solar PV system mainly for self-consumption, hence it is proposed to keep the Tariff / compensation rate for surplus energy exported by such systems to Grid at such a level that there should not be adverse impact of the same on other Electricity consumers. TPPDL agrees to the suggestion and it is in overall consumer interest as well as the financial viability of the Power sector.

2.195 As regard to stakeholder comment on Solar energy scheme at Residential Houses, it is submitted that this is the prerogative of the GoNCTD.

BYPL

2.196 As regard to stakeholder comment pertaining to Electricity Trading, it is submitted that the issue pertains to other DISCOMs & the observations may be duly addressed by them.

2.197 Purchase of RECs burden the DISCOMs and ultimately consumers with no Actual

Power. It is always prudent to procure Renewable Energy which fulfills RPO instead of procuring REC Certificate. However, setting of RPO Targets and its associated deferment is prerogative of the Commission to consider.

2.198 Moreover, various other states have relaxed the RPO Target in view of delayed RE Project and outbreak of COVID pandemic. Following states relaxes/ carry forward the RPO Target:

a) The Punjab State Electricity Regulatory Commission (PSERC) has approved the carry forward of the shortfall in the compliance of RPO in FY 2019-20 to FY 2020-21.

b) The Gujarat Electricity Regulatory Commission (GERC), in a recent ruling, directed MPSEZ Utilities Private Limited (MUPL) to make up for the past shortfall (FY 2017-18) in solar RPO within the FY 2020-21.

c) The Bihar Electricity Regulatory Commission (BERC) has approved the request of the Bihar State Power Holding Company Limited (BSPHCL) to carry forward the shortfall in its RPO for the FY 2019-20 to FY 2020-21. BERC further added that the power company could purchase either solar power or solar RECs to fulfil the RPO shortfall for FY 2019-20.

d) The Rajasthan Regulatory Commission pointed out that the DISCOMs had made every effort to comply with RPO targets and had signed a sufficient number of PPAs under which the required quantum of Electricity could have been obtained. The regulatory authority pointed out that even though the DISCOMs signed an adequate number of PPAs in the past, the Generation in terms of energy was not to the expected level. Consequently, there was a shortfall in RPO compliance. The Commission noted that there was no case to initiate action against the DISCOMs or impose a penalty as they had tried their best to comply with the targets. The Commission directed the DISCOMs to assess the energy requirements more realistically in advance and sign the PPAs accordingly in the future. It also asked the DISCOMs to make up for the RPO shortfall in the next three years.

2.199 The Petitioner is making consistent efforts for the last few years to procure Renewable

Energy to meet RPO targets as specified by the Commission. The Petitioner has arrangements for purchasing Non-Solar Power from Delhi based Plants such as DMSW, SDMC. In addition to the existing sources the petitioner has executed PPAs with Renewable Energy Developer through SECI for Wind Power. However, there are various external factors which might affect the Petitioner to comply with RPO targets like COVID- 19, delay in Scheduled Commercial Operation Date by RE-developers, halt in REC trading and other factors which are beyond the control of the Licensee.

2.200 Therefore, in view of the above, various efforts have been made by the Petitioner in meeting the RPO Targets and all above mentioned constraints which are beyond the control of the Licensee and should be allowed carry forward/waiver of RPO Target of FY 2020-21. The Commission is requested to consider the same while issuing the Tariff Order.

2.201 BYPL is continuously exploring the avenues of procuring actual Renewable Power from Solar and Non-Solar sources.

2.202 With regard to the suggestion for Green Power Tariff, it is submitted that determination of Electricity Tariff to be charged from a consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003

2.203 The Petitioner purchases excess energy by Net Metering consumer as per Regulation 9(7) of DERC (Net Metering for Renewable Energy) Regulations, 2014. Petitioner is obligated by the aforesaid Regulation. The Regulation 9(7) is quoted below:

> *"At the end of each Financial Year, any net energy credits, which remain unadjusted, shall be paid for by the distribution licensee to the consumers as per the rates notified by the Commission from time to time."*

2.204 As enquired in reference to the Solar Power to all, the Government has set a target of installing 40 GW of Grid connected Rooftop Solar capacity in the Country including Delhi and National Capital Region (NCR) by year 2022. As per the Delhi Solar Policy, 2016 notified by Government of NCT of Delhi, target has been set for installation of 2 GW of solar power by year 2025 in Delhi.

2.205 The Government is promoting development of Solar Energy in the Country by providing various fiscal and promotional incentives such as Accelerated Depreciation,

waiver of Inter State Transmission System (ISTS) charges and losses, financing solar Rooftop Systems as part of home loan, and permitting Foreign Direct Investment up to 100 per cent under the automatic route.

2.206 Further, currently there is no such provision in the Tariff Order which makes a Renewable Power purchase by a consumer optional and for the consumer who is willing to purchase the Renewable Power to be charged at the rate at which it is purchased.

2.207 The Petitioner in FY 2020-21 have undertaken the initiatives towards solarization, as follows:

a) Implementation of rooftop solar projects for residential customers,
b) Setting up of Energy Innovation Hub,
c) Digital Platform for Energy Management,
d) Development of Mobile Application under Consumer Behavior study,
e) Maintenance of 13 rooftop PV plants at office locations,
f) Service for Dashboard related to RE Generation Forecasting, etc.

2.208 The above initiative aims to improve the consumer experience, efficiency & lowers the cost of service. As the expenses incurred on such new initiatives are not the part of normative O&M expenses, therefore, such expenses are claimed in additional O&M expenses for FY 2020-21.

2.209 As regard to stakeholder comment on Solar energy scheme at Residential Houses, it is submitted that the stakeholder comment is not related to the instant Petition. However, the Petitioner is actively engaged in publicizing the Solar Generation scheme along with benefits and incentives provided by appropriate Authorities under the scheme.

2.210 With regard to stakeholder comment on providing Renewable Power option to consumer, it is submitted that the Commission has provided renewable Purchase Obligations for DISCOMs. Accordingly, the petitioner signed Long Term /Short Term contracts with RE generators. The petitioner is also facilitating the growth of Net Metering connections in its area of supply.

2.211 As regard to stakeholder comment pertaining to Electricity Trading, it is submitted that the issue pertains to other DISCOMs & the observations may be duly addressed by them.

2.212 Purchase of RECs Certificate burden the DISCOMs and ultimately consumers with no Actual Power. It is always prudent to procure Renewable Energy which fulfills RPO instead of procuring REC Certificate. However, setting of RPO Targets and its associated deferment is prerogative of the Commission to consider.

2.213 Moreover, various other states have relaxed the RPO Target in view of delayed RE Project and outbreak of COVID pandemic. Following states relaxes/ carry forward the RPO Target:

a) The Punjab State Electricity Regulatory Commission (PSERC) has approved the carry forward of the shortfall in the compliance of RPO in FY 2019-20 to FY 2020-21.

b) The Gujarat Electricity Regulatory Commission (GERC), in a recent ruling, directed MPSEZ Utilities Private Limited (MUPL) to make up for the past shortfall (FY 2017-18) in solar RPO within the FY 2020-21.

c) The Bihar Electricity Regulatory Commission (BERC) has approved the request of the Bihar State Power Holding Company Limited (BSPHCL) to carry forward the shortfall in its RPO for the FY 2019-20 to FY 2020-21. BERC further added that the power company could purchase either solar power or solar RECs to fulfil the RPO shortfall for FY 2019-20.

d) The Rajasthan Regulatory Commission pointed out that the DISCOMs had made every effort to comply with RPO targets and had signed a sufficient number of PPAs under which the required quantum of Electricity could have been obtained. The regulatory authority pointed out that even though the DISCOMs signed an adequate number of PPAs in the past, the Generation in terms of energy was not to the expected level. Consequently, there was a shortfall in RPO compliance. The Commission noted that there was no case to initiate action against the DISCOMs or impose a penalty as they had tried their best to comply with the targets. The Commission directed the DISCOMs to

assess the energy requirements more realistically in advance and sign the PPAs accordingly in the future. It also asked the DISCOMs to make up for the RPO shortfall in the next three years.

2.214 Therefore, in view of the above, various efforts have been made by the Petitioner in meeting the RPO Targets and all above mentioned constraints which are beyond the control of the Licensee and should be allowed carry forward/waiver of RPO Target of FY 2020-21. The Commission is requested to consider the same while issuing the Tariff Order.

2.215 The Petitioner purchases excess energy by Net Metering consumer as per Regulation 9(7) of DERC (Net Metering for Renewable Energy) Regulations, 2014. Petitioner is obligated by the aforesaid Regulation. The Regulation 9(7) is quoted below:

"At the end of each Financial Year, any net energy credits, which remain unadjusted, shall be paid for by the distribution licensee to the consumers as per the rates notified by the Commission from time to time."

2.216 As regard to stakeholder comment on Solar energy scheme at Residential Houses, it is submitted that the stakeholder comment is not related to the instant Petition. However, the Petitioner is actively engaged in publicizing the Solar Generation scheme along with benefits and incentives provided by appropriate Authorities under the scheme.

2.217 BRPL is continuously exploring the avenues of procuring actual Renewable Power from Solar and Non-Solar sources. Further, in order to encourage Renewable Power, BRPL has already procured 41 MU of Solar Power from Power Exchange during FY 2020-21 through GTAM.

2.218 With regard to the suggestion for Green Power Tariff, it is submitted that determination of Electricity Tariff to be charged from a consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

2.219 As enquired in reference to the Solar Power to all, the Government has set a target of installing 40 GW of Grid connected Rooftop Solar capacity in the country including Delhi and National Capital Region (NCR) by year 2022. As per the Delhi Solar Policy, 2016 notified by Government of NCT of Delhi, target has been set for installation of 2

GW of Solar Power by year 2025 in Delhi.

2.220 The Government is promoting development of Solar Energy in the country by providing various fiscal and promotional incentives such as accelerated depreciation, waiver of Inter State Transmission System (ISTS) charges and losses, financing solar Rooftop Systems as part of home loan, and permitting Foreign Direct Investment up to 100 per cent under the automatic route.

NDMC

2.221 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.222 The Electricity Act, 2003 entrusts on the appropriate Commission the responsibility for the promotion of co-generation and generation based on Renewable Energy Sources (RES). The policy framework of the Government of India also stresses on the encouragement of Renewable Energy Sources keeping in view the need for energy security and reducing the carbon footprint. Section 86 (1) (e) of the Electricity Act 2003 states:

> *"The State Commission shall discharge the following functions:*
>
> *Promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee"*

2.223 The Commission in pursuance of the same has mandated the Renewable Purchase Obligation to be met through the purchase of energy from Renewable Energy Sources/or purchase of Renewable Energy Certificates (RECs) to ensure that RPOs are met in the most optimum manner.

2.224 Ministry of Power (MoP), GoI vide its Order dated 14/06/2018 specified the RPO targets till FY 2021-22. The Commission has considered the RPO targets (a year later targets) in DERC (Business) Plan Regulations, 2019, as specified by MoP, GoI.

2.225 The renewable power is available at competitive rates and DISCOMs are encouraged to enter long term PPAs with various Renewable Energy Generation companies. The

Power Purchase Agreement with Generating Companies are valid till the term of PPA.

2.226 The Commission has promoted Net Metering in Delhi through framework of Net Metering Regulations in 2014 and issued guidelines in 2019 related to Virtual Net Metering (VNM) and Group Net Metering (GNM). 178 MW of Solar Roof Top through Net Metering, VNM & GNM has been installed in Delhi till Q1 FY 2022-23.

2.227 Further, penalties for non-compliance to RPO has been illustrated at Table No. 2.2 of DISCOM wise penalty levied from FY 2017-18 to FY 2019-20.

2.228 In order to further encourage embedded Generation in the Electricity Distribution Network without any Transmission Losses (STUs & CTU) and Distribution Losses at appropriate voltage level, the Commission issued amendments to DERC (Group Net Metering and Virtual Net Metering for Renewable Energy) Guidelines, 2021 to promote Renewable Energy by including Service Line cum Development (SLD) and network augmentation in the scope of respective DISCOMs till additional capacity doesn't exceed 75 MW, 50 MW, 30 MW and 10 MW for BRPL, TPDDL, BYPL and NDMC respectively as applicable for VNM/ GNM projects.

2.229 The Commission has noted the suggestion of stakeholders regarding Green Tariff & Peer to Peer Energy Trading.

2.230 The Commission notified DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulation, 2021 wherein RPO targets for Obligated Entities (i.e. Distribution Licensees, Open Access consumers and Captive users) are specified for period from FY 2020-21 up to FY 2022-23.

2.231 The DISCOMs have submitted that they have procured the Renewable Energy from Power Exchanges in last six months through Green Term Ahead Market (GTAM). GTAM being a new product shall be explored for procuring Renewable Power. The Commission continually provides Regulatory support in exploring new products for purchase of Renewable Energy as a step in promoting clean sources of energy in the interest of consumer.

ISSUE 7: AT&C LOSSES

STAKEHOLDER'S VIEW

2.232 BRPL has already achieved 7.17% Distribution Losses in FY 2020-21 & considering

Distribution Losses for FY 2022-23 as 7.9% is unjustifiable & must be denied by DERC. There is no incentive to improve this number as this is fully compensated in ARR.

2.233 DERC should disallow incentives for DISCOMs showing higher Target for Distribution Loss in Tariff Petition and then showing less in Actual to claim incentives.

2.234 Reduced AT&C losses in last 14 years is not matching with reduction in Power Tariff for all those years.

2.235 The direction of Hon'ble APTEL to rework AT&C losses for FY 2011-12 in EP 5 of 2020-21 dated 26/07/2021 was in excess of jurisdiction and cannot be implemented. The existing AT&C loss level based on MYT Regulations shall prevail.

2.236 Collection efficiency should be 100%.

2.237 Distribution loss target should be fixed at 5%.

2.238 Distribution loss of 7.9% for FY23 is very high in comparison to that of Chinese companies.

2.239 The Collection of 0.7% in excess of 100% collection efficiency is claimed in the Petition but it is also stated that 200 MUs could not be collected. These are contrary claim in the Petition & Bad debt claim should be rejected.

2.240 Incentive of over achievement of Collection Efficiency and Distribution Loss Target should be provided to consumers.

PETITIONER'S SUBMISSION

TPDDL

2.241 The case regarding reworking of AT&C loss for FY 2011-12, is sub-judice in Hon'ble APTEL.

2.242 The Tariff Regulations, 2017 provides that

> *"Target for Collection Efficiency shall be fixed on the basis of actual performance, past targets and other relevant factors/measures/ information of the Distribution Licensee for a Control Period in the Business Plan Regulations."*

2.243 Accordingly, the Distribution loss targets are fixed by the Commission for the entire period of applicability of Business Plan Regulations and are determined based on the base year performance of the DISCOM. Once the targets are approved by the Commission, the same are not revisited till the end of the above said period.

2.244 Hence, Distribution loss reduction targets and eligibility for incentives on actual achievement are decided by the Commission as per Business Plan Regulations, 2017 and Tariff Regulations, 2017 after prudence check at the time of True-Up.

2.245 As regard to stakeholder comment on Bad Debt, it is submitted that TPDDL has not claimed any amount related to bad debt.

2.246 Other query does not pertain to TPDDL.

BYPL

2.247 The Distribution Loss of 8.50 % is the target fixed by the Commission for the Petitioner in Regulation 25 of Business Plan Regulations, 2019. Further, any financial impact on underachievement & overachievement is as per Regulation 25 of Business Plan Regulations, 2019, as follows:

"25. TARGET FOR DISTRIBUTION LOSS

(1) The Distribution Loss target in terms of Regulation 4(9)(a) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution licensees shall be as follows:

Table 15: Target for Distribution Loss for the Control Period

Table 15: Target for Distribution Loss for the Control Period

Sr. No.	Distribution Licensee	2020-21	2021-22	2022-23
1	BSES Rajdhani Power Ltd.	8.10%	8.00%	7.90%
2	BSES Yamuna Power Ltd.	9.00%	8.75%	8.50%
3	Tata Power Delhi Distribution Ltd.	7.90%	7.80%	7.70%
4	New Delhi Municipal Council	9.00%	8.75%	8.50%

Regulation 25(4) of the Business Plan Regulations, 2019-

"(4) Any financial impact due to Overachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be shared between the Distribution Licensee and Consumers as follows:

i. in case actual Distribution Loss is between the loss target and loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 2/3rd to Consumers and 1/3rd to the Distribution Licensee;*

ii. in case actual Distribution Loss is less than loss target minus [50%(Previous*

Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 1/3rd to Consumers and 2/3rd to the Distribution Licensee.

Explanation -

Previous Year Distribution Loss Target - PYT

Current Year Distribution Loss Target - CYT

CASE 1: If Actual Loss > CYT, 100% of the distribution loss is to Distribution Licensee

CASE 2: If CYT > Actual > [CYT-50%(PYT-CYT)], 1/3rd of the incentive is to Distribution Licensee and 2/3rd of the incentive is to Consumers.*

CASE 3: If Actual < [CYT-50%(PYT-CYT)], incentive upto [CYT-50%*(PYT-CYT)] is to be shared as 1/3rd to the Distribution Licensee and 2/3rd to the Consumers. Remaining incentive is to be shared as 2/3rd to the Distribution Licensee and 1/3rd to the Consumers."*

2.248 Petitioner in its ARR petition has considered target for Distribution Loss as approved by the commission in its Business Plan Regulations, 2019. Further, BYPL has aggressively reduced its Distribution Loss from 63 % to 7.98% from Jul '02 to Mar '21 which is among highest in the country. The benefit of the same is passed on to the consumers in the ARR Petition.

2.249 By virtue of the billing lag which is inherent in an annual Tariff re-determination, even if the collection efficiency were assumed to be 100%, even then the actual collection would still be in the range of 99% to 99.25%.

2.250 Accordingly, the Petitioner has made its detailed submission w.r.t Distribution Loss Target and Collection Efficiency Target in its ARR Petition along with detailed analysis.

2.251 In SOR of Business Plan Regulation 2019, the Commission has stated that while determining the Distribution Loss trajectory for the Control period, it reviewed the actual loss targets as already achieved by the Distribution Licensees. Based on the trajectory as allowed in the Business Plan Regulations, 2017 and the current performance, the Commission determined the trajectory for FY 2020-21 to FY 2022-23.

2.252 The Distribution Loss target specified for Petitioner is 8.75% and 8.50% for FY 2021-22

and FY 22-23 respectively. The Petitioner has overachieved its Distribution Loss Target during FY 2020-21 i.e; 7.98% against target of 9.00 % and the benefit of the same is shared with the consumers in the ARR Petition in accordance with Regulation 25 of DERC Business Plan Regulations, 2019.

2.253 Tariff Regulations, 2017 and Business Plan Regulations, 2019 provides the methodology for computation of Collection efficiency and the incentive sharing mechanism on account of overachievement of the specified operational targets.

2.254 Accordingly, the Petitioner has claimed incentive on overachievement of Distribution Losses in accordance to Regulation 25(4) of the Business Plan Regulations, 2019 against the targets defined in regulation 25(1) of the Business Plan Regulations, 2019.

BRPL

2.255 Petitioner in its ARR petition has considered target for Distribution Loss as approved by the commission in its Business Plan regulations, 2019. It may be noted that BRPL has aggressively reduced its Distribution Loss from 47.1 % to 7.17% from July'02 to March'21 which is among highest in the country. The benefit of the same is passed on to the consumers in the ARR Petition.

2.256 The Commission has finalized the targets for Distribution loss and Collection Efficiency in its Business Plan Regulations, 2019. Also, incentive on account of any overachievement w.r.t Collection Efficiency and Distribution Loss is shared with the consumers in accordance with the provisions of Tariff Regulations, 2017 and Business Plan Regulations, 2019.

2.257 The Distribution Loss of 7.9% is the target fixed by the Commission for the Petitioner in Regulation 25 of Business Plan Regulations, 2019. Further, any financial impact on underachievement & overachievement is as per Regulation 25 of Business Plan Regulations, 2019, as follows.

"25. TARGET FOR DISTRIBUTION LOSS

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"(4) Any financial impact due to Overachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be shared between the Distribution Licensee and Consumers as follows:

i. in case actual Distribution Loss is between the loss target and loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 2/3rd to Consumers and 1/3rd to the Distribution Licensee;*

ii. in case actual Distribution Loss is less than loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 1/3rd to Consumers and 2/3rd to the Distribution Licensee.*

Explanation -

Previous Year Distribution Loss Target - PYT

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CASE 3: If Actual < [CYT-50%(PYT-CYT)], incentive upto [CYT-50%*(PYT-CYT)] is to be shared as 1/3rd to the Distribution Licensee and 2/3rd to the Consumers. Remaining incentive is to be shared as 2/3rd to the Distribution Licensee and 1/3rd to the Consumers."*

NDMC

2.258 The party is not in NDMC area.

COMMISSION'S VIEW

2.259 The target for Distribution Losses has been benchmarked with following parameters:

a) Distribution Losses trajectory of previous years for DISCOMS;
b) Performance of various Indian Distribution companies
c) Electric Power Transmission and Distribution Losses for Top 50 countries from the World Bank website

The detailed methodology for computing Distribution losses is mentioned at Sr. No. D (4) of Explanatory Memorandum - Draft DERC (Business Plan) Regulations, 2019 uploaded at Commission's website.

2.260 The target for Distribution losses for the control period from FY 2020 till FY 2023 is specified as Regulation 25 of DERC (Business Plan) Regulations, 2019. The amount of over achievement/under achievement on the distribution loss target shall be computed as per formula specified in the Regulation 159 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

2.261 The DISCOMs are given an incentive if the Distribution Losses are reduced below the target fixed. If the losses are more than the target fixed, the loss above the target fixed is full to the account of the DISCOMs. The targets every year are progressively decreasing and it is expected that DISCOMs will achieve them. If the DISCOMs do not achieve the target, the financial impact will be to the account of the DISCOMs alone and will get reflected in the true-up of ARR of the respective DISCOMS.

2.262 The Actual Distribution Losses of DISCOMs, as submitted by them during True up of the Petitions, for FY 2020-21 is 7.17%, 7.98%, 8.43% & 7.15% for BRPL, BYPL, NDMC & TPDDL respectively which is far below the National Average Loss Level i.e. 20.93% in FY 2019-20 *(source: Report on performance of Power Utilites 2019-20).*

2.263 The details of actual incentive/disincentive given to the DISCOMs for over and underachievement of AT&C loss target are available in Chapter A3 (True-up of ARR) of the respective year Tariff Orders which are available at Commission website (*www.derc.gov.in*).

2.264 The Commission is of the view that Distribution Loss is an inherent loss in the System which can be minimized up to the technical permissible limit, whereas the losses also include the theft which can be controlled by DISCOMs.

2.265 The Distribution Losses are applicable on Open Access consumers in line with clause 8.5.1 of the Tariff Policy 2016 as stated under:

"8.5.1 …

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross-subsidy surcharge.

… While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers."

2.266 The Cross-Subsidy Surcharge and the Additional Surcharge to be levied from consumers, who are permitted open access. However, a consumer shall avail open access only if the payment of all the charges leads to a benefit to them.

2.267 The stakeholders views regarding resetting of Distribution Loss Target of Distribution Licensees will be considered appropriately for next control period and stakeholders are requested to submit their comments when sought by the Commission on the Draft Regulations for the next control period.

ISSUE 8: DISTRIBUTION INFRASTRUCTURE

STAKEHOLDERS' VIEW

2.268 The infrastructure of DISCOM is getting outdated and Infrastructure development activities should be increased.

2.269 Electricity poles, Substations infrastructure is in bad shape. Overhead cables should be removed and should be laid underground.

2.270 Consumption of Power in Substation is very high.

2.271 The consumption of power in Sub-station, own-consumption of DISCOM are shown very high.

2.272 Underground cables are not required. For fault rectification, entire road is excavated which causes inconvenience to Public.

2.273 Smart Meter do not serve the purpose in terms of its cost and Cost benefit analysis

and their funding is a direct burden on consumer.

2.274 Meters were changed forcefully in the past, due to which maintenance cost is increasing.

2.275 All new cables should be laid in housing societies.

2.276 Why DISCOM denied connections to consumer with 11kW meter load and asked them to pay for installation of new transformer.

2.277 Defective/burnt meters should be sent to NABL laboratories for testing and consumers should not be harassed as thief.

2.278 Street light maintenance charge of Rs. 9 / kM is totally unjustifiable.

2.279 Street light maintenance charges should be reduced. The maintenance charges received from Municipal Corporation should be included in NTI.

2.280 Street light is already part of O&M expenses and should be paid through CKT-KM basis and actual tax paid should be allowed without any profit on it.

PETITIONER'S SUBMISSION

TPDDL

2.281 Maintenance charges for street light maintenance is already offered as Non-Tariff Income.

2.282 Other queries does not pertain to TPDDL.

BYPL

2.283 As regards to stakeholder comment on income from Street Light Maintenance, it is submitted that the responsibility of maintaining street light is not contained in the Distribution License of the Petitioner. The Electricity Act, 2003 does not mandate the Distribution Licensee to maintain Street Lights. Further, as per Section-42 of Delhi Municipal Corporation Act, 1957, it is the responsibility of MCD to maintain Street lighting system which is reproduced below:

"42. Obligatory functions of the Corporation….

(o) the lighting, watering and cleansing of public streets and other public places;…

(w) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;"

2.284 With the unbundling and restructuring of Delhi Vidyut Board (DVB) into corporate entities and privatisation of Distribution Business, the past legacy of maintenance of public lighting was passed on to the Petitioner though the maintenance of public lighting is not their function.

2.285 The Commission while deliberating on the issue of Street Light maintenance charges has in the Tariff Order dated 31/08/2017 directed that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner.

2.286 Therefore, Petitioner is maintaining Street Lights not as an obligation under Licensed Business or a part thereof but on behalf of road owning agencies, viz. MCD, NHAI, PWD in the areas comprising East and Central Delhi.

2.287 Further, the Commission in its Order dated 5/03/2004 and 22/09/2009 while stipulating the incentive/disincentive mechanism for maintaining streetlights has stated that the incentive or disincentive would not be a pass-through in the calculation of the ARR. The Commission in the Tariff Order dated 23/07/2014 had clarified that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner if the same is indicated separately in the audited financial statement. Accordingly, the street light maintenance charges is offered as part of Non-Tariff Income.

BRPL

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2.291 Therefore, Petitioner is maintaining Street Lights not as an obligation under Licensed Business or a part thereof but on behalf of road owning agencies, viz. MCD, NHAI, PWD in the areas comprising East and Central Delhi.

2.292 As regards to stakeholder comment on consumption of Power in sub-station, it is submitted that the Commission has approved consumption at substation as per Regulation 23(2) of Business Plan Regulations, 2019. The Regulation 23(2) is stated as below:

> *"(2) The Distribution Licensee shall be allowed own (Auxiliary) consumption including e-vehicle charging stations installed at Distribution Licensee offices and sub-stations, at Zero Tariff for actual recorded consumption subject to a maximum of 0.25% of total sales excluding own consumption to its retail consumers for the relevant financial year as part of O&M expenses for the relevant year:*
>
> *(3) Actual recorded own (Auxiliary) consumption in excess of 0.25% of total sales excluding own consumption to its retail consumers for the relevant financial year, shall be billed at Non Domestic Tariff of respective year's Tariff Schedule and shall form part of revenue billed and collected for the same year."*

NDMC

2.293 The party is not in NDMC area

COMMISSION'S VIEW

2.294 The installation of smart meters has been mandated in the revised National Tariff Policy dated 28/01/2016 issued by MoP, GoI. Accordingly, the Commission has

accorded 'In-principle' approval to the proposal of DISCOMs for installation of Smart Meters, in phased manner.

2.295 The Central Electricity Authority (CEA) notified Measures relating to *Safety and Electric Supply Regulations, 2010* as amended from time to time. The Commission in its *DERC (Supply Code and Performance Standards) Regulations, 2017* has directed the Distribution Licensee and the consumers to follow the provision of the Safety and Electric Supply Regulations. Accordingly, the bare conductors are being replaced with the cables in a phased manner by the Distribution Licensees on case to case basis.

2.296 The domestic connections shall be installed as per procedure specified in Chapter-3 of *DERC (Supply Code and Performance Standards) Regulations, 2017*. For delay in energizing connection, the License shall be liable to pay the applicant compensation as per regulation 11 (v) of said order. Relevant clause as stated below:

> *"11 (V). In case the Licensee fails to provide the connection to an applicant within the prescribed time lines, the Licensee shall be liable to pay the applicant compensation as specified in Schedule-I of the Regulations.".*

2.297 During the prudence check, the details for capitalisation of meters on different heads were sought as per format including the replacements of meters attributable to the Distribution Licensee and the consumer.

2.298 The Regulation 24 of Business Plan Regulations, 2019 outlays the tentative Capital Investment Plan including investment on smart meters for the petitioners. The relevant clause of said Regulation is as follows:

> *" 5. The Distribution Licensee shall submit an application including details of actual Capitalisation on quarterly basis for physical verification and true up of capital cost within 1 (one) month of the completion of the relevant quarter".*
>
> *In line with said regulation, the petitioner submits the details of actual capitalization on quarterly basis."*

2.299 The formation and implementation of capitalization plan may be referred from section A3: True up upto FY 2020-21 under the head of capital expenditure and capitalization.

2.300 The Commission has considered the submission that the expenses on account of street light maintenance is separate than the normal O&M expenses. However, the contract

for maintenance of the street light has been given to the Petitioner due to its distribution business. Accordingly, the Commission has considered the net amount from Street Light Maintenance as part of Non-tariff income of the Petitioner.

ISSUE 9: TRUE-UP OF PAST CLAIMS

STAKEHOLDERS' VIEW

2.301 True Up for FY 2020-21 should be completed urgently:

i) Distribution Loss Target and Collection Efficiency for FY 2020-21.
ii) Non-Tariff Income
iii) Rebate on Power Purchase Cost
iv) Sale of Surplus Power
v) RPO Obligation
vi) O&M Charges
vii) Communication Expenses
viii) Loss on Sale of retired assets
ix) Legal Expenses
x) Income from Street Light Maintenance
xi) Commission on Collecting Electricity Duty

2.302 Old DVB dues should be recovered.

2.303 Rs. 372 Crore with carrying cost should be reduced from assets of the DISCOMs as this amount was transferred to DISCOMs in December, 2001 before privatization.

2.304 DISCOM's response to observations shall be reviewed by the Commission as DISCOMs projected huge Revenue gap every year.

2.305 Why BYPL keeps filing same claims again and again.

PETITIONER'S SUBMISSION

TPDDL

2.306 DISCOMs books of accounts are duly checked/audited by CAG empanelled Statutory Auditors to present a true and fair view in accordance with various Laws. Further, prudence checks towards the True up is also done by the Commission and the Auditors appointed by them.

2.307 Other Queries does not pertain to TPDDL.

BYPL

2.308 As regards the stakeholder's comments on True-up of FY 2020-21, it is submitted that the Petitioner has filed the True-up Petition in terms of the provisions of the Tariff Regulations, 2017 and Business Plan Regulations, 2019.

2.309 The Petitioner has already provided the detailed justifications, clarification and computation with respect to each claim as sought in its Petition for scrutiny.

2.310 The Commission considers the merits of the submissions made by the Petitioner, analyses the legitimacy of the same as per the applicable Regulations and allows/disallows the submissions based on such principles. The concerns of the stakeholder would be addressed in the Tariff Determination process to the extent not contrary to the Binding Regulations and Statutory Framework.

2.311 BYPL claims its legitimate entitlements in terms of DERC Regulations/Orders/ or Orders of Superior Court in its ARR Petition. If these entitlements are not considered by the Commission in the Tariff Order for the Financial Year, the same is sought by BYPL under past claims Chapter in the ARR Petition.

2.312 Timely Implementation of APTEL orders by the Commission is in overall interest of the consumers and the sector as a whole. Hon'ble APTEL has observed in its various judgments that its judgment/ Orders are to be implemented promptly, in cases, where its judgments have been passed and no stay Order has been granted by the Hon'ble Supreme Court. Even the mere pendency of an appeal against APTEL judgment is not an excuse for its delay in implementation or non-implementation.

2.313 Regarding Petitioner's claim for implementation of APTEL Judgments and past period claims, it is submitted that, only after detailed deliberation on the issues, Hon'ble APTEL vide its various judgments has issued specific directions to the Commission which the Commission is legally bound to implement. Accordingly, the Petitioner in its Petition has prayed for implementation of various Judgments passed by the Hon'ble APTEL and allowance of its entitlement in the Tariff Order. Further, the issue wise detailed submissions along with computation of financial impact are provided in ARR/True-up Petition.

2.314 Delay in recognition of past period issues and allowance of the claims violates

principles of Tariff determination under Section 61, 62 and 64 of Electricity Act, 2003 which attracts substantial amount of carrying cost to be borne by the consumer which can be avoided if the claims are allowed to the Petitioner in a timely manner.

2.315 As regard to Distribution Loss Target and Collection Efficiency for FY 2020-21, it is submitted that the Commission finalised the Distribution Loss targets and Collection Efficiency in its Business Plan Regulations, 2019 after seeking comments and suggestions from the stakeholders.

2.316 The per unit rates for normative O&M computation in Business Plan Regulations, 2019 was specified by the Commission after due diligence of the data submitted by Petitioner. Further, we would like to submit that a Public hearing was conducted by the Commission and after considering the contentions, submissions and suggestions by the stakeholders, Business Plan Regulations, 2019 was finalised.

2.317 As regard Rate of Interest on Loan, it is submitted that the rate of interest on loan is dependent upon various factors which are the resultant of aspects beyond the control of the Petitioner. The Commission has specified the norms for determination of cost of debt based on SBI MCLR in Tariff Regulations, 2017 and Business Plan Regulations, 2019. Accordingly, the Petitioner has made its submissions along with all requisite information for due consideration of the Commission.

2.318 As regards the stakeholder comment on 7th Pay Commission arrears, it is submitted that the Petitioner has claimed the incremental impact of 7th Pay Commission during FY 2020-21 as provided in Regulation 23(6) of Business Plan Regulations, 2019.

2.319 Distribution Business is a regulated business under the aegis of the Commission and the right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business. Moreover, the Electricity Act, 2003, allows the Petitioner the right to avail its statutory remedies under section 111 and other applicable provisions. Therefore, all prudently incurred legal expenses without any distinction should be allowed as an expense in the ARR.

2.320 Further, the Commission while determining the norms for O&M expenses in Business

Plan Regulations, 2019 has not considered legal expenses as the same shall be allowed based on prudence check at the time of true of ARR. Hence, the Petitioner has made its claim of Legal Expenses as an additional expense as provided for in Business Plan Regulations, 2019.

2.321 In regard to stakeholder comment on Communication Expenses, it is submitted that these expenses which are incurred by the Petitioner pursuant to the directions of the Commission post finalization of the norms of O&M expenses and hence legitimate expenses are allowed to be recovered in the ARR.

2.322 As regards the stakeholder's view for consideration of bad debt recovered as Non-Tariff Income, it is submitted that any amount recovered as bad debts is an energy income and has been rightly considered by the Commission as part of revenue collected during the year and is utilized towards meeting the ARR for the year. Since such income has already been considered as revenue available towards ARR, treating it as Non-Tariff Income would tantamount to double accounting of Income. Therefore, the Income on account of bad debts recovered is allowed to be reduced from Non-Tariff Income of the relevant year.

2.323 The Commission in Regulation 23 (6) of Business Plan Regulations, 2019 has provided that Distribution Licensee may claim the expenses for raising loan for Working Capital and Regulatory Assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence. Accordingly, such expenses are claimed in the Petition for True Up for FY 2020-21. Further, Working capital requirement is determined by the Commission in line with the Regulation 84(4) of the DERC Tariff Regulations, 2017.

BRPL

2.324 BRPL agrees to the concern raised by the Stakeholder on Truing-up of capital cost since the first Multi Year Tariff period. The Commission is requested to kindly consider Truing Up of Capital Cost of past periods.

2.325 The Commission has finalized the targets for Distribution loss and Collection Efficiency in its Business Plan Regulations, 2019. Also, incentive on account of any overachievement w.r.t Collection Efficiency and distribution loss is shared with the

consumers in accordance with the provisions of Tariff Regulations, 2017 and Business Plan Regulations, 2019.

2.326 As regards the stakeholder's view for consideration of bad debt recovered as Non-Tariff Income, it is submitted that any amount recovered as bad debts is an energy income and has been rightly considered by the Commission as part of revenue collected during the year and is utilized towards meeting the ARR for the year. Since such income has already been considered as revenue available towards ARR, treating it as Non-Tariff Income would tantamount to double accounting of Income. Therefore, the Income on account of bad debts recovered is allowed to be reduced from Non-Tariff Income of the relevant year.

2.327 In regard to stakeholder comment on Communication Expenses, it is submitted that these expenses which are incurred by the Petitioner pursuant to the directions of the Commission post finalization of the norms of O&M expenses and hence legitimate expenses are allowed to be recovered in the ARR.

NDMC

2.328 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.329 Finalization of Capital Expenditure and Capitalisation of the DISCOMs is under process. Pending completion of True up exercise for capitalisation, the Commission has approved the capitalisation on provisional basis so that the future consumers are not burdened with past costs.

2.330 The matter related to past period claims have been appropriately delat in the relevant section of subsequent chapters.

2.331 The impact of various Judgements of Hon'ble APTEL & review Orders of the Commission has been appropriately considered in this Tariff Order during True-up of FY 2020-21 currently.

ISSUE 10: REGULATORY ASSETS

STAKEHOLDER'S VIEW

2.332 Tariff on actual cost should be ensured so that past dues are liquidated and new ones not accumulated.

2.333 Commission should come with plan for timely Liquidation of Regulatory Assets with carrying costs.

2.334 It is requested to liquidate the Regulatory Assets, withdraw the 8% surcharge levied and ensure that such dues are not accumulated further.

2.335 What are the Regulatory Assets and their carrying costs as of now.

2.336 Govt. should pay for the liquidation of Regulatory Assets along with interest and save consumers from Tariff hike.

2.337 Forensic Audit of all DISCOMs should be carried out to arrive at the correct figure of Regulatory Assets.

2.338 Regulatory Assets should not be created further, Tariff should be cost reflective and mechanism need to be devised in order to clear the Regulatory Assets.

2.339 It needs to be clarified if the Revenue Gap of Rs. 5948 Crores for TPDDL till FY 2021-22 is to be recovered from consumers and also if Rs. 1980 crores is separate from this amount or included in this amount. DERC should provide a roadmap for clearing of these dues.

2.340 Carrying cost on Regulatory Asset should be reduced.

2.341 How will the accumulation of such huge amount for recovery with interest benefit a common man and what Tariff hike can be expected.

2.342 DERC is requested to make the Tariff equal to cost of supply to solve problem of Regulatory Assets/Revenue Gap.

2.343 Regulatory Assets are soaring & should be eliminated. Levy of 8% cess is not justified as its tax on future Generations. Tariff shall be raised.

PETITIONER'S SUBMISSION

TPDDL

2.344 Regulatory Assets got created due to non-cost reflective Tariff for previous years which has now piled up to Rs. 5948 Crores till FY 2021-22 which is to be recovered from the consumers. The amount of Rs. 1980 crores is not included in the amount of Rs. 5948 cores and is a separate one.

2.345 Thus, in order to fund the Regulatory assets TPDDL is availing loans from the market and paying interest on the same to the Banks/FIs. To overcome the problem of further

creation of Regulatory Assets, the Commission had introduced Regulatory Surcharge of 8% so that the interest burden can be met out to save the consumers from further accumulation of interest. However, current 8% surcharge is not sufficient to recover even the interest cost of Regulatory Assets and it should be enhanced to atleast 15%.

2.346 TPDDL agrees with the suggestion that the Tariff should be cost reflective i.e. Tariff should be determined to recover the entire ARR requirement to avoid any creation/ accumulation of further Regulatory Asset in a year as the funding of the Regulatory Asset results in carrying cost burden on the consumers.

2.347 Need for timely liquidation of the Regulatory Assets has been emphasized in the amendments to the National Tariff Policy. Even in past, DISCOMs have been advocating at various Forums for time bound recovery of Regulatory Assets.

2.348 Funding of the Regulatory Assets results in carrying cost burden on the consumers. Hence, in the interest of the consumers and financial viability of the power sector, TPDDL proposes hike in Surcharge to atleast 15% along with cost reflective Tariff to recover the past accumulated Revenue Gap and its carrying cost.

2.349 Absence of clear cut roadmap for the liquidation of Regulatory Asset severely impacts the future lending rates. Hence, the Commission is requested to provide a road map for early liquidation of Regulatory Assets.

2.350 It is the discretion of the Govt. to take over the liability of liquidation of Regulatory Assets.

BYPL

2.351 We agree with the stakeholder's suggestion that no new Regulatory Asset should be created by adopting the cost reflective Tariff and mechanism need to be devised in order to clear the Regulatory Assets.

2.352 The Commission has acknowledged the fact in past Tariff Orders and Press Releases that in absence of cost-reflective Tariff, huge Regulatory Assets has been created and has adversely affected the borrowing capacity and the credit rating of the DISCOMs.

2.353 The Commission vide its Tariff Order dated 13/07/2012 had introduced the concept of 8% Regulatory surcharge (on fixed & energy charges) for liquidation of accumulated Revenue Gap.

2.354 The rationale given by the Commission in its Tariff Order is as under:

"5.9 The revenue deficit for FY 2012-13 of the three DISCOMs is Rs 1402.32 Crore While, the accumulated revenue deficit till FY 2010-11 (along with carrying cost) is Rs 6919 Crore Keeping in view the significant deficit with all three DISCOMs and in an attempt to make tariffs cost reflective, the Commission has decided to revise the tariff for all consumer categories in order to enable the DISCOMs to at least recover the approved revenue requirement for FY 2012-13.

5.10 For meeting carrying cost of the revenue gap till FY 2010-11 and liquidation of revenue gap, the Commission has decided to introduce a surcharge of 8% over the revised tariff."

2.355 However, the surcharge of 8% as levied is not enough to recover even the entire carrying cost on created Regulatory Assets. In case, exemption from payment of Regulatory Surcharge is allowed to the stakeholder, not only BYPL cash flow status will further deteriorate, the burden of such exemption will fall on other consumers along with applicable carrying cost.

2.356 There is huge unrecognized Regulatory Asset on account of various APTEL Orders in favour of DISCOMs pending implementation by the Commission. We request that the Commission for implementation of various APTEL judgments which are either not challenged by DERC before the Hon'ble Supreme Court or where there is no stay from Hon'ble Supreme Court and allow the impact in this Tariff Order without further delay.

2.357 BYPL from time to time has also been drawing the attention of the Commission regarding precarious financial crisis faced by it in the absence of cost reflective Tariff and time bound recovery of accumulated Regulatory Asset.

BRPL

2.358 We agree to the stakeholder's suggestion that Regulatory Assets should not be created. Further, Tariff should be cost reflective and mechanism need to be devised in order to clear the backlog.

2.359 The Commission has acknowledged the fact in past Tariff Orders and Press Releases that in absence of cost-reflective Tariff, huge Regulatory Assets has been created and has adversely affected the borrowing capacity and the credit rating of the DISCOMs.

2.360 BRPL from time to time has also been drawing the kind attention of the Commission regarding precarious financial crisis faced by it in the absence of cost reflective Tariff and time bound recovery of accumulated Regulatory Asset.

2.361 There is huge unrecognized Regulatory Asset on account of various APTEL Orders in favour of DISCOMs pending implementation by the Commission. We request that the Commission for implementation of various APTEL judgments which are either not challenged by DERC before the Hon'ble Supreme Court or where there is no stay from Hon'ble Supreme Court and allow the impact in this Tariff Order without further delay. This will lead to the determination of actual Regulatory Asset (recognized and unrecognized) and accordingly an appropriate methodology may be devised to clear the backlog.

2.362 The Commission vide its Tariff Order dated 13/07/2012 had introduced the concept of 8% Regulatory surcharge (on fixed & energy charges) for liquidation of accumulated Revenue Gap.

2.363 The rationale given by the Commission in its Tariff Order is as under:

> *"5.9 The revenue deficit for FY 2012-13 of the three DISCOMs is Rs 1402.32 Crore While, the accumulated revenue deficit till FY 2010-11 (along with carrying cost) is Rs 6919 Crore Keeping in view the significant deficit with all three DISCOMs and in an attempt to make tariffs cost reflective, the Commission has decided to revise the tariff for all consumer categories in order to enable the DISCOMs to at least recover the approved revenue requirement for FY 2012-13.*
>
> *5.10 For meeting carrying cost of the revenue gap till FY 2010-11 and liquidation of revenue gap, the Commission has decided to introduce a surcharge of 8% over the revised tariff."*

2.364 However, the surcharge of 8% as levied is not enough to recover even the entire carrying cost on created Regulatory Assets. In case, exemption from payment of Regulatory Surcharge is allowed to the stakeholder, not only BRPL cash flow status will further deteriorate, the burden of such exemption will fall on other consumers along with applicable carrying cost. Further, determination of Electricity Tariff to be charged from a certain category of consumers is the sole prerogative of the Commission under

Section 61, 62 and Section 45 of the Electricity Act, 2003

NDMC

2.365 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.366 Recovery of accumulated revenue gap, Regulatory Asset as envisaged in clause 8.2.2 of Tariff policy is as under:

"Carrying cost of Regulatory Assets should be allowed to the utilities.

Recovery of Regulatory Assets to be time-bound and within a period not exceeding three years at the most, preferably within the control period.

The use of the facility of Regulatory Assets should not be retrospective.

In case when Regulatory Asset is proposed to be adopted, it should be ensured that the ROE should not become unreasonably low in any year so that the capability of a licensee to borrow is not adversely affected."

2.367 The Appellate Tribunal for Electricity (APTEL) has also reiterated the above policy in its judgment dated 11/11/2011 (OP 1 of 2011).

2.368 The Commission in terms of the National Tariff Policy and in accordance with the APTEL judgment and has allowed carrying cost to DISCOMs. For liquidation of the past accumulated revenue gap, the Commission introduced a surcharge of 8% over the Tariff, in Tariff Order dated 13/07/2012, and has been fixing Tariff every year to a reasonable level to provide additional revenue to DISCOMs and also to reduce the burden of carrying cost on the consumers of Delhi. Desired level of dedication could not take place due to petitioner burden on account of implementation of Hon'ble APTEL Judgment and Review Orders. It will be reviewed in future Tariff Orders.

2.369 The build-up of the revenue gap commenced in 2009-10 when power purchase costs went up substantially and the rate of sale of surplus power steeply declined due to stringent frequency controls imposed by CERC.

2.370 The Tariff Order for FY 2010-11 was not issued due to court proceedings. Therefore, while the tariff increase from FY 2011-12 onwards has to some extent offset the incremental increase in revenue gap, however, cumulative revenue gap along with applicable carrying costs still remained uncovered. Thus, the formula evolved by the

Commission i.e., including carrying costs in the ARR every year, for tariff determination and using 8% surcharge for liquidating the principal over time is expected to liquidate the Regulatory Assets in a reasonable period of 6 to 8 years.

2.371 The Commission has submitted before Hon'ble Supreme Court of India in Civil Appeal No. 884 of 2010 that additional surcharge of 8% shall liquidate the principal amount of the accumulated revenue gap within 6 to 8 years.

2.372 The Commission determines the ARR for the DISCOMs as per the provisions of Regulation 154 & 155 of *Tariff Regulations, 2017* along with *Business Plan Regulation, 2019*, as follows.

> *"REGULATORY ASSETS*
>
> *154. The accumulated revenue gap, if approved by the Commission in the relevant Tariff Order shall be treated as*
>
> *Regulatory Assets:*
>
> *Provided thatsuch revenue gap shall be computed on the basis of excess of ARR over Revenue approved after true up of the relevant financial year.*
>
> *155. Carrying cost on average balance of accumulated revenue gap shall be allowed to the Utility at carrying cost rate approved by the Commission in the ARR of the relevant financial year:*
>
> *Provided that average balance of accumulated revenue gap shall be determined based on opening balance of accumulated revenue gap and half of the Revenue Gap /Surplus during the relevant year."*

2.373 The Commission in its Tariff Order has provided the break-up of the major components considered for projecting costs of supply during FY 2022-23, like power purchase cost, O&M costs, CAPEX, financing cost, the gap in true-up of FY 2019-21 and carrying cost for the Regulatory Assets etc. This forms the basis for the projection of the gap/surplus between present requirement in terms of ARR and revenue available at existing tariff. It is in the consumer's overall interest, that the gap between these two figures is filled by determining the tariffs so as to reduce the accumulated Revenue Gap/Regulatory Assets and the Carrying Cost thereof, which otherwise would impose an additional burden on the average consumer. The Tariff Order is issued after prudence check of

the Petitions submitted by the DISCOMs as per relevant Regulations.

ISSUE 11: PENSION TRUST

STAKEHOLDERS' VIEW

2.374 Section 86 of Electricity Act 2003, do not have provisions of Pension Trust in the Regulation. The Adhoc provisions since 2011-12 without audit are beyond mandate. Further, provision of Rs. 1506 cr. for FY 2022-23 is biased and should not be made part of Tariff exercise.

2.375 Despite non-compliance in audit, Adhoc provisions for pension fund continued since FY 2011-12.

2.376 Pension Trust Surcharge should be withdrawn/ removed/ discontinued.

2.377 DVB Employees Pension Trust surcharge increased from 3.3% to 7% and further expected to be increased thereafter which is additional burden on consumer.

2.378 Consumer are not party to Agreement between DVB Employees & GoNCTD and passing the surcharge burden on consumers should be withdrawn.

2.379 Why Pension Trust charge of erstwhile DVB employees are levied to consumers.

2.380 Pension Trust Surcharge should not be collected from Electricity consumers which will be beneficial to consumers due to reduction in Tariff.

2.381 Huge amount of liabilities of outstanding amount of erstwhile DVB employees is remaining and no proper accounting has been done so far. This Issue should be settled.

2.382 Pension fund should be abolished as its duty of the Govt. to pay them.

PETITIONER'S SUBMISSION

TPDDL

2.383 The Pension Trust was mandated to get an annual actuarial valuation of its corpus to ascertain its solvency on a year on year basis. Till date, Pension Trust has not conducted the actuarial valuation in terms of the statuary framework ordained for the functioning and funding of the Pension Trust.

2.384 The Commission had even directed the Delhi Government to have a forensic audit of the Pension Trust conducted, which has not been done till date. The responsibility solely lies with Delhi Govt. and it should meet the shortfall in the Trust at any stage

and ensure benefits of the pensioners. This will ensure that electricity consumers are not directly impacted with this burden.

2.385 While Tariff has remained same for Delhi DISCOMs in past 6 years, the Pension Trust surcharge has increased from 3.7% to 7% resulting in Tariff increase for the end consumer.

2.386 The Petitioner agrees to the suggestion of Stakeholder and requests the Commission to discontinue the Pension Trust surcharge as responsibility of funding pension is with GoNCTD.

2.387 Electricity Tax is levied by MCD in accordance with its Delhi Municipal Corporation Act. Distribution Companies and the Commission have no role in deciding the percentage of Electricity Tax to be levied.

BYPL

2.388 With regard to comment on levy of Electricity Tax, it is submitted that the Distribution licensee collects Electricity Tax/Duty on Electricity consumption on behalf of MCD which is levied under statutory mandate of Section 3 of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, sale or supply of electricity) Bye laws 1962.

2.389 With regard to comment on levy of Pension Trust Surcharge, it is submitted that in Tariff Order dated 31/08/2017, the Commission had decided to levy an Additional Surcharge for recovery of Pension Trust funding of erstwhile DVB Employees/Pensioners from September '17 onwards as per recommendation of GoNCTD vide their letter dated 26/07/2017. The rationale given by the Commission in its Tariff *Order is as under:*

> *"2.298 The Commission vide letter dated 08.12.2016 has requested GoNCTD for conducting a forensic audit of Pension Trust for authentication of the data of pension disbursement from FY 2002-03 to till date to ascertain the actual liability of Pension Trust. The Commission has considered the amount of Rs. 693 Crore sought for FY 2017-18 by the Pension Trust on an ad-hoc basis recommended by GoNCTD vide it's letter dated 26.07.2017."*

2.390 As a result, the Commission vide its Commission vide its Tariff Order dated 31/08/2017

had notified a surcharge of 3.70% towards the recovery of Pension Trust Charges of erstwhile DVB Employees/Pensioners as recommended by GoNCTD, and the same was revised to 3.80% in Tariff Order dated 28/03/2018. Thereafter, the Commission vide its Tariff Order dated 28/08/2020 has revised this surcharge to 5% and the same has increased to 7% vide its Tariff Order dated 30/09/2021.

2.391 Further, the Commission vide its Tariff Order dated 30/09/2021 also directed the Petitioner to deposit the actual amount collected through the said surcharge directly into a specified bank account. The relevant extract of the directive issued in this regard is extracted below:

"The above Tariff Rates shall be subject to following Additional Surcharges to be applied only on the basic Fixed Charges and Energy Charges excluding all other charges e.g., LPSC, Arrears, Electricity Tax/Duty, PPAC, Load Violation Surcharge, etc. for the consumers of BRPL, BYPL & TPDDL:

(a) 8% towards recovery of accumulated deficit, and,

(b) 7% towards recovery of Pension Trust Charges of erstwhile DVB Employees/ Pensioners as recommended by GoNCTD.

…

A6: DIRECTIVES

6.2 The Petitioner shall directly deposit the amount of pension trust surcharge collected from the consumer as per the tariff schedule in the following bank account, of Pension trust:

1	*A/C No.*	*10021675545*
2	*MICR No.*	*110002103*
3	*Bank*	*State Bank of India*
4	*IFSC Code*	*SBIN0004281*
5	*Name*	*DVB-ETBF-2002*
6	*Branch*	*Rajghat Power House, New Delhi-110002*

2.392 BYPL is complying with the aforesaid directive of the Commission by billing and collecting the Pension Surcharge for servicing the liabilities, pension of the Pension

Trust.

BRPL

2.393 With regard to comment on levy of Electricity Tax, it is submitted that the Distribution Licensee collects Electricity Tax/Duty on Electricity consumption on behalf of MCD which is levied under statutory mandate of Section 3 of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, sale or supply of electricity) Bye laws 1962.

2.394 DISCOM is levying Pension Trust Surcharge charge as per the surcharge rate determined by the Commission in its Tariff Order.

2.395 With regard to comment on levy of Pension Trust Surcharge, it is submitted that in Tariff Order dated 31/08/2017, the Commission had decided to levy an Additional Surcharge for recovery of Pension Trust funding of erstwhile DVB Employees/Pensioners from September '17 onwards as per recommendation of GoNCTD vide their letter dated 26/07/2017. The rationale given by the Commission in its Tariff *Order is as under:*

> *"2.298 The Commission vide letter dated 08.12.2016 has requested GoNCTD for conducting a forensic audit of Pension Trust for authentication of the data of pension disbursement from FY 2002-03 to till date to ascertain the actual liability of Pension Trust. The Commission has considered the amount of Rs. 693 Crore sought for FY 2017-18 by the Pension Trust on an ad-hoc basis recommended by GoNCTD vide it's letter dated 26.07.2017."*

2.396 As a result, the Commission vide its Commission vide its Tariff Order dated 31/08/2017 had notified a surcharge of 3.70% towards the recovery of Pension Trust Charges of erstwhile DVB Employees/Pensioners as recommended by GoNCTD, and the same was revised to 3.80% in Tariff Order dated 28/03/2018. Thereafter, the Commission vide its Tariff Order dated 28/08/2020 has revised this surcharge to 5% and the same has increased to 7% vide its Tariff Order dated 30/09/2021.

2.397 Further, the Commission vide its Tariff Order dated 28/08/2020 directed the Petitioner to deposit the actual amount collected through the said surcharge directly into a specified bank account, on a monthly basis. The relevant extract of the directive issued

in this regard is extracted below:

"Tariff Schedule

7.The above tariff rates shall be subject to following additional surcharges to be applied only on the basic Fixed Charges and Energy Charges excluding all other charges e.g., LPSC, Arrears, Electricity Tax/Duty, PPAC, load violation surcharge, etc. for the consumers of BRPL, BYPL & TPDDL:

8% towards the recovery of an accumulated deficit, and,

3.80% towards the recovery of Pension Trust Charges of erstwhile DVB Employees/Pensioners as recommended by GoNCTD.

Directives:

6.2 The Petitioner shall directly deposit the amount of pension trust surcharge collected from the consumer as per the tariff schedule in the following bank account, of Pension trust

1	*A/C No.*	*10021675545*
2	*MICR No.*	*110002103*
3	*Bank*	*State Bank of India*
4	*IFSC Code*	*SBIN0004281*
5	*Name*	*DVB-ETBF-2002*
6	*Branch*	*Rajghat Power House, New Delhi-110002*

2.398 Accordingly, the Petitioner has been complying with the above directive of the Commission.

NDMC

2.399 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.400 The Pension Trust was established as a part of Transfer Scheme Rules, 2001 framed under Delhi Electricity Reform Act, 2000 (DERA) and the Tripartite Agreement executed by GoNCTD with Unions of employees and Associations of officers of the erstwhile DVB. In terms of the aforesaid Rules and Tripartite Agreement, the Pension Trust was funded at the time of unbundling of the DVB by way of one lump sum payment by GoNCTD. Subsequent contributions from the date of unbundling have to

be made to the Pension Trust by the successor entities of DVB. The Commission has been releasing ad-hoc payments in DTL Tariff orders from FY 2011-12 onwards up to FY 2015-16. Further, in the Tariff Order dated August'2017, the Commission has directed the DISCOM's for submitting the reconciliation statement and deposit the amount directly to the pension trust, instead of the past practice of routing it through DTL.

2.401 Section 86 of the Electricity Act, 2003, which defines functions of State Commission, does not provide for issuing Regulations of Pension Trust. The fact has also been appreciated by the Hon'ble APTEL in Appeal No. 238 of 2013 (Mahendra Gupta & Others Vs DERC), wherein it has held that "the learned State Commission has no jurisdiction to go into disputes between the Appellants and the Pension Trust with regard to release of terminal benefits in their favour. The grievances of individual employees/appellants relating to service matters relating to the terminal benefits including pension are not under the jurisdiction of the State Commission". The Commission reiterates its view that it is beyond its jurisdiction to regulate the Pension Trust or to frame Regulations in this regard.

2.402 The Commission vide letter no. F.17(44)/Engg./DERC/201213/C.F. No.3481/3320 dated 11/09/2012 has issued Statutory Advice under Section 86(2) of the Electricity Act, 2003 to Govt. of NCT of Delhi to constitute an Oversight Committee to look into the issues related to pensioners of erstwhile DVB. The subject matter is presently sub-judice before Hon'ble High Court of Delhi and the parties to the dispute should expedite the matter before the court and explore other avenues for settlement of the dispute.

2.403 The Commission has already made provision on the Ad-hoc basis of Rs.150 Crore, Rs.160 Crore, Rs.400 Crore, Rs. 470 Crore, Rs. 573 Crore, Rs. 573 Crore, Rs. 694 Crore, Rs. 792 Crore , Rs. 839 Crore and Rs. 937 Crore, Rs. 1506 Crore for FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19 , FY 2019-20, FY 2020-21 , FY 2021-22 respectively in applicable Tariff Orders for passing on to the Pension Trust to avoid undue hardship to the pensioners till all issues concerned with Pension Trust are settled by the Courts/Delhi Govt.

2.404 The Commission vide letter dated 8/12/2016 and 13/7/2020 has requested GoNCTD for conducting a forensic audit of Pension Trust for authentication of the data of pension disbursement from FY 2002-03 to till date to ascertain the actual liability of Pension Trust.

2.405 The Hon'ble Supreme Court in the matter of NDPL Vs. GoNCTD & Ors. in Civil Appeal no. 4269 of 2006 (Judgment dated 3/05/2010) had inter alia held that any liability towards DVB employees and existing pensioners are the responsibility and liability of the successor utility or employer.

ISSUE 12: OPEN ACCESS

STAKEHOLDERS' VIEW

2.406 SLDC determines the cross subsidy surcharge for different categories of Open Access consumers based on uniform ABR for all levels EHT/HT/LT. The Commission is requested to determine and levy CSS separately on EHT/HT category based on respective ABRs.

2.407 Additional Surcharge be determined based on credible data related to stranded capacity, open access volume and further demonstrated by the DISCOMs so that the stranded capacity is on account of Open Access.

2.408 As per agreed principles by GoNCTD, DMRC shall be treated as special category of consumer recommending Tariff on Actual Cost of Supply (ACoS) without Surcharge & Cross Subsidy Surcharge.

2.409 Cost of Supply should be decided based on ACoS plus reasonable margin.

2.410 Continue with existing security deposit for DMRC.

2.411 ToD surcharge should not be applicable on DMRC, keeping in view nature of operations, which does not allow any flexibility of shifting of loads. DMRC peak hours is 8-10 AM, 5-8 PM & they cannot reduce consumption during peak hours.

2.412 kVAh billing should be maintained on lag only principles.

2.413 Fixed charges of approx. Rs. 61 Crore is 8-10% of cost paid by DMRC, as per agreed principles, DMRC should be exempted from Fixed Charges as DISCOMs Distribution network is not used by DMRC.

2.414 DMRC should be exempted from 8% Regulatory Surcharge.

2.415 DMRC should be considered as Integrated contract demand and penalty may be applicable if cumulative demand is breached

2.416 DISCOMs proposing Levy of penalty on harmonics, DISCOMs should educate/aware HT/EHT consumers so that they can take steps to minimize harmonics voluntarily at their level.

PETITIONER'S SUBMISSION

TPDDL

2.417 Tariff determination and Tariff design for all consumer categories is the sole prerogative of the Commission. Further, DMRC is covered under Tariff of Public Utility and is given benefit of lower Tariff along with other public utilities in comparison to other industrial consumers.

2.418 Regulatory surcharge is levied to recover the carrying cost of Regulatory assets built up during the last 14 years due to non-cost reflective Tariff. DMRC was also part of the consumers when the Tariff was non-cost reflective and hence should not be exempted from the Regulatory surcharge

2.419 The present ToD Tariff is applicable since last 6 years and hence, TPDDL requests the Commission to review its performance basis the load curves noticed during the summer months [April – September] and winter months [October – March] in its Distribution Area which is as follows:

1. Two distinct peaks and two distinct off-peak periods are noticed in the load curves for summer as well as winter months.

2. Summer:

a. Peak Periods: 0000 – 0100 hrs, 1300 – 1700 hrs. and 2100 – 2400 hrs;

b. Off-peak Period: 0300 – 0900 hrs.

3. Winter:

a. Peak Periods: 0600 – 1200 hrs, and 1700 – 2200 hrs;

b. Off-peak Period: 0000 – 0400 hrs.

2.420 As regard to stakeholder comment regarding "lag only" metering, it is submitted that Consumer equipment and installation are not provided with appropriate and adequate capacitor installations but mostly with use of fixed capacitors, bulk compensation on

HT in fixed mode, use of substandard controllers having erratic and inconsistent performance, thereby leading to additional Reactive (lead) Power Charges, which is causing undesirable unwarranted burden on TPDDL. During winter season, there is hardly any reactive injection, and due to high capacitive injection by high end consumers, the voltage becomes very high and sometimes so much so that it becomes difficult to control the same.

2.421 The reactive compensation is effective when it is nearer to the load and the extra reactive compensation by industrial consumers cannot be used / compensated against extra Reactive Energy drawl by Agricultural section.

2.422 The most effective remedy to remove such anomaly is to introduce kVAh billing in lag as well lead mode i.e. kVARh consumption in the leading power factor mode has to be taken in account as consumption. Introduction of kVAh metering and Tariffs in lead as well lag mode will also encourage the consumers to reduce their Electricity bill by ensuring that they do not draw Reactive Power and switch over to using efficient devices with proper Power Factor correctors or will install only appropriate capacitors at their premises.

2.423 Therefore, to ensure better quality and reliable supply of Power for the consumers, it is proposed to charge even the leading Power Factor cases on kVAh basis so that the injection by high end consumers (more than 30 kVA) is as per their actual requirement and proper voltage is maintained for all the consumers.

2.424 As regard to stakeholder comment on harmonic distortion, it is submitted that the presence of harmonic distortion is highly detrimental to the health of Electrical Network. Bulk consumers of electricity have higher capability to inject current harmonics in the network by virtue of large nonlinear loads. The Forum of Regulators has specified such group of customers as “Designated customers” based on their potential to inject harmonics in the Electrical Network. The end users and utilities share responsibility for limiting harmonic current injections and voltage distortion at the point of common coupling.

2.425 Regulation 8 of DERC (Supply Code and Performance Standards) Regulations, 2017, also talks of penal charges on non-compliance which are to be notified by the

Commission. This Regulation is reproduced below for ready reference:

"(5) Failure to comply with the permissible limits of Harmonics after inspection as in sub-regulation (3) above may attract penal charges, as may be notified by the Commission from time to time:"

2.426 Accordingly, the Commission is requested to direct all the HT/EHT consumers to install Power Quality meters in accordance to CEA (Technical Standards for Connectivity of the Distributed Generation Resources) Amendment Regulations, 2019 and also specify the periodicity for sharing the recorded data of PQ meters with the DISCOMs as stipulated in the Amended Regulations of CEA.

2.427 The Generation capacity remains stranded because of consumers moving to open access. TPDDL has signed PPA's with Generators for meeting the Power requirement of consumers which is leading to Generating Stations being backed down/ plants scheduled to their technical minimum/ on reserve shutdown while paying their fixed cost because of consumers moving to open access. On similar lines, CTU and STU transmission charges are also stranded charges which are paid by other Non-open Access consumers. Further, using normative fixed cost of Generating Station for determination of Additional Surcharge will not be correct as the payments towards the same is not done on normative basis, the payment is done towards the plant availability and energy scheduled. Additionally, with increase in RPO, additional surcharge is bound to increase. Hence the methodology used by Commission is correct and needs no moderation in the same.

2.428 As regards to stakeholder's comment on determination of Additional Surcharge based on credible data, it is submitted that IEX can also explore/ directly take up this matter with Delhi GENCOs & other gas stations to help provide economic gas for running the plants throughout the year with less variable cost since they operate in Gas Trading Business through their platform. This will help in Generating Power at normative Fixed Costs rather than actual higher fixed costs. Further, it will help in reducing stranded capacity & additional surcharge for Open Access consumers.

BYPL

2.429 In view of the role of DMRC as a Public Utility service, BYPL has special consideration

for maintaining quality of power supply to DMRC. BYPL endeavours to maintain the uninterrupted Power supply to all its consumers including DMRC. To maintain this level of quality Power supply, associated costs (i.e. other than Power Purchase cost) are also borne by the Petitioner, which needs to be factored in Tariff Determination for supply to DMRC and other consumers.

2.430 In order to provide reliable power supply to all consumers and to meet the continuously increasing peak demand, BYPL has entered into long term Power Purchase Agreements (PPAs) with various Central Govt. /State Govt. owned Generating stations & IPPs. In addition to this, the Petitioner also Purchases Power from other sources such as Energy Exchanges, Bilateral & Banking arrangements etc, to meet the Energy demand/rate variations. Thus, the cumulative cost of Power procurement from all these sources is applicable to all consumers of BYPL including DMRC.

2.431 It is submitted that that BYPL has proposed ToD peak Surcharge and Rebate to at least 30% in the ARR petition so that objective of ToD may be fulfilled by attracting more consumers which is beneficial for consumer as well as DISCOM.

2.432 As regard to stakeholder comment regarding “lag only” metering, it is submitted that the Petitioner has proposed to include lead Reactive Power for billing consumption owing to the fact that consumer use fixed capacitors, bulk compensation on HT in fixed mode, use of substandard controllers having erratic and inconsistent performance, thereby, leading to additional Reactive (lead) Power Charges causing burden on the distribution licensee. During off-peak period, voltage become high due to high capacitive injection by high end consumers using fixed capacitors vis-à-vis absence of adequate reactive injection which endanger the system stability. Such overcompensation requires Transformer of higher capacity and increased burden on the Distribution Utility. In order to limit such anomaly, DISCOM has requested the Commission to introduce kVAh billing in lag as well as lead mode.

2.433 BYPL has been creating awareness among HT/EHT consumers to use adequate harmonic filtering equipment to avoid dumping of harmonics in the DISCOM Network beyond permissible limit. However, absence of any punitive measure against the same

has lagged motivation among such consumers to timely implement usage of adequate equipment. The Commission has recognized the such requirement in Regulation 8 of DERC (Supply Code and Performance Standards) Regulations, 2017 wherein penal charges for non-compliance against harmonics dumping within permissible limits are to be notified, relevant excerpt is reproduced here as follows:

> *"(5) Failure to comply with the permissible limits of Harmonics after inspection as in sub-regulation (3) above may attract penal charges, as may be notified by the Commission from time to time."*

2.434 However, such penal charges are still pending to be notified and accordingly, the Commission is requested to notify the same along with the Tariff Order.

2.435 As regard to stakeholder comment regarding integrated contract demand, it is submitted that existing practice is as per the prevailing Regulations and Norms. The matter requires detailed deliberation before the Commission and subsequently appropriate measures may be taken accordingly.

2.436 The Petitioner has proposed revision of Security Deposit on 2 months Average Billing as adopted by various SERC's in order to link same with consumption of individual consumer, prevailing Tariff and billing cycle in order to protect the interest of all consumers as well as reduce the risk involved for the DISCOM. Further, security deposit is an interest bearing refundable amount to the consumer, thus there is no loss for the consumer.

2.437 As regard to the issue related to Determination of Open Access, it is submitted that the determination of Electricity Tariff and Cross Subsidy Surcharge to be charged from a certain category of consumer are the sole prerogative of the Commission under Section 61 of the Electricity Act, 2003.

BRPL

2.438 In view of the role of DMRC as a Public Utility service, BRPL has special consideration for maintaining quality of power supply to DMRC. BRPL endeavours to maintain the uninterrupted Power supply to all its consumers including DMRC. To maintain this level of quality Power supply, associated costs (i.e. other than Power Purchase cost) are also borne by the Petitioner, which needs to be factored in Tariff Determination

for supply to DMRC and other consumers.

2.439 In order to provide reliable power supply to all consumers and to meet the continuously increasing peak demand, BRPL has entered into long term Power Purchase Agreements (PPAs) with various Central Govt. /State Govt. owned Generating stations & IPPs. In addition to this, the Petitioner also Purchases Power from other sources such as Energy Exchanges, Bilateral & Banking arrangements etc, to meet the Energy demand/rate variations. Thus, the cumulative cost of Power procurement from all these sources is applicable to all consumers of BRPL including DMRC.

2.440 It is submitted that that BRPL has proposed ToD peak Surcharge and Rebate to at least 30% in the ARR petition so that objective of ToD may be fulfilled by attracting more consumers which is beneficial for consumer as well as DISCOM.

2.441 As regard to stakeholder comment regarding "lag only" metering, it is submitted that the Petitioner has proposed to include lead Reactive Power for billing consumption owing to the fact that consumer use fixed capacitors, bulk compensation on HT in fixed mode, use of substandard controllers having erratic and inconsistent performance, thereby, leading to additional Reactive (lead) Power Charges causing burden on the distribution licensee. During off-peak period, voltage become high due to high capacitive injection by high end consumers using fixed capacitors vis-à-vis absence of adequate reactive injection which endanger the system stability. Such overcompensation requires Transformer of higher capacity and increased burden on the Distribution Utility. In order to limit such anomaly, DISCOM has requested the Commission to introduce kVAh billing in lag as well as lead mode.

2.442 As regard to stakeholder comment regarding integrated contract demand, it is submitted that existing practice is as per the prevailing Regulations and Norms. The matter requires detailed deliberation before the Commission and subsequently appropriate measures may be taken accordingly.

2.443 The Petitioner has proposed revision of Security Deposit on 2 months Average Billing as adopted by various SERC's in order to link same with consumption of individual consumer, prevailing Tariff and billing cycle in order to protect the interest of all

consumers as well as reduce the risk involved for the DISCOM. Further, security deposit is an interest bearing refundable amount to the consumer, thus there is no loss for the consumer.

2.444 Other issue raised is concerned with the Determination of Open Access Charges and related matters and not ARR Petition. Hence, no submission on the same, as we are confining our response to the issues relating to the present ARR Petition only. Further, the determination of Electricity Tariff and Cross Subsidy Surcharge to be charged from a certain category of consumer are the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

NDMC

2.445 The party is not in NDMC area.

COMMISSION'S VIEW

2.446 Section 42 of the Electricity Act, 2003 provides for non-discriminatory open access to consumers as per the provisions specified by the Commission. Accordingly, the Commission has already notified Regulations for allowing open access to consumers whose contract demand is 1 MW and above. The Commission has decided to allow Transmission and Wheeling Charges, Cross Subsidy Surcharge, Additional Surcharge and other applicable charges under Open Access keeping in view the provisions of the Electricity Act, 2003, National Electricity Policy, National Tariff Policy and the Open Access Regulations of the Commission.

2.447 The Open Access Charges will be governed by Order dated 1/6/2017, 3/9/2021 & 1/10/2021 as amended from time to time.

2.448 The Distribution Licensee shall be compensated by consumer for permitting open access. In accordance with the methodology followed in the *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* and *DERC (Business Plan) Regulations, 2019*, the approved ARR for Wheeling and Retail Supply business is trued up during calculations of ARR.

ISSUE 13: C&AG AUDIT

STAKEHOLDERS' VIEW

2.449 The Commission may issue Order for Audit of DISCOMs by C&AG.

2.450 Audit Report for O&M expenses, Depreciation and Capital Expenditure.

2.451 Recovery in commercial Tariff and Fixed Charge on Sanction Load against MDI provide revenue in surplus and needs to be audited.

2.452 Huge amount of liabilities of outstanding amount of erstwhile DVB employees is remaining and no proper accounting has been done so far. C&AG Audit must be carried out on Pension Trust account of Delhi Govt. in public interest.

2.453 C&AG audit by Supreme Court should be expedited.

2.454 C&AG Audit of the Pension Trust Account should be conducted.

2.455 C&AG audit of Electricity Companies should be done every year and the hearing on hike in Tariff should be done thereafter.

2.456 Consumer rely on Regulator for deficit security, performance parameter and penalties thereof. Virtual monopoly is extended to the DISCOMs in absence of audit & not being covered under the ambit of RTI Act.

2.457 Records reveal that ARRs shows deficit despite recovery on Sanction Load against MDI. This amounts to irregular recovery in the absence of any directions for forensic audit to establish actual liability.

PETITIONER'S SUBMISSION

TPDDL

2.458 DISCOMs books of accounts are duly checked/audited by C&AG empanelled Statutory Auditors to present a true and fair view in accordance with various Laws. Further, prudence check towards the True up is also done by the Commission and the Auditors appointed by them.

BYPL

2.459 As regards to the stakeholder Comment on Audit of DISCOMs by C&AG, it is submitted that the Petitioner has a very robust multi-layered system of Internal and Statutory Audit. Petitioner Company's accounts are audited both internally and externally by Statutory Auditors as per the requirements of the Companies Act, 1956. The auditors appointed by the Petitioner is a well reputed C&AG empanelled auditor.

2.460 In addition to the above checks and balances, the Commission itself appoints independent Auditors to verify each and every aspect of the Petitioner's accounts

before issuing Tariff Orders. Moreover, all ARR petitions are made available in the public domain and are also subjected to rigorous prudence checks by the Commission itself and its consultants.

2.461 Further, the Commission determines the Tariff only after considering the prudency of Operational and Capital Expenditure required by the Licensee for supplying power and maintaining its Distribution Network / Infrastructure to meet the load requirements of the consumer. The Commission takes into account all relevant facts and figures for approving the expenses while determining the ARR of the Licensees.

2.462 As regards to the stakeholder Comment on Audit Report for O&M expenses, depreciation and capital expenditure, it is submitted that the Commission issues Tariff Order only after prudence check of the Petitions submitted by the DISCOMs and after considering each element of cost projected in the Petitions with due analysis and ensuring proper justification. The Petitioner furnishes clarifications/additional information, as and when required by the Commission.

BRPL

2.463 As regards to the stakeholder Comment on Audit Report for O&M expenses, depreciation and capital expenditure, it is submitted that the Commission issues Tariff Order only after prudence check of the Petitions submitted by the DISCOMs and after considering each element of cost projected in the Petitions with due analysis and ensuring proper justification. The Petitioner furnishes clarifications/additional information, as and when required by the Commission.

2.464 The Petitioner has a very robust multi-layered system of Internal and Statutory Audit. Petitioner Company's accounts are audited both internally and externally by Statutory Auditors as per the requirements of the Companies Act, 1956. The auditors appointed by the Petitioner is a well reputed C&AG empanelled auditor. In addition to the above checks and balances, the Commission itself appoints independent Auditors to verify each and every aspect of the Petitioner's accounts before issuing tariff orders. Moreover, all ARR petitions are made available in the public domain and are also subjected to rigorous prudence checks by the Commission itself and its consultants.

2.465 Further, the Commission determines the Tariff only after considering the prudency of

Operational and Capital Expenditure required by the Licensee for supplying power and maintaining its Distribution Network / Infrastructure to meet the load requirements of the consumer. The Commission takes into account all relevant facts and figures for approving the expenses while determining the ARR of the Licensees.

NDMC

2.466 The party is not in NDMC area.

COMMISSION'S VIEW

2.467 The matter of C&AG Audit is sub-Judice before the Hon'ble Supreme Court of India.

2.468 The Audit is crucial for preventing mis-statements in the company's records and reports. The DISCOMs get their accounts audited by internal and external statutory auditors conducted under the Companies Act 2013, which forms the basis for financial submission in Tariff Petition of the Commission. The provision of financial reporting may vary from the regulatory reporting as specified by the Commission from time to time. Therefore, the Commission conducts the regulatory audit in order to refine the prudence check methodology adopted with the help of an independent C&AG empaneled auditor.

2.469 The Commission was carrying out verification of Books of Accounts of Distribution Licensees, however from FY 2016-17, the Commission started Regulatory Audit for verification of Books of Accounts of Distribution Licensees through C&AG empanelled Auditor. Similarly, for FY 2019-20, the Commission conducted in-house verification of Books of Accounts for FY 2019-20 from March '21 onwards, however, variation/deficiency in the in-house verification is being noticed in future will be dealt accordingly.

2.470 The Commission appointed C&AG Empanelled Auditors for Regulatory Audit of DISCOMs i.e. NDMC, BRPL, BYPL & TPDDL for True-up of FY 2020-21. The Regulatory Audit assignment for FY 2020-21 was awarded to Shridhar & Associates for NDMC & TPDDL, Grand Mark & Associates for BRPL and Adroit & Co. for BYPL. Based on their reports and prudence check by the Commission and after considering various components of cost mentioned in the Petitions, the Tariff Order is issued with due analysis and justification.

ISSUE 14: TARIFF HIKE

STAKEHOLDERS' VIEW

2.471 Tariff should not be lower than overall cost of purchase of Electricity. Tariff should be cost reflective.

2.472 Cross subsidy concept is not correct. There should be no Cross subsidies as they will harm the system.

2.473 Distribution Company should not operate under losses. Hence, if there is loss, increase Tariff by 2% otherwise hike Tariff by 1%

2.474 Tariff should levied on the basis of Power Factor (PF) including leading PF on kVAh basis while billing to High End Consumers.

2.475 Tariffs of higher slabs should be reduced.

2.476 Concession and benefits should be given to Honest Consumers.

2.477 Loss due to Electricity theft in unauthorized colonies should not be burdened on to other consumers.

2.478 COVID burden should be shared 50% to consumer and 50% to DISCOM equally.

2.479 Tax levied on Electricity was 17% in 2013 now, it 42 % tax is levied on Electricity consumption.

2.480 DTC and Metro suffered heavy losses during Corona time but they did not increase their fare so Electricity Company should not enhance their Electricity rates.

2.481 There should be no Tariff hike including surcharges.

2.482 The Commission should issue directions to consumer to keep Power Factor as unity or make such consumers pay for deviation.

2.483 Dishonest consumer should not be allowed to take the benefit of LPSC on no. of days of default, Subsidy, Interest on Security Deposit, Rebates. etc. Dishonest domestic consumer be charged on highest slab rate.

PETITIONER'S SUBMISSION

TPDDL

2.484 In the interest of consumer and financial viability of the power sector, the Tariff should be cost-reflective i.e. the Tariff should be determined to recover the entire ARR requirement to avoid any creation/ accumulation of Regulatory Asset in a year as the

funding of the Regulatory Asset results in carrying cost burden on the consumers.

2.485 The Section 61 (g) of Electricity Act 2003 mandates the Appropriate Commission to determine Tariff guided by the objectives that the Tariff progressively reflects the cost of supply of Electricity and also reduces Cross Subsidies within the specified period.

2.486 The National Tariff Policy states that Tariff design shall be linked to cost of service and Tariff thereof, progressively reflects the efficient and prudent cost of supply of electricity.

2.487 We agree to the stakeholder suggestion that Concession and benefits should be given to honest consumers.

2.488 The Commission has been making efforts to provide lower Tariff to consumers and has also made provisions for some benefits to some categories of consumers. It is also needs to be ensured that dishonest consumers are not allowed to take benefit of these concessions and only the honest consumer can avail them. Those who are defaulting their bill payments / avoiding to pay it on time / pay only when the connection is to be disconnected should not be given these benefits. Defaulters be dissuaded from taking the benefit. Also some consumers engage in theft of electricity, the burden of which is passed on to other consumers.

2.489 Therefore, all such consumer should not get the following benefits if they engage in Payment Default or Theft of Electricity:

a) Domestic Consumers – Such Consumers should be charged on Average cost of supply (ACoS) for any energy consumption
b) No TOD or Other Rebate should be provided
c) No Subsidy Benefit if Consumer is Domestic
d) No Security Interest should be provided
e) LPSC to be charged on monthly basis

2.490 This will help in reducing the ARR of DISCOMs and also the burden of honest paying consumers.

BYPL

2.491 As regard to stakeholder comment regarding increasing Tariff by 2% or 1%, it is submitted that the determination of Electricity Tariff to be charged from a consumer

is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

2.492 BYPL levy Tariff on consumers for a period as determined and approved by the Commission in accordance with the Electricity Act 2003. Further, the Section 61 of Electricity Act 2003 mandates that while determining Tariff, the Appropriate Commission shall be guided by the objective that the Tariff progressively reflects the efficient and prudent cost of supply of Electricity. Further, the Appropriate Commission shall safeguard the interest of consumers and at the same time allow recovery of the cost of electricity in a reasonable manner. Hence, it is in the consumer's overall interest, that the gap between Revenue available and Revenue required is to be filled by adjusting the Tariffs so as to reduce the accumulated Revenue Gap/Regulatory Assets and the Carrying Cost thereof, which otherwise would impose an additional burden on the average consumer.

2.493 In regard to the comment of the stakeholder regarding Cross Subsidy, it is submitted that BYPL is bound to levy Tariff on consumers for relevant period as approved by the Commission under the Electricity Act 2003. Further, clause 8.3(2) of the Tariff Policy, 2016 provides as under:

> *"2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within ±20% of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy."*

2.494 We agree to the stakeholder suggestion that Concession and benefits should be given to Honest Consumers. The Commission is requested to consider the same in Tariff proceedings.

2.495 Consumers are paying charges for actual consumption with adequate time for payment. Providing incentive to consumer for clearing their dues against consumption of preceding month in allowed time will additionally burden the other cross-subsidizing consumers. However, there are penalizing provisions for delinquent consumers under prevailing Regulations which is being exercised by BYPL on case to case basis.

2.496 In the event of the electricity bill rendered by the Distribution licensee, not being paid

in full within the due date specified on the bill, a Late Payment Surcharge (LPSC) @ 18% per annum shall be levied. The LPSC shall be charged for the number of days of delay in receiving payment from the consumer by the Distribution Licensee, until the payment is made in full without prejudice to the right of the licensee to disconnect the supply after due date, in the event of non-payment in accordance with Section 56 of Electricity Act, 2003. This will also apply to temporary connections and enforcement cases, where payment of final bill amount after adjustment of amount as per directions of the Court and deposit, is not made by due date.

BRPL

2.497 In regard to the comment of the stakeholder regarding reduction of Tariff, it is submitted that BRPL is bound to levy Tariff on consumers for relevant period as approved by the Commission under the Electricity Act 2003.

2.498 Further, the Section 61 of Electricity Act 2003 mandates that while determining Tariff, the Appropriate Commission shall be guided by the objective that the Tariff progressively reflects the efficient and prudent cost of supply of Electricity.

2.499 Further, the Appropriate Commission shall safeguard the interest of consumers and at the same time allow recovery of the cost of electricity in a reasonable manner. Hence, it is in the consumer's overall interest, that the gap between Revenue available and Revenue required is to be filled by adjusting the Tariffs so as to reduce the accumulated Revenue Gap/Regulatory Assets and the Carrying Cost thereof, which otherwise would impose an additional burden on the average consumer.

2.500 In regard to the comment of the stakeholder regarding cross subsidy, it is submitted that BRPL is bound to levy Tariff on consumers for relevant period as approved by the Commission under the Electricity Act 2003. Further, clause 8.3(2) of the Tariff Policy, 2016 provides as under:

> *"2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within ±20% of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy."*

2.501 We agree to the suggestion of the stakeholder that leading Power Factor to be charged on kVAh basis as is done for lagging power factor in order to ensure safety of Power System.

2.502 Consumers are paying charges for actual consumption on post-paid basis with adequate time for payment. Providing incentive to consumer for clearing their dues against consumption of preceding month in allowed time will additionally burden the other Cross-Subsidizing consumers. However, there are penalizing provisions for delinquent consumers under prevailing Regulations which is being exercised by BRPL on case to case basis. Further, in case any benefit to such consumers to be allowed then the same shall be allowed to be passed through in the ARR.

2.503 In the event of the electricity bill rendered by the Distribution licensee, not being paid in full within the due date specified on the bill, a Late Payment Surcharge (LPSC) @ 18% per annum shall be levied. The LPSC shall be charged for the number of days of delay in receiving payment from the consumer by the Distribution Licensee, until the payment is made in full without prejudice to the right of the licensee to disconnect the supply after due date, in the event of non-payment in accordance with Section 56 of Electricity Act, 2003. This will also apply to temporary connections and enforcement cases, where payment of final bill amount after adjustment of amount as per directions of the Court and deposit, is not made by due date.

NDMC

2.504 The party is not in NDMC area.

COMMISSION'S VIEW

2.505 The Commission determines the ARR for DISCOMs as per the provisions of the relevant Regulations. The Commission in its Tariff Order has provided the break-up of the major components considered for projecting costs of supply like power purchase cost, O&M costs, CAPEX, financing cost, the gap in True up to FY 2020-21 and carrying cost for the Regulatory Assets etc. This forms the basis for the projection of the gap/surplus between present requirement in terms of ARR and revenue available at existing Tariff. It is in the consumer's overall interest, that the gap between these two figures is filled by adjusting the Tariffs so as to reduce the accumulated Revenue Gap/Regulatory

Assets and the Carrying Cost thereof, which otherwise would impose an additional burden on the average consumer. The Tariff Order is issued after prudence check of the Petitions submitted by the DISCOMs and after considering each element of cost projected in the petitions with due analysis and ensuring proper justification.

ISSUE 15: TARIFF CATEGORY

STAKEHOLDERS' VIEW

2.506 Benefit of zero billing to consumer as per APTEL judgement 9/09/2015 should be provided.

2.507 Govt. Connections (Public utility) should have commercial Tariff and no subsidy should be given to them.

2.508 Tariff of Government Connection should be kept equal to actual cost or highest amongst all consumer categories.

2.509 Subsidy provided by Government should be done away for healthy operations of Distribution Sector.

2.510 Tariff of Commercial category is always kept highest, which is incorrect

2.511 Winter peaks may also be included in Time of Day (ToD) Tariff.

2.512 There should be only two slabs for domestic category i.e. one for less than 400 units and other for more than 400 units.

2.513 Subsidy should not be forcefully opted out and shall be made optional.

2.514 Domestic charges should be fixed instead of slabwise Tariff.

2.515 Tariff for Industrial Consumer should be realistic and close to Power Purchase Cost.

2.516 Domestic category with high consumption should have only one rate for all units and cheaper slab wise rates for poor only.

2.517 As per Electricity Act, 2003, Competition is main objective of this Act. At present, Highest Electricity Tariff is paid by Industries, how the industry will survive. Tariff for Industrial category should be reduced.

2.518 Industry Tariff is very high which is making it uncompetitive with other business. It is requested to eliminate concessional Tariff provided to residential consumers.

2.519 Each and every unit of Power to consumer should be billed and there should no

sanction of "free units".

2.520 No subsidy should be given to the consumers who are consuming more than 200 units a month. Single Tariff should be levied from domestic consumers consuming more than 400 units a month.

2.521 Remove Electricity Tax and Pension Trust Surcharge.

2.522 Those who consume less than 200 units should also be charged some nominal charges. Consumer using more than 200 units should also get some rebate.

2.523 Subsidy should be fixed on slab such as upto 200 units.

2.524 Rebate of 0.2% of annual bill per extra Electricity bill over 6 nos. annually may please be reintroduced for domestic consumers.

2.525 Domestic Tariff should have all units above 300 units billed at Rs. 8/kWh. Fixed charges should be Rs. 250/kW. Below 300 units only 2 slabs and fixed charges of Rs. 100/kW should exist.

2.526 The subsidy provided to consumer is a big political issue and role of Regulator for Tariff Rationalization, should be looked into.

2.527 There should be no subsidy. If Government desires to give subsidy to the domestic category, it should be for all without discrimination on unit slabs or to none.

2.528 It needs to be clarified whether owner or occupier has to reside along with paying guest to avail the Domestic category Tariff.

2.529 Electricity Tariff should be decreased for DISCOMs as they have enough financial resources and have Rs. 10,000 crores of electrical scrap with them.

2.530 The Commission is requested to include the activities of processing of fruits and vegetables under Agricultural Tariff.

2.531 Re-categorize the plantations/ Horticulture nursery under Agriculture Category from present Non-Domestic Category.

2.532 The Commission is requested to include the additional peak timings in ToD Tariff.

2.533 Religious functions such as Dusshera fair & Dharamshala used for public functions should be treated under Domestic Category and should not be treated under Commercial Catergory.

2.534 Subsidy benefits should be given to poor consumers directly and certificate should be

taken if they are poor.

2.535 Too much distortion being brought due to slab and concessional Tariffs. It brings inefficiency. People use lower slab for illegal & commercial activities like e-rickshaw charging on domestic connection. Hence, Cross subsidy should be removed.

PETITIONER'S SUBMISSION

TPDDL

2.536 The stakeholder is requested to provide details of Rs. 10,000 crores scrap which has been mentioned in their comments. The Regulatory Assets of TPDDL as per financial books of account as on 31/03/2021 is Rs. 5,512 Crore. However, current 8% surcharge is not sufficient to recover even the interest cost of Regulatory Assets. Hence, in the interest of the consumers and financial viability of the power sector, TPDDL proposes hike in Surcharge to atleast 15% along with cost reflective Tariff to recover the past accumulated Revenue Gap and its carrying cost.

2.537 We agree to the suggestion of stakeholders that all slab and concessional Tariffs should be removed. The Tariff should be cost reflective i.e. the Tariff should be determined to recover the entire ARR requirement to avoid any creation/ accumulation of Regulatory Asset in a year as the funding of the Regulatory Asset results in carrying cost burden on the consumers.

2.538 Further in addition to the recovery of entire ARR, appropriate recovery towards past accumulated Revenue Gap should be factored while deciding the Electricity Tariff to be charged for next year.

2.539 Stakeholder in its comments stated that there should be only two slabs for domestic category i.e. one for less than 400 units and other for more than 400 units. It is submitted that Section 61 (g) of Electricity Act 2003 mandates that Appropriate Commission while determining Tariff shall be guided by the objective that the Tariff progressively reflects the cost of supply of Electricity and also reduces and eliminates cross subsidies within the specified period. Accordingly, for achieving the objective, National Tariff Policy states that design shall be linked to cost of service and Tariff thereof, progressively reflects the efficient and prudent cost of supply of electricity. We agree to the stakeholder suggestion that Tariff of Public utility should be made

equal or higher than the average cost of supply in the interest of consumers.

2.540 The present ToD Tariff is applicable since last 6 years and hence, TPDDL requests the Commission is requested to review its performance basis the load curves noticed during the summer months [April – September] and winter months [October – March] in its Distribution Area which is as follows:

1. Two distinct peaks and two distinct off-peak periods are noticed in the load curves for summer as well as winter months.

2. Summer:

a. Peak Periods: 0000 – 0100 hrs, 1300 – 1700 hrs. and 2100 – 2400 hrs;

b. Off-peak Period: 0300 – 0900 hrs.

3. Winter:

a. Peak Periods: 0600 – 1200 hrs, and 1700 – 2200 hrs;

b. Off-peak Period: 0000 – 0400 hrs.

2.541 While the Average Power Purchase Cost at base load @ 1400 MW April – September and @ 900 MW during October – March is almost the same based on the Merit Order Despatch (MOD) principles, the Power Purchase Cost increases by approx. 150% to meet the peak load during April – September and approx. 30% to meet the peak load during October - March.

2.542 In key metro cities, highest Domestic slab starts from 501 Units while in Delhi the highest slab Starts from 1201 Units. Highest Domestic slab Tariff in other cities is more than or equal to Average Cost of Supply however in Delhi, it is lower than that. At present, high consuming Domestic consumers also get the benefit of lower Tariff according to the slabs. Consumers with more than 400 units monthly consumption should pay cost of supply as they are well off and can afford to pay. TPDDL aggress to stakeholder suggestion of fixing Domestic charges.

2.543 However, even in Haryana and Punjab which are major Agricultural states processing units are not considered under Agricultural Tariff.

2.544 As per Tariff Order for FY 2021-22, the Consumers having sanctioned load up to 20kW for tube wells for irrigation, threshing and kutti-cutting in conjunction with pumping load for irrigation purposes and lighting load for bonafide use in Kothra are under

Agriculture Category.

2.545 Providing subsidy to a class of consumers or to all depends is the prerogative of the GoNCTD. DISCOMs have no role in deciding subsidy for any class of consumer.

2.546 The Tariff Order dated 30/09/2021 provides that

> *"The consumers (owner, tenant or occupier of premises) running small commercial establishments including Paying Guest from their households (houses under Domestic Category) having sanctioned load upto 5kW under Domestic Category, shall be charged Domestic Tariff"*

which makes it clear that the consumer whether owner or occupier has to reside along with paying guest to avail the Domestic Category Tariff.

BYPL

2.547 Determination of Electricity Tariff to be charged from a consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

2.548 However, 100% subsidy for consumer consuming upto 200 units a month in Delhi is given by State Government under Section 65 of the Electricity Act, 2003, as follows.

> *"Section 65. (Provision of subsidy by State Government):*
> *If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government:"*

2.549 Therefore, subsidy for, bills of consumers under 200 units per month is paid by Govt. of NCT of Delhi instead of consumers.

2.550 Further, with regard to comment on electrical scrap lying with BSES Yamuna, it is submitted that sale of scrap become part of Non-Tariff Income as per Regulation 94 of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017, the Regulation 94 is quoted below:

> *"94: The Utility shall submit forecast of Non-Tariff Income to the Commission, in such form as may be stipulated by the Commission from time to time, whose tentative list is as follows:*
> • *Income from rent of land or buildings;*

- *Net Income from sale of de-capitalised assets;*
- *Net Income from sale of scrap;;*

…..”

2.551 Accordingly, the income from scrap sale is indicated under the head “Other Income” in the Audited Financial Statement.

2.552 With regard to the comment on recognize the farm as agricultural establishment, it is submitted that determination of Electricity Tariff to be charged from a certain category of consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003 and the same may be duly considered by the Commission. Further, as per Terms and conditions of Tariff Order dated 30/09/2021, following consumers are categorized under Agricultural Category:

“The Consumers having sanctioned load up to 20 kW for tube wells for irrigation, threshing and kutti-cutting in conjunction with pumping load for irrigation purposes and lighting load for bonafide use in Kothra are under Agriculture Category”

BRPL

2.553 Determination of Electricity Tariff to be charged from a consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

2.554 However, 100% subsidy for consumer consuming upto 200 units a month in Delhi is given by State Government under Section 65 of the Electricity Act, 2003, as follows.

“Section 65. (Provision of subsidy by State Government):
If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government:”

2.555 Therefore, subsidy for, bills of consumers under 200 units per month is paid by Govt. of NCT of Delhi instead of consumers.

2.556 Further, with regard to comment on electrical scrap lying with BSES Rajdhani, it is submitted that DISCOM Sell Scrap items through MSTC Portal after taking approval from the Commission and the income from such sale becomes part of Non-Tariff

Income as per Regulation 94 of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017, the Regulation 94 is quoted below:

"94: The Utility shall submit forecast of Non-Tariff Income to the Commission, in such form as may be stipulated by the Commission from time to time, whose tentative list is as follows:

- *Income from rent of land or buildings;*
- *Net Income from sale of de-capitalised assets;*
- *Net Income from sale of scrap;;*

….."

2.557 It is submitted that the Control and disbursal of subsidy to any class of consumer is under Govt. of NCT of Delhi under Section 65 of Electricity Act 2003 read with National Tariff Policy.

2.558 With regard to the comment on recognize the farm as agricultural establishment, it is submitted that the determination of Electricity Tariff to be charged from a certain category of consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003 and the same may be duly considered by the Commission. As per Terms and conditions of Tariff Order dated 30/09/2021, following consumers are categorized under Agricultural Category:

"The Consumers having sanctioned load up to 20 kW for tube wells for irrigation, threshing and kutti-cutting in conjunction with pumping load for irrigation purposes and lighting load for bonafide use in Kothra are under Agriculture Category

NDMC

2.559 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.560 Hon'ble APTEL in Appeal No. 195 to 2013, has remanded back the case to DERC to True up for FY 2011-12 for zero billing and consumption. Further, the benefit of Zero Billing in compliance to Hon'ble APTEL Judgment in appeal no. 195/ 2012 has been copnsidered in True-up of past period in Tariff Order dated 29/09/2015, as follows:

*" **Zero Billing** – 195 of 2012*

3.132 As per the direction of Hon'ble APTEL in appeal no. 195 of 2012, the

Commission has revised the AT&C Loss Computation for FY 2010-11. It is observed that the petitioner had submitted total quantum of zero billing at 40.85 MU for the period between Jan'11 to Mar'11. The Petitioner was directed to submit the details of zero billing entire FY 2010-11 in view of the APTEL's direction. The Petitioner has submitted that total quantum of zero billing during FY 2010-11 which was lesser than earlier submission during the technical validation in true up of FY 2010-11 in tariff order dated 13.07.2012. Therefore, the Commission has decided that total quantum of zero billing basis be prorated for the entire year based on the three months information as provided while true up of FY 2010-11. Accordingly, the total impact of an amount of Rs. 57.98 crore on account of under achievement in AT&C loss target has been added into the revenue available towards ARR in FY 2010-11."

2.561 The categorization of consumers in various Tariff categories by the Commission is governed by Section 62 (3) of Electricity Act, 2003 as follows:

"(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

2.562 Various suggestions regarding re-categorization of load and slabs has been received from stakeholders. Accordingly, the details of applicable Electricity Tariff for various categories of consumers shall be dealt in Other Terms and Conditions of Tariff Schedule of this Tariff Order.

2.563 The Electricity Act, 2003 provides for reduction of cross subsidies by moving the category wise Tariffs towards cost of supply. The Commission also recognizes the need for reduction of cross subsidy. However, it is equally incumbent on the Commission to keep in mind the historical perspective for the need to continue with cross-subsidy for some more time.

2.564 Providing subsidy is the prerogative of the State Government.

2.565 As per DMC (Assessment and collection of Tax on the consumption, Sale or Supply of

Electricity) Bye Laws 1962, electricity tax can be levied on consumption, Sale or supply of electricity and also levies a tax on electricity generated for own consumption

2.566 The Commission is of the view that Electricity tax is levied and collected by respective DISCOMs on the basis of DMC (Assessment and collection of Tax on the consumption, Sale or Supply of Electricity) Bye Laws 1962. As the matter of applicability of Electricity Tax pertains to MCD, the same is subject to the Order of MCD.

ISSUE 16: RETURN ON EQUITY

STAKEHOLDER'S VIEW

2.567 Return on Equity allowed to DISCOMs should be reduced.

2.568 Why 16% Return on Equity is provided to DISCOMs when the Government bonds yields provide upto 6% in current scenario.

2.569 There cannot be any profit on Income Tax. Only actual Tax paid should be allowed.

2.570 It needs to be clarified whether there is net off on Input tax.

2.571 DERC is allowing equity of 30% in assets without verifying the source of funding.

2.572 Since the BSES loans are reducing, allowing 13% interest on complete loan base of RRB needs to be checked.

2.573 BSES Inter-company loans should be checked.

PETITIONER'S SUBMISSION

TPDDL

2.574 The Commission allows Income tax as per Regulation 72 of the DERC Tariff Regulations 2017 reproduced below:

"72. Tax on Return on Equity: The base rate of return on equity as specified by the Commission in the Business Plan Regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid vis-à-vis total income of the Utility in the relevant financial year in line with the provisions of the relevant Finance Acts. The actual tax on other income stream shall not be considered for the calculation of "effective tax rate":

Provided that if the rate of return on equity for a Control Period is allowed on pre-tax basis, then income tax on the return on equity shall not be allowed separately as a pass

through in ARR;

Provided further that no amount shall be considered towards tax exceeding the actual amount of tax paid by the Corporate entity of the Utility as an Assesse."

2.575 Other queries doesn't pertains to TPDDL.

BYPL

2.576 It is submitted that Petitioner claim Income Tax as per Regulation 72 & 73 of Tariff Regulation, 2017.

2.577 The rate of Return on Equity is applicable in line with Regulation 20(1) and 20(2) of the Business Plan Regulations, 2019 i.e., base rate of 14% on post tax basis for Wheeling Business and base rate of 16% on post tax basis for Retail Business, relevant excerpt is reproduced here as follows:

"20. RATE OF RETURN ON EQUITY

(1) Wheeling Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at the Base Rate of 14.00% on post tax basis.

(2) Retail Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at an additional Base Rate of 2.00% on post tax basis."

BRPL

2.578 It is submitted that the Commission is allowing 30% equity as per Regulation 63 of Tariff Regulations, 2017 after prudence check. The relevant extract of the said regulations is replicated as below:

"DEBT-EQUITY RATIO

63. For determination of Tariff, the debt-equity ratio for any project or scheme under commercial operation shall be considered as 70:30:

Provided that:

(i) Where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff;

(ii) Where equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as notional loan;"

2.579 The rate of Return on Equity is applicable in line with Regulation 20(1) and 20(2) of the Business Plan Regulations, 2019 i.e., base rate of 14% on post tax basis for Wheeling Business and base rate of 16% on post tax basis for Retail Business, relevant excerpt is reproduced here as follows:

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(1) Wheeling Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at the Base Rate of 14.00% on post tax basis.

(2) Retail Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at an additional Base Rate of 2.00% on post tax basis."

2.580 The details of year wise equity infused is shown in yearly balance sheets of Petitioner.

2.581 As regard to stakeholder comment on details of loan base, it is submitted that the required details have already been submitted in the Tariff Petition every year. The Commission after detailed prudence check allows the funding of Asset base.

2.582 The Interest on Loan is determined by the Commission as per Regulation 77 of the Tariff Regulations, 2017.

2.583 Depreciation is determined by the Commission as per Regulation 78 to 83 of the Tariff Regulations, 2017.

2.584 As regard to stakeholder comment on Inter-company loan, it is submitted that BRPL has given loan to BYPL which otherwise would have been borrowed by BYPL from some other Bank/ Financial Institution. BRPL has not claimed the cost of such a loan in its ARR and is not incidental to Electricity Business. Therefore, the comment of the stakeholder does not pertain to the Tariff Petition.

NDMC

2.585 Did not provide any comment.

COMMISSION'S VIEW

2.586 The return of equity post tax and pre-tax is computed as per Regulation 3 of Business Plan Regulations, 2019. The relevant extract of said Regulation is as follows:

"3. RATE OF RETURN ON EQUITY

Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for Generating Entity shall be computed at the Base Rate of 14.00% on post tax basis:

Provided that the Equity for the purpose of Return on Equity shall be lower of the Normative Equity determined as per Regulation 63 of the DERC (Terms And Conditions For Determination of Tariff) Regulations, 2017 or Equity available as per Audited Financial Statement of the relevant year."

2.587 The debt-equity ratio for any project or scheme under commercial operation is computed as per Regulation 63 of Tariff Regulations, 2017 after prudence check. The relevant extract of the said regulations is replicated as below:

"DEBT-EQUITY RATIO

63. For determination of Tariff, the debt-equity ratio for any project or scheme under commercial operation shall be considered as 70:30:

Provided that:

(i) Where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff;

(ii) Where equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as notional loan;"

ISSUE 17: FIXED CHARGE

STAKEHOLDER'S VIEW

2.588 Why customers are subjected to Fixed charges.

2.589 The average billing calculation should be done on charges on units consumed per month and should exclude Fixed Charges and other charges.

2.590 Fixed cost of DISCOMs should be recovered from fixed part of Retail Supply Tariff.

2.591 Fixed Charges should be fixed on Maximum Demand Indicator (MDI), not on connected load for domestic consumers.

2.592 MDI variation cut off time and duration along with daily usage be provided. Access to online data may not add to printing cost.

2.593 30% surcharge should be levied on all including domestic consumers where MDI exceeds Sanctioned Load /Contract Demand.

2.594 Fixed charges should be adjusted against the consumption i.e. fixed charges should be treated as minimum charges.

2.595 Fixed charges should be levied when there is no usage of electricity.

2.596 Earlier the fixed charges were levied on kW basis but it has now been changed to kVA basis. A surcharge is levied on the Fixed charges if the usage exceeds the sanctioned load and thereafter on the basis of average of three or four monthly demands, load is enhanced and corresponding security deposit is asked from the consumer.

2.597 Why such high Fixed Charges are levied on Consumers for 2 kW, 5 kW connections.

2.598 Fixed Charge for Domestic and Industrial Consumers should be reduced by 25%.

2.599 It is requested to waive off Fixed Charges for COVID period.

2.600 Fixed Charges have increased from Rs. 100 / kW/ month to Rs. 300 / kW/ month. Further, Rs. 3000 /- are levied for new electricity connection which is very high.

2.601 Fixed Charge without extending benefits of certain free units amounts to extortion and inequality due to disproportionate burden on low end users.

PETITIONER'S SUBMISSION

TPDDL

2.602 Fixed Charges as part of Tariff is levied so as to be able to cover the fixed expenses / costs of DISCOMs. DISCOMs need to establish and maintain Infrastructure and Network corresponding to the Sanctioned / Connected Load of the Consumers to ensure uninterrupted Power supply irrespective of the fact whether such Load demand is actually used or not but the DISCOM is required to have such infrastructure in place.

2.603 The present retail Tariff structure in Delhi includes only a part of the Fixed Cost into recovery out of Fixed Charges, and major portion of the Fixed Cost is recovered through Energy Charges component of the retail Tariff, which is not considered as a sustainable Tariff structure.

2.604 In case Fixed Charges are rolled back, the Energy Charge would increase correspondingly as these form a part of total Revenue of the Utility. Therefore, whether only Energy Charge is levied or Energy Charge as well as Fixed Charge is levied, the same ARR would have to be recovered from the consumers.

2.605 In any case, Tariff determination and Tariff design for all consumer categories is the sole prerogative of the Commission.

2.606 The Commission had issued an Approach Paper in Feb '18 on rationalization of Tariff structure which also states recovery of Fixed Cost from Fixed Charges and Fuel Charges of GENCO from Energy Charges and had proposed that the bifurcation between Fixed Charges and Energy charges should be adjusted gradually.

2.607 Therefore, the Commission is requested to suitably review the Fixed Charges during Tariff determination and Tariff design so that fixed cost of DISCOMs can be recovered through Fixed Charges.

2.608 One of the objectives of the Tariff Policy is to ensure creation of adequate capacity including reserves in Generation, Transmission and Distribution in advance for reliability of supply of Electricity to consumers as per Section 4 (i) of the Tariff Policy. Lower recovery of fixed costs of a Distribution Utility from the Fixed Charges increases the variability of recovery of its costs as recovery of Energy Charges depends on the consumption thereby pushing the distribution utility to cut down on building efficient Network.

2.609 At present, recovery from fixed charges is only 17.30% against the 56.40 % Fixed Cost of the ARR.

2.610 In the interest of consumer and financial viability of the Delhi DISCOMs, the Commission is requested to kindly revert to the fixed charges of FY 2018-19 and specify a trajectory in increase in Fixed Charge so as to ensure full recovery of Fixed Costs from Fixed Charges and ensure that the ensuing Tariff should be cost reflective for each category of consumer as well as recover Fixed Cost of DISCOMs from fixed part of Tariff.

2.611 For Domestic consumers, there is no timely updation by the consumer of enhanced Load being used by them. This leads to excessive use of electricity which has a definitive impact on the Electricity Network. DISCOMs have to arrange for Network Augmentation since Network has to be in conformity with Load being supplied. Such excessive Load at times leads to burning of meter and enhances consumer indiscipline.

2.612 The surcharge on excess load will help ensure discipline amongst Domestic consumers.

2.613 Fixed charges for Domestic consumers if levied on Billing Demand will help recover Costs according the actual usage of the consumer. Hence, the Commission is requested to allow levy of Fixed Charges for domestic category on billing demand.

2.614 For all categories other than domestic, Fixed Charges are levied based on Billing Demand. The Sanctioned Load is enhanced based on the highest of an average of Maximum Demand readings recorded as per billing cycle covering any four consecutive calendar months in the preceding Financial Year and not immediately on exceeding the Sanctioned Load. Hence, the charges on enhanced load are collected only after the completion of the relevant financial year of usage which is delay in recovery of cost according to load used by the domestic consumer which is not the case for other categories.

2.615 Fixed charges on the basis of kVA is levied on the basis of the Tariff Orders issued from time to time by the Commission. For all categories other than domestic, Fixed Charges are to be levied based on billing demand per kW/kVA or part thereof as per Tariff Schedule of Tariff Order FY 2021-22. Fixed charges as part of Tariff is levied so as to be able to cover the expenses / costs of DISCOMs. Same ARR is to be recovered from the consumers. DISCOMs have installed shunt capacitors at their Grids to maintain the required power factor. However, maintaining the power factor at consumer end is the sole responsibility of the consumer.

2.616 Similarly, if MDI reading exceeds Sanctioned Load, a surcharge of 30% is levied on the Fixed Charges corresponding to excess load in kW/kVA for such billing cycle only as per Tariff Schedule of Tariff Order FY 2021-22. Differential Security deposit from the consumers on the basis of Suo-Moto enhanced load are in accordance with the DERC (Supply Code and Performance Standards) Regulations, 2017.

2.617 When compared to the Telecom sector for access to online data, it is submitted that the Power sector is different as the electricity consumption of consumers is stored in their meter and downloading the data for all consumers is not possible due to large numbers of non-communicating meters.

BYPL

2.618 Concept of two-part Tariff rely on premise that Fixed Cost should be recovered from

Fixed Charges and Variable Charges out of Energy Charges. Commission has released an approach paper in Feb' 2018 and Niti Aayog also did study on this and recommended the same. In fact, they have appreciated the approach of Commission of Delhi and described as right step was initiated while issuing Tariff Order for FY 2018-19 increasing Fixed Charges and reducing Energy Charges. Recovery of fixed cost out of Fixed Charges is more beneficial to consumer because non-consumption will benefit them.

2.619 Tariff determination and Tariff design for all consumer categories is the sole prerogative of the Commission and DISCOM is bound to oblige the same.

2.620 The fixed charges have been increased by the Commission in lines with the provisions of Section 45(3) of the Electricity Act, 2003.

2.621 Further, the Commission in its Tariff Order dated June 26, 2003 introduced two-part Tariff for domestic consumers, i.e., Fixed Charges and Energy Charges and abolished minimum charges and meter rent. The fixed charge in two-part Tariff represents the fixed component of charges, which is independent of consumption level and depends on the fixed cost incurred by the Utility in supplying electricity.

2.622 When a consumer is connected to the system, the utility has to provide/allocate certain capacity of the Distribution System to serve the consumer. In addition to this, some expenses such as meter reading, billing, bill delivery, maintenance etc. are fixed in nature and independent of Energy consumption. Ideally, the Fixed Charges levied on the consumer should reflect the cost of such capacity requirements of the consumer after considering the Fixed Cost of such system and diversity of load in the system.

2.623 The Commission in its Tariff Order dated 31/07/2013 has held as under:

> *"2.71 The Commission would also like to point out that if fixed charges are removed, the energy charge would increase correspondingly as these forms a part of total revenue of the utility. Therefore, whether only energy charge is levied or energy charge as well as fixed charge is levied, the same ARR would have to be recovered from the consumers.*
>
> *The Commission is of the opinion that the best method of levying fixed charges is*

on the basis of the sanctioned load, as other options do not representatively reflect the cost of providing the capacity requirements of the consumer. After analyzing all the options of levying fixed charges, the Commission continues with the existing methodology of levying fixed charges."

2.624 The rationale behind rationalizing fixed charges has been given by the Commission in its Tariff Order dated 31/07/2017 and 28/03/2018 as below:

In tariff order dated 31/08/2017: "Fixed charges are levied to cover the fixed expenses of the Utilities. The infrastructure and network involves continuous running and maintenance to ensure uninterrupted power supply irrespective of the fact whether such load demand is actually used or not. The energy charges indicate the variable charges which are directly linked to the consumption of electricity. Both fixed and energy charges form part of the electricity billing; decrease in one shall lead to increase in the other."

In tariff order dated 28/03/2018: "The Commission has rationalized fixed charges based on under recovery of revenue through fixed charges in the ARR of the Distribution Licensees as per the earlier tariff schedule."

2.625 For all categories other than Domestic, Fixed Charges are to be levied based on billing demand per kW/kVA or part thereof. Where the Maximum Demand (MD), as defined in DERC (Supply Code and Performance Standards) Regulations, 2017, reading exceeds Sanctioned Load/Contract Demand, a surcharge of 30% shall be levied on the Fixed Charges corresponding to excess load in kW/kVA for such billing cycle.

2.626 Further, the Petitioner is bound to levy Tariff on consumers for a period as determined and approved by the Commission under the Electricity Act 2003.

2.627 As regard to stakeholder comment on Fixed Charges based on MDI / Sanction Load, it is submitted that Retail tariff has purposely been divided in two parts across the country so that the Licensee is able to recover the Fixed Costs associated with maintenance and upgradation of its network through the Fixed Charges.

2.628 At the time of energization, the consumer undertakes to limit his load to a certain level which determines his Sanctioned Load. This is the load which the Licensee is obligated to serve and based on which it plans its Network Load growth as well as power

purchase. If the consumer, for any reason, exceeds this contracted demand, the Licensee needs to arrange for additional Power in Short Term, the rates for which is much higher than long time Power. Therefore, there is a mechanism by which such consumers (who exceed their Sanctioned Load) are asked to bear the additional cost so that all those consumers who rightfully restrict their usage up to their Sanctioned Load is not wrongfully penalized.

2.629 Further, the Directive to calculate Fixed Charges based on MDI (in case MDI is higher than Sanctioned Load) is not to enrich the licensee but to act as a deterrent for the consumer.

2.630 Levy of fixed charge on Sanctioned Load is strictly executed as per the provisions of the DERC Supply Code and Performance Standards Regulations, 2017.

2.631 As regard to stakeholder comment on Access to MDI online data, it is submitted that the instant comment does not relate to the Petition. However, Consumers are billed in accordance with the DERC (Supply Code & Performance Standards) Regulations, 2017. The format of bill was approved by the Commission.

2.632 With respect to Fixed Charges of domestic category is to be charged on Maximum Demand Indicator (MDI), the Commission is requested to allow recovery of Fixed Charges for all categories of consumers including domestic category on the basis of Sanctioned Load/ Contract Demand or MDI (whichever is higher).

BRPL

2.633 The Fixed Charges as part of the Tariff are levied so as to be able to recover the fixed expenses/costs of DISCOMs. DISCOMs need to establish and maintain Infrastructure and network corresponding to the Sanctioned / Connected Load of the Consumers to ensure uninterrupted Power supply irrespective of the fact whether such load demand is actually used or not. But, the DISCOMs are required to have such infrastructure in place. Hence the Fixed Charges correspond to the sanctioned load.

2.634 The sanctioned load is enhanced based on the highest of an average of Maximum Demand readings recorded as per billing cycle covering any four consecutive calendar months in the preceding FY and not immediately on exceeding the Sanctioned Load. Hence, the charges on enhanced load are collected only after the completion of the

relevant FY of usage. Further, the load is reduced only after 6 months from date of load enhancement as per Regulation 17 4(vii) of DERC (Supply Code and Performance Standards) Regulations, 2017 subject to the reduction of load limited to the highest of an average of any 4 (four) consecutive months' maximum demand readings of last 12 (twelve) months.

2.635 Retail Tariff has purposely been divided in two parts across the country so that the Licensee is able to recover the Fixed Costs associated with maintenance and upgradation of its network through the Fixed Charges.

2.636 Further, the Commission in its Tariff Order dated June 26, 2003 introduced two-part Tariff for domestic consumers, i.e., Fixed Charges and Energy Charges and abolished minimum charges and meter rent. The fixed charge in two-part Tariff represents the fixed component of charges, which is independent of consumption level and depends on the fixed cost incurred by the Utility in supplying electricity.

2.637 At the time of energization, the consumer undertakes to limit his load to a certain level which determines his Sanctioned Load. This is the load which the Licensee is obligated to serve and based on which it plans its Network Load growth as well as Power Purchase. If the consumer, for any reason, exceeds this contracted demand, the Licensee needs to arrange for additional Power in short term, the rates for which is much higher than long time power. Therefore, there is a mechanism by which such consumers (who exceed their Sanctioned Load) are asked to bear the additional cost so that all those consumers who rightfully restrict their usage up to their Sanctioned Load is not wrongfully penalized.

2.638 When a consumer is connected to the system, the utility has to provide/allocate certain capacity of the Distribution System to serve the consumer. In addition to this, some expenses such as meter reading, billing, bill delivery, maintenance etc. are fixed in nature and independent of Energy consumption. Ideally, the Fixed Charges levied on the consumer should reflect the cost of such capacity requirements of the consumer after considering the Fixed Cost of such system and diversity of load in the system.

2.639 The Fixed Cost of the utility should be recovered to a certain extent through Fixed

Charges to ensure revenue stability. Hence, the Commission has determined Tariffs such that a reasonable part of the Fixed Cost is recovered through a Fixed Charge. The Fixed Charges are usually levied on the basis of demand charges on Sanctioned Load or Contract Demand/billing demand.

2.640 The Commission in its Tariff Order dated 31/07/2013 has held, as under:

"2.71 The Commission would also like to point out that if fixed charges are removed, the energy charge would increase correspondingly as these forms a part of total revenue of the utility. Therefore, whether only energy charge is levied or energy charge as well as fixed charge is levied, the same ARR would have to be recovered from the consumers.

The Commission is of the opinion that the best method of levying fixed charges is on the basis of the sanctioned load, as other options do not representatively reflect the cost of providing the capacity requirements of the consumer. After analyzing all the options of levying fixed charges, the Commission continues with the existing methodology of levying fixed charges."

2.641 The rationale behind rationalizing fixed charges has been given by the Commission in its Tariff Order dated 31/07/2017 and 28/03/2018 as below:

In tariff order dated 31/08/2017: "Fixed charges are levied to cover the fixed expenses of the Utilities. The infrastructure and network involves continuous running and maintenance to ensure uninterrupted power supply irrespective of the fact whether such load demand is actually used or not. The energy charges indicate the variable charges which are directly linked to the consumption of electricity. Both fixed and energy charges form part of the electricity billing; decrease in one shall lead to increase in the other."

In tariff order dated 28/03/2018: "The Commission has rationalized fixed charges based on under recovery of revenue through fixed charges in the ARR of the Distribution Licensees as per the earlier tariff schedule."

2.642 For all categories other than Domestic, Fixed Charges are to be levied based on billing demand per kW/kVA or part thereof where the Maximum Demand (MD), as defined in DERC (Supply Code and Performance Standards) Regulations, 2017, reading exceeds

Sanctioned Load/Contract Demand, a surcharge of 30% shall be levied on the Fixed Charges corresponding to excess load in kW/kVA for such billing cycle only. Wherever, Sanctioned Load/Contract Demand is in kW/HP, the kVA shall be calculated on basis of actual Power Factor of the consumer, for the relevant billing cycle and in case on non-availability of actual Power Factor, the Power Factor shall be considered as unity for Sanctioned Load/Contract Demand upto 10kW/11kVA.

2.643 Therefore, the Fixed charge is being levied as per the Tariff determined by the Commission in line with Tariff Regulation, 2017. Further, the Petitioner is bound to levy Tariff on consumers for a period as determined and approved by the Commission under the Electricity Act, 2003.

2.644 As regards to the concern of the stakeholder pertaining to fixed charges of DISCOM to be covered by Fixed Charges of Tariff, it is submitted that Regulation 130 of MYT Regulation 2017 states as under:

"The Fixed Charge of the Distribution Licensee shall consist of the following components:

(a) Capacity Charges of Generating Stations as approved/adopted by the appropriate Commission; Capacity Charges of Transmission Licensee including Load Dispatch Charges Stations as approved/adopted by the appropriate Commission;

Fixed Cost of Distribution Licensee:

- *Return on Capital Employed;*
- *Depreciation; and*
- *Operation and Maintenance expenses."*

2.645 As regards to stakeholder comment on Fixed Charges for domestic connections to be levied on MDI, it is submitted that Levy of Fixed Charge on Sanctioned Load is strictly executed as per the provisions of the DERC Supply Code and Performance Standards Regulations, 2017.

2.646 As regards to stakeholder comment on relief in Fixed Charges due to COVID-19, it is submitted that relief has been granted to the consumers during COVID-19 pandemic period. The Commission vide its order dated 7/04/2020 provided relief to retail consumers, as follows:

a) LPSC charging was restricted to lower of the actual working capital or 12% per annum during 24/03/2020 to 30/06/2020.

b) Due date of bill payment was extended further 2 weeks during 24.03.2020 to 30/06/2020

c) Recovery of legible fixed charges on non-domestic and public utilities and industrial categories during 24/03/2020 to 30/06/2020 was spread across next 3 billing cycles after 30/06/2020

d) Annual review of sanctioned load/contract demand were deferred

e) Rebate were given to consumers on timely payment of bills raised during 24/03/2020 to 30/06/2020

2.647 Further, the Commission vide order dated 4/05/2020 provided relief to Industrial and Non-domestic consumers directing to generate provisional Electricity bill considering Energy Charges Nil from 24/03/2020.

2.648 Furthermore, the Commission vide Order dated 7/09/2020 provided relief to Industrial and Non-domestic consumers by levying Fixed Charges during April 2020 and May 2020 @100% up to Maximum Demand and @50% for balance between Maximum Demand and Sanctioned Load.

2.649 Moreover, the Commission relaxed the recovery of accumulated billed amount based on actual reading of more than one billing cycle in equal installments of corresponding no. of billing cycles without levying any LPSC.

2.650 As regard to stakeholder comment on Access to MDI online data, it is submitted that the consumers are billed in accordance with the DERC (Supply Code & Performance Standards) Regulations, 2017. The format of bill was approved by the Commission. However, the customer may request for MDI data and submit the copy of electricity bill with CA No. of his bill. On request of the customer, the historic MDI data may be provided.

2.651 With respect to Fixed Charges of domestic category is to be charged on Maximum Demand Indicator (MDI), the Commission is requested to allow recovery of Fixed Charges for all categories of consumers including domestic category on the basis of Sanctioned Load/ Contract Demand or MDI (whichever is higher).

2.652 As regard to stakeholder comment on Recovery of Fixed Charges in kW and kVA, it is submitted that as per the Tariff Schedule, domestic category is being charged under kW billing. However, higher load consumer category (ex. Non-domestic category, Industrial) is being charged under kVA billing as per existing provisions of Tariff Schedule.

NDMC

2.653 The party is not in NDMC area.

COMMISSION'S VIEW

2.654 Aggregate Revenue Requirement (ARR) of DISCOMs recoverable through Electricity Tariff has two parts i.e., Fixed Cost and Variable Cost. The Fixed Cost raised to DISCOMs from Generating Companies/ Transmission Companies includes Capacity Charges to Generating Companies/ Transmission Companies, Depreciation, O&M Expenses, Interest on Loan Expenses related to Infrastructure Cost of DISCOMs based on Sanctioned Load of consumers etc. and Variable Cost raised to DISCOMs from Generating Companies mainly includes Fuel cost of Generating Companies.

2.655 The Fixed Charges, as determined by the Commission mandated under Section 45 of the Electricity Act, 2003, are levied by DISCOMs so as to recover their above mentioned Fixed Costs. These Fixed Costs have to be paid uniformly to Generating Companies and Transmission Companies irrespective of electricity consumption. Any under-recovery on account of these Fixed Charges shall have severe impact on cash inflows of DISCOMs and may disturb timely payments to Generation Companies and Transmission Companies.

2.656 Further, the non-payments of Fixed Charges by consumers leads to non-payment of Fixed Cost to Generation Companies and Transmission Companies by DISCOMs. It results into creation of vicious circle and disturbs the equilibrium of the Power Sector which may lead to non-availability of 24X7 uninterrupted power supply.

2.657 As the distribution company needs to pay the fixed cost to Generating Stations and Transmission Companies uniformly during the year, this erratic cash inflow makes it difficult to make timely payments to Generation Companies and Transmission Companies which derails the entire system. The Commission in its DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 has specified the components

which are part of fixed charges and the variable charges separately.

ISSUE 18: TRANSMISSION LOSS AND CHARGES

STAKEHOLDER'S VIEW

2.658 BRPL has claimed Intra-State Transmission Charges i.e. Rs. 333.7 Crore (i.e. Rs. 330.82 Crore as rebatable amount and Rs. 2.9 Crore as non-rebatable amount) towards DTL Wheeling Charges for FY 2020-21 against the bill raised by DTL amounting to Rs. 432.26 Crore towards Wheeling Charges (including incentive/disincentive). However, BRPL has remitted only Rs. 82.70 Crore during for FY 2020-21 to DTL and same should be considered by the Commission while Truing-up the financials of BRPL. Further for FY 2022-23, BRPL has projected an amount of Rs. 1232 Crore as Transmission charges, however, no bifurcation for Intra-State Transmission Charges is given.

2.659 BRPL in its ARR petition has considered 470.4 MU as to Intra-State Transmission Losses for FY 2020-21, however, BRPL has neither specified any percentage nor any bifurcation for Intra-State Transmission Losses, whereas as per SLDC data, the actual Intra-State Transmission Losses are 0.88% for FY 2020-21. Further for FY 2022-23, BRPL has projected Intra-State Transmission Losses as 0.88% i.e. 106.3 MU.

2.660 BRPL had been defaulting payment of DTL since October, 2010. The Hon'ble Supreme Court vide date 12/05/2016 has directed to BRPL to clear the 70% of the current dues. Last hearing was held on 10/05/2022. The Commission is requested to make the provision of Escrow in which BRPL has to deposit all their receivables and the payment will be released to the DTL for current as well as past dues.

2.661 BYPL has claimed 172.56 Crore as rebatable amount towards DTL Wheeling Charges for FY 2020-21 against the bill raised by DTL amounting to Rs. 222.92 Crore towards wheeling charges (including incentive/disincentive). However, BYPL has remitted only Rs. 19.0 Crore during for FY 2020-21 to DTL and same should be considered by the Commission while Truing-up the financials of BYPL. Further, BYPL has projected different Transmission Charges i.e. Rs. 243 Crore and Rs.253 Crore as intra-state Transmission Charges including SLDC charges for FY 2022-23.

2.662 BYPL in its ARR petition has considered 279 MU as Intra-State Transmission Losses for FY 2020-21, however, BYPL has neither specified any percentage nor any bifurcation is

given for intra-State Transmission Losses, whereas as per SLDC data, the actual Intra-State Transmission Losses are 0.88%. Further, BYPL has projected Intra-State Transmission Losses as 82 MU for FY 2022-23.

2.663 BYPL had been defaulting payment of DTL since October, 2010. The Hon'ble Supreme Court vide their Order dated 12/05/2016 has directed BYPL to clear the 70% of the current dues. Last hearing was held on 10/05/2022. The Commission is requested to make the provision of Escrow in which BRPL has to deposit all their receivables and the payment will be released to the DTL for current as well as past dues.

2.664 TPDDL has claimed Rs. 325.40 Crores as DTL Wheeling Charges for FY 2020-21, against the bills raised by DTL amounting to Rs. 332.34 Crore towards wheeling charges (including incentive/disincentive). However, TPDDL has remitted only Rs. 275.79 Crores for FY 2020-21 to DTL and same should be considered by the Commission at the time of True Up of FY 2020-21. for FY 2022-23, TPDDL has projected an amount of Rs. 390.22 Crore as DTL & SLDC Charges.

2.665 As per SLDC data, the actual Intra-State Transmission Losses is 0.88% for FY 2020-21, however TPDDL has not specified any percentage for Intra-State Transmission Losses and has considered Intra-state Transmission Losses as 90.89 MU for FY 2020-21.

2.666 TPDDL has projected Total Transmission Loss @ 3.5% for PGCIL and DTL i.e 376.31 MU for FY 2022-23.

2.667 NDMC has claimed Rs. 34.36 Crore towards Intra-State Transmission Loss/ Charges against the bills raised by DTL amounting to Rs.55.67 Crores towards Wheeling Charges (including incentive/disincentive). NDMC has remitted only Rs.33.81 Crore during FY 2020-21 to DTL and the same should be only considered by the Commission while truing up the financials of NDMC.

2.668 NDMC for FY 2022-23 has projected an amount of Rs.44.86 Crore as Intra State Transmission Charges which is even lesser than the amount actually billed by DTL for FY 2020-21.

2.669 As per SLDC data, the actual Intra-State Transmission Losses as 0.80% for FY 2020-21, however, NDMC has not specified any percentage for Intra-State Transmission Losses and has considered the Intra-State Transmission Loss as -9.06 MU for FY 2020-21.

Further, NDMC has projected Transmission Losses as 0.88% i.e. 15.06 MU for FY 2022-23.

PETITIONER'S SUBMISSION

TPDDL

2.670 Transmission and Distribution (T&D) losses are a percentage of energy lost in the Transmission and Distribution Network in the process of transporting Electricity from Generating Stations to points of consumption. Therefore, Transmission and Distribution loss is considered along with Power Purchase Cost in order to determine Tariff by the Commission.

2.671 For FY 20-21, total bill of Rs. 334.84 Cr. was raised by DTL and TPDDL had received Rs. 70.12 Cr. DTL STOA credit hence a net of Rs. 264.72 cr. is booked for DTL.

2.672 Tata Power-DDL computes the losses as difference of the actual power scheduled and energy received at Tata Power-DDL periphery and the losses are prorated under Intra state and Interstate losses as follows:

2.673 For Intra State Losses :- DTL losses have been factored in as per the data shown on the Delhi SLDC Website i.e 0.88% approx. (Delhi STU Loss).

2.674 For Inter State Losses :- Remaining difference is booked under Interstate head

BYPL

2.675 BYPL has considered Rs.172.56 Crore as the Intra-State Transmission Charges billed by the DTL. Reconciliation of the DTL's wheeling charges and Petitioner's claim are given below: -

Particulars	FY 2020-21
Wheeling Charges	Rs. 222.82 Cr.
Less: STOA Credit	Rs. (50.26) Cr.
Net Total Billing	172.56 Cr.

2.676 The Intra-state Transmission Loss during FY 2022-23 has been considered @0.92% based on previous Tariff Order of the Commission.

2.677 BYPL is looking at all possible options/solutions to sort out the payment issues with DTL at the earliest. However, BYPL has been facing adverse financial condition since FY 2009-10 primarily on account of a non-cost reflective Tariff and absence of timely and

adequate recovery of accumulated Regulatory Asset. The same has constrained the capability of BYPL to make timely payments to Generation and Transmission Utilities including DTL.

Status of Overdue as per SC directives as on 31st March'21					
Jan. '14 onwards Consumption Bills	**Total Dues**	**Subsidy Payment**	**Cash & TDS Payment**	**Total Payments**	**Payment %**
Delhi Transco Ltd. (Wheeling Charges)	1,510	686	615	1,301	86%

2.678 Further, the matter regarding payment to DTL is pending before Hon'ble Supreme Court. There are several disputes pending before Petitioner and DTL before various fora, including the unilateral adjustment of subsidy amounts by Delhi Government/DTL.

BRPL

2.679 Our response to the comments, suggestions and issues raised by the stakeholder on Intra-State Transmission Charges are as follows:

(i) The Petitioner has claimed the Rs. 333.7 Crore as billed by the DTL as per Tariff Regulations, 2017. Reconciliation of the DTL's wheeling charges and Petitioner's claim are given below:

Table 2. 4: Reconciliation of the DTL's wheeling charges

Sr. No.	Particulars	Amt. (Rs. Cr.)
1.	DTL- Wheeling Charges	432
2.	Less: STOA Credit	(101.1)
3.	Add: SLDC Charges	2.9
	Total DTL Billing to BRPL	333.7

With respect to payment claim of DTL, it is submitted that BRPL has paid current dues for FY 2020-21.

(ii) For FY 2022-23, the Petitioner has projected Transmission Charges as approved by the Commission in its Tariff Order dated 30/09/2021. The details are as tabulated below:

"Table 4. 31: Commission Approved: Inter-State and Intra-State Transmission Losses and Transmission Charges for FY 2021-22

Sr. No.	Particulars	As Approved
A	Transmission losses (MU)	
I	Inter-State Transmission (PGCIL)	235.35
II	Intra-State Transmission (DTL)	123.34
	Total Transmission Losses (MU)	358.68
B	Transmission Charges (RsCrore)	
I	Inter-State Transmission (PGCIL)	776.02
I	Intra-State Transmission (DTL)	433.9
III	Other Transmission Charges	18.06
IV	SLDC Charges	4.02
C	Total Transmission Charges (Rs. Cr.)	1232

(iii) **Intra-State Transmission Losses**: Regarding bifurcation of Intra- and Inter- State Transmission losses during FY 2020-21, the Commission is requested to consider the actual data as submitted by SLDC while Truing-up for FY 2020-21. However, for FY 2022-23, BRPL has projected 0.88% of Intra-state losses as submitted by Delhi SLDC.

(iv) **Non-Payment of dues of wheeling charges by BRPL**: Non-payment is due to Non-cost reflective Tariff and the delayed / inadequate recovery of accumulated Regulatory Asset being determined by the Commission. On account of these reasons, BRPL was constrained to approach the Supreme Court by way of a Writ Petition being W.P. (C.) No. 104 of 2014, wherein DTL is also a party. The Supreme Court by its Order dated 19/02/2015 read with Order dated 10/03/2015, reserved judgment in W. P. (C.) No. 104 of 2014. Since the judgment was not pronounced, the Writ Petition is still pending adjudication. Thereafter, in the subsequent years as well, the Commission has not factored the liquidation of accumulated Regulatory Assets and consequently the Tariff as determined, has been non-cost reflective. BRPL has complied with the requirement of 70% payment of the current dues of DTL in compliance with the Order dated 12/05/2016 passed by the Hon'ble Supreme Court. In fact, BRPL has endeavoured to make 100% payment of current dues since December 2017. Status of payment on the basis 70% of the current dues in terms of the Order dated 12.05.2016, as on 31.03.2021 is as under:

Further, the issue regarding payment to DTL is pending before various fora including the Hon'ble Supreme Court. There are several disputes pending between the Petitioner and DTL before various fora, including the unilateral adjustment of subsidy amounts by DTL.

(v) **Relief sought by BRPL due to COVID Pandemic**: We deny and dispute the observation of the stakeholders that no relief due to COVID-19 has to be given to the BRPL as its Collection Efficiency is 100.32%. Apart from collection efficiency norms set out by the Commission, there has been adverse effect of the Covid-19 pandemic on the billing. Revenue of BRPL was adversely affected during the Covid-19 pandemic on account of drastic reduction in the quantum of the bills that were being raised. The power purchase cost had increased to Rs. 5.81 / kWh as opposed to the approved power purchase cost of Rs. 5.02 / kWh during FY 2020-21. Hence, this adversely affected the financial position of BRPL.

(vi) **Adjustment of subsidy by DTL towards past outstanding dues:** It has been the consistent stand of BRPL, that the Subsidy amount cannot be adjusted towards payment of outstanding dues as the subsidy is part of current receivable/ revenue recoverable through Tariff. A treatment at variance to this in effect adversely affects ability of BRPL to pay the Generating and Transmission utilities on account of Power Purchase Cost. Reliance placed by DTL on the interim Order

DTL	Total Dues Jan'14 to Mar 21 (Rs. Cr.)	Payment Details (Jan'14 to Mar 21) (Rs. Cr.)			Payment %
		Amount paid including TDS	Subsidy Adjustment	Total Payment	
A	B	C	D	E= (C+D)	F= (E/B)
Wheeling Charges	2,317	1,023	1,168	**2,191**	**95%**

dated 23/05/2014 passed by the Hon'ble Tribunal in IA 164 of 2014 in Appeal No. 32 of 2014 and connected matters is misplaced since a Civil Appeal being C.A Nos. 8387-89 & 8464-66 of 2014 regarding adjustment of subsidy amounts is pending before the Hon'ble Supreme Court against the Order dated 23.05.2014. The Hon'ble Supreme Court on 19/09/2014, issued notice on the IA(s) seeking

stay of the Order dated 23/05/2014 passed by the Hon'ble Tribunal as well as the Civil Appeals. The Hon'ble Supreme Court by its Order dated 10/03/2015 has directed that the said Appeals to be listed after pronouncement of Judgment in W.P. (C.) 104 of 2014.

(vii) **Letter of credit (LC) to be provided by BRPL in terms of BPTA with DTL:** As regards non-maintenance of required LC amount as per terms of BPTA,it is submitted that BRPL has been facing adverse financial condition since FY 2009-10 primarily on account of a non-cost reflective Tariff in the past and absence of timely and adequate recovery of accumulated Regulatory Asset being allowed by the Commission which has constrained our financial position and consequently, BRPL does not have the required LC limits from Banks for establishment of LCs in favour of power suppliers including DTL.

Further, the issue of LC was raised by DTL before the Commission in Petition No. 46 & 47 of 2013 wherein the Commission by its Order dated 22/11/2013 directed for constitution of an Empowered Committee. The said Order was challenged by DTL and is pending adjudication in Appeal No. 32 of 2014 before the Hon'ble Tribunal which has been sine die adjourned in terms of Order dated 9/02/2014 passed by the Hon'ble Supreme Court. Since the matter is sub-judice, DTL is requested not to insist upon BRPL to open LC.

2.680 Further, the credit of STOA charges shall be refunded by DTL on monthly basis and should be adjusted with current bills of the Wheeling Charges. DTL should not be allowed to adjust the same with past overdues, as directed by the Commission in the last Tariff Order, as under:

"The Commission directs the Petitioner to disburse Short Term Open Access Charges to DISCOMS as per applicable rules and regulations, on monthly basis on the date of raising Transmission charge bills. Further, no adjustment of STOA charges shall be made towards any past dues/ or adjustment in transmission bills of utilities."

NDMC

2.681 Did not provide any comment.

COMMISSION'S VIEW

2.682 The Commission determines the ARR for the DISCOMs as per the provisions of the Tariff Regulations, 2017 & Business Plan Regulations, 2019. The Tariff Order is issued after prudence check of the Petitions submitted by the DISCOMs and after considering each element of cost projected in the Petitions with due analysis and ensuring proper justification.

2.683 The Commission determines the transmission charges of DTL as per Tariff Regulations, 2017 & Business Plan Regulations, 2019. Further, the transmission losses and availability are being considered as provided by Delhi SLDC. With regards to the dues to DTL by DISCOMs, it is pertinent to state that in case DISCOM do not pay State GENCO and DTL as per timelines mandated in the Tariff Regulations, 2017 then they are liable for LPSC as stipulated in the said Regulations. LPSC paid by DISCOMs to State GENCO and DTL is not passed through in their ARR.

2.684 The target for Distribution Losses has been benchmarked with following parameters:

a) Distribution Losses trajectory of previous years for DISCOMS;
b) Performance of various Indian Distribution companies
c) Electric Power Transmission and Distribution Losses for Top 50 countries from the World Bank website

The detailed methodology for computing Distribution losses is mentioned at Sr. No. D (4) of Explanatory Memorandum uploaded at Commission website.

2.685 Further, Directives has been issued in previous Tariff Order to DISCOMs to make timely payment of bills to all the Generating Companies and Transmission Utilities. No Late Payment Surcharge shall be allowed as a pass through in the ARR on account of delayed payments.

2.686 The DISCOMs are given an incentive if the Distribution Losses are reduced below the fixed target. If the losses are more than the target fixed, the loss above the target fixed is full to the account of the DISCOMs. The targets every year are progressively

decreasing and it is expected that DISCOMs will achieve them. If the DISCOMs do not achieve the target, the financial impact will be to the account of the DISCOMs alone and will get reflected in the true-up of ARR of the respective DISCOMS.

ISSUE 19: GROUP HOUSING SOCIETY TARIFF CHARGES

STAKEHOLDER'S VIEW

2.687 As there is no method to calculate the individual load like total common load of the GHS, in this connection, then how GHS charge Fixed Charges is levied from its individual members.

2.688 GHS are paying double for the same services through cost structure of housing society, regular Maintenance Charges and Electricity bills but GHS is paying Fixed Charges at three times of normal Fixed Charges of domestic consumer, which is totally unjustified. These Fixed charges should be abolished.

2.689 GHS members should pay same or less Fixed Charges than LT domestic consumer.

2.690 The Distribution System/ Sub-station for individual connections are installed and maintained by DISCOMS. However, in GHS, the housing society maintains all the systems bearing all the expenses. Hence, Electricity Rates for GHS and its members should be same.

2.691 There shall be no change in GHS Tariff and Electricity to be billed to HV SPD GHS residents as a pass through with 5% surcharge only.

2.692 A meeting with DERC executives may be held on method to calculate Fixed Charges for individual load in GHS for levying Fixed Charges.

2.693 GHS members not getting Govt. subsidy available to the normal domestic consumer.

2.694 Previously, DISCOMS were showing the MDI reading in its every bill, which helped the GHS to regulate their Electricity connection, but now the MDI reading is not mentioned on the bills. kindly direct the DISCOMS to mention the same in each bill.

2.695 TPDDL is not refunding the difference in security deposit arising out of load reduction since April 2004 & not paying the Interest on Consumption Deposit from 18-04-2007 onward.

2.696 Meter no. 8XXXXXX45 and other connection 8XXXXXXX41 was not given connection because of absence of Electric Pole.

2.697 Stable Power should be Provided even small interruption of 5 seconds cause disruption in work for people connected/ working from Home. Few days back, 17 times on/ off happened in Group housing society.

2.698 Group housing Tariff are getting realistic Tariff around Rs. 6.20 Rs/ kWh as 11kV HV consumers. If 2/3rd members agree then Group Housing Society should be converted to SPD as per Delhi Apartments Act. Such conversion should happen only if 100% member agree to convert Group Housing to Single Point Connection.

PETITIONER'S SUBMISSION

TPDDL

2.699 Single Point Delivery (SPD) connections to Group Housing Society (GHS) are sanctioned in compliance to prevailing Regulations. DISCOM charges Fixed Charges from the GHS as per provision of the Tariff Order based on Sanctioned Load/Contract Demand. Calculating load of individual members as well as that of common services for charging Fixed Charges is under the purview of SPD.

2.700 TPDDL is billing all its consumers as per Tariff Order FY 2021-22. Tariff determination and Tariff design for all consumer categories is the sole prerogative of the Commission.

2.701 As regards to stakeholder Comment on individual load in GHS connection, the Commission may like to decide on the same as it may deem fit.

2.702 As regards to stakeholder Comment on GHS maintaining all the systems, it is submitted that GHS availing supply at 11 KV are being given rebate of 3 % on Energy Charges for maintaining the system and bearing expenses as per prevailing Tariff Orders.

2.703 The Commission has already stipulated modalities for claiming subsidy benefit by individual consumers in Group Housing Societies (GHS). It was duly informed to each of the GHS falling in the Licensed area & the same needs to be complied by the GHS for claiming the subsidy.

2.704 As regards to stakeholder comment on showing the MDI reading in its every bill, it is submitted that MDI is not reflected on the society bills due to Multimeter case however we are arranging the same.

2.705 As regards to stakeholder comment on specific meter connection, it is submitted that the CGHS Connection is an old connection of DESU times and security deposit details

are not available in our records that were handed over to us. In case there are any records available with consumer, same may be shared with us. In absence of updated security deposit details in our records, no security refund has been processed.

BYPL

2.706 As regard to the stakeholder comment on Tariff of GHS connection, it is submitted that the Commission has fixed the Tariffs taking into consideration all the comments of the stakeholders and after detailed observations. Further, DISCOMs are bound to charge the Tariff approved by the Commission for the respective consumer categories and that the DISCOMs cannot get involved into what CGHS charges from its consumers.

2.707 In regard to the stakeholder comment on subsidy for GHS connection, it is submitted that as per the Cabinet decision of GoNCTD, Electricity subsidy to all domestic consumers consuming upto 400 units per month has been approved which is also applicable to the consumers for Group Housing Society. The Govt. of NCT of Delhi vide letter dated 23/03/2016 to the Commission has requested to firm up the modalities for claiming subsidy, under intimation to GoNCTD. The Group Housing Society shall maintain data/records of consumption of each of the member and the Group Housing Society shall get the subsidy claim document audited by the CAG empanelled Auditor and submit its report to the DISCOM.

2.708 As per provision of DERC Supply Code, 2017, the consumer shall pay Security Deposit towards supply of electricity corresponding to the Sanctioned Load or Contract Demand as the case may be as per the rates and mode notified.

2.709 As regard to stakeholder comment on HV SPD GHS residents as a pass through with 5% surcharge, it is submitted that determination of Electricity Tariff to be charged from consumer is the prerogative of the Commission under Section 45 of the Electricity Act, 2003.

BRPL

2.710 As regard to the stakeholder comment on Tariff of GHS connection, it is submitted that the Commission has fixed the Tariffs taking into consideration all the comments of the stakeholders and after detailed observations. Further, DISCOMs are bound to charge the Tariff approved by the Commission for the respective consumer categories and

that the DISCOMs cannot get involved into what CGHS charges from its consumers.

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2.712 As regard to stakeholder comment on HV SPD GHS residents as a pass through with 5% surcharge, it is submitted that determination of Electricity Tariff to be charged from consumer is the prerogative of the Commission under Section 45 of the Electricity Act, 2003.

NDMC

2.713 The stakeholder does not fall in NDMC's licensed area of supply.

COMMISSION'S VIEW

2.714 The Single Point Delivery Supplier (Group Housing Societies) shall charge the Domestic tariff as per slab rate of 1.1 to its Individual Members availing supply for Domestic purpose and Non Domestic Tariff for other than domestic purpose. Any Deficit/Surplus due to sum total of the billing to the Individual Members as per slab rate of tariff schedule 1.1 and the billing as per the tariff schedule 1.2 including the operational expenses of the Single Point Delivery Supplier shall be passed on to the members of the Group Housing Societies on pro rata basis of consumption.

2.715 Individual Domestic Consumers availing the supply at single point delivery through Group Housing Society, shall claim the benefit of subsidy, applicable if any, as per the Order of GoNCTD. Group Housing Society shall submit the details of eligible consumers with consumption details and lodge claim of subsidy on behalf of individual members from DISCOMs.

2.716 The Commission, for the ease of consumers, has uploaded on its website : Public

Awareness Bulletin- 12 "*Sample Electricity Bill for the Group Housing Society*".

ISSUE 20: EV CHARGING STATION

STAKEHOLDER'S VIEW

2.717 Present Tariff system for EV is highly unsatisfactory.

2.718 EV charging stations should have commercial Tariff and no subsidy to be given just as there is no subsidy on petrol and diesel.

2.719 DERC should notify fixed charges for EV charging stations.

2.720 EV charging station Tariff be kept equal to Actual Cost or highest amongst all consumer categories.

2.721 EV charging stations should have a Tariff equal to commercial category Tariff at Rs. 8.5/unit and Fixed Charges at Rs. 250/kVA/month.

2.722 Electricity Tariff provided for E-vehicle is misused and other consumer should not be subsidized for lower Tariff of E-vehicle.

PETITIONER'S SUBMISSION

TPDDL

2.723 Section 61 (g) of Electricity Act 2003 mandates that Appropriate Commission while determining Tariff shall be guided by the principle that the Tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within a time period as decided by the Commission. Even National Tariff Policy states that tariff design shall be linked to cost of service and Tariff thereof, progressively reflects the efficient and prudent cost of supply of electricity.

2.724 Accordingly, in line with the objectives of the Electricity Act, 2003 and National Tariff Policy, tariff of EV charging should be made equal or higher than the average cost of supply in the interest of consumers.

2.725 The Energy Charges for EV charging stations is found to be more than their respective Average Cost of Supply in Andhra Pradesh-Rs.6.7/unit, Meghalaya-Rs. 9.7/unit (LT) and Odisha-Rs. 6.2/unit (LT) as per Tariff Order for FY 2021-22. Fixed charges are also levied in Meghalaya and Odisha.

2.726 The Commission is requested to keep the Tariffs for EV Charging Stations at the Average Cost of Supply and introduce Fixed Charges for EV charging Stations to allow

for recovery of Infrastructure costs as per the prevalent practice in other states.

BYPL

2.727 As per the provisions of the Electricity Act, 2003, determination of Electricity Tariff of all consumers irrespective of any category is the sole prerogative of the Commission.

2.728 As regards to Stakeholder comment on EV charging Tariff be kept equal to commercial Tariff, it is submitted that the Commission vide its Tariff Order dated 31/08/2017 had introduced a new Tariff Category for charging of batteries of E-Rickshaw /E-Vehicle at Charging Stations and also held that the Tariff for charging of batteries of E-Rickshaw / E-Vehicle at premises other than at Charging Stations shall be the same as applicable for the relevant category of connection at such premises from which the E-Rickshaw / E-Vehicle is being charged.

BRPL

2.729 The Commission vide its Tariff Order dated 31/08/2017 had introduced a new Tariff Category for charging of batteries of E-Rickshaw / E-Vehicle at Charging Stations and also held that the Tariff for charging of batteries of E-Rickshaw / E-Vehicle at premises other than at Charging Stations shall be the same as applicable for the relevant category of connection at such premises from which the E-Rickshaw / E-Vehicle is being charged.

2.730 Petitioner in its ARR Petition has requested the Commission to kindly address the issue of Cross Subsidization among all categories by restructuring the existing Tariff structure as the same is not in line with National Tariff Policy which states that Tariffs should be within ±20% of the Average Cost of Supply.

2.731 With regard to EV charging Tariff to consumer, it is submitted that the determination of Electricity Tariff to be charged from a certain category of consumer is the sole prerogative of the Commission under Section 45 of the Electricity Act, 2003.

NDMC

2.732 The party is not in NDMC area

COMMISSION'S VIEW

2.733 Increased usage of E-Vehicles will lead to a substantial reduction in consumption of conventional fuels such as petrol and diesel and the consequential pollution.

2.734 In line with revised guidelines and standards on charging infrastructure for Electric vehicles, 2021 issued by MoP, GoI relevant clauses as stated under

"Objectives

(b) To promote affordable tariff chargeable from EV and charging station operators/ owners

…

7.1 The tariff for supply of electricity to EV public charging shall be determined by appropriate commission in accordance with tariff policy issued under section-3 of electricity act 2003 as amended from time to time.

7.2 Tariff applicable for domestic consumption shall be applicable for domestic charging."

2.735 DERC is the 1st Regulatory Commission to provide separate Tariff category for Charging of E-vehicles in its Tariff Order dated 31/08/2017. Further, the Commission in its Tariff Order dated 28/08/2020 extended the Electric vehicle charging station Tariff category for swapping of batteries of E-rickshaw/E-vehicles. Further, Tariff for battery Swapping Stations is same as that for charging stations for E-Rickshaw/E-vehicle on single point delivery provided that such swapping facilities are exclusively used for swapping of batteries of E-Rickshaw/E-Vehicle only.

2.736 For the promotion of E-vehicles, there are no fixed charges applicable on charging stations for E-rickshaw/E-vehicle on Single Point Delivery/ Swapping Battery Tariff category. Further, Energy Charges are lesser than Cost of Supply.

2.737 The Commission has also decided to retain the Rebate on Energy Charges during the Off Peak hours and Peak hours Surcharge at 20% i.e. 4 AM TO 10 AM, as follows:

" **3. Time of Day (ToD) Tariff**

The Commission has retained the time slots for Peak and Off-Peak hours as follows:

MONTHS	PEAK HOURS (HRS)	SURCHARGE ON ENERGY CHARGES	OFF-PEAK HOURS (HRS)	REBATE ON ENERGY CHARGES
May - September	1400– 1700 & 2200 – 0100	20%	0400 – 1000	20%

"

2.738 As regard to stakeholder comment on misuse of Tariff for E-vehicle, DISCOMs should step up their enforcement activities to avoid misuse of E-vehicle charging facility. The

Petitioner should make all efforts to prevent theft/pilferage of electricity by strengthening their enforcement activities without harassing honest consumers.

ISSUE 21: E-BILL & ONLINE PAYMENT

STAKEHOLDER'S VIEW

2.739 Electricity bills to be sent online on emails/ mobile to consumers to save paper, manpower and environment.

2.740 E-bill be made mandatory for consumers with 5 kW and above connections except for extremely poor.

2.741 Unilateral actions of paper bills should be stopped for zero payment and reduction of Sanctioned Load without consent to be reversed.

2.742 Make Aadhar and PAN submission mandatory for all existing as well as new connections. This will help in recovery of dues from defaulters and in tax compliances.

2.743 Digital payments should not be made mandatory and payment through DD/ Cheque should be accepted.

2.744 The facility of paper bill should continue.

2.745 Electricity bills should be in hard copy i.e. one-page bill. Sending bills on Whatsapp is not acceptable and will create problems.

2.746 Benefit of zero billing to the consumer as per APTEL judgement 9/09/2015 should be provided.

2.747 Notification for mandatory Digital payments for bills of value more than Rs. 20000/- has been withdrawn. Hence, it is requested to issue Guidelines to payment collection agency to accept payment through cheque.

PETITIONER'S SUBMISSION

TPDDL

2.748 In this era of internet, DISCOMs sending paper electricity bills to lakhs of consumers every month means thousands of trees are cut every year just to send electricity bills to consumers. This wastage can be saved by sending a soft copy of the bill on email or WhatsApp. This can be made mandatory for those connections having sanctioned load of above 5 kW. These consumers, one can hope, to definitively have internet connectivity.

2.749 These consumers can be asked to pay bill by digital modes like e-wallets, Net Banking, NEFT, RTGS, debit card etc. Following are the Benefits of e-payment:

i) Hassle-free

ii) Safe & Secure

iii) Environment Friendly

iv) Saves Time

v) Cashback

This will help in improving collection efficiency of DISCOMs which in turn help consumer with reduced tariff burden.

2.750 For the consumers, where the amount payable is zero after Subsidy adjustment or otherwise, only electronic bill may be sent through SMS/email/Whatsapp .

2.751 As regards to Stakeholder comment on accepting DD/ Cheque, it is submitted that the Payment through digital modes were in line with the GoI initiative of promoting payments through digital modes. Hence, some categories of consumers were brought under mandatory payment category if the values exceeded Rs. 20000/-. Moreover, to provide sufficient time for transition, this was deferred and made applicable from 1/04/2022.

2.752 As regards to stakeholder comment on reduction of Sanctioned Load without consent to be reversed, it is submitted that Suo moto load enhancement/reduction is done as per DERC Supply Code Regulations, 2017.

2.753 As regards to Stakeholder comment on making Aadhar and PAN submission mandatory for all existing as well as new connections, it is submitted that sometimes dues on premises remain unrecovered due to consumer default and it is not always possible to recover dues without establishing the liability on the defaulter who has left the premises. Such recovery suits also take time and sometimes do not give the desired result of dues recovery as the defaulter cannot be pinned due to lack of documents that can identify him like Aadhar, mobile no and PAN details. Whenever a consumer applies for new connection, DISCOM checks the dues on premises applied for and the applicant has to pay these dues to get the new connection. This is unnecessary burden and harassment for the applicant.

2.754 PAN of registered consumer is required according to section 206AA of Income-tax Act 1961, to

a) Deduct TDS (Tax deduction at Source) u/s 194A, on payment of Interest on Security deposit / consumption deposit by the consumer,

b) Charge TCS (Tax Collection at Source) u/s 206C(1)H on receipt of payment above 50 Lakhs from any consumer.

c) Finalize the Tax rate applicable on such transactions for compliance check u/s 206AB and 206CCA.

Further, taking Aadhar and PAN details of all applicants for existing connection will help in smooth compliance on Tax deduction / Collection at source as per law as stated above and to pass on the benefit of Tax deduction / Collection at source from the registered consumer.

BYPL

2.755 The consumer is given option to consumers to get e-Bill from application or through website.

2.756 BSES have given the option to consumers to get e-Bill from application or through our website. Lakhs of consumers have already opted for e-bills and have decided to stop their physical bills. Further, the Commission has also provided the provision in DERC (Supply Code and Performance Standards) Regulations, 2017 stated as under:

> *"38 (5) The consumer shall have an option to receive the bill either in hard copy or through electronic mode such as e-mail. The consumer opting for receiving bill through electronic mode shall register for the same:*
>
> *Provided that the distribution licensee shall deliver the bill both in hard copy and in electronic mode such as email for a consecutive period of 3 (three) billing cycles from the date of registration by the consumer: Provided further that after a consecutive period of 3 (three) billing cycles, the Licensee may stop the delivery of hard copy of the bill."*

2.757 At present, any consumer of the Petitioner can request to opt for e-bill and discontinue their physical bills or may decide to continue with both formats. A numbers of consumers have already opted for e-bills and have decided to stop their physical bills.

However, this is still optional for all consumers. However, while considering to make e-bills mandatory, it may also need to be considered that there may be lakhs of consumers especially in the lower economic strata, who may still lack the technical resources to access e-bills.

2.758 The Petitioner has also made a written representation before the Commission in the past. However, it cannot be made mandatory because there are some remote areas where people are not digitalized and therefore it is not feasible for them to rely upon the E-Bills. Any delay in access of the bills may further lead to delay in revenue collection.

2.759 The Commission is requested to kindly allow serving of only paperless e-bill to the consumer getting Subsidy on the entire bill amount. The mode of serving such e-bills would be through email, SMS with a link of pdf of bill, other digital mode. In such cases, the physical bill would not be delivered for that month and only e-bill would be served to the consumers on its registered email id, SMS with bill link to registered mobile number.

2.760 For digital payments, multiple options and interfaces has been put in place to enable consumer make payment online such as:

a) Payment through Unified Payment Interface (UPI)
b) Dynamic UPI QR Code
c) Debit / Credit Card
d) Internet Banking

2.761 As regards to Stakeholder comment on accepting DD/ Cheque, it is submitted that BYPL is bound to comply with the directive issued by the Commission vide Tariff Order dated 30/09/2021 regarding payment of monthly Electricity bills of all categories of consumers except Domestic, Agriculture & Mushroom Cultivation exceeding Rs. 20,000/- to be paid digitally through various platforms like NEFT, RTGS, IMPS, Credit Card, Debit Card, Wallets (like PayTM, Google Pay) etc.

2.762 Furthermore, making mandatory E bill and online payment is the prerogative of the Commission.

2.763 As regards to stakeholder comment on reduction of Sanctioned Load without consent to be reversed, it is submitted that Sanctioned Load is reviewed by the DISCOM in

terms with Regulation 17 (4) of DERC Supply Code Regulations, 2017. For domestic category consumers, if the computed/reviewed load is less than the sanctioned load, the DISCOM seeks the consent of the consumer for load reduction through a separate notice to the consumer. For domestic consumer category having the sanctioned load upto 5 kW, if no communication is received from the consumer within 30 days from the date of receipt of notice, the load is reduced automatically.

2.764 The comment of the stakeholder regarding clearance of past dues and ID requirement in transfer of connection/new connection do not relate to the instant petition. However, it is submitted that application for transfer of connection is processed by BYPL in line with the procedures defined under DERC (Supply Code and Performance Standards) Regulations, 2017 and its subsequent amendments.

2.765 At present, any consumer of the Petitioner can request to opt for e-bill and discontinue their physical bills or may decide to continue with both formats. A numbers of consumers have already opted for e-bills and have decided to stop their physical bills.

BRPL

2.766 BSES Rajdhani have given the option to consumers to get e-Bill from application or through our website. Lakhs of consumers have already opted for e-bills and have decided to stop their physical bills. Further, the Commission has also provided the provision in DERC (Supply Code and Performance Standards) Regulations, 2017 stated as under:

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2.771 Furthermore, making mandatory E bill and online payment is the prerogative of the Commission.

2.772 The Petitioner submits that matter of zero billing is pending before the Hon'ble APTEL in A.No. 290 of 2015.

2.773 As regards to stakeholder comment on reduction of Sanctioned Load without consent to be reversed, it is submitted that Sanctioned Load is reviewed by the DISCOM in terms with Regulation 17 (4) of DERC Supply Code Regulations, 2017. For domestic category consumers, if the computed/reviewed load is less than the sanctioned load, the DISCOM seeks the consent of the consumer for load reduction through a separate notice to the consumer. For domestic consumer category having the sanctioned load

upto 5 kW, if no communication is received from the consumer within 30 days from the date of receipt of notice, the load is reduced automatically.

NDMC

2.774 The party is not in NDMC area

COMMISSION'S VIEW

2.775 The e-bill and online payment along with other multiple mode of payment is voluntary for customers. Consumer can pay the bill by Cash, Cheque, Demand Draft, Money Order or through electronic modes. The date of realisation of cheque or Three (3) days from the submission of cheque shall be deemed to be the date of receipt of the payment provided that the cheque is not dishonoured.

2.776 Provided that if cheque of a Consumer dishonoured for Two (2) occasions in any Financial Year, then such Consumer shall not have facility of paying electricity bill through cheque for balance period of Financial Year. Provided further that cash payment limit for each monthly bill shall not exceed Rs 5,000/- or as may be decided by the Commission from time to time.

2.777 Accordingly, the Directive has been issued regarding the Cash Collection in current Tariff Order, as follows:

> *"No payment shall be accepted by the Distribution Licensees from its consumers at its own collection centres/mobile vans in cash towards electricity bill exceeding Rs. 4,000/- except from blind consumers, for court settlement cases & payment deposited by the consumers at designated scheduled commercial bank branches upto Rs. 50,000/-. Violation of this provision shall attract penalty to the level of 10% of total cash collection exceeding the limit."*

2.778 Further, in Tariff Order dated 30/09/2021, the Commission has mandatorily made the payment of monthly electricity bills of all categories of consumers except Domestic, Agriculture & Mushroom Cultivation exceeding Rs. 20,000/- digitally through various platforms like NEFT, RTGS, IMPS, Credit Card, Debit Card, Wallets (like PayTM, Google Pay) etc.

2.779 When collection exceeds the Normative target of 99.5% the benefit uptil 100% is shared between Distribution Licensee and consumer. The treatment of security

deposit and its interest thereof is governed by provisions indicated in DERC (Supply Code and Performance Standards) Regulations, 2017.

ISSUE 22: MISCELLANEOUS

STAKEHOLDER'S VIEW

2.780 Investment in Generation can be explored against giving subsidy of Rs. 3250 Crores per annum.

2.781 There should be check on fast running meters.

2.782 No further surcharge to be levied on Temporary Residential Connections.

2.783 DISCOMs may confirm if Non-Tariff Income is very small.

2.784 Interest on Consumer Security Deposit may be reduced.

2.785 Whether BYPL has paid any security deposit to Government/Other companies from where they purchase Power.

2.786 At present, 42% taxes on Electricity are levied to Consumer which was only 17% in year 2013.

2.787 Multi Storey building should be provided Electricity connection only if they produce Fire Safety certificate.

2.788 New connection application takes long time in processing which should be streamlined.

2.789 It is well accepted commercial practice to hand over damaged property to one who compensates the loss. Yet damaged meters are not handed over to consumers even after paying for it.

2.790 Meter installation without property document should be allowed for ease of operation.

2.791 Income from Electric poles offered for use of internet and cable TV may be considered in ARR.

2.792 Complaints related to Voltage Fluctuations, Frequent Power Cuts and unreliable SMS services to be addressed.

2.793 The Commission is requested to dilute Fire Safety norms and bypass cumbersome documentation procedures.

2.794 As per DERC order, new connections are not provided by BSES for height of Building

more than 15 Meters. DISCOMs may be directed to release connections.

2.795 Overhead cables get entangled with Telecom cables, sticker should be placed for identifying Power cables. Also passing vehicles/ truck break or cut these wires.

2.796 Poles are overloaded with TV cable laid by cable operator and causing frequent fire incidents.

2.797 Due to bare conductor's people have been electrocuted. Safety Audit should be mandatorily conducted for DISCOM.

2.798 Government has sanctioned funds but no action has been taken by TPDDL. Bare conductor/ uncovered wires overhanging in TPDDL area, for which request has also been made.

2.799 Interest on security deposit of consumers should be given to the consumers.

2.800 Order NO. 00XXXXXXX6 dated 8/09/2021 connection pending since Sept 2021. Electricity connections are not sanctioned because electrical wires are passing adjacent to the balcony.

2.801 Proper marking and color coding of cables should be carried out for identification of Electric cables.

2.802 For floor wise residences, pending dues of previous resident are transferred to new buyer. How to check and clear the old outstanding dues.

2.803 Electricity Connections for Ground floor resident are not processed due to pending dues of upper floor residents which is unfair.

2.804 Strict rules to be made for tracing the defaulters & prevent theft of meters.

2.805 Transformer installed adjacent to the road restricts vehicular movement, which is a type of encroachment. Instead, drains should be covered and Transformer should be placed above them.

2.806 Provisional/ erratic billing by DISCOMs varies exorbitantly. In one month the consumer received zero billing and the subsequent month bill of Rs. 8000 was received.

2.807 Standby mode LED blinking on all the gadgets should be removed to save Electricity.

2.808 DERC should make a committee of consumers to check the bills generated by the DISCOMs.

2.809 Electricity wastage occur due to street light functioning in the morning, any helpline

number should be provided to switch-off street lights shall be helpful.

2.810 5 % paid to MCD as Taxes should be fixed not on the basis of overall consumption.

2.811 MCD Tax should be fixed as Rs. 20/ month.

2.812 Interest on Consumer Security Deposit should be given as 16% as BYPL is getting 16% ROE.

2.813 300 nos. Jhuggies exist in our area but only 110 nos. jhuggies are provided with connection. Remaining Jhuggies should be provided Electricity connections.

2.814 1900 nos. Roads need to be electrified in Delhi.

2.815 Temporary Connection should be provided for 1 or 2 months not for years. For construction/ housing work, domestic connection should be provided.

2.816 Highest voltage, lowest voltage, frequency and no. of power cuts should be mentioned in Electricity bill.

2.817 DISCOMs should also consider MSME certificate as valid document.

2.818 High billing observed in 6 flats in Vasant Vihar & their Meters should be tested & checked.

PETITIONER'S SUBMISSION

TPDDL

2.819 Electrification for street lights and roads is the responsibility of respective Municipal corporation or road owning agencies like PWD, DSIIDC, MCD etc. Distribution companies can electrify the roads/ streetlights after receiving request from respective agencies after receiving payment of electrification charges.

2.820 If there is no further surcharge levied on Temporary Residential Connections, there is no motivation for residential consumers to switch from temporary to permanent connection as he is availing temporary connection at the same Tariff.

a) It will create a lot of safety concerns, since, there is no standardization of cables used by consumers. There is chance of theft by tapping the service cable used by consumer.

b) There is a scope of misuse of existing permanent connection as consumer will not ask for temporary connection for construction of additional floor/units by consumer as there is no fear of any penalty etc. on account of misuse. (being

on same tariff)

c) Temporary connection cannot be denied as per supply code, and there is possibility that consumer will use the same and will not go for permanent connection which is provided subject to feasibility.

d) Already domestic consumer is subsidized and excluding surcharge from long term temporary connection is like providing them double benefit.

e) TPDDL procures Long Term Power based on the demand of the existing consumers and for the temporary connections, for which TPDDL has to make temporary arrangement in terms of procuring additional power on Short Term Basis, which is at much higher rates as compared to long term power being procured on a regular basis.

2.821 Considering above, it is requested to allow levy of surcharge on all residential connections under temporary supply category.

2.822 The Petitioner follows DERC (Supply Code and Performance Standards) Regulations, 2017 and Tariff Orders issued by the Commission for Temporary Connections. Depending on construction of large buildings, malls and Public Infrastructures like Metro lines and bridges, the construction periods will vary from 6 months to several years. Therefore, consumer should have option of having temporary connection of longer duration.

2.823 Interest on security deposit of consumers is adjusted in bills in accordance with the DERC (Supply Code and Performance Standards) Regulations, 2017.

2.824 Non-Tariff Income are shown as per relevant Regulations. All Non-Tariff Incomes are included in the ARR and benefit given to the consumers.

2.825 As regard to stakeholder comment on diluting fire safety norms, it is submitted that TPDDL being a regulated entity, follows the Regulations and directions issued by the Commission.

2.826 As regard to stakeholder comment on handing over of old/ damaged meters, it is submitted that old meters are prone to misuse. Hence, handing over of damaged meter is not done as it no use to the consumer.

BYPL

2.827 The determination of Retail Tariff and Surcharges is the sole prerogative of the Commission and the Petitioner is bound to levy Tariff on consumers for a period as determined and approved by the Commission under the Electricity Act 2003.

2.828 The Non-Tariff Income for True-up of FY 2020-21 has been claimed by the Petitioner based on the Audited Accounts of FY 2020-21 in line with the actuals of past years and provisions under the Tariff Regulations, 2017 and Business Plan Regulations, 2019.

2.829 As per the Policy on replaced meter under tempering/DEA, the damaged/replaced meters are sent to the laboratories for disposal.

2.830 As regard to stakeholder comment pertaining to Income from Electric Poles, it is submitted that the Petitioner considered the income from other business as per the DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) (First Amendment) Regulations, 2017, as per Regulation 5 (5 (a)) of the same, the Licensee can retain 40% of net revenue from other business in which Licensee utilizes the assets and facilities of the Licensed Business for other business and pass the remaining 60% to the Regulated Business. The Regulation 5(5(a)) is quoted as under:

> *"(5) In addition to the sharing of costs under sub-clause (3) above, the Licensee shall account for and ensure due payment to the Licensed Business a certain proportion of revenues from the other Business as follows:*
>
> *(a) where the Licensee utilizes the assets and facilities of the licensed business for other business the Licensee shall retain 40% of the net revenue from such business and pass on the remaining 60% of the net revenue to the regulated business; and…"*

2.831 As regards to Pole Rental, Street Charges Maintenance & Scrap Sale, the Commission approves the expenses and recoveries in its Tariff Order for a year after prudence check under the Business Plan Regulations, 2019 and Tariff Regulations, 2017.

2.832 As regard to stakeholder comment on Pole rental, it is submitted that the Commission in its Order dated 6/10/2006 in Petition No. 4 of 2005 filed by TPDDL has stated that the DISCOM's LT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee for generating revenue. The relevant extract of the Order is reiterated as below:

"29. The Commission is therefore, of the opinion that the poles other than the Central Verge and the HT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee. Any revenue generated thereto shall be subject to the Regulations made by the Commission on the Treatment of Income from Other Business."

2.833 The other business income towards pole rental is earned on account of rent from the cable operators for using Petitioner's LT poles for laying their cables/set up. In this regard, proper agreements have been executed between the Petitioner and the operator for usage of Petitioner's LT poles.

2.834 Accordingly, the Pole Rental income has been duly considered under Non-Tariff Income in the ARR Petition.

2.835 The Petitioner always endeavors to resolve the consumer complaints at the earliest besides providing quality and uninterrupted supply of Power. For consumer grievance, Consumers have access to multiple avenues/institutions for redressed of grievances. For the convenience of its consumers, the Petitioner has also launched other various options such as BSES Mobile APP, Voice Bot, etc. where the consumer can easily lodge its complaint.

2.836 The Petitioner, on its part, has instituted the Consumer Grievance Cell at its Corporate Office at Nehru Place. The customers in the licensee's area of supply also have a 24 x 7 access to a dedicated "No Supply" call Centre - manned by trained personnel (phone number 39999808 and 19122 – 24x7 Toll Free Helpline). The licensee has conducted special training programs for all personnel manning the call centres. Alternatively, consumers can also register their grievance by sending an email at bypl.customercare@relianceada.com. Consumers can also visit the conveniently located customer care centres and contact the customer care officials / Business District Manager in person. All complaints lodged are monitored internally for faster resolution of complaints.

2.837 As regard to the comment of the stakeholder regarding surcharge on Temporary connections, it is submitted that BYPL is bound to levy Tariff on consumers for relevant period as approved by the Commission under the Electricity Act 2003.

2.838 The interest on Consumer Security Deposit is given in accordance with the Schedule of Charges and the procedure under DERC (Supply Code and Performance Standards) Regulations, 2017.

BRPL

2.839 DISCOM physically inspects and tests meter for its accuracy as per DERC (Supply Code and Performance Standards) Regulations, 2017.

2.840 As regard to stakeholder comment pertaining to Income from Electric Poles, it is submitted that the Petitioner considered the income from other business as per the DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) (First Amendment) Regulations, 2017, as per Regulation 5 (5 (a)) of the same, the Licensee can retain 40% of net revenue from other business in which Licensee utilizes the assets and facilities of the licensed business for other business and pass the remaining 60% to the Regulated Business. The Regulation 5(5(a)) is quoted as under:

> *"(5) In addition to the sharing of costs under sub-clause (3) above, the Licensee shall account for and ensure due payment to the Licensed Business a certain proportion of revenues from the other Business as follows:*
>
> *(a) where the Licensee utilizes the assets and facilities of the licensed business for other business the Licensee shall retain 40% of the net revenue from such business and pass on the remaining 60% of the net revenue to the regulated business; and…"*

2.841 Accordingly, the Pole Rental income has been duly considered under Non-Tariff Income in the ARR Petition.

2.842 For consumer grievance, Consumers have access to multiple avenues/institutions for redressed of grievances. The Petitioner, on its part, has instituted the Consumer Grievance Cell at its Corporate Office at Nehru Place. The customers in the licensee's area of supply also have a 24 x 7 access to a dedicated "No Supply" call Centre - manned by trained personnel (phone number 39999707 and 19123 – 24x7 Toll Free Helpline). The licensee has conducted special training programs for all personnel manning the call centres. Alternatively, consumers can also register their grievance by sending an email at brpl.customercare@relianceada.com. Consumers can also visit the

conveniently located customer care centres and contact the customer care officials / Business District Manager in person. All complaints lodged are monitored internally for faster resolution of complaints.

2.843 With regard to the comment of frequent voltage fluctuations, it is submitted that the complaint has been forwarded to the divisional O&M office for resolution.

2.844 As regard to stakeholder comment on diluting Fire Safety norms, it is submitted that DISCOM provides new connection to the consumer under DERC (Supply Code and Performance Standards) Regulations, 2017 and its subsequent amendments.

2.845 As regard to stakeholder comment on Surcharge of temporary connections, it is submitted that BRPL is bound to levy tariff on consumers for a period as determined and approved by the Commission under the Electricity Act 2003.

2.846 BRPL submitted the Non-Tariff Income for True-up of FY 2020-21 based on the Audited Accounts of FY 2020-21 in line with the actuals of past years and provisions under the Tariff Regulations, 2017 and Business Plan Regulations, 2019.

2.847 SBI MCLR rate is considered for computing the interest on Consumer Security Deposit in accordance with the Schedule of Charges and the procedure under DERC (Supply Code and Performance Standards) Regulations, 2017.

2.848 In regard to the stakeholder comment regarding unauthorized usage/theft of electricity, it is submitted that BRPL attributes highest priority to reduction of theft and for this express purpose, has within its structure, an independent and exclusion department which is focused in reduction of theft. BRPL enforcement teams are fully equipped and self-sufficient in curbing theft which is one of the reasons why BRPL has been able to bring down AT&C losses from over 50% to below 8% at present. However, enforcement team often have to face violent resistance in several areas and have been physically assaulted on several occasions. In spite of facing such violence, the enforcement officials remain un-deterred in discharging their duties under difficult and hostile conditions.

2.849 The Petitioner has been able to save substantial amount on account of collection from theft / enforcement due to the aggressive clampdown on theft and avoidance of power purchase cost which would have been necessary in absence of any enforcement

activities. This amount saved has directly benefitted consumers by way of reduced tariff burden.

2.850 The Petitioner endeavours to resolve the consumer complaints at the earliest besides providing quality and uninterrupted supply of power. For the convenience of its consumers, the Petitioner has also launched other various options such as BSES Mobile APP, Voice Bot, etc. where the consumer can easily lodge its complaint.

2.851 It is submitted that in accordance DERC (Supply Code and Performance Standards) Regulations, 2017 along with the Schedule of Charges, interest on Consumer Security Deposit is being paid on the basis of SBI MCLR.

NDMC

2.852 The party is not in NDMC area.

COMMISSION'S VIEW

2.853 The new and existing connections shall be as per procedure specified in Chapter-3 of *DERC (Supply Code and Performance Standards) Regulations, 2017*. The said Regulation shall be applicable for New and existing connections, agreement, metering, billing and payment, disconnection and reconnection, Unauthorised use, theft, Complaint handling procedure and overall standards of performance.

2.854 The Commission exercises prudence check on the expenses that are incurred or allowed to be incurred by the Utilities for approval of O&M expenses during a control period. O&M expenses are a controllable parameter in terms of *DERC (Terms & conditions for Determination of Tariff) Regulations, 2017*, and any surplus or deficit on account of O&M expenses shall be to the account of the Licensee and shall not be trued up in the ARR.

2.855 The Commission while determining the norms for O&M expenses in its Business Plan Regulations, 2017 has not considered the legal expenses as it shall be allowed based on prudence check in true up of ARR for the relevant year.

A3: TRUE UP FOR FY 2020-21

BACKGROUND

3.1 The True up of FY 2020-21 shall be considered in accordance with the provisions of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* and *DERC (Business Plan) Regulations, 2019*.

3.2 The Commission was carrying out verification of Books of Accounts of Distribution Licensees, however from FY 2016-17, the Commission started Regulatory Audit for verification of Books of Accounts of Distribution Licensees through C&AG empanelled Auditors *(except for FY 2019-20)*. In line with the same, the Commission has appointed C&AG Empanelled Auditor, (M/s Grandmark & Associates) for Regulatory Audit of the Books of Accounts of the Petitioner for FY 2020-21. M/s Grandmark & Associates (hereinafter referred to as "Consultant") has submitted the report based on the detailed scope of work specified in the Award. Major areas of reconciliation under the scope of work are as follows:

A. <u>POWER PURCHASE COST</u>

I. Reconciliation of Power purchase quantum, cost through:

(a) Long Term (Inter-state Generating Stations & State Generating stations)

a. Fixed Cost

b. Variable Cost

c. Arrears

(b) Short Term (Bilateral, Exchange, Intra DISCOM, UI etc.)

(c) Tender wise Banking transactions (opening balance, during the year, closing balance)

II. Reconciliation of Transmission Charges

(a) Central Transmission Utility

(b) State Transmission Utility

(c) Open Access

III. Verification of invoices w.r.t. Form-15 and Form-26 w.r.t. Energy Charges as computed by Generating Companies.

IV. Impact of any CERC/APTEL/Supreme Court Orders w.r.t. Power Purchase Cost.

V. Reconciliation of Renewable Purchase Obligation vis-à-vis Actual Renewable Power with cost and quantum of Renewable Energy Certificates procured

VI. Monthly Reconciliation of company wise Power Purchase and Transmission Charges' payment

VII. Violation of Merit Order Dispatch Principle

VIII. Overlapping in Banking and Bilateral transactions

IX. Contingency limit under UI

X. Incentive for bulk sale of Power

XI. Violation of cash receipt from consumers exceeding the limit

XII. Verification of Short term power purchase cost greater than Rs.5/kWh impacting variation in Gross purchase cost of greater than 10 paisa/kWh.

XIII. Verification of self-levied PPAC during the year.

XIV. LPSC paid to Generators/Transmission Utilities

B. BILLING AND REVENUE

XV. Reconciliation of Sales

a) Monthly Sales as per SAP and Form-2.1 (a).

b) Monthly Adjustments as per SAP and Form-2.1 (a)

i. Adjustments on account of Contra Entries

ii. Adjustments on account of Open Access Consumers

iii. Adjustment on account of Provisional Billing

(a) Provisional Bills adjusted within 2 months

(b) Provisional Bills adjusted after 2 months and within a year

(c) Provisional Bills adjusted after a year.

iv. Other Adjustments, if any (with remarks)

XVI. Reconciliation of Category-wise Revenue Billed on account of

a) Fixed charges
b) Energy charges
c) Theft / Misuse / Enforcement
d) PPAC
e) 8% Surcharge
f) Load violation surcharge (Maximum Demand)
g) ToD Surcharge/ Rebate
h) Electricity Duty / Tax
i) Late Payment Surcharge (LPSC)
j) Voltage Discount, etc.

XVII. Reconciliation of Category-wise Revenue Collected

a) 8% Surcharge
b) Electricity Duty / Tax
c) Late Payment Surcharge (LPSC)
d) Street Light Maintenance charges
e) Incentive on Street Light Maintenance charges
f) Theft / Misuse / Enforcement
g) Advances from customers.
h) Net Revenue

XVIII. Quarterly Reconciliation of Subsidy- Actual released / adjusted by GoNCTD and passed to consumers in their electricity bills

XIX. Monthly Reconciliation of Pension trust- Billed by DISCOMs, Paid by DISCOMs to Pension Trust

XX. Direct expenses of other business

XXI. Power factor (sample basis) used for different set of consumers

XXII. Verification of component-wise (Fixed Charges, Energy Charges, etc.) Billed to individual consumers and revenue collected thereof from Billing Dump and from bank statement

XXIII. Regulation 9 of Net Metering Regulations- credit debit adjustments of sales at the end of the year

XXIV. Verification of Energy input at various exchange points at transmission distribution periphery and Inter-DISCOM exchange.

C. <u>OTHERS:</u>

XXV. Reconciliation of actual details of capitalization for each quarter of the year vis-à-vis the date of in-principle approval of such capitalization by the Commission. Further, the following break-up/work w.r.t. to capitalization to be included in the report:

a. The details of actual capitalization as per audited accounts under different heads such as Material Cost, Labour Cost, Interest during construction (IDC), Employee expenses capitalised, A&G expenses capitalised

b. Percentage of capitalisation of Employee expenses and A&G expenses out of total employee expenses and A&G expenses

c. Details of computation of IDC clearly specifying the fund flow and rate of interest.

d. The details of actual capitalization as per audited accounts under different asset classes as specified in Appendix-1 of Depreciation schedule of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

e. Amount capitalised by Distribution Licensee on account of replacement / repair of existing assets and to comment/ qualify whether the amount booked by Distribution Licensee on account of replacement / repair of existing assets under capitalisation is correct or part of O&M expenses.

f. Segregation of amount of actual capitalisation under the groups, i.e Electrical Inspector Certificate (EIC) required and EIC not required.

g. Whether the EIC Certificate, wherever required, has been obtained by Distribution Licensees within the financial year. If not, the amount thereof.

h. Amount of actual capitalisation and addition in network capacity during the year under different network capacity heads along-with units as mentioned in Table 8, 9, 10 &11 of Regulation 23 of *DERC (Business Plan) Regulations, 2017*

i. The amount of de-capitalization as per audited accounts.

XXVI. Bifurcation of Interest During Construction (IDC) into Cash IDC (to be considered as part of capital cost on COD) and Accrued IDC (to be considered as part of Capital cost in the year of payment)

XXVII. Related party transactions

XXVIII. Inter DISCOM fund transfer

XXIX. Means of Financing for Capitalization, Working capital & Accumulated Revenue Gap through:

(a) Equity
(b) Debt
(c) Consumer Contribution
(d) Grant etc.

XXX. Prudency of Cost of Debt Financing

XXXI. Verification of Audited Financial Statement w.r.t. Segmental Reporting in respect of the distribution business and other businesses and disclosure of the same in the report.

XXXII. Hedging policy and Hedging Cost incurred

XXXIII. Verification of Inter Corporate Loan if any with reference to the Company's Policy or Board Approval and analyzing the merits of the interest rate with reference to the weighted average interest rate of the lending company as well as the borrowing company

XXXIV. Verification of statement of interest on all types of loans availed from various Banks/Financial institutions duly supported by certificates from every lending Bank/Financial institution for each loan, certifying the following:

a) Opening balance of loan
b) Loan disbursed during the year
c) Repayment during the year
d) Interest rates as applicable in accordance with the terms of sanction
e) Additional interest if any levied on account of non-creation of required charge/not providing required security
f) Interest charges levied and paid
g) Processing charges and/or fees of any other kind as levied and paid as per the terms of sanction
h) Penal charges levied and paid

And accordingly compute the weighted average rate of interest for loans availed for:

a) Capitalisation
b) Working Capital
c) Accumulated revenue Gap

XXXV. Reconciliation of Debtors and Computation of Collection Efficiency

XXXVI. Verify any provisions created for doubtful debts, write-off of any doubtful debts along with write back of the consequent excess provision with reference to the Company's Policy for Provision/write-off of doubtful trade receivables. The same will be done with reference to the origin of the debt, collection efficiency claimed and admitted previously.

XXXVII. Reconciliation of Net-worth as per Regulatory provisions and as per audited financial statement

XXXVIII. Actual O&M expenses:

(a) Actual Employee expenses as per audited accounts
(b) Actual administrative and general expenses as per audited accounts,

(c) Actual Repair & Maintenance expenses as per audited accounts

(d) Actual O&M expenses booked by the distribution licensee as per audited accounts, on different network capacity heads alongwith units as mentioned in Table 8, 9, 10 &11 of Regulation 23 of DERC (Business Plan) Regulations, 2017,

(e) Amount of provisions been made under different heads in audited accounts

(f) To comment whether all provisions made in audited accounts have been shown separately.

(g) Amount of Loss or gain to be reported separately on account on decapitalization of assets.

(h) Whether the water charges, statutory levies and taxes under O&M expenses have been indicated separately.

(i) Bifurcation on Loss or gain on account of decapitalization of assets as per Regulation 45, 46 & 47 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

XXXIX. Actual Other expenses.

XL. Verification of income earned from other businesses. Separate disclosure of the same w.r.t. income earned from battery swapping and electric vehicle charging stations.

XLI. Reconciliation of Non -Tariff Income as per regulatory provisions and other income as per Audited Financial Statement

XLII. Verification of Meter jump cases (Meter fast/ meter slow).

3.3 The report of the Consultant has been considered appropriately by the Commission for True-up of various parameters of ARR of FY 2020-21 as submitted in the Petition by the Petitioner in accordance with the applicable principles laid down under the *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017*, *DERC (Business Plan) Regulations, 2019* and Books of Accounts maintained as per Companies Act.

3.4 The Commission has also conducted various prudence check sessions with the Petitioner for True-up of various parameters of ARR for FY 2020-21 submitted in the

Petition. Wherever required clarifications were sought on various issues from the Petitioner in accordance with the applicable principles laid down under the *DERC (Terms and Conditions for Determination of Tariff) Regulations 2017*, *DERC (Business Plan) Regulations, 2019* and with respect to the Books of Accounts of the Petitioner maintained as per Companies Act. The Commission has considered all information submitted by the Petitioner as part of Tariff Petition, Audited Accounts for past years, response to queries raised during discussions and also considered the stakeholder's submission during Virtual/ physical Public Hearing process and those submitted in written for finalization of the Tariff Order as per the principle laid down under *DERC (Terms and Conditions for Determination of Tariff) Regulations 2017* and *DERC (Business Plan) Regulations, 2019*.

PRIOR PERIOD ISSUES

A. DIRECTIONS OF HON'BLE SUPREME COURT IN THE VARIOUS JUDGMENTS AND COMPLIANCE THEREOF

3.5 The Hon'ble Supreme Court has pronounced following judgments on different issues:

I. Civil Appeal No(s).884/2010, 980/2010, 9003-04/2011 & 1854-55/2014, decided by a Common Order dated 1/12/2021;

II. Miscellaneous Application No(s). 633-34/2022 in Civil Appeal Nos.9003-04 of 2011;

Miscellaneous Application No.1261/2022 in Civil Appeal No.884/2010; Miscellaneous Application No. 1262/2022 in Civil Appeal No.980/2010;

Miscellaneous Application No.918/2022 in Civil Appeal No.884/2010 & Miscellaneous Application No.919/2022 in Civil Appeal No.980/2010;

Common order dated 15/12/2022;

III. Civil Appeal Nos.4323-24 of 2015, judgment dated 18/10/2022.

3.6 Copies of aforesaid orders/judgment are annexed to the subject true-up order as **Annexures-IV, V, VI,** respectively.

3.7 Salient directions of the Hon'ble Supreme Court are as follows:

I. **IN Civil Appeal No(s).884/2010**

Delhi Electricity Regulatory Commission
Vs. BSES Rajdhani Power Ltd.
With
Civil Appeal No(s).980/2010
With
Civil Appeal No(s).9003-04/2011
With
Civil Appeal No(s).1854-55/2014

Common order dated 1/12/2021

3.8 In the subject civil appeals, the Hon'ble Supreme Court held as under:

IN C.A. Nos. 884 and 980 of 2010

IN C.A. Nos. 9003-9004 of 2011

Having heard learned counsel for the parties, perused the impugned order and the materials placed on record, we are of the view that these appeals do not involve any substantial question of law. The civil appeals are accordingly dismissed.

We are also of the view that the appellant has to comply with the directions issued by the Appellate Authority, namely, Appellate Tribunal for Electricity within a reasonable time. Therefore, we direct the appellant to comply with the directions contained in the impugned order within a period of three months from today, if not already complied with, and file a compliance report before this Court within two weeks thereafter.

IN C.A. Nos. 1854-1855 of 2014

Having regard to the disposal of the Civil Appeal Nos. 884 and 980 of 2010 as above, these appeals do not survive for consideration by this Court. The civil appeals are accordingly dismissed. However, the observations made by the Appellate Authority against the Commission(DERC) in the impugned order are expunged.

II(A) In Miscellaneous Application No(s). 633-34/2022 in Civil Appeal Nos.9003-04 of 2011, the Hon'ble Supreme Court in its order dated 15/12/2022 held as follows:

Issue No.1 - Carrying Cost

6. *xxxx xxxx xxxx xxxx*
7. *xxxx xxxx xxxx xxxx*
8. *xxxx xxxx xxxx xxxx*
9. *It is evident from the compliance affidavit/report dated 23.03.2022 that DERC has not applied the Debt-Equity ratio of 70:30. We are of the view that DERC ought to have allowed funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30. There is no question of recomputing the carrying cost rate based on purported equity on the basis of net worth from the audited books and balancing figure as debt. Therefore, we direct DERC to allow funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30.*

Issue No.2 – Rate of Interest on Carrying cost

10. *On this question, the direction of the APTEL in its judgment dated 12.07.2011, is as under:*

> *"11. The sixth issue is regarding interest rate for carrying cost.*
>
> *11.1. This issue also had been dealt with in this Tribunal's Judgment dated 30.7.2010 reported in 2010 ELR (APTEL) 0891 between North Delhi Power Ltd. vs. DERC (Appeal No.153 of 2009). The relevant extracts of the Judgment are reproduced below:*

45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accrual and/or internal accrual has to be paid for by way of carrying cost. The carrying cost is a legitimate expectation of the distribution company. The State Commission instead of applying the principle of PLR for the carrying cost has wrongly allowed the rate of 9% which is not the prevalent market lending rate. Admittedly, the prevalent market lending rate was higher than the rate fixed by the State Commission in the tariff order. Therefore, the State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate. "

11. The above view has been upheld by this Court.

12. xxxx xxxx xxxx xxxx

13. In our view, it is clear that DERC has substituted the words 'prevailing market rate keeping in view the prevailing Prime Lending Rate' with the words actual interest rate paid by BRPL and BYPL on their loans' which is not permissible in view of the aforesaid judgment of the APTEL. A comparison of the two is given below:

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21
BRPL Rates of	11.03 %	11.47 %	11.30 %	11.87 %	13.11 %	15.26 %	15.02 %	15.14 %	14.19 %	14.07 %	13.85 %	13.38 %	12.25 %	12.24 %
BYPL Rate of	10.93 %	11.66 %	11.37 %	11.56 %	13.28 %	15.19 %	15.17 %	15.40 %	14.63 %	14.28 %	14.16 %	13.93 %	12.53 %	12.20 %
SBI PLR	12.69 %	12.79 %	11.87 %	12.26 %	14.40 %	14.61 %	14.58 %	14.75 %	14.29 %	14.04 %	13.68 %	13.68 %	13.58 %	12.27 %

14. Therefore, we direct DERC to allow SBI PLR as provided in the Table above, on 70% debt component for funding regulatory asset/revenue gap in the ratio of 70:30.

(II)(B) Reference may also be had to the same order dated 15/12/2022 of the Hon'ble Supreme Court in Miscellaneous Application No.1261/2022 in Civil Appeal No.884/2010, Miscellaneous Application No. 1262/2022 in Civil Appeal No.980/2010, Miscellaneous Application No.918/2022 in Civil Appeal No.884/2010 & Miscellaneous Application No.919/2022 in Civil Appeal No.980/2010, whereby the Hon'ble Supreme Court held as follows:

Issue No.2 - Capital Expenditure and Capitalization Charges

xxxx xxxx xxxx xxxx

20. In respect of Capital expenditure and Capitalization charges that were questioned by the DERC in the appeal, paragraphs 56 and 57 of the impugned judgment dated 6.10.2009 are relevant and have been relied upon by both sides. For ready reference, the said paragraphs are extracted herein below:

> *"56. We do feel that it was imprudent on the part of the appellant to resist the comparison to the prices paid to REL with the prices paid for similar products by NDPL. The appellant has realized the folly now. In view of the appellant resisting the comparison mentioned above, the Commission also gave up all efforts to compare. The fact, however, remains that both the appellant as well as NDPL has incurred capital expenditures of various nature and has purchased goods and commodities in furtherance of the same. The Commission has to treat all the distribution companies at par. It is not disputed that the NDPL has purchased products of the same description although they may be different in their quality and technical specifications. Of the long list of articles which are involved in the dispute in hand some may be comparable to articles purchased by the NDPL. If for those articles the Commission has allowed same price there is no reason why the appellant should not have been allowed the same price provided, however, they are lower than the price paid to REL for those products. The Commission has to treat all the distribution licensees on the same scale and no one of them can be either victimized or favoured on account of the stands or pleas taken by them during the tariff hearings. At the same time the Commission is duty bound to make the prudent check on all the claims made by the distribution licensees.*
>
> *57. The NDPL submitted its records before the Commission simultaneously with the appellant during the tariff hearing of the relevant year. As such the records are expected to be with the Commission. We think it is appropriate to allow the appellant an opportunity to prove, item wise, that the price paid by it to REL was not higher than the price paid by NDPL and allowed to it by the Commission for similar products. The onus would be entirely on the appellant to prove that the products purchased by it and the one purchased by NDPL offered for comparison are of the same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vender rating etc. In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable*

commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin. Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson."

xxxx xxxx xxxx xxxx

27. There was no scope of imposing a price stipulated in the Tariff Order dated 23.02.2008, when APTEL has clarified the position in paragraphs 56 and 57 of the impugned judgment, extracted above. To the above extent, the order dated 12.04.2022, passed by the DERC is unsustainable and is accordingly set aside. The DERC is directed to recompute the amount payable to the non-applicants for the commodities purchased by it, strictly in terms of the directions issued in paragraphs 56 and 57 of the impugned judgment dated 6.10.2009. We may reiterate that the above direction is restricted to the items specified in sub-column B-2 of the table forming part of paragraph 43 of the order dated 12.04.2022, passed by the DERC.

III. IN Civil Appeal No(s). 4324 of 2015

BSES Rajdhani Power Ltd. Versus
Delhi Electricity Regulatory Commission
With
Civil Appeal No(s). 4323 Of 2015
BSES Yamuna Power Ltd. Versus
Delhi Electricity Regulatory Commission

The Hon'ble Supreme Court in the subject appeal vide its order dated 18/10/2022 held as under:

xxxx xxxx xxxx xxxx

5. The Appellants have challenged the finding of the APTEL in the impugned order on the following issues:

A. Change in methodology in computation of AggregateTechnical and Commercial (AT&C) losses [Issue 14 in Impugned Order]

B. Change in methodology for computation of Depreciation [Issue 15 in Impugned Order]

C. Disallowance of salary for Fundamental Rules and Supplementary Rules (FR/SR) structure [Issue 23 in Impugned order]

D. Disallowance of interest accrued on Consumer Security Deposit retained by Delhi Power Corporation Limited (DPCL) [Issue 29 in Impugned Order]

E. Disallowance of Fringe Benefit Tax [Issue 34 in Impugned Order]

F. Reduction in Million Units (MUs) in relation to Enforcement sale for the purpose of calculation of AT&C Loss [Issue 14 in Impugned Order]

6. It is to be noticed that the above-mentioned Issue 'C' has been challenged only by BSES Rajdhani Power Ltd. in C.A. No.4324 of 2015 while the remaining issues have been challenged by both BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. and are subject-matter of C.A. No.4324 of 2015 and C.A.No.4323 of 2015.

7. The Tariff Appeals were filed by the Appellants challenging the disallowances in their respective Tariff Orders dated 26.08.2012passed by the DERC for:

(a) Determination of ARR and Tariff for FY 2011-12;and

(b) Truing up of financials for FY 2008-09 and FY 2009-10.

xxxx xxxx xxxx xxxx

*57. **Issue No. 1**: In the original MYT determination (Tariff Order dated 28.05.2009), the DERC took into account the full late payment surcharge ('LPSC') revenue as also the DVB arrears while computing the targets of Collection Efficiency……..*

58. However, while truing up for the year in question, the DERC has retrospectively sought to take away part of the LPSC revenue by deducting the Financing Cost on LPSC in comparing the actual Collection Efficiency with the projected Collection Efficiency. Hence, allowing the Financing Costs on LPSC revenue and then deductingit from the LPSC revenue would tantamount to giving by one hand and taking it away by the other. This order of the DERC is contrary to the original MYT determination.

59. ***Issue No.2**: In the Original Determination Order dated 28.05.2009 (F.Y. 2008-09), DERC has allowed depreciation on the assets funded by consumer contributions. However, DERC changed the methodology of computation of ARR at the stage of true up. Ac- cording to the learned counsel for the respondent, DERC had inadvertently made an error and adopted an approach contrary to the mandate of 2007 MYT Regulations while computing the depreciation when originally issuing the tariff order, which was rectified in the true up exercise. However, learned counsel for the appellants submit that no error has been committed by the DERC in the tariff order dated 28.05.2009 and it is only after*

considering the relevant MYT Regulations that depreciation to the appellants on the assets that were funded by consumer contributions was allowed.

60. *Perusal of the Tariff Order dated 28.05.2009 would clearly indicate that after considering the contentions of the parties theaforesaid depreciation has been allowed. We have already held thatit is not permissible to amend the tariff order during true up exercise. On the pretext of prudence check and truing up, DERC could not have amended the tariff order.*

61. ***Issue No.3*** *: During projection of expenses for the entire control period, the Tariff Order dated 23.02.2008 had projected employee expenses considering inter alia the impact of the anticipated Sixth Central Pay Commission Report……*

62. *xxxx xxxx xxxx xxxx xxxx*

63. *However, contrary to its own undertaking, the DERC in Tariff Order dated 26.08.2011 has erroneously changed its own methodology at the stage of truing up, by not allowing employee expenses of FR/SR employees as per actuals. The DERC, at thestage of truing up, has changed the methodology and disallowed theactual salary of FR&SR employees, which is impermissible. TheDERC in the Tariff Order dated 26.08.2011 has acted contrary to its own undertaking of truing up the impact of employee expenses on account of the Sixth Central Pay Commission Report.*

64. ***Issue No.5*** *: This issue is in relation to disallowance of fringe benefit tax. The DERC has allowed fringe benefit tax in the MYT Order dated 23.02.2008. Relevant extract of the MYT Order dated23.02.2008 is as under:*

> *"Commission's Analysis*
>
> *4.242 The Commission is of the opinion that projecting the actual tax liability for the Control Period is difficult and complex. Thus for simplicity, the Commission provisionally approves Rs 5.00 Cr each year towards income tax and fringe benefit expenses. The Commission would, however, true-up the tax expenses based on the actual tax liability at the end of each year of the Control Period. The Commission has allocated the tax expenses into Wheeling and Retail Supply in the ratio of 20:80, respectively."*

65. *The DERC, at the stage of truing up for the F.Y. 2008-09, has changed the methodology and disallowed the fringe benefit tax incurred by the appellants.*

66. *xxxx xxxx xxxx xxxx xxxx*

67. *Therefore, the findings of the DERC, as confirmed by theAPTEL in the impugned order, on issue nos. 1, 2, 3 and 5 are contrary to the order of the original MYT determination (Tariff Order(s) dated 23.02.2008 and 28.05.2009) which are accordingly set aside. In view of the above, it is unnecessary for us to considerthe other substantial questions of law on the aforesaid four issues.*

68. ***Issue No.4**: This issue relates to disallowance of interest incurred on Consumers Security Deposit retained by Delhi Power Company Limited ('DPCL'). The DERC in the tariff order dated26.08.2011 has disallowed the interest on Consumers Security Deposit paid for pre-privatization period received by DVB, which isyet to be transferred to the appellants. The APTEL has confirmedthis order of the DERC. It is to be stated here that, at the time of unbundling of the erstwhile DVB (w.e.f. 01.07.2022), the quantum of Consumers Security Deposit reflected in the opening balance- sheet notified in terms of statutory transfer scheme, was not transferred by the DPCL (the Holding Company wholly owned by the Government of NCT of Delhi) to the appellants and other successor private Discoms. The appellants being distribution licensees under the 2003 Act are required to and are continuing to pay interest on the said Consumers Security Deposit in terms of Section 47(4) ofthe 2003 Act even though the principal sum was never transferred to them in its entirety by DPCL.*

xxxx xxxx xxxx xxxx xxxx

72. *Therefore, we hold that the appellants are entitled to recover interest on Consumers Security Deposit as held by the DPCL. We direct the DERC to allow the interest on Consumers Security Deposit held by the DPCL and impact thereof to the appellants. The findings of the DERC and the APTEL in this regard are set aside.*

73. ***Issue No.6**: This issue pertains to enforcement sales i.e. sales which are deemed to have been occurred in cases of electricity theft. The question for consideration is whether the impugned findings in the order of the APTEL are against the legal principle that when the statute creates a legal fiction i.e. energy assessed is'deemed' to be consumed, the same has to be given effect to with allits consequences i.e. same quantum of energy is to be accounted foras supplied?*

xxxx xxxx xxxx xxxx xxxx

80. *We are of the view that the assessed energy has to be considered as supply by the appellants in enforcement cases. Therefore, we direct the DERC to consider assessed energy for calculation of enforcement sales and allow the impact of the same along with carrying costs. In view of our conclusion as above, we do not deem it necessary to answer the other contentions on this issue.*

3.9 Against the order dated 15/12/2022, the Commission filed a review petition being Review Petition (Civil) Diary No(s). 25405/2023 before the Hon'ble Supreme Court with a prayer to review the directions passed in paragraphs 9 and 14 of the said order related to Normative Debt : Equity of 70:30 and SBI PLR. The said review petition was dismissed by the Hon'ble Supreme Court vide its order dated 03/08/2023.

3.10 Some of the distribution companies have now filed following contempt petitions against DERC for alleged non-compliance of the directions of the Hon'ble Supreme Court:

(i) Contempt Petitions Nos. 788 of 2022 in Civil Appeal No. 884 of 2010;

(ii) Contempt Petitions Nos. 789 of 2022 in Civil Appeal No. 980 of 2010;

(iii) Contempt Petitions Nos. 789-90 of 2022 in Civil Appeal No. 9003-04 of 2011;

(iv) Contempt Petitions Nos. 816-817 of 2023 in M.A. No. 633-34 of 2022 in Civil Appeal No. 9003-04 of 2011;

(v) Contempt Petitions No.818 of 2023 in M.A. No. 1261 of 2022 in Civil Appeal No. 884 of 2010;

(vi) Contempt Petitions No.819 of 2023 in M.A. No. 1262 of 2022 in Civil Appeal No. 980 of 2010;

(vii) Contempt Petitions No. 1298 of 2023 in Civil Appeal No. 4324 of 2015;

(viii) Contempt Petitions No. 1299 of 2023 in Civil Appeal No. 4323 of 2015.

3.11 The aforesaid contempt petitions are pending before the Hon'ble Supreme Court in which notices have been issued to the Commission.

3.12 It may be noted that three distribution companies have filed writ petitions being W.P.(C) Nos. 6618/2023, 6719/2023, 6724/2023 and 3573/2020 before the Hon'ble High Court of Delhi challenging Delhi Electricity Regulatory Commission's Business Plan Regulations, 2019 and Delhi Electricity Regulatory Commission's Business Plan

Regulations, 2023.

3.13 In the above matters, on 01/06/2023, the Division Bench of Hon'ble Delhi High Court noted as follows:

"Learned counsel for the Respondent has fairly stated before this Court that till 10.07.2023, no final order is going to be passed in Petition Nos.26/2023 & 27/2023."

3.14 On 07/06/2023, the following was noted by the Division Bench of Hon'ble High Court of Delhi :

"Learned counsel for the Respondent was fair enough in stating before this Court that they will not be passing ay final order in Petition Nos.26/2023 & 27/2023 till 14.07.2023."

3.15 This order continued to be in operation. However, on 24/11/2023, the Division Bench of Hon'ble High Court of Delhi passed the following order:

"In that view of the matter, we note that there appears to be no bar or impediment which operates and which may restrict the DERC from passing the true-up orders as prayed for in this application."

3.16 Pursuant to the above directions, the present true-up order has been finalised. The true up order has ramifications since the financial year 2004-05 and involved re-calculation of figures. Hence, the Commission had to revisit all the earlier tariff orders to comply with the aforenoted directions. The entire figures have been recomputed and hence, the present order has been passed accordingly i.e. for a period of 17 years.

3.17 The Commission issued various compliance orders and the same were filed before the Hon'ble Supreme Court also. List of compliance orders issued are as follows:

(a) 12/04/2022 – In compliance with the directions of the Hon'ble Supreme Court of India vide its judgment dated 01/12/2021 in Civil Appeal No.884 & 980 of 2010 and Order dated 11/03/2022 in M.A. No.446 & 447 of 2022 filed by DERC against the Hon'ble APTEL's judgment dated 06/10/2009;

(b) 14/05/2023 – In compliance with the directions of the Hon'ble Supreme Court of India in its judgment dated 15/12/2022 in M.A. Nos.1261-62 of 2022 & 918-19 of 2022 in Civil Appeal No.884 & 980 of 2010;

(c) 10/07/2023 – In compliance with the directions of the Hon'ble Supreme Court of India vide its judgment dated 15/12/2022 in M.A. Nos.633-634 in Civil Appeal No.9003-04 of 2011;

(d) 10/07/2023 – In compliance with the directions of the Hon'ble Supreme Court of India vide its judgment dated 18/10/2022 in Civil Appeal No.4323 and 4324 of 2015;

3.18 The Commission, in compliance with the directions of Hon'ble Supreme Court of India dated 15/12/2022 in MA Nos. 633-634 of 2022 in Civil Appeal No. 9003-9004 of 2011, issued a Compliance Order dated 10/07/2023 specifying the revised Carrying Cost Rate from FY 2007-08 to FY 2019-20 as follows (in percentage):

(in %age)

FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
13.08	13.15	12.51	12.78	14.28	15.03	15.01	15.13	14.80	14.63	13.78	13.78	13.71

3.19 The Carrying cost as re-determined by the Commission above has been done as per the direction of Hon'ble Supreme Court i.e. *"without re-computing the carrying cost rate based on purported equity on the basis of net worth from the audited books and balancing figure as debt"* (Para 9 of the Order dated 15/12/2022) and the direction to "DERC to allow SBI PLR, on 70% debt component for funding regulatory asset/revenue gap in the ratio of 70:30".

3.20 Hon'ble APTEL in judgment dated 20/06/2016 in TPDDL v. DERC, Appeal No. 271 of 2013 upheld the rate of return on equity at 14% to be considered towards computation of Carrying cost rate in its Tariff Order dated 31/07/2013. This judgment also attained finality in view of the order dated 10/02/2017 of the Hon'ble Supreme Court in TPDDL v. DERC, Civil Appeal No. 11251 of 2016. Thus, the Commission has, in accordance with

Regulation 5.10 of the DERC MYT Regulations, 2007, computed the Rate of Return on Equity at 14% for the 1st MYT Control Period from FY 2007-08 to FY 2011-12, and at 16% for the 2nd MYT Control Period from FY 2012-13 to FY 2016-17.

3.21 Further, the Petitioner has prayed to revise the Carrying Cost before the Hon'ble Supreme Court for the period FY 2007-08 to FY 2016-17 only. The Commission has considered the revision of such Carrying Cost upto FY 2016-17 and thereafter as per the provisions applicable to the *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* and DERC (Business Plan) Regulations, 2017.

3.22 The Carrying Cost rate now considered is as follows:

Financial Year	Carrying Cost Rate earlier allowed in various Tariff Orders	Carrying Cost Rate computed as per Supreme Court Order dated 15/12/2022 (As determined in DERC Compliance Order dated 10.07.23)	SBI PLR as directed to be considered by Supreme Court vide its Order dated 15/12/2022 in Para 13 in relation to BRPL and BYPL	Rate of return on Equity as considered by the Commission as per applicable Regulations	Carrying Cost rate as considered in True Up Order FY 20-21 (D:E::70:30)
FY 2007-08	10.34%	13.08%	12.69%	14.00%	13.08%
FY 2008-09	11.13%	13.15%	12.79%	14.00%	13.15%
FY 2009-10	11.49%	12.51%	11.87%	14.00%	12.51%
FY 2010-11	11.66%	12.78%	12.26%	14.00%	12.78%
FY 2011-12	13.17%	14.28%	14.40%	14.00%	14.28%
FY 2012-13	10.67%	15.03%	14.61%	16.00%	15.03%
FY 2013-14	10.82%	15.01%	14.58%	16.00%	15.01%
FY 2014-15	11.18%	15.13%	14.75%	16.00%	15.13%
FY 2015-16	11.12%	14.80%	14.29%	16.00%	14.80%
FY 2016-17	11.18%	14.63%	14.04%	16.00%	14.63%
FY 2017-18	13.62%	13.78%	13.68%	16.00%	13.62%
FY 2018-19	13.32%	13.78%	13.68%	16.00%	13.32%
FY 2019-20	12.59%	13.71%	13.58%	16.00%	12.59%

Working Capital funding in the D/E ratio 70:30 considering debt @SBI PLR

3.23 The Petitioner has claimed that the Working Capital funding be considered in the ratio of 70:30 towards Debt and Equity as considered for Carrying cost towards Revenue Gap citing judgment of Hon'ble APTEL in Appeal 61 & 62 of 2012, where, as per the Petitioner's submission, the Working Capital and Revenue Gap has been considered on

the same pedestal by APTEL.

3.24 The Order of the Hon'ble Supreme Court dated 15/12/2022 has not given any such directions with respect to the Working Capital funding. Thus, the claim of DISCOM to allow Working Capital in D/E ratio of 70:30 considering SBI PLR is not tenable.

Compliance of Hon'ble Supreme Court dated 15/12/2022 in MA Nos. 1261 & 1262 of 2022 and 918 & 919 of 2022 in Civil Appeal Nos. 884 and 980 of 2010

Capital Expenditure and Capitalization Charges

3.25 The Commission had filed a Miscellaneous Application No. 446 of 2022 in Civil Appeal No. 884 of 2010 before the Hon'ble Supreme Court of India, seeking extension of time for Compliance of Order dated 01/12/2021, by a further period of six weeks from 01/03/2022 and to file a compliance affidavit within two weeks thereafter. The matter was listed for hearing on 11/03/2022 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India granted additional time of 4 weeks from 11/03/2022 for compliance of the Order dated 01/12/2021. The relevant extract of the Order dated March 11, 2022 is as under: -

> *"Four weeks' time from today is granted finally to comply with the Order dated 1st December, 2021 passed by this Court and to file a compliance affidavit within two weeks thereafter."*

3.26 In view of the compliance with the directions of the Hon'ble Supreme Court of India vide its judgment dated 01/12/2021 in Civil Appeal Nos. 884 of 2010 and Order dated 11/03/2022 in M.A. No. 446 of 2022 filed by DERC against the Hon'ble APTEL's Judgment dated 06/10/2009 in Appeal No. 36/2008, the Commission issued an Order dated 12/04/2022 to implement two pending issues in respect of Hon'ble APTEL's judgment dated 06/10/2009 in Appeal No. 36 of 2008 filed by M/s BSES Rajdhani Power Limited (BRPL) viz.

(i) Capital Expenditure - allowance of purchase from related party after benchmarking with NDPL; and

(ii) Allowance of Capitalization pending Electrical Inspector Clearance and allowed the following amount towards Capitalisation for various years:

(Rs. Crore)

S. No	Particulars	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
1	Amount capitalized as per books of accounts	266	779	316	261	459	299	357	156	313
2	Assets requiring EI certificate and capitalized in FY	192.01	615.88	209.70	114.66	171.67	69.49	157.08	43.69	64.09
3	Consideration of capitalization from 16th day of filing of applications with EI*	92.86	271.93	400.93	58.03	417.59	69.33	141.1	64.19	48.15
4	Capitalization based on submission of EI application (1-2+3)	166.85	435.05	507.23	204.37	704.91	298.84	341.02	176.50	297.06
5	Disallowances on related party transaction	80.35	159.39	38.08	5.12	21.83	4.05	0.58	0.01	0.05
6.	Allowance of double deduction on REL purchase	1.04	5.57	0.01	0.05	0.05	0.00	0.00	0.00	0.00
7	Net capitalization (4-5+6)	87.54	281.24	469.16	199.31	683.13	294.79	340.44	176.49	297.01

*Note: Further capitalization from 16th day of filing of applications with EI beyond FY 2012- 13 has been as under;

FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
31.41	3.51	0.11	5.54	1.20	0.01	4.16	0.07

3.27 The Commission further stated in the Compliance Order that the financial impact of the findings will be appropriately provided in the ensuing Tariff Order. Further, the Commission also stated that the impact, if any, in the ongoing capex review exercise for issues other than the two issues dealt above, will be considered separately. The

Commission thereafter filed M.A. Nos. 918 and 919/2022 for placing Compliance Affidavit before Hon'ble Supreme Court stating to have duly complied with the directions of Hon'ble Court as recorded in Order dated 01/12/2021.

3.28 The Hon'ble Supreme Court in its Order dated 15/12/2022 partially set aside the order dated 12/04/2022 and directed DERC to *"recompute the amount payable to the non-applicants for the commodities purchased by it, strictly in terms of the directions issued in paragraphs 56 and 57 of the impugned judgment dated 6.10.2009."*

3.29 In compliance of the directions of Hon'ble Supreme Court of India in its Order dated 15/12/2022 in MA Nos. 1261 & 1262 of 2022 and 918 & 919 of 2022 in Civil Appeal Nos. 884 and 980 of 2010, the Commission issued further Orders on 14/05/2023.

3.30 The Commission further finalised the Capitalisation based on physical verification of assets of the Petitioner for the Financial Year 2004-2005 to 2015-16 on 03/05/2024, wherein the Commission verified the assets capitalised by the Petitioner upto FY 2015-16.

3.31 For the period FY 2016-17, FY 2018-19 and FY 2019-20, the Commission has considered the Capitalisation as per the Audited Accounts on a provisional basis. The physical verification of the assets for the period FY 2016-17, FY 2018-19 & FY 2019-20 shall be continued and completed expeditiously by the Commission.

3.32 Thus, considering the impact of the orders of Hon'ble Supreme Court, the Commission has revised the Capitalisation on account of Related Party Transaction, Electrical Inspector Clearance and Physical verification for earlier periods as follows and the financial impact on account of such revision in Capitalisation has been appropriately dealt with in the current True Up Order.

Capitalisation as approved by the Commission

Particulars	Additional Capex adjusted as per Compliance Order on account of REL disallowance & EIC verification (in Rs. Cr.)	Additional Capex adjusted on account of Physical verification (in Rs. Cr.)	Finally Approved Capitalisation (For FY 2016-17, FY 2018-19 & FY 2019-20 as per Audit Accounts)
FY 2004-05	3.55	-1.11	95.44
FY 2005-06	157.42	-5.29	284.13
FY 2006-07	327.47	-5.05	469.42
FY 2007-08	-4.81	-2.35	197.84
FY 2008-09	0.43	-6.64	676.79
FY 2009-10	-11.07	-6.26	288.67
FY 2010-11	49.63	-3.91	336.72
FY 2011-12	-36.51	-1.43	175.06
FY 2012-13	-15.99	-0.99	296.01
FY 2013-14	31.41	-1.65	329.76
FY 2014-15	3.51	-1.06	340.07
FY 2015-16	0.11	-0.34	383.03
FY 2016-17	5.54	-	410.98*
FY 2017-18	1.20	-	575.48
FY 2018-19	0.01	-	598.69*
FY 2019-20	4.16	-	637.20*

**Considered on the basis of Audited Financial Statements.*

Compliance of Hon'ble Supreme Court dated 18/10/2022 in Civil Appeal No. 4323-4324 of 2015

Issue No.1 & 6

Change in methodology in computation of Aggregate Technical and Commercial (AT&C) losses and Reduction in Million Units (MUs) in relation to Enforcement sale for the purpose of calculation of AT&C Loss

3.33 Pursuant to the judgment as pronounced on 18/10/2022, the Petitioner filed its claim on the basis of Audited Statement of actual Enforcement Units for every Financial Year. The Commission sought the detailed submission from the Petitioner regarding its claim. Upon receipt of the data, the Commission observed that the data is voluminous and decided to appoint the CAG empanelled Auditors to verify their claims. The tenders

were called, however, sufficient bidders could not qualify and the Commission is in the process of re-tendering the assignment. In the meantime, the Commission has considered the claim of the Petitioner on the basis of the Audited statement as submitted by the Petitioner and has allowed the impact on AT&C losses on provisional basis subject to the findings of the Auditors as may be appointed by the Commission. Any recovery on account of such findings shall be recovered from the Petitioner along with the applicable Carrying Cost. Based on the Enforcement units as provided by the Petitioner, impact of change in methodology to arrive at the AT&C Loss incentives/disincentives on account of revision of collection efficiency and the Enforcement units as Sales is as follows:

(in Rs. Cr.)

Particulars	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	Total*
Impact on ARR	33.62	14.56	21.63	20.29	34.50	15.05	23.08	42.56	38.12	-	0.18	6.27	4.98	254.84

**Principal Amount on account of revision enforcement sales, Collection Efficiency, etc in AT&C Loss Incentives; without taking into account further consequential impact.*

3.34 In addition to above, for the FY 2015-16 & FY 2016-17, the additional return on equity is revised to 0.54% and 1.32% respectively towards AT&C incentive the impact of which is computed in the Table no. 3.5.

Issue No.2
Change in methodology for computation of Depreciation

3.35 In view of the judgment, the Commission has considered the depreciation on the Consumer Contribution during FY 2007-08 to FY 2011-12 and has accordingly considered the impact along with revision in Capitalisation in Table no. 3.3 – 3.5.

Issue No.3
Disallowance of salary for Fundamental Rules and Supplementary Rules

3.36 In view of the judgement, the Commission allows the claim towards expenses on account of FR/SR as follows:

(in Rs. Cr)

Particulars	FY 09-10	FY 10-11	FY 11-12
Impact on ARR	1.11	14.61	25.99

Issue No.4

Disallowance of interest accrued on Consumer Security Deposit retained by Delhi Power Corporation Limited (DPCL)

3.37 This issue is already implemented by the Commission in Tariff Order dated 29/09/2015.

Issue No. 5
Disallowance of Fringe Benefit Tax

3.38 In view of the direction of the Hon'ble Supreme Court, the cost towards Fringe Benefit Tax is Rs. 1.73 Cr. for FY 2008-09.

B. Issues as decided by Hon'ble APTEL and not stayed by Hon'ble Supreme Court

3.39 The Hon'ble APTEL in its judgment dated 14/11/2023 in OP No.1 and OP No.2 of 2012 adjudged as follows:

xxxx xxxx xxxx xxxx

"39. In view of the categorical stand taken by the Delhi Commission now, it is enough for us to direct the Delhi Commission to implement the directions of this Tribunal given in the decisions referred to above and pass an order in terms of those directions in future.

40 …

ii) The refusal by the Delhi Commission to implement the judgments of this Tribunal would amount to judicial indiscipline and is against the settled position of law. Mere filing of the Appeal or proposal to file the Appeal would not amount to the effect of automatic stay of the Tribunal's judgment. However, in view of the affidavit filed by Delhi Commission in Appeal No.14 of 2012 and submissions made in these petitions, we do not propose to take any penal action against the Delhi Commission except to advise it to correct its mistakes committed earlier and follow the directions issued by this Tribunal in future."

xxxx xxxx xxxx xxxx

3.40 The Petitioner filed its petition on various issues which have been decided by Hon'ble APTEL, however, not stayed by Hon'ble Supreme Court. Thus, in view of the direction of Hon'ble APTEL in OP1 & 2 of 2012, the Commission has considered the prayers of the Petitioner on the following issues and has allowed the impact of the claims as per the directions of the Hon'ble APTEL subject to further directions of the Hon'ble Supreme Court.

a) Rate of interest on long term loans for FY 2007-08 to FY 2016-17

3.41 The Petitioner has claimed that the direction of Hon'ble APTEL in Appeal 61 & 62 of 2012 and Appeal no. 171 of 2012 relating to true up of interest rates of loans in case of movement in SBI PLR trajectory is to be considered as per the direction of the Hon'ble APTEL in view of the Order of Hon'ble Supreme Court dated 01/12/2021 as there is no stay granted on the Appeals filed by the Commission against the judgements.

3.42 The APTEL in its judgment dated 28/11/2014 in Appeal no. 61 & 62 of 2012 had observed that

" 34. The Appellants have submitted that the Delhi Commission has not implemented the directions of the Tribunal in judgment reported as 2009 ELR (APTEL) 0880 in Appeal No. 36 of 2008, wherein this Tribunal had directed the Delhi Commission to true up the interest rates of loans in case SBI PLR rate deviates by more than 1%.

35. The Learned Counsel for the Commission vehemently denied the allegation made by the Appellants and submitted the gist of his detailed submissions is that the deviation in SBI PLR Rate from FY 2007-08 to 2010-11 has not been more than 1%, hence, the rate of interest is not to be revised. Further, True Up of RoCE has to be done at the end of Control Period.

36. Per contra the learned Appellant for the Appellants reiterated its stand that the Delhi Commission had not implemented the directions of the Tribunal and made the following submissions:

i. The Delhi Commission had undertaken before this Tribunal in Appeal No. 36 of

2008, as under:

> *"115) Further, the Commission has at the very outset said that it shall true up the interest rate for the new loans to be taken for capital investment and for working capital requirement if there is a deviation in the PLR of the scheduled commercial banks by more than 1% on either side."*

ii. The Appellants have submitted the SBI PLR for various periods between 2006-07 to FY 2011-12 and contended that the base figure of SBI PLR considered by the Delhi Commission was 12.25% i.e. PLR prevailing at the end of FY 2006-07 and not FY 2007-08 as erroneously observed by the Delhi Commission in the Impugned Order and during the Control Period, PLR rate has deviated by more than 1% as per the following Table.

…

iii. Despite its own undertaking, the Delhi Commission has not proportionately revised the rate of return on debt despite the fact that the Appellant is paying much higher rate of return on debt and that the SBI PLR has deviated by more than 1%.

iv. Even if the Delhi Commission considers the weighted average SBI PLR for the whole Financial Year then also SBI PLR has deviated by more than 1% from 2006-07 (base year), as under:-

Particular	*FY 06-07*	*FY 07-08*	*FY 08-09*	*FY 09-10*	*FY 10-11*	*FY 11-12*
Weighted average SBI PLR	*11.08%*	*12.69%*	*12.79%*	*11.87%*	*12.26%*	*14.01%*

v. As can be seen from the above table the SBI PLR rates have deviated by more than 1% since the base year or FY 2006- 07. Despite the aforesaid, the Delhi Commission has not trued up the interest rates on loans.

vi. The Delhi Commission has also ignored the fact that the amount of Regulatory Assets has gone up by 1707% till FY 2011-12, i.e., from Rs. 158 Crore in FY 2007 to Rs. 2855 Crore in FY 2012. Also the credit rating of Appellant has been downgraded by CARE Limited due to huge Regulatory Assets, liquidation of which remains unaddressed till

date. Due to the same the Appellant is not operating in business as usual conditions and not getting loans at lower rates.

vii. The Delhi Commission has admitted that True up of RoCE is to be done at the end of the control period. However, despite the fact that the Control Period is over, True Up of RoCE is still pending.

37. On perusal of the data submitted by the Appellant related to SBI PLR, it is clear that SBI PLR has deviated by more than 1% during the control period and accordingly the Commission was required to revise the rate of interest on loan and carry out the required true up. Further, despite admitting that true of Return on Capital Employed (RoCE) would done at the end of control period, the Delhi Commission has failed on both the counts. The Delhi Commission is directed to revise the rate of interest on loan as well true up of the RoCE in its next tariff exercise. The issue is accordingly decided in favor of the Appellants."

3.43 In case of Working Capital Loans, the Commission, in its Tariff Order dated 31/07/2013 had implemented the direction of Hon'ble APTEL in Appeal no. 52 of 2008 and had provisionally considered the Working Capital in Debt equity ratio of 70:30 which was later revised in view of actual equity availability as per the applicable Regulations.

3.44 Similarly, the judgment of Hon'ble APTEL in Appeal 171 of 2012 had directed that *"the State Commission to true-up the interest rate on working capital for the years from 2012-13 to 2014-15 in the true up of the accounts, based on the actual interest rates".*

3.45 MYT Regulations, 2011 provide for true up of rate of interest in case variation in SBI base rate as on 01/12/2012 varies beyond ±1%. Hon'ble APTEL also upheld the view that *"the interest rates have to be trued up as per the Regulations. Accordingly, the State Commission shall true up the interest rate in the true up for the financial years from 2012-13 to 2014-15".*

3.46 Since the issue on truing up of interest rate on loans is appealed before Hon'ble Supreme Court in Civil Appeal 8660-61 of 2015, the Commission provisionally allows the interest rate on Capex for 1st MYT Control period as per the directions of Hon'ble APTEL

in Appeal 61 & 62 subject to the outcome of CA 8660-61 of 2015. In case of the 2nd MYT Control period, since the movement against the base year's SBI PLR is within +/- 1% of the SBI PLR, the rate of interest on the loan towards Capitalisation is considered as per the trajectory as determined in the MYT Tariff Order.

3.47 In case of Working Capital loans, during the 2nd MYT Control period, the Commission considers the actual working capital loan rates on a provisional basis subject to outcome of CA 4879 of 2015 filed before the Hon'ble Supreme Court.

b) Repayment of Loans not considered while computing WACC

3.48 The Petitioner has submitted that Hon'ble APTEL vide its judgment dated 28/11/2014 in Appeal 61 & 62 of 2012 *"direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recompute the RoCE payable to the Appellant. The issue is decided in favour of the Appellant."*

3.49 The Commission in its Tariff Order dated 29/09/2015 has deliberated on the issue of repayment of loans in view of the said judgement as follows:

> *"3.34 The Commission had not considered the actual equity available with the Petitioner in its financial statements for computation of Return on Equity from FY 2002-03 to FY 2006-07 (Policy Direction Period) and computation of Return on Capital Employed (RoCE) from FY 2007-08 to FY 2012-13 (MYT Period).*
>
> *3.35 The Commission had proposed to consider the actual equity deployed as net shareholders fund to be used for determination of the ratio of actual equity deployed to total funds required in computation of Weighted Average Cost of Capital (WACC)…*
>
> *3.36 The Petitioner has submitted the net worth assessment from FY 2002-03 to FY 2011-12 vide their letter dated 02.04.2014 and for FY 2012-13 to FY 2014-15 vide their letter dated 19.06.2015…*
>
> *3.37 The Commission has considered the Actual available Equity including Free reserve upto Maximum of 30% of Regulated Rate Base (RRB) for the purpose of computation of WACC. RRB includes original cost of Fixed Asset excluding*

accumulated depreciation. By considering the Actual Equity available, the balance of RRB has been considered to be funded from Debt which is net of repayment of loans.

…

a. The Commission has provisionally considered the repayment of loans as approved in accordance with the applicable MYT Regulations. The Commission, at the time of determination of the Advance Against Depreciation has considered the repayment schedule for the loans as 10% of the opening loan balance which is now considered to reduce the loan balances for assessment of the debt and equity requirement of the Petitioner for MYT Periods."

3.50 The Commission in its Tariff order dated 29/09/2015 observed that "*The Commission has considered the Actual available Equity including Free reserve upto Maximum of 30% of Regulated Rate Base (RRB) for the purpose of computation of WACC. RRB includes original cost of Fixed Asset excluding accumulated depreciation. By considering the Actual Equity available, the balance of RRB has been considered to be funded from Debt which is net of repayment of loans*." Further, the Working Capital is an annual requirement which is met by way of short term funding which is determined in accordance with the MYT Regulations as part of the Regulated Rate Base, thus not requiring further adjustment calling for any reduction on repayment of loan.

c) <u>Bank Charges/Syndication Fees</u>

3.51 The Commission in its Tariff Order dated 30/09/2021 considered this issue as follows:

"3.21 The Commission has already trued-up the interest cost and has allowed RoCE to the Petitioner in accordance with the applicable Regulations. The Petitioner may establish its claim to the Commission giving its reasons for the variance from submission as forming part of the Petition and subsequent submissions before the Commission. Further, the Petitioner may establish that the interest cost as approved by the Commission while projecting the interest rates for the 2nd MYT

Control period did not include such fees/charges as being claimed by the Petitioner over and above the RoCE as per Regulation 5.6 of MYT Regulations 2011."

3.52 The Commission sought the documents to verify the claim of the Petitioner related to Syndication Fee/Bank Charges claimed in its True-up Petition. The Petitioner submitted the documents vide its letter dated 28/06/2021.

3.53 Based on the documents submitted and justification given by the Petitioner in support of the claim on account of Syndication Fee/Bank Charges, the Commission now allows such charges in view of the Judgment of Hon'ble APTEL in Appeal no. 246 of 2014.

(in Rs. Cr.)

Particulars	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Borrowing cost/Bank Charges	37.04	35.75	25.55	6.72	11.09

d) <u>Non revision of AT&C losses for second MYT Control period</u>

3.54 The Commission as already implemented the issue in its previous Tariff Order dated 30/09/2021 as follows:

3.8 Hon'ble APTEL in its judgment in Appeal No. 61&62 of 2012 dated 28.11.2014, has ruled as follows:

"72. In the light of above discussions, we direct the Delhi Commission to refix the AT&C loss levels for the FY 2011-12 as per its letter dated 8.3.2011 and give consequential relief to the Appellants. The issue is decided in favour of the Appellants."

3.9 Further in Judgment dated 2.03.2015 in Appeal No. 177 & 178 of 2012, Hon'ble APTEL has specified certain loss reduction for FY 2012-13, FY 2013-14 & FY 2014-15 and mentioned that in this way, the target for FY 2014-15 will remain the same as decided by the Commission in the impugned order adjudged as follows:

"30.12 The State Commission has proposed AT&C loss reduction 1.27% below the target fixed for 2011-12(15%). Now the AT&C loss target for FY 2011-12 has to be refixed to 16% for BRPL as per the decision of this Tribunal in Appeal no. 62 of 2012. The State Commission has fixed AT&L loss target for 2014-15 as 12.5%

which would mean a loss reduction of 3.5% in the control period of 3 years which seems reasonable and can be distributed to 1.05% reduction in 2012-13, 1.2% in 2013-14 and 1.25% in 2014-15 over the target of previous year i.e. AT&C loss target of 14.99%, 13.75% and 12.5% respectively. Lower target for 2012-13 has been fixed as the impugned order was passed on 13.07.2012, about 3½ months after the commencement of FY 2012-13. In this way, the target for FY 2014-15 will remain the same as decided by the Commission in the impugned order. Considering the performance in the past and the actual AT&C loss level, the above loss reduction trajectory will be reasonable. According decided.

…

30.14 We find that the State Commission has refixed the collection efficiency as 99.5% from 98.5% earlier without any benchmarking despite making change in definition of the collection efficiency with reference to definition in 2007 MYT Regulations by excluding arrears collected for the DVB period, electricity duty and late payment surcharge."

3.10 With regards to observation of Hon'ble APTEL related to 98.5% target Collection Efficiency for 1st MYT period, it is noted that the Commission in it's Tariff Order dtd. 23/02/2008 has specified Collection Efficiency targets from 99.0% to 99.50% for 1st MYT Period and 99.50% for all years of 2nd MYT Period in 13/07/2012 Tariff Order, as follows:

Table 50: Commission Approved AT&C and Distribution Loss Reduction Trajectory

Particular	FY08	FY09	FY10	FY11
AT & C loss target	26.69%	23.46%	20.23%	17.00%
A T & C loss Reduction over previous year	3.23%	3.23%	3.23%	3.23%
Distribution loss target	25.95%	22.88%	19.83%	16.58%
Collection Efficiency	99.00%	99.25%	99.50%	99.50%

Table 53: AT&C Loss Targets approved by the Commission

Particulars	FY 2012-13	FY 2013-14	FY 2014-15
Distribution Loss Target	13.73%	12.89%	12.06%
Collection Efficiency Target	99.50%	99.50%	99.50%
AT&C Loss Target	14.16%	13.33%	12.50%

3.11 In view of the above directions from Hon'ble APTEL and no grant of stay from the Hon'ble Supreme Court, the Commission has provisionally revised the AT&C Loss Trajectory of the Petitioner for FY 2011-12, FY 2012-13 and FY 2013-14, based on the trajectory directed by Hon'ble APTEL and the additional incentive thereon is computed

as follows:

Table 3. 7: Commission Approved: Impact on account of Revision of AT&C Loss

Sr. No	Particulars	UoM	FY 2011-12			FY 2012-13			FY 2013-14		
			Original	TO dt 31.07.13	Revised	Original	TO dt 23.07.14	Revised	Original	TO dt 29.09.15	Revised
A	AT&C Loss	%	15.00	18.11	16.00	14.16	17.74	14.95	13.33	16.93	13.75
B	Under achievement	%		3.11	2.11		3.58	2.79		3.60	3.18
C	Energy Input	MU	10,910	10,910	10,910	11,233	11,233	11,233	11,509	11,509	11,509
D	Units realised	MU	9,274	8,948	9,164	9,642	9,240	9,553	9,975	9,561	9,926
E	Average Billing Rate	Rs./ U	5	5	5	6	6	6	7	7	7
F	Amount realised	Rs. Cr.	4,777	4,609	4,720	6,049	5,796	5,990	6,877	6,592	6,839
G	Total financial impact	Rs. Cr.		(168)	(110)		(252)	(194)		(285)	(248)
H	**Impact allowed**	**Rs. Cr.**			**57.29**			**58.63**			**37.94**

"

e) Service tax for FY 2011-12 to FY 2016-17

3.55 In view of the direction of the Hon'ble APTEL in Appeal 246 of 2014, the Commission allows the claim towards Service Tax for the second MYT Control period as follows:

Particulars	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Service Tax	5.53	9.61	12.46	20.11	23.39

f) Financing cost of LPSC for FY 2007-08 to FY 2012-13

3.56 The Financing Cost of LPSC is being revised as per the interest rate as applicable for Working Capital and is accordingly adjusted in the non-tariff income of the Petitioner.

g) License Fee paid on assets to be allowed as per Actuals

3.57 The petitioner has claimed that in terms of the Judgment of the Hon'ble APTEL dated 30.09.2019 in Appeal No. 246 of 2014, wherein the Hon'ble APTEL referred to its stand in Judgement dated 10/02/2015 in Appeal No. 171 of 2012 that enhancement in expenses due to reasons beyond the control of the utility, such as statutory obligations are uncontrollable in nature, therefore, ought to be allowed.

3.58 The Commission observed that the Petitioner has been allowed the incremental License Fee for many financial years within the 2nd MYT Period and adjusts the balance to be allowed or recovered along with the applicable Carrying Costs.

Particulars	Considered in base cost	FY 13	FY 14	FY 15	FY 16	FY 17
Base Year (FY 2010-11)	3.44					

Particulars	Considered in base cost	FY 13	FY 14	FY 15	FY 16	FY 17
Inflation factor		8.00%	8.00%	8.00%	8.00%	8.00%
License fees approved by DERC in base+escalation		4.02	4.34	4.68	5.06	5.46
Inflation factor		1.08	1.08	1.08	1.08	1.08
Amount of License fees actually paid		3.79	4.52	4.62	5.38	6.06
Differential amount to be allowed		**-0.23**	**0.18**	**-0.07**	**0.32**	**0.60**
Already allowed by DERC in earlier Tariff Orders			0.27	0.12	0.52	
Difference now to be allowed		-0.23	-0.09	-0.19	-0.20	0.60

3.59 For the period governed under the DERC (Business Plan) Regulations, 2017, the Commission in its Tariff Order dated Aug. 2020 observed that:

"3.214 The Commission has determined the norms for O&M expenses in DERC (Business Plan) Regulations, 2017 based on the actual O&M expenses of the Petitioner during FY 2011- 12 to FY 2015-16. In the actual O&M expenses, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retirement of assets was not considered.

3.215 The actual O&M Expenses considered by the Commission already include the expenses on account of license fee paid on assets to GoNCTD. The O&M expenses determined by the Commission contain both element of escalation on year to year basis and additional O&M expenses on account of increase in the network capacity. Therefore, the additional claim sought by the Petitioner is not justified. Accordingly, the Commission has not allowed such expenses separately."

3.60 Further, in its Tariff Order dated September'21, the Commission, due to the Covid -19 situation allowed the O&M on actual basis which covered the actual License fee paid and claimed by the Petitioner as recorded in the Tariff order as below:

"3.220 COVID-19 pandemic and subsequent lockdown has impacted everyone in an unprecedented manner and the Commission in view to maintain balance between the stakeholders while dispensing essential commodity like electricity exercises its power to

relax the provision under Regulation 172 of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Regulation 37 of DERC (Business Plan) Regulations, 2017.

3.221 Accordingly, the Commission has considered the O&M expenses on actual basis based on the audited accounts and has have balanced to safeguard the interest of the consumers and the DISCOMs by allowing the actual O&M Expenses incurred by the Petitioner in the ARR for FY 2019-20.

h) Efficiency Factor for FY 2010-11

3.61 The Commission has considered Efficiency factor at nil percentage for DISCOMs in view of judgment of Hon'ble APTEL in Appeal no. 177 & 178 of 2012. Accordingly, the claim of the Petitioner is being considered subject to outcome of the Hon'ble Supreme judgment.

i) KYC expenses claim

3.62 The judgment of Hon'ble APTEL in Appeal no. 246 of 2014 has observed that "*It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality."* The Petitioner has submitted that the said expenses have been incurred towards the KYC as per the direction of the Government of GoNCTD vide its letter No. F.11(55)/2018/Power/1421 dated 28.05.2018, directing the Petitioner to provide the information of K.No. /CA.No., Name of Consumer, yearly subsidy given in the last 3 years, Load in kW, Month wise Units consumed and billed amount in last 3 years, etc. and prepare the future roadmap to maximize the benefit of subsidy in terms of energy efficiency among Domestic Consumers of Delhi. The Commission is of the view that such administrative works cannot be considered as a

new head cost. Rather, the Petitioner is expected to evolve its business to accommodate such changes/ additions in its business. Accordingly, the cost claimed by the Petitioner for such KYC is not allowed in the ARR separately.

j) SMS Charges

3.63 The judgment of Hon'ble APTEL in Appeal no. 246 of 2014 has observed that "*It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality."* The Petitioner has submitted that the said expenses have been incurred towards the SMS charges as per the direction of the Commission vide its letter no. F.17(47)/Engg./DERC/2014-15/C.F.4741/3682 dated 13/01/2016. The said expenses as claimed by the Petitioner pertain to FY 2017-18 and FY 2018-19 at Rs. 0.60 Cr and Rs. 1.09 Cr respectively. The petitioner further submitted that while issuing the directive, the Commission stated that the actual expenses incurred by BRPL shall be allowed separately in the ARR. Moreover, such charges were not part of the base expenses considered for determination of normative O&M expenses for FY 2017-18 to FY 2019-20.

3.64 The Commission examined the submissions and in its Tariff Order dated 28/08/2020 observed that "*Regulation 23 of DERC (Business Plan) Regulations, 2017 stipulates the norms for O&M expenses of the Petitioner. The Commission has determined the norms for O&M expenses in DERC (Business Plan) Regulations, 2017 based on the actual O&M expenses of the Petitioner during FY 2011-12 to FY 2015-16. In the actual O&M expenses, the expenditure incurred towards legal fee, legal claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retirement of assets have not been considered. During the prudence check, it was observed that the Petitioner already claimed the expense of similar nature booked by the petitioner in its audited financial statement under the head of Communication expenses have already been considered by the*

Commission at the time of determining the O&M expenses under Regulation 23 of DERC (Business Plan) Regulations, 2017. The O&M expenses determined by the Commission contain both element of escalation on year to year basis and additional O&M expenses on account of increase in the network capacity. Therefore, the additional claim sought by the Petitioner is not justified. Accordingly, the Commission has not allowed such expenses separately."

3.65 The SMS charges form part of the communication expenses which are included in the normative costs. The Commission has not considered the SMS charges as a new head cost and has thus disallowed the claim of the Petitioner.

k) Cost of Auditor Certificate

3.66 The Commission is of the view that conduct of audit is an ongoing exercise and thus cannot be considered as a new head cost. Rather, the Petitioner is expected to evolve its business to accommodate such changes/ additions in its business. Accordingly, the extra cost claimed by the Petitioner for Audit certificate is not allowed in the ARR separately.

l) Computation of AT&C Losses for FY 2009-10 using actual kWh figures

3.67 The Commission in its Tariff Order dated 26/08/2011 trued-up AT&C Losses for FY 2009-10 and disallowed certain quantum of Sales for BRPL and BYPL by considering computed Power Factor figures from kVAh and kWh submitted by BRPL and BYPL for FY 2010-11 to convert kVAh sales in to kWh for 2009-10, as follows:

"4.31 The Commission directed the Petitioner to submit the figures of kVAh and KWh for FY 2010-11 for consumers where kVAh billing is applicable. The Petitioner complied with the same.

4.32 The Commission observed that the average power factor computed from kVAh and kWh figures shown by the Petitioner for FY 2010-11 for Industrial and Commercial consumers were much lower. The average power factor computed from kVAh and kWh figures made available for LT consumers were in range of 0.90

– 0.93.

4.33 As the Commission was not able to verify the KWh figures for FY 2009-10, the Commission decided to consider the computed power factor figures from kVAh and kWh submitted by the Petitioner for FY 2010-11 to convert kVAh sales in to KWh for 2009-10. Due to this, Sales in MU for FY 2009-10 decreased by 22.81 MU."

3.68 The above finding of the Commission was challenged by BRPL and BYPL before Hon'ble APTEL in Appeal No. 61/62 of 2012. Hon'ble APTEL vide its Judgment dated 28/11/2014 in Appeal No. 61/62 of 2012 directed the Commission to recompute the AT&C losses for FY 2009-10 using actual kWh figures, as follows:

"79. The perusal of the findings of the Commission in the Impugned Order would suggest that the Delhi Commission has failed to understand the working of the tri-vector meters installed at the consumers' premises by the Appellant. Basic electricity meters record only active power i.e. kWh consumed by the consumer. Tri-vector meters records all three vectors i.e. Active Power (kWh), Reactive Power (kVAh) and Apparent Power (kVAh). The principle parameter recorded by these meters is kWh. Other parameters are determined from this basic parameter based on instantaneous values of the current and voltage and their phaser angle. Therefore, the Commission has erred in computing kWh based on kVAh and power factor. It is interesting to note that the Commission has computed the average power factor for FY 2010-11 on the basis of kWh and kVAh recordings and computed kWh figures by reverse calculations using the kVAh figures for 2009-10 and average power factor for FY 2010-11.

80. In the light of above discussions we direct the Commission to recomputed the AT&C losses for FY 2009-10 using actual kWh figures as recorded in para 4.8 of the Impugned order. The issue is decided in favour of the Appellants."

3.69 Further, Hon'ble APTEL at Para 52 of above stated Judgment also decided:

"58. In view of the above discussions the issue is decided as under:

1) All the parameters such as LPSC, ED, DVB arrears have to included both in the numerator as well in the denominator for computing the collection efficiency.

2) The Commission has adopted correct approach for computing MUS on account of enforcement.

3) Expenses incurred on deployment of CISF personnel cannot be adjusted towards reduction of AT&C losses."

3.70 Above findings of the Hon'ble APTEL in Judgment dated 28/11/2014 was challenged by the Commission in its Civil Appeal Nos. 8660-61 of 2015 before Hon'ble Supreme Court of India. Since there is no stay granted by Hon'ble Supreme Court on the Civil Appeal filed, the Petitioner is being provisionally granted the disallowed energy billed to the extent of 44.41 MU during FY 2009-10 earlier disallowed by the Commission, subject to the outcome of CA 8660-61 of 2015. The impact thereof is included in the additional incentives on account of AT&C loss revision.

C. Impact of Review Orders, Petitions and issues before DERC

a) Review Order dated 09/09/2022 in Review Petition No. 60 of 2021 - Non-consideration of trading margin for Banking Transactions during FY 2019-20

3.71 The Commission in its Review Order dated 09/09/2022 has decided as follows:

"Commission's Analysis 10.2.3 The Commission has considered banking transactions at normative cost at weighted average rate of all long term sources considering only variable cost for the relevant year. Therefore, the Trading Margin incurred for banking transaction during FY 2019-20 will be considered in ensuing Tariff Order after prudence

check."

3.72 Based on the information submitted by the Petitioner, the Commission has allowed an impact of Rs. 0.37 Cr. of Trading Margin for Banking Transactions during FY 2019-20.

b) Review Order dated 20/07/2021 in Review Petition No. 63 of 2019 – Additional UI Charges levied due to Forced Scheduling

3.73 The Commission in its Order dated 20/07/2021 in Review Petition No. 63/2019 of BRPL has decided as follows:

"7.7.3 The Regulation 152 (c) third proviso of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations 2017 stipulates that any Additional /Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges other than Forced scheduling of power as certified by SLDC paid by the Distribution Licensee shall not be allowed in Power Purchase Cost.

7.7.4 As mandated in the said Regulations, BRPL is directed to submit Additional Deviation Charges duly certified by SLDC other than Forced Scheduling of Power. Accordingly, the claim will be considered in the subsequent Tariff Order."

3.74 Subsequently, the Commission in its Tariff Order dated 30/09/2021 observed that *"Pending submission of the certificate from SLDC, the Commission vide it's email dtd. 9/09/2021 directed SLDC to submit the same. However, the information has yet not been received from SLDC, accordingly, the Commission has not considered the claim of the Petitioner in the current Tariff Order."*

3.75 BRPL in its Tariff Petition filed for True-up of FY 2020-21 & ARR for FY 2022-23 has claimed an amount of Rs. 46 Cr. (including Carrying Cost) on account of Forced-scheduling impacting UI Charges for FY 2017-18, FY 2018-19 and FY 2019-20.

3.76 However, during prudence check exercise of True up of FY 2020-21, BRPL vide its letter dated 19/05/2022 has submitted the impact of Additional UI on Forced Scheduling certified by Delhi SLDC for FY 2017-18, FY 2018-19 and FY 2019-20 to the tune of Rs. 1.12 Cr., Rs. 0.02 Cr. and Rs. 0.04 Cr. respectively.

3.77 Since, there was variation in amount claimed by BRPL in their Tariff Petition vis-à-vis submitted through letter dated 19/05/2022, the Commission vide its email dated 17/06/2022 sought clarification from BRPL. In reply to the same vide letter dated 20/06/2022, BRPL submitted that only Rs. 1.18 Cr. were certified by SLDC which do not fully represent the issue of Forced Scheduling and its impact since they are only some of the specific instances of forced scheduling during operations.

3.78 It is observed that third proviso of Regulation 152 (c) of *Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations 2017* stipulates that any Additional/Penal Deviation Settlement Mechanism Charges other than Forced Scheduling of Power as certified by SLDC paid by the Distribution Licensee shall not be allowed in Power Purchase Cost.

3.79 Accordingly, the Commission has considered the amount submitted by BRPL vide its letter dated 19/05/2022 amounting to Rs. 1.12 Cr., Rs. 0.02 Cr. and Rs. 0.04 Cr. for FY 2017-18, FY 2018-19 and FY 2019-20 respectively as certified by Delhi SLDC for allowance of Additional/Penal Deviation Settlement Mechanism Charges under Forced Scheduling.

c) Review Order dated 13/12/2019 – Write-back miscellaneous provisions as part of NTI for FY 2007-08 to FY 2016-17

3.80 The Commission vide its Review Order 31 of 2018 in case of BYPL dated 13/12/2019 adjudged on the matter the Commission observed as follows:

"3.5.4 On this issue of error in consideration of the provisions written back in a particular

year as Non-Tariff Income, there are two aspects, one related to O&M amount and other about doubtful debts. The Petitioner has submitted that provisions have been written back in various heads in the audited books of accounts, either on realisation of dues/movement of debtor or on account of non-use of O&M expenses earlier created in the Books of Accounts. In respect of written back provisions related to such O&M expenses, which had not been considered in the O&M cost, the same may be allowed subject to verification and prudence check of the audited statement of accounts and other relevant documents.

3.5.5 Regarding written back doubtful debts, it is observed that for the past few years, the collection efficiency of the Petitioner has been more than 100%, and it is usually possible when unrecovered past dues are being realised. The realised past dues may contain arrears and a portion of doubtful debts as well. In such a situation, the part of doubtful debts so realised will be treated as income because it has already been allowed to the Petitioner against collection efficiency, and therefore, no relief on such doubtful debts may be allowed. However, those doubtful debts, which have not been part of the collections efficiency, the same may be allowed provided the Petitioner is able to establish and prove that such amount of doubtful debts had not considered against the collection efficiency.

3.5.6 The claim of the Petitioner, accordingly, shall be considered in the next tariff Order subject to verification of data and prudence check."

3.81 The Petitioner requested the Commission to provide similar dispensation for BRPL. However, the Commission in its Tariff Orders dated 28/08/2020 and 30/09/2021 maintained the stand that as the issue is sub-judice under Appeal no. 297 of 2015 before Hon'ble APTEL, the effect thereof shall be considered upon finalisation of the Appeal.

3.82 The Petitioner vide letters dated 24/09/2021 and 28/09/2021 requested the Commission to consider their claim in terms of Commission's Order dated 13/12/2019

in Review Petition 31 of 2018 in case of BYPL on the similar issue. Through these letters, the Petitioner submitted to have filed Additional Affidavit before APTEL on withdrawal of the issue of write back of miscellaneous provisions from various Appeals, if the said issue was allowed by the Commission in the tariff determination exercise then underway.

3.83 The issue was not considered by the Commission in its tariff order dated 30/09/2021 as such additional submissions were delayed and the tariff petitions were ready for disposal.

3.84 The Commission conducted prudence Check on the issue for BRPL also and the Petitioner made various submissions on the matter vide letters dated 19/05/2022, 26/05/2022, 30/06/2022. Based on the submission:

a. During the First MYT period, the provisions created against O&M Expenses and towards retirement of Assets were also considered for allowing the Normative O&M expenses in Tariff. As such, the provisions written back to the extent of other provisions, during that period is not considered to be excluded as part of NTI, where as it is not so during the Second MYT period.

b. In case of write back of provisions on account of bad debts, the Commission observed that the past dues may contain arrears and a portion of doubtful debts as well. The part of doubtful debts realized has been treated as income and is already allowed to the Petitioner against Collection Efficiency. Referring to MYT Regulations 2007 and MYT Regulations 2011,

MYT Regulations 2007, Regulations 4.7 (C)

Collection efficiency, which shall be measured as ratio of total revenue realised to the total revenue billed for the same year. The revenue realisation from arrears relating to the DVB period, electricity duty and late payment surcharge shall be included for computation of collection efficiency;

MYT Regulations 2011, Regulations 4.7 (C)

Collection efficiency, which shall be measured as ratio of total revenue realised

to the total revenue billed in the same year:

Provided that revenue realisation from electricity duty and late payment surcharge shall not be included for computation of collection efficiency;

c. It is observed that the amount of debtors classified as doubtful debts and provision in a particular Financial Year have not been collected during that Year. Thus the said amount has also not been considered towards Collection Efficiency as could be inferred from the above referred Regulations.

d. The Write Back of Provisions on account of bad debts is considered as a Contra entry which does not involve any cash transaction.

3.85 Thus the provisions on account of bad Debts earlier reversed is being allowed to be reduced from Non-tariff income of the Petitioner. In case of the Provisions written back to the extent of other provisions created against O&M Expenses (incl legal and other expense) and towards retirement of Assets, during FY 2007-08 to FY 2011-12 is not allowed to be reduced from Non-tariff income as, the same was also not reduced from the base O&M expenses while determining the Normative O&M expenses for 1st MYT period.

(in Rs. Cr.)

Particulars	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Impact on ARR	14.40	-	-	1.84	5.81	4.73	21.56	2.78	3.03	24.01	4.57

d) Petition 46 of 2012: Loss on retirement of Assets

3.86 BRPL had filed Petition No. 46/2012 before the Commission, with a prayer to treat the loss on retirement of assets as per their books of accounts and allow the same as pass-through in the Aggregate Revenue Requirement (ARR) along with applicable carrying cost.

3.87 During the hearings of the Petition, the Commission sought written submissions from the Petitioner whether the methodology as provided for vide the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 could be made applicable to the case. The relevant portion of the final order of 28.05.2018 is as follows:

"2. Vide DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 a methodology for treatment of loss and profit on retirement of assets has been prescribed, whereas there was no such methodology provided in the previous Regulations. As the petitions are in respect of assets retired prior to the notification of extant Regulations, 2017, the petitioners were directed to file written submissions as to whether the aforesaid methodology may also be applied on the assets retired before notification of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

3. The counsel for the petitioners submitted that the written submissions have been filed, wherein it is stated that as per the terms of law settled by the Supreme Court and the APTEL, Regulations framed under the Electricity Act cannot be given retrospective application, however, in order to put quietus to the discussion, the petitioner is willing to have the aforesaid claim considered on the principles contained in Regulation 45 of the DERC (Terms and Conditions for Determination of tariff) Regulations, 2017, without prejudice to the general principle and retrospective operation and only as a special case.

4. In view of the submissions made by the petitioners the petitions are disposed of with the direction to the petitioners to file their claim regarding retirement of assets along with the relevant data to the Engineering division within four weeks, which shall be processed as per the methodology provided in the DERC (Terms and Conditions of Determination of Tariff) Regulations, 2017."

3.88 In view of the above Order of the Commission, the issue on the assessment of loss of retirement of eligible assets of the Petitioner from FY 2002-03 to FY 2016-17 as per the Regulation 45 of the DERC (Terms and Conditions of Determination of Tariff) Regulations, 2017 has now been considered.

3.89 Regulation 45 of DERC (Terms and Conditions for Determination of Tariff) Regulations,2017 stipulates:

"Loss or Gain due to de-capitalization of assets based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the utility in the relevant year."

3.90 BRPL submitted the relevant data vide its communication dated 08.08.2023. The Commission conducted prudence checks through several meetings with the Petitioner and finalized the loss on the sale and retirement of assets. During the prudence check it was observed:

a) The commissioning date & actual purchase price of assets were not provided by the Petitioner for Pre-DVB period. However, during Pre-DVB period, AT&C losses were more than 50%, the Petitioner had to replace a large number of deteriorated assets that were faulty and non-repairable, which resulted in high system losses. Considering the above justification, the Commission allows the loss due to the early retirement of assets related to the replacement of all network assets such as transformers, switchgears, cables, meters, lightning arrestors, etc. for Pre-DVB period.

b) For the assets purchased Post-DVB period (after transfer scheme), the Commission considered such assets where such early retirement is justified owing to system reliability, operational requirement & network modernization.

c) The loss on early retirement of assets relating to network enhancement has not been considered, where the assets were retired by the Petitioner before total useful life of 25 years without proper justification. It is observed that the majority of the assets have however been retired by the Petitioner within 5-10 years of their normal useful life.

d) In case of meter replacement, the Commission sought reasons for meter replacements before their useful life. The Petitioner submitted justifications for all meters as faulty/burnt/theft, however, the detailed reasoning/ segregation of such justification could not be provided by them in-spite of repeated directions from the Commission. However, Commission has considered the losses for all meters replaced before their useful life, except those replaced within a 2-year period from the date of commissioning.

e) The Commission has further allowed for the loss due to early retirement of servers/software in view of technological obsolescence. However, loss on sale of assets such as mobile phones, office equipment, furniture, etc., which are A&G category type assets, are not considered.

3.91 Thus, the Commission after due prudence check has approved the following amount towards loss due to early retirement of assets from FY 2002-03 to FY 2016-17 to be considered towards Annual Revenue Requirement.

In Rs.Cr.

Particulars	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17
Petitioner's Claim	6.18	1.61	3.47	3.95	3.23	5.14	27.27	5.42	7.09	14.66	18.28	16.86
As approved by the Commission	5.06	1.27	2.54	2.70	4.07	4.60	13.80	5.42	6.54	6.27	12.35	10.50

e) Merit Order Despatch

3.92 The Commission in its DERC, Distribution Tariff Regulations, 2011, applicable from April 1st, 2012 introduced the Regulation on the principle of Merit Order Despatch (MOD), as follows:

"5.25 While approving the cost of power purchase, the Commission shall determine the quantum of power to be purchased from various sources in accordance with the principles of merit order schedule and despatch based on a ranking of all approved sources of supply in the order of their variable cost of power purchase. All power purchase costs shall be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates or the power procurement guidelines as laid down by the Commission from time to time has not been followed."

3.93 The Commission while truing up of FY 2013-14, scrutinized the adherence of MOD principle by Delhi DISCOMs and thereby computed the avoided power purchase cost

due to scheduling of power without MOD principle based on slot wise and plant wise energy details from SLDC considering the station wise actual average variable rates for FY 2013-14 and disallowed the same from the power purchase cost of the DISCOMs.

3.94 Subsequently, BRPL, BYPL and TPDDL moved to Hon'ble APTEL challenging the disallowance of Power Purchase Cost based on MOD Violation including force scheduling, transmission constraints and technical constraints. In its reply to the Hon'ble ATE, the Commission submitted that in case the DISCOM submits details of such transmission constraints and technical constraints duly certified by the SLDC for any specific period for the stations in question with supporting documents, the same shall be reviewed by the Commission.

3.95 The Commission while truing up the Prior Period Expenses in the Tariff Order for FY 2018-19, revised the disallowance on account of avoided power purchase cost due to MOD Violation by not considering various Stations under MOD violations which have must run status of Stations 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.

3.96 The Commission, exercising Regulations 12.7 *(Enquiry and Investigation) of DERC Distribution Tariff Regulations 2011*, sent a letter dated 07/12/2018 to the SLDC seeking detailed reasons as to why MOD principle was not followed in Delhi in FY 2013-14 as was mandated under DERC Distribution Tariff Regulations 2011. In response, SLDC vide letter dated 22/01/2019 certified that MOD principle was adhered to during FY 2013-14 while preparing the schedule during FY 2013-14.

3.97 Thereafter, based on the findings in Review Order dated 13/12/2019 against the Tariff Order for FY 2018-19, the Commission vide its letter dated 1/07/2020 sought plant-wise and month-wise Merit Order Despatch (MOD) violation for FY 2013-14 from SLDC. In response, SLDC vide its letter dated 24/07/2020 submitted the details wherein it is

observed that from the date of implementation of DISCOM-wise scheduling i.e. 21/02/2014 till 31/03/2014 for Anta, Auraiya and Dadri Gas Stations of NTPC there was sale of power in Exchange during the slots where power was scheduled above Minimum Technical Limit (MTL) from these stations by BRPL, BYPL and TPDDL. Further, the Commission directed SLDC to include all of the generating stations and not just Anta, Auraiya and Dadri Gas Stations of NTPC. In response, SLDC vide its email dated 30/07/2020 submitted the data indicating the slot-wise details of DISCOM's (i.e. BRPL, BYPL, TPDDL & NDMC) power sale in Exchange when power is scheduled more than MTL. The Commission computed penalties for the period from 21/02/2014 till 31/03/2014 in Tariff order dtd. 28/08/2020. In the said Tariff Order, it was noted that:

a) BRPL, BYPL and TPDDL had submitted copy of Affidavit which is submitted before Hon'ble APTEL wherein they have indicated that they have conditionally withdrawn the issue related to disallowance of MOD during FY 2013-14 subject to its reversal by the Commission.

b) **Prior to 21/02/2014** - The requisition submitted by DISCOMs to SLDC is on lump sum basis i.e. it is not generator wise and slot wise.

c) **Post 21/02/2014** - The requisition submitted by DISCOMs to SLDC is generator wise and slot wise.

3.98 Accordingly, the penalty for FY 2013-14 was provisionally reversed by 50% since, the Commission had also sought Plant-wise, month-wise and day-wise violations for FY 2012-13 and for FY 2013-14 prior to implementation of DISCOM wise from SLDC.

3.99 Delhi SLDC expressed its inability to provide the information Plant wise, month wise and date wise violations for FY 2012-13. Accordingly, the Commission requested NRLDC & IEX to provide the said information. IEX submitted the information, however, inspite of Commission's letter dated 5/07/2021 and reminder email dated 21/09/2021, NRLDC

didn't submit the information related to FY 2012-13. In the absence of the desired information, the Commission in its Tariff Order dated 30/09/2021 decided to consider this issue in subsequent Tariff Order.

3.100 NRLDC vide its letter no. NRLDC/SO-I/151 dated 20/12/2021 has submitted the said information. The information received from NRLDC was forwarded to Delhi SLDC vide letter dated 04/01/2022 and Delhi SLDC has emailed the desired information on 03/03/2022.

3.101 Accordingly, meeting with Delhi SLDC and DISCOMs was held and the Commission vide its email dated 30/05/2021 sought inputs in the information submitted by Delhi SLDC and DISCOMs vide its email & letters submitted their inputs on the same. In their reply, DISCOMs have submitted the following:

"Delhi SLDC, in its reply at para 29 in Petition No. 10 of 2014 had indicated the following:

a. DISCOM-wise scheduling was implemented from 22.02.2014 onwards. There were some initial teething troubles though for few months.

b. Network constraints, grid security aspects etc. will always have preference to economic factors.

Before 22.02.2014, there was no violation of MOD and Delhi SLDC/NRLDC scheduled power for Delhi as a whole considering grid and network constraints."

3.102 The Commission vide its Notice dated 21/09/2022 had sought replies from DISCOMs w.r.t. Merit Order Despatch for FY 2012-13 and FY 2013-14 and reply of the Petitioner is summarized as follows:

a) That the issue of alleged MOD violation is limited to FY 2013-14 and does not pertain to FY 2012-13.

b) Admittedly, DISCOM-wise scheduling was implemented from 21.02.2014 as recognized by the Commission, based on SLDC's submission in Petition No. 10 of 2014, and duly recorded in Order dated 06.12.2019 passed by the Commission.

c) As such, since there was no DISCOM-wise scheduling in FY 2012-13, the issue of MOD violation for FY 2012-13 does not arise for BRPL.

d) Regulations 5.25 of Tariff Regulations, 2011 provides for MOD principle to be followed on power purchase and power procurement by the DISCOM. The Regulation nowhere provides for applicability of the MOD principle on sale of surplus power. Even otherwise, MOD as a concept provides for ranking of all approved sources of supply to DISCOMs by various Generating Stations in the order of their variable cost of power purchase. It is unknown as to how the same concept can be applied to sale of surplus power.

e) The Commission while applying the MOD principle has also not considered various factors like force outages and forced scheduling which are beyond the control of the DISCOM.

f) Notably, during prudence check session held by the Commission on 30/05/2022 in the presence of all stakeholders, Delhi SLDC had orally confirmed that (i) there is no violation of MOD by DISCOMs during FY 2012-13; and (ii) a communication in this regard has also been given by Delhi SLDC to the Commission. However, no such communication as received from Delhi SLDC on MOD for FY 2012-13 has been shared by the Commission with BRPL. BRPL reserves its rights to make appropriate submissions in this regard as and when the said communication is shared with BRPL.

g) Without prejudice to the above, no Scheduling and Despatch Procedure has been approved by the Commission as required by Regulation 31 under chapter V -

'Scheduling and Despatch Code' of the Delhi Electricity Regulatory Commission (State Grid Code) Regulations, 2008 ("Delhi Grid Code"). As such in the absence of any procedure and till the time such Procedure is submitted by SLDC and approved by the Commission, the Commission cannot draw any adverse inference against BRPL as a DISCOM.

h) Evidently, the aforesaid disallowance was limited for FY 2013-14. This disallowance was challenged by BRPL before the Hon'ble Appellate Tribunal for Electricity ("Hon'ble APTEL") in Appeal No. 297 of 2015 which is pending adjudication. The Commission in its Reply dated 13/05/2016 in Appeal No. 297 of 2015, stated that in case BRPL were to file certain details., it would consider BRPL's claims. In other words, the Commission in its Reply clearly undertook before Hon'ble APTEL that it will consider the claim of BRPL upon the requisite data being furnished. Undertaking to the Hon'ble APTEL was not connected with the disposal of the Appeal on such issue.

i) In fact, on 14/08/2020, BRPL had filed as Additional Affidavit in Appeal No.297 of 2015 undertaking to withdraw the said issue and not to press this issue should the Commission be pleased to duly allow the same in BPRL's favour in the then pending tariff determination exercise for FY 2019-20. Above factual situation as well as the copy of Additional Affidavit dated 14/08/2020 was duly communicated to the Commission by its letter dated 14/08/2020.

j) The aforesaid issue of consideration of the claim for FY 2012-13 by the Commission has been challenged by BRPL in its Appeal (being DFR No. 123 of 2022) against Tariff Order dated 30.09.2021 inter-alia on the ground that Hon'ble Commission cannot re-open / re-visit issues when the same have been trued up also held by the Hon'ble APTEL in Judgment dated 30.09.2019 in Appeal No. 246 of 2014 titled 'TPDDL vs. DERC'.

k) Admittedly, since the DISCOM-wise scheduling had started only form 21.02.2014 onwards, the data pertaining to FY 2012-13 and FY 2013-14, if any, available from NRLDC/IEX would pertain to Delhi as a whole and would not be relatable to each DISCOM. Without prejudice, it is stated that no such data as stated to have been received from NRLDC and IEX, has been shared by the Hon'ble Commission with BRPL. BRPL, therefore, reserves its right to respond to the same as and when the same is shared with BRPL.

l) As much, MOD principle is limited to only purchase/procurement of power by a DISOM. The Regulations cannot be applied to sale of surplus power in the Power Exchange by DISCOM. Therefore, reliance on Regulations 5.25 of Tariff Regulations 2011 is incorrect and misplaced.

m) They have requested to appreciate that claim of Petitioner for MOD of FY 2013-14 which was to be considered by the Commission based on verification by Delhi SLDC is still pending with the Commission for the past 9 years, without there being any fault attributable to them. Each year's delay in recognition and allowance of legitimate claims for BSES DISCOMs:

   a. Violates principles of tariff determination under Section 61 read with Sections 62 and 64 of Electricity Act, 2003;
   b. Leads to substantial amount of carrying cost to be borne by the consumer which can be avoided if the claims are allowed to them in a timely manner.

n) BSES DISCOMs once again requested the Commission to consider the submissions made by them in their ARR Petitions and allow the cost by reversing the disallowance as per undertaking given by the Commission to Hon'ble APTEL in Appeal No.297 of 2015, as well its own Orders dated 6/12/2019 and 13/12/2019 alongwith applicable carrying cost.

o) Further, BSES DISCOMs vide their letter dated 13/10/2022 have submitted that:

"In this connection it is also submitted that merely because sale of power has taken place in slots where scheduling has taken place from Generators over their Technical Minimum is irrelevant and immaterial, for the purposes of alleged violation of MoD principles, inter alia, for the following reasons: -

(i) There is no connection whatsoever with sale of power and MoD. The only question is whether the requisition by BSES has been done in accordance with MoD.

(ii) Sale of power on the Power exchanges is specifically in terms of the various Orders and Directions passed by the Hon'ble Commission from time to time. It is indeed surprising that the Hon'ble Commission is now seeking to find fault with sale of power on the power exchanges etc;

(iii) Revenue from sale of power is taken into account in reducing the ARR, hence the benefit of the same has already been passed through to the consumers. It is indeed surprising that the Hon'ble Commission is now seeking to find fault with the same;

(iv) Requisition of power is always on an "estimate" of what the power requirement is expected to be. No distribution licensee can know with unrelenting exactitude specifically how much power would be needed at any specific point of time. The query of the Hon'ble Commission somehow appears to be predicated on the assumption that a licensee has a "crystal ball" to see the future and know with exactitude how much power will be drawn by its lakhs of consumers at any specific point of time.

(v) Sales are an "uncontrollable" item even in terms of the 2011 Tariff Regulations. Therefore, it is statutorily recognized by the Hon'ble Commission that how much power is drawn through the network of the licensee is NOT CONTROLLABLE by the licensee.

(vi) Equally power purchase is "uncontrollable" not only by the laws of the Hon'ble Commission but also by the laws of physics. If there is load in the network, and the network is connected to a power source, power will be drawn by the network.

(vii) On the other hand, the Hon'ble Commission has always mandated that load shedding in Delhi can never exceed 1% of the total demand. Hence the licensee is always mandated to arrange to have sufficient power in reserve to feed its demand. It is indeed surprising that the Hon'ble Commission is now entering into a post-mortem of power drawn and sold in time slots of more than 7 years ago when the consumers of Delhi have already consumed all such power purchased and whatever was excess has already been sold in the exchange and the revenue there form already passed through in the ARR's of the Discoms.

(viii) It appears, prima facie, that the said Notice has now been issued with the specific intent of creating grounds for a disallowance which has never been raised over the past over 7 years."

3.103 After reviewing the submission of the Stakeholders and based on the determined violations during the period 21.02.14 to 31.03.14, the Commission considered the penalty amounting to Rs.7.38 Cr. for FY 2013-14 as determined in Tariff Order dated 28.08.2020 and allows Rs. 44.74 Cr. along with applicable Carrying costs.

f) Rectification of Error in Tariff Order dated Aug'17

3.104 The Commission has further observed that the Interest on inter Company loan for the FY 2014-15 and FY 2015-16 amounting to Rs. 24.55 Cr and Rs. 44.00 Cr was erroneously allowed to be reduced twice from the non-tariff income of the Petitioner. The same is now being rectified.

Revision in Regulatory Assets upto FY 31.03.2020

Table 3. 1: O&M expenses during MYT Control Period (Rs. Cr.)

Particulars	FY 2007-08	FY 2008-09	FY2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Employee Expenses	136.54	141.08	148.33	203.07	211.38	270.24	291.86	315.21	340.43	367.66
R&M Expenses	71.44	78.42	102.28	112.93	122.97	93.97	101.87	109.41	117.28	126.92
A&G Expenses	65.31	68.35	71.54	74.88	78.37	93.29	100.75	108.81	117.52	126.58
Total O&M Expenses	273.29	287.85	322.15	390.88	412.72	457.50	494.48	533.43	575.23	621.16
Efficiency Factor		2.00%	3.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
6th Pay Arrears (on which no efficiency is to be applied)		8.35	136.88							
FRSR & Non-FRSR Employee costs for MYT Period - APTEL Judgment dtd. 31/10/2017	4.58	2.54	10.01	6.32	16.73					
Payment to VRS Optees - APTEL judgment in Appeal NO. 61& 62/2012	63.00	21.00	(17.00)							
SVRS Pension	14.17	10.88	18.28	9.97	7.39	7.39	7.39	7.39	7.39	
Revision in salary of Head Clerk and Jr. Stenographer								10.79	8.50	
Net O&M Expenses	355.04	324.86	460.66	407.17	436.84	464.89	501.87	551.62	591.12	621.16

Table 3. 2: Change in Working capital (Rs. Cr.)

S.No	Particulars	FY 2007	FY 2008	FY2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
A)	O&M Expenses		355.04	324.86	460.66	407.17	436.84								
A) ii)	O&M Expenses for 1 Month		29.59	27.07	38.39	33.93	36.40								
B)	Receivables														
B) i)	Annual Revenue		2,889.99	3,109.13	3,594.46	3,980.23	4,562.70	5,864.62	6,757.42	7,598.77	8,147.22	7,743.33	8,121.70	8,744.15	9,576.54
B) ii)	Receivables equivalent to 2 months average billing		481.67	518.19	599.08	663.37	760.45	977.44	1,126.24	1,266.46	1,357.87	1,290.56	1,353.62	1,457.36	1,596.09
C) i)	Power Purchase expenses		2,527.60	2,615.56	3,558.01	4,506.40	5,614.95	5,561.73	5,873.21	6,781.39	6,176.81	6,718.54	6,738.26	7,231.97	8,006.95
C) ii)	power purchase expenses for 1 Month		210.63	217.96	296.50	375.53	467.91	463.48	489.43	565.12	514.73	559.88	561.52	602.66	667.25
D)	Total Working Capital A) ii) + B) ii) - C) ii)	71.85	300.62	327.30	340.96	321.77	328.94	513.96	636.80	701.35	843.14	730.68	792.10	854.69	928.84
	Change in WC		228.77	26.68	13.67	(19.19)	7.17	185.02	122.84	64.54	141.79	(112.46)	61.42	62.60	74.15

Table 3. 3: Approved Gross Fixed Assets & Depreciation (Rs. Cr.)

Particulars	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Opening GFA	1,533.00	1,551.72	1,658.01	1,753.07	2,023.73	2,489.23	2,678.67	3,345.16	3,627.53	3,955.98	4,036.24	4,320.27	4,637.58	4,948.34	5,294.28	5,670.60	6,198.88	6,723.53
Additions to Asset during the year	18.72	106.29	95.44	284.13	469.42	197.84	676.79	288.67	336.72	175.06	296.01	329.76	340.07	383.03	410.98	575.48	598.69	637.20
Decapitalisation during the year	-	-	0.38	13.47	3.92	8.40	10.30	6.30	8.27	94.80	11.98	12.45	29.32	37.08	34.66	47.20	74.04	92.29
Net Additions during the year	18.72	106.29	95.06	270.66	465.50	189.44	666.49	282.37	328.45	80.26	284.03	317.31	310.75	345.95	376.32	528.28	524.65	544.91
Closing GFA	1,551.72	1,658.01	1,753.07	2,023.73	2,489.23	2,678.67	3,345.16	3,627.53	3,955.98	4,036.24	4,320.27	4,637.58	4,948.34	5,294.28	5,670.60	6,198.88	6,723.53	7,268.44
Average GFA	1,542.36	1,604.87	1,705.54	1,888.40	2,256.48	2,583.95	3,011.92	3,486.35	3,791.76	3,996.11	4,178.26	4,478.93	4,792.96	5,121.31	5,482.44	5,934.74	6,461.20	6,995.98
Less: Average Consumer Contribution	Not considered as per PDP					160.91	197.21	243.05	292.61	327.63	368.56	426.21	483.29	557.26	631.07	700.72	760.83	813.66
Average GFA net of CC	1,542.36	1,604.87	1,705.54	1,888.40	2,256.48	2,423.05	2,814.71	3,243.30	3,499.15	3,668.49	3,809.70	4,052.72	4,309.67	4,564.05	4,851.37	5,234.02	5,700.38	6,182.33
Average rate of depreciation	6.69%	6.69%	6.69%	6.69%	6.69%	5.11%	3.60%	3.60%	3.60%	3.60%	3.67%	3.68%	3.69%	3.70%	3.72%	4.77%	4.55%	4.56%
Opening bl of Accum Dep (as per transfer scheme)	383.00																	
Depreciation	76.92	103.81	110.92	117.28	135.39	123.88	101.33	116.76	125.97	132.07	139.82	149.14	159.03	168.87	180.47	249.55	259.31	281.91
Depreciation on Consumer Contribution - SC judgment dtd 18.10.2022						8.23	7.10	8.75	10.53	11.79								
Accumulated Depreciation on Decapitalised Assets during the year		-	0.07	3.34	2.53	6.13	0.49	5.00	4.93	72.38	8.73	7.98	20.74	22.84	21.19	29.20	47.20	63.76
Depreciation - net of decap	76.92	103.81	110.85	113.94	132.86	125.97	107.94	120.51	131.57	71.48	131.09	141.16	138.29	146.03	159.28	220.35	212.11	218.15
Accumulated Depreciation	459.92	563.73	674.58	788.52	921.38	1,047.35	1,155.29	1,275.80	1,407.37	1,478.85	1,609.94	1,751.10	1,889.39	2,035.42	2,194.70	2,415.05	2,627.16	2,845.31

Table 3. 4: Revised Regulated Rate Base (Rs. Cr.)

Particulars	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
OCFA	2,489.23													
Opening Balance of Working Capital	71.85													
Accumulated Depreciation (net of Decapitalisation)	921.38													
Accumulated Consumer Contribution	149.25													
RRB Opening		1,490.45	1,759.38	2,295.32	2,428.45	2,549.42	2,552.04	2,821.47	3,073.70	3,243.31	3,504.47	3,541.97	3,839.09	4,166.24
AAB		40.16	509.26	119.47	140.16	(4.55)	84.42	129.38	105.07	119.38	149.96	235.70	264.55	269.10
Investments Capitalized		189.44	666.49	282.37	328.45	80.26	284.03	317.31	310.75	345.95	376.32	528.28	524.65	544.91
Depreciation		132.10	108.43	125.51	136.50	143.86	139.82	149.14	159.03	168.87	180.47	249.55	259.31	281.91
Accumulated Depreciation on Decapitalised Assets during the year		6.13	0.49	5.00	4.93	72.38	8.73	7.98	20.74	22.84	21.19	29.20	47.20	63.76
AAD		-	-	-	-	-	-	-	-	-				
Consumer Contribution		23.31	49.29	42.40	56.71	13.33	68.53	46.77	67.40	80.54	67.08	72.22	48.00	57.66
Change in WC		228.77	26.68	13.67	(19.19)	7.17	185.02	122.84	64.54	141.79	(112.46)	61.42	62.60	74.15
RRB Closing		1,759.38	2,295.32	2,428.45	2,549.42	2,552.04	2,821.47	3,073.70	3,243.31	3,504.47	3,541.97	3,839.09	4,166.24	4,509.49
RRB (i)		1,739.30	2,040.69	2,368.72	2,479.34	2,554.31	2,779.27	3,009.01	3,190.77	3,444.78	3,466.99	3,721.24	4,033.97	4,374.94

Table 3. 5: Revised Return on Capital Employed (Rs. Cr.)

RRBi (Capex)	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
RRB Opening		1,418.60	1,458.76	1,968.02	2,087.48	2,227.65	2,223.10	2,307.52	2,436.89	2,541.96	2,661.34	2,811.29	3,047.00	3,311.55
AAB		40.16	509.26	119.47	140.16	(4.55)	84.42	129.38	105.07	119.38	149.96	235.70	264.55	269.10
Investments Capitalized		189.44	666.49	282.37	328.45	80.26	284.03	317.31	310.75	345.95	376.32	528.28	524.65	544.91
Depreciation		132.10	108.43	125.51	136.50	143.86	139.82	149.14	159.03	168.87	180.47	249.55	259.31	281.91
Accumulated Depn on Decap Assets		6.13	0.49	5.00	4.93	72.38	8.73	7.98	20.74	22.84	21.19	29.20	47.20	63.76
AAD		-	-	-	-	-	-	-	-	-	-	-	-	-
Consumer Contribution		23.31	49.29	42.40	56.71	13.33	68.53	46.77	67.40	80.54	67.08	72.22	48.00	57.66
RRB Closing		1,458.76	1,968.02	2,087.48	2,227.65	2,223.10	2,307.52	2,436.89	2,541.96	2,661.34	2,811.29	3,047.00	3,311.55	3,580.64
RRB (i)		1,438.68	1,713.39	2,027.75	2,157.57	2,225.37	2,265.31	2,372.21	2,489.43	2,601.65	2,736.31	2,929.15	3,179.27	3,446.09
Equity (limiting to 30% of RRBi)		431.60	514.02	608.33	647.27	667.61	679.59	711.66	746.83	780.49	820.89	878.74	953.78	1,033.83
Debt (limiting to 70% of RRBi)		1,007.08	1,199.37	1,419.43	1,510.30	1,557.76	1,585.71	1,660.54	1,742.60	1,821.15	1,915.42	2,050.40	2,225.49	2,412.27
Closing Equity and free reserves balance as per net worth of the DISCOM	543.31	105.20	5.09	189.54	570.33	1,302.18	1,287.00	1,295.00	1,357.42	1,424.88	1,332.07	1,477.45	1,778.00	2,088.00
Actual Equity including free reserve		324.26	55.15	97.32	379.94	936.26	1,294.59	1,291.00	1,326.21	1,391.15	1,378.48	1,404.76	1,627.73	1,933.00
Equity now considered for WACC (min of normative equity and actual equity)		324.26	55.15	97.32	379.94	667.61	679.59	711.66	746.83	780.49	820.89	878.74	953.78	1,033.83
Debt - balancing figure		1,114.43	1,658.25	1,930.44	1,777.63	1,557.76	1,585.71	1,660.54	1,742.60	1,821.15	1,915.42	2,050.40	2,225.49	2,412.27
re (capex)		16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%
additional re on account of AT&C incentive										0.54%	1.32%			
rd as per judgment in Appeal 61 & 62 of 2012 for 1st MYT control period		10.34%	10.81%	9.24%	10.34%	12.03%	9.99%	10.24%	10.44%	10.47%	10.47%	13.01%	13.16%	12.52%
WACC		11.62%	10.98%	9.56%	11.34%	13.22%	11.79%	11.97%	12.11%	12.29%	12.52%	13.91%	14.01%	13.56%
ROCE -Capex		167.11	188.08	193.94	244.60	294.22	267.15	283.91	301.42	319.75	342.72	407.36	445.48	467.43
RRBi (WC)														
RRB Opening		71.85	300.62	327.30	340.96	321.77	328.94	513.96	636.80	701.35	843.14	730.68	792.10	854.69
Change in WC		228.77	26.68	13.67	(19.19)	7.17	185.02	122.84	64.54	141.79	(112.46)	61.42	62.60	74.15
RRB Closing		300.62	327.30	340.96	321.77	328.94	513.96	636.80	701.35	843.14	730.68	792.10	854.69	928.84
RRB (i)		300.62	327.30	340.96	321.77	328.94	513.96	636.80	701.35	843.14	730.68	792.10	854.69	928.84
Considering Equity funding normative 30% for 1st MYT - APTEL judgment 61 & 62 of 2012		90.19	98.19	102.29	96.53	98.68								
Debt funding normative 70% for 1st MYT/ Thereafter 100%		210.43	229.11	238.67	225.24	230.26	513.96	636.80	701.35	843.14	730.68	792.10	854.69	928.84
re (WC)		16%	16%	16%	16%	16%								
rd as per judgment in Appeal 61 & 62 of 2012 for 1st MYT control period ; and 171 of 2012 for 2nd MYT Control period		10.34%	10.81%	9.24%	10.34%	12.03%	14.34%	13.98%	14.09%	13.86%	13.56%	13.06%	12.22%	11.74%
WACC (WC)		12.04%	12.37%	11.27%	12.04%	13.22%	14.34%	13.98%	14.09%	13.86%	13.56%	13.06%	12.22%	11.74%
RoCE - WC		36.19	40.48	38.42	38.73	43.49	73.70	89.02	98.82	116.86	99.08	103.45	104.44	109.05
Total RoCE		**203.30**	**228.56**	**232.36**	**283.33**	**337.71**	**340.85**	**372.93**	**400.24**	**436.61**	**441.80**	**510.80**	**549.92**	**576.47**

Table 3. 6: Revised Annual Revenue Requirement (Rs. Cr.)

Annual Revenue Requirement	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Cost of Power Purchase						2,527.60	2,615.56	3,558.01	4,506.40	5,614.95	5,561.73	5,873.21	6,781.39	6,176.81	6,718.54	6,738.26	7,231.97	8,006.99
Operation & Maintenance Costs						355.04	324.86	460.66	407.17	436.84	464.89	501.87	551.62	591.12	621.16	844.37	928.70	963.94
Impact for 11 months on O&M Expenses						10.76												
R&M and A&G expenses - as allowed in July 2014 Order			15.73	(3.37)	6.62													
Employee Expenses for FY 2004-05, FY 2005-06 and FY 2006-07(Aug2017 TO)			(15.73)	6.92	12.29													
Depreciation (including AAD)	(0.00)	0.00	0.00	0.11	9.42	132.10	108.43	125.51	136.50	143.86	139.82	149.14	159.03	168.87	180.47	249.55	259.31	281.91
Other Expenditure						-	3.77	1.32	4.58	4.71	1.01	2.37	2.89	3.15	-	51.89	37.68	-
Additional RoE /(Recovery) on account of less actual equity as per audited financial statements	(1.75)	(7.69)	(5.66)	(3.91)	(19.92)													
Return on Capital Employed (incl Supply Margin)						203.30	228.56	232.36	283.33	337.71	340.85	372.93	400.24	436.61	441.80	510.80	549.92	576.47
Incentive/(Disincentive) on AT&C						(6.97)												
Income Tax Provision						-	-	-	15.13	29.92	14.78	5.29	29.90	14.46	19.79	31.22	45.37	35.01
Income Tax on account of revision in depreciation rate in PDP																		
Review Order dated 24.04.2012																		
DTL Claim as treated in TO - Aug 2011								95.72										
DVB Arrears						64.50												
Reactive Energy Charges					0.66	(0.66)												
Less: Penalty on account of Cash payment recieved greater than Rs.4,000/-												21.34	1.62	0.00				
Less:Penalty due to non fulfilment of RPO upto FY 2015-16														28.43				
Less: Interest & Other Expenses Capitalized						4.27	-	-	-	-								
Less: Income from open Access																	25.76	51.53
Less: Non Tariff Income						80.94	177.80	151.35	136.87	224.92	199.91	217.22	164.27	183.10	150.44	208.23	209.62	174.06
Aggregate Revenue Requirement	**(1.75)**	**(7.69)**	**(5.66)**	**(0.25)**	**9.07**	**3,200.46**	**3,103.38**	**4,322.23**	**5,216.24**	**6,343.07**	**6,323.16**	**6,666.25**	**7,759.18**	**7,179.49**	**7,831.32**	**8,217.87**	**8,817.57**	**9,638.75**

Table 3. 7: Revised Revenue (Surplus)/Gap for the policy Direction Period (Rs. Cr.)

Particulars	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Opening Balance Revenue (Surplus)/Gap		(1.75)	(9.60)	(16.12)	(12.77)
Loss on retirement of assets allowed in ARR				5.06	1.27
Adjustment in Revenue (surplus)/Gapduring the year	(1.75)	(7.69)	(5.66)	(0.25)	9.07
carrying cost rate	9%	9%	9%	9%	9%
Carrying Cost on opening balance	-	(0.16)	(0.86)	(1.45)	(1.15)
Closing Balance Revenue (Surplus)/Gap	(1.75)	(9.60)	(16.12)	(12.77)	(3.58)

Table 3. 8: Revised Revenue (Gap)/Surplus for the period (Rs. Cr.)

Particulars	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Aggregate Revenue Requirement						3,200.46	3,103.38	4,322.23	5,216.24	6,343.07	6,323.16	6,666.25	7,759.18	7,179.49	7,831.32	8,217.87	8,817.57	9,638.75
Revenue Available towards ARR						2,877.56	3,109.13	3,408.33	3,929.66	4,572.58	6,048.65	6,877.19	7,598.77	8,147.22	8,130.09	8,498.66	9,124.99	9,095.27
Revenue Surplus/ (Gap) for the year						(322.90)	5.75	(913.90)	(1,286.58)	(1,770.49)	(274.51)	210.94	(160.41)	967.73	298.77	280.79	307.42	(543.48)
Opening balance of Revenue Gap		(1.75)	(7.69)	(5.66)	(12.77)	(404.45)	(910.04)	(1,125.12)	(2,282.34)	(3,955.58)	(6,569.87)	(7,695.89)	(8,426.84)	(9,348.47)	(9,133.88)	(9,526.45)	(10,097.07)	(10,395.75)
Adjustment in opening balance of revenue gap - Error																		
Adjustment in Opening balance of RG on account of PDP adjustments						3.58												
Adjustment of Contingency reserve on Revenue Gap									28.91									
Additional impact of PPI Aug 17 TO																		
AT&C Loss for FY 2008-09							*(14.07)*											
Interest De-Capitalisation						*(4.27)*												
RoE and Interest of Loan for 11 months FY 2007-08						*(63.26)*												
Reactive Energy Charges									*(0.66)*									
Short term gain						*(2.10)*	*(6.28)*	*(1.53)*	*(1.21)*	*(4.11)*	*(6.68)*	*(7.67)*						
SLD Charges												*(41.35)*						
Bad Debts recovered									*(1.21)*	*(6.68)*	*(5.35)*	*(2.59)*						
Additional impact of PPI Mar 18 TO																		
Non-submission of arrears by Petitioner billed for Anta, Auraiya and Dadri Gas stations after FY 2011-12															*(19.89)*			
Considering Pension Trust by Petitioner amount while computing Rebatable amount for FY 2014-15															*(3.78)*			
Revenue Adjustment on account of over-achievement of AT&C Loss for FY 2008-09							*(42.52)*											
Penalty on account of cash collection over & above Rs. 4000 for FY 2013-14												*(8.87)*						
Merit Order Despatch for FY 2013-14 considering Must Run Plants												*(35.16)*						
Efficiency Factor from FY 12 to FY15 - APTEL Judgment dtd.	*Included in O&M expenses*																	
FRSR & Non-FRSR Employee costs for MYT Period - APTEL Judgment dtd. 31/10/2017	*Included in O&M expenses*																	
Payment to VRS Optees - APTEL judgment in Appeal NO. 61&	*Included in O&M expenses*																	
Interest on inter-company loan (rectified as already considered in NTI)													-	-				
Additional impact of PPI Aug 20 TO																		
Error in consideration of rebate from DTL as NTI during FY 2013-14;												*(14.86)*						
Omission to deduct Rs.27.82 Cr. LPSC (FY 2008-09) from Revenue;							*(13.39)*											
Error in consideration of impact on account of Merit Order Dispatch for FY 2013-14												*(52.12)*						
Omission to withdraw/Recall the efficiency factor for FY 2015-16;	*Being adjusted in O&M expenses*																	
Error in carrying cost on account of Anta, Auraiya and Dadri Gas Stations for arrears upto FY 2012-13											*(17.74)*	*(2.55)*	*0.34*	*0.06*	*19.89*			
Error in considering normative rebate for power drawn from SECI for the year 2016-17;															*(0.49)*			
Recovery of O&M for FY 2017-18																*1.25*		
Advance from consumers erroneously considered in revenue for FY 2017-18																*6.29*		

Particulars	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Additional impact of PPI Sep 21 TO																		
Revision of AT&C loss Trajectory for 2nd MYT Period										*(57.29)*	*(58.63)*	*(37.94)*						
Physical verification FY 2017-18 CAPEX (including adjustment of penalty on account of CAPEX)																*(3.13)*	*(11.01)*	
IEX FEE & Reactive Charges																	*(6.19)*	
Property Tax for FY 2016-17															*(16.10)*			
Net Metering																*(1.08)*		
1% Adjustments																*(26.46)*		
Depreciation as per 246/2014	*Addressed in respective Depreciation, RRB, RoCE in view of revision of capitalisation*																	
Working Capital as per MYT Reg	*Addressed in respective Depreciation, RRB, RoCE in view of revision of capitalisation*																	
Error in considering depreciation while computing ARR	*Addressed in respective Depreciation, RRB, RoCE in view of revision of capitalisation*																	
Additional impact of Prioir period Items in Current Order																		
Change in AT&C methodology on account of Collection Efficiency & Enforcement unit and revision of AT&C losses for FY 2009-10 using actual kwh figures						*(33.62)*	*(14.56)*	*(21.63)*	*(20.29)*	*(34.50)*	*(15.05)*	*(23.08)*	*(42.56)*	*(38.12)*	-	*(0.18)*	*(6.27)*	*(4.98)*
Disallowance of Fringe Benefit Tax							*(1.73)*											
FRSR salary								*(1.11)*	*(14.61)*	*(25.99)*								
Rate of Interest on Term loans for FY 2007-08 to FY 2011-12 as per APTEL judgment in Appeal no. 61 & 62 of 2012; rate of interest on working capital as per APTEL judgment in Appeal no. 171 of 2012;								*Effect given while computing RoCE*										
Bank Charges/ syndication fees											*(37.04)*	*(35.75)*	*(25.55)*	*(6.72)*	*(11.09)*			
Service tax FY 12-13 to FY 16-17											*(5.53)*	*(9.61)*	*(12.46)*	*(20.11)*	*(23.39)*			
Financing Cost of LPSC for FY 2007-08 to FY 2016-17 as per interest rate of Working Capital								*Revised in NTI due to revision in WC RoI*										
License Fees paid on Assets						-	-	-	-	-	*0.23*	*0.09*	*0.19*	*0.20*	*(0.60)*	-	-	-
Efficiency Factor FY 2010-11												*Adjusted in O&M expenses*						
Disallowance of PPC on account of MoD for FY 2013-14												*(44.74)*						
Write back of misc provisions						-	-	*(14.40)*	-	-	*(1.84)*	*(5.81)*	*(4.73)*	*(21.56)*	*(2.78)*	*(3.03)*	*(24.01)*	*(4.57)*
Loss on retirement of assets upto FY 2019-20				(5.06)	(1.27)	*(2.54)*	*(2.70)*	*(4.07)*	*(4.60)*	*(13.80)*	*(5.42)*	*(6.54)*	*(6.27)*	*(12.35)*	*(10.50)*			
Force scheduling (RP 63/2019)																*(1.12)*	*(0.02)*	*(0.04)*
Trading Margin for Banking Transactions(RP 60/2021)																		*(0.37)*
Opening balance of Revenue (Gap)/Surplus						(400.87)	(910.04)	(1,125.12)	(2,253.43)	(3,955.58)	(6,569.87)	(7,695.89)	(8,427)	(9,348)	(9,134)	(9,526)	(10,097)	(10,396)
Revenue surplus/(Gap) during the year						(428.69)	(89.50)	(956.64)	(1,329.17)	(1,912.86)	(427.57)	(117.60)	(251.46)	869.13	230.04	253.33	259.92	(553.43)
Net addition to CSD during the year																		
Adjustment on account of 8%surcharge											298.50	507.45	579.57	619.16	649.19	686.97	721.00	728.87
Net Revenue (Gap)/Surplus during the year						(428.69)	(89.50)	(956.64)	(1,329.17)	(1,912.86)	(129.07)	389.85	328.11	1,488.29	879.23	940.30	980.92	175.44
Closing Revenue (gap)/Surplus						(829.56)	(999.54)	(2,081.77)	(3,582.60)	(5,868.44)	(6,698.94)	(7,306.04)	(8,098.73)	(7,860.18)	(8,254.66)	(8,586.15)	(9,116.15)	(10,220.30)
Average balance of Revenue (gap)/Surplus						(615.21)	(954.79)	(1,603.44)	(2,918.01)	(4,912.01)	(6,634.40)	(7,500.96)	(8,262.79)	(8,604.33)	(8,694.27)	(9,056.30)	(9,606.61)	(10,308.02)
Rate of carrying cost	9%	9%	9%	9%	9%	13.08%	13.15%	12.51%	12.78%	14.28%	15.03%	15.01%	15.13%	14.80%	14.63%	13.62%	13.32%	12.59%
Carrying cost						(80.49)	(125.58)	(200.57)	(372.98)	(701.43)	(996.95)	(1,125.59)	(1,249.75)	(1,273.70)	(1,271.80)	(1,233.47)	(1,279.60)	(1,297.78)
Penalty due to delay in implementation of GIS mapping												4.79						
Additional Impact of past period True up - Net PPC earlier disallowed for Anta, Auriya & Dadri Power stations (July 2019 TO)																*(223.96)*		
Pension Trust Deficit																*(53.49)*		
Net Closing Balance of (Gap)/Surplus						**(910.04)**	**(1,125.12)**	**(2,282.34)**	**(3,955.58)**	**(6,569.87)**	**(7,695.89)**	**(8,426.84)**	**(9,348.47)**	**(9,133.88)**	**(9,526.45)**	**(10,097.07)**	**(10,395.75)**	**(11,518.08)**

ENERGY SALES

PETITIONER`S SUBMISSION

3.105 The Commission in its Tariff Order for FY 2020-21, had projected Energy to be Billed of 11846 MU. Against the same, the Petitioner has actually billed 11077.40 MU as Sale of Energy including enforcement of 45.53 MU. The category-wise comparison between Projected Energy Sale and Actual Energy Billed is as follows:

Table 3. 9: Petitioner Submission - Category wise billed energy sale (Projected vis-a-vis Actual) for FY 2020-21

Sr. No.	Category	Projected Energy Sales	Actual Energy Sales
		MU	MU
1	Domestic including 11kV and staff	7683.0	7667.1
2	Non-Domestic	2745.0	2200.5
3	Industrial	447.0	420.5
4	Agriculture & Mushroom	21.0	22.7
5	Public Utilities	669.0	561.3
6	DIAL	72.0	15.3
7	Adv. & Hoardings	1.0	0.6
8	Temporary Supply	95.0	108.8
9	Charging Stations for EV	39.0	19.4
10	Others*	75.0	61.3
11	**Total**	**11846.0**	**11077.4**

** Enforcement, Own Consumption and Net Metering*

3.106 It is submitted that Regulation-152 of the Tariff Regulations, 2017 provides that true up of ARR for Distribution (Wheeling & Retail Supply) shall be conducted on variation in Revenue and Sales of the Distribution Licensee based on projected Revenue and Sales vis-à-vis actual Revenue and Sales. The Petitioner, therefore requested the Commission to carry out the true-up of the variation in the Revenue and Expenditure for FY 2020-21. The quantum of Energy Sales is an uncontrollable factor and therefore, any variation and its impact thereto ought to be allowed by the Commission.

3.107 The Petitioner has submitted the category-wise bifurcation of Energy Sales during FY 2020-21 for Truing up as follows:

Table 3. 10: Petitioner Submission - Category-wise Energy Sales for Truing-up during FY 2020-21 (MU)

S. No.	Category	Load	Consumers	Energy Sales
		MW	No.	MU
1	**Domestic**	**6147.2**	**2367648.0**	**7667.1**
1.1	Domestic	6024.5	2363140.0	7433.6
1.2	SPD for GHS (CGHS)	87.3	204.0	188.2
1.3	Worship & Hospital	19.6	19.0	25.2
1.4	DVB Staff	15.9	4285.0	20.1
2	**Non-Domestic**	**2484.1**	**347357.0**	**2200.5**
2.1	Non-Domestic LT (up to 3kVA)	370.5	229456.0	226.3
2.2	Non-Domestic LT (above 3kVA)	1417.4	116939.0	1209.0
2.3	Non-Domestic HT	696.2	962.0	765.2
3	**Industrial**	**290.2**	**5332.0**	**420.5**
3.1	Industrial LT	199.4	5163.0	256.6
3.2	Industrial HT	90.8	169.0	163.9
4	**Agriculture**	**31.2**	**5953.0**	**22.5**
5	**Mushroom Cultivation**	**0.2**	**20.0**	**0.2**
6	**Public Utilities**	**315.4**	**10678.0**	**561.3**
6.1	Public Lighting	48.0	6858.0	139.3
6.2	Delhi Jal Board (DJB)	121.9	3811.0	234.7
6.3	Delhi Metro (DMRC)	145.5	9.0	187.2
7	**Delhi Airport (DIAL)**	**51.3**	**1.0**	**15.3**
8	**Advertisement and Hoardings**	**1.5**	**814.0**	**0.6**
9	**Charging Stations for EV**	**9.8**	**1083.0**	**19.4**
9.1	EV Charging at LT	9.4	1082.0	19.2
9.2	EV Charging at HT	0.4	1.0	0.3
10	**Self-Consumption**	**12.6**	**474.0**	**15.7**
11	**Temporary Supply**			**108.8**
12	**Enforcement**			**45.5**
	Total	**9343.5**	**2739360.0**	**11077.4**

3.108 Further, the Commission in its Tariff Order for FY 2020-21 had projected total Revenue of Rs. 8851 Cr. out of which Rs. 8195 Cr. had been projected towards Fixed Charges and Energy Charges and balance Rs.656 Cr. *(i.e., 8% Recovery Assets Surcharge to be applied on fixed and energy charges)* had been projected towards recovery of Carrying Cost and accumulated Revenue Gap. Category wise Billed Revenue projected for FY 2020-21 is as follows:

Table 3. 11 Petitioner Submission - Category wise Projected Sales and Revenue for FY 2020-21

Sr. No.	Category	Projected Energy Sales	Fixed Charges	Energy Charges	Total Charges	Avg. Billing Rate	Regulatory Assets Surcharge
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. /Unit	Rs. Cr.
1	Domestic	7683.0	498.0	3419.0	3917.0	5.10	313.4
2	Non-Domestic	2745.0	802.0	2309.0	3111.0	11.33	248.9
3	Industrial	447.0	94.0	346.0	440.0	9.84	35.2
4	Agriculture & Mushroom	21.0	4.0	3.0	7.0	3.33	0.6
5	Public Utilities	669.0	71.0	418.0	489.0	7.31	39.1
6	DIAL	72.0	15.0	53.0	68.0	9.44	5.4
7	Advertisement and Hoardings	1.0	1.0	1.0	2.0	20.00	0.2
8	Charging Stations for EV	39.0	0.0	17.0	17.0	4.36	1.4
9	Others	170.0	13.0	170.0	183.0	10.76	14.6
10	**Total**	11846.0	1499.0	6736.0	8236.0	6.95	658.9
11	**Revenue at 99.5% Collection Efficiency**		**1491.5**	**6702.3**	**8194.8**	**6.92**	**655.6**

3.109 Against the said projected Billed Revenue, the Petitioner has actually Billed Revenue *(net of E. tax and Pension Trust Surcharge)* of Rs. 8700 Cr. at approved Retail Supply Tariffs.

3.110 The Petitioner has submitted the category wise and component wise Revenue Billed during the year as follows:

Table 3. 12: Petitioner Submission - Actual Energy Sales and Revenue for FY 2020-21

Sr. No.	Category	Energy Sales	Fixed Charges	Energy Charges (inc. Other)	PPAC	Total Charges	Avg. Billing Rate	Regulatory Assets Surcharge
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./Unit	Rs. Cr.
1	Domestic	7667.1	466.0	3220.4	355.9	4042.3	5.27	295.0
2	Non-Domestic	2200.5	700.8	1899.5	266.4	2866.7	13.03	216.3
3	Industrial	420.5	84.4	350.5	46.0	480.8	11.43	37.2
4	Agriculture & Mushroom	22.7	5.4	3.8	1.0	10.2	4.48	0.7
5	Public Utilities	561.3	80.2	361.2	47.5	488.8	8.71	41.0
6	DIAL	15.3	3.5	11.4	1.5	16.5	10.77	10.4
7	Adv. & Hoardings	0.6	0.3	0.5	0.1	0.9	15.44	0.1
8	Charging Stations for EV	19.4	0.0	8.7	1.0	9.7	4.99	0.7

Sr. No.	Category	Energy Sales	Fixed Charges	Energy Charges (inc. Other)	PPAC	Total Charges	Avg. Billing Rate	Regulatory Assets Surcharge
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./Unit	Rs. Cr.
9	Others	170.1	27.8	128.0	14.6	170.4	10.02	12.3
10	**Total**	**11077.4**	**1368.3**	**5984.0**	**733.9**	**8086.3**	**7.30**	**613.6**

COMMISSION ANALYSIS

3.111 The Commission during the Prudence Check and based on the verification of the Category-wise Sales data from the Petitioner's SAP system with the Books of Accounts for FY 2020-21 by the Consultant, validated the billing database. The Commission observed as follows:

OWN CONSUMPTION

3.112 Regulations 23(2) and 23(3) of *DERC (Business Plan) Regulations, 2019* stipulates:

"23(2) The Distribution Licensees shall be allowed own (Auxiliary) consumption, at Zero Tariff for actual recorded consumption subject to a maximum of 0.25% of total sales to its retail consumers for the relevant financial year as part of O&M expenses for the relevant year."

"23(3) Actual recorded own (Auxiliary) consumption in excess of 0.25% of total sales to its retail consumers for the relevant financial year, shall be billed at Non Domestic Tariff of respective year's Tariff Schedule and shall form part of revenue billed and revenue collected for the same year."

3.113 The Petitioner has reported actual Self-Consumption of Energy as 15.70 MU which was lower than the Normative Self-Consumption computed at 27.59 MU [*0.25% x (11049.92-15.70)*].

ENFORCEMENT

3.114 Regulation 5(10) of DERC *(Terms and Conditions for Determination of Tariff) Regulations, 2017* states *"any units assessed and billed on account of theft shall only be considered in the year of its realization as specified in Section 126(6) of the Act".*

3.115 Section 126(6) of Electricity Act 2003 states that *"the assessment shall be made at a rate equal to twice the tariff rates applicable for relevant category of services"*.

3.116 The Petitioner has submitted 45.5 MU on account of Enforcement Sales based on Annual Revenue realised on account of Enforcement as Rs. 26.85 Cr.

3.117 During Prudence check session, the Commission sought category wise revenue collected on account of enforcement. Based on the information submitted by the Petitioner the Units Billed on account of Enforcement is calculated by dividing the said amount by twice its category wise Average Billing Rate (ABR) available in the Audited Form-2.1(a), as follows:

Table 3. 13: Enforcement Collection and Units assessed during FY 2020-21

Sr. No.	Category	Revenue Collected (Rs. Cr.)	ABR	2xABR	Units Assessed (MU)
1	Domestic	14.03	5.27	10.54	13.31
2	Non-Domestic	11.90	13.03	26.05	4.54
3	Industrial	0.63	11.43	22.87	0.28
4	Agriculture	0.04	4.46	8.91	0.04
5	EV Charging	0.25	4.99	9.98	0.25
	Amount Collected	**26.85**			**18.44**

3.118 However, as per Hon'ble Supreme Court Judgement dated 18/10/2022 wherein it was directed to consider the Enforcement Sales as *"Assessed Energy"*, accordingly, the Commission has considered the Enforcement units as 45.50 MU to arrive at the Trued-up sales for FY 2020-21 subject to Prudence Check as stipulated in above paras.

NET METERING

3.119 The Commission in its Tariff Order dated 28/08/2020 for True-up of FY 2018-19 has decided the treatment of Net Metering as follows:

"NET METERING

3.73 During prudence check session for True up of FY 2018-19, the methodology for treatment of consumption through Net Metering arrangement was discussed with the Distribution Licensees. The Commission observed that since Net Metering consumers are connected to the network of Distribution Licensees, mainly at LT

level, therefore the treatment followed by Distribution Licensees to consider the consumption through Net Metering in Sales is not correct. Net Metering consumers are not new category of consumers, they are existing consumers opting Net Metering arrangement through bidirectional feature i.e., they can export as well import with the Distribution Licensee Grid. Considering their consumption in sales leads to factoring such consumption for Distribution Loss computation which is technically not correct as these Net Metering consumers are embedded in Distribution Licensee Grid itself.

3.74 Further, Regulation 9 of Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014 stipulates "(7) At the end of the each Financial Year, any net energy credits, which remain unadjusted, shall be paid for by the distribution licensee to the consumers as per the rates notified by the Commission from time to time."

3.120 The details of Net Energy credits were sought from the Petitioner vide email dated 5/06/2022 and the same was replied by the Petitioner vide its email dated 7/06/2022 as follows:

Sr. No.	Particulars	Details
A	Gross Generation (MU)	23.42
B	Off-set in Billing/Self-consumed by the Consumer (MU)	20.63
C	Balance units settled at APPC as mandated under Net Metering Regulations, 2014 at the end of FY 2020-21 (MU)	2.79

3.121 Accordingly, the Commission has considered Net Energy credits which remain unadjusted during end of FY 2020-21 as per Average Power Purchase Cost of the Petitioner in its Power Purchase cost.

ADJUSTMENT IN BILLING BY MORE THAN 1%

3.122 The Commission has issued directive 6.8 in Tariff Order dated 31/08/2017 which states as follows:

"6.8. The Commission directs the Petitioner to restrict the adjustment in units billed on account of delay in meter reading, raising of long duration provisional bills etc. to a maximum of 1% of total units billed."

3.123 During True-up of FY 2018-19, the Commission in it's Tariff Order dated 28/08/2020 had deliberated the issue of the adjustment in billing by more than 1% considering various aspects like Contra Entries/Invoice Reversals, Provisional Billing, Open Access and other adjustments as follows:

"3.62. The Commission *conducted prudence check session with the Petitioner on 29/07/2020 related to compliance of the above mentioned directive. Further, based on the data submitted by the Petitioner on 11/08/2020, it was observed that adjustments are mainly on account of following heads:*

i) Bills raised in system but not served to consumers (Contra Entries)

ii) Bills on account of provisional meter reading

iii) Bills raised to Open Access Consumers

iv) Other adjustments

3.63 Contra entries are entries which are posted and are subsequently reversed in the SAP billing system in FY 2019-20. The Petitioner has numerous contra entries aggregating to 94.63 MU.

3.64 Based on the submission of the Petitioner, it is observed that there are 3 main reasons due to which such entries are posted.

i) ***Multi-meter Consumers on Single Contract Account -*** *There are consumers who are having multiple power injection points and are metered at multiple points but are billed on a single Contract Account. This is done in order to comply to the directive billed to bill such consumers on simultaneous maximum demand. In such cases, each meter records independent MDI and energy consumption simultaneously. In preparation of bills in the SAP system the billing system billing consumption is added arithmetically and the MDI is required to be maintained simultaneously for all the meters against one CA number to raises the bill. The contra entries are created on account of following:*

a) MDI as recorded in the individual meters against the particular Consumer

Account get added. Such bills are reversed and the correct bill is raised on simultaneous MDI as per the direction of the Commission.

b) To capture meter reading data of the balance meters when reading of one or more of the multi-meters is missing in AMR reading data.

Such Contra Entries are in the case of Government consumers viz. DMRC (47.73 MU), CPWD (0.50 MU) and DJB (0.40 MU), where there are multiple meters. All three put together accounts for 51.39% of total contra entries.

Ii) Post audit check – done in compliance with STQC audit and subsequent directive of the Commission –*In the SAP system of the Licensee there is no scope to delete any entry once it is made. In case any correction or alteration is required in the individual consumer account while preparation of the bill, the previous entry passed in the system is required to be reversed and new entry is passed in the system for serving correct bill to the consumer. However, to obviate the chances of erroneous billing and in the interest of the consumers, several precautions have been inbuilt in to the billing software. Some of those precautions were built in pursuant to the directive of the Commission following various billing audit including the once carried out by STQC during the period of December, 2005 to May, 2006 and later in FY 2008-09. Hence, certain precautions are built in to the system for certain preset checks to identify abnormal billing or meter reading, change in tariff category on account of consumers; application/Commission's Order etc. to ensure error free billing to our consumers. The contra entry under the Post Audit Checks aggregates to 28.7 MU which is 30.31% of total Contra Entries. Out of this, 10.7 MU are for Government consumers and 18.0 MU for private consumers.*

ii) ***Processing of name change / transfer of connection requests -*** *During normal course of business, the Petitioner gets thousands of name change / transfer of connection requests from consumers during a financial year. Regulation 17 (1) of the Supply Code Regulations prescribes the procedure that needs to be adopted for executing such name change requests. Sub-regulation (iii) of Regulation 17 (a) reads as under:*

"(iii) The request for transfer of connection shall not be accepted unless all recoverable dues in respect of the concerned connection are fully paid:

Provided that once connection is transferred, no dues / arrears shall be recovered from the new consumer."

In compliance of the aforesaid Regulation and in order to ascertain the total recoverable dues at the time of name change, a special reading is undertaken subsequent to which a final bill is generated. In order to effect the name change, a new CA number needs to be generated. However, the SAP system will allow the new CA to be generated only when the final bill generated is nullified by passing a contra entry. As a result, the Licensee is required to pass such contra entries in compliance of the Provisions of the Supply Code. The aggregate amount of contra entries passed while preparing the final bill is 17.3 MU, which is almost 18.3% of the total contra entries

3.65 Further, the Petitioner has submitted the replies to the Commission's queries that Contra entries do not form part of billing and none of these invoices are ever served to consumers. Further, no payments were received against such invoices.

3.66 From the conjoint reading to Regulations 30 (10) & (11) of DERC (Supply Code and Performance Standards) Regulations, 2017, it is observed that the licensee may raise provisional billing for 2 months after which the consumer may refuse to make the payment until the bill on actual meter reading is raised by the licensee. The Regulations 30 (10) & (11) states as under:

"10) In case, for any reason, to be specifically recorded, the meter is not read/ recorded during a billing cycle, the Licensee shall prepare a provisional bill based on the consumption during the corresponding period in the previous year when readings were taken:

Provided that if the consumption during the corresponding period in the previous year is not available, the Licensee shall take average consumption of preceding three billing cycles or the lesser period when readings were taken.

(11) If the provisional billing continues for more than one consecutive billing cycle, the consumer may refuse to pay the payment until bill is raised by the licensee as per actual meter reading."

3.67 In view of above and based on the information submitted by the Petitioner including quarterly Form 2.1 (a), the Commission has not considered Contra Entries (being counter entries), adjustments related to Open Access consumers and Provisional Billing less than 2 months as adjustments in Units Billed. However, other adjustments submitted by the Petitioner have been considered without sign change (gross) as adjustments indicate total adjustments without +/- nature. ..

3.68 In view of above, the Commission considers the adjustment in sales for the Petitioner at 1.09% for FY 2019-20 and the effect of adjustment in excess of 1% (0.09% x 12506 = 11.61 MU) has been considered as deemed sales and deemed revenue billed of the Petitioner as follows:

Table 3. 14: Deemed sales and Deemed revenue billed on account of adjustments

Particulars	*Units (MU)*
Deemed Units for Adjustment Beyond 1%	*11.61*
ABR	*7.52*
Deemed Revenue Billed	*8.73*

3.124 Based on the above findings during True up of FY 2018-19, the Commission in its Tariff Order dated 28/08/2020 revised the said directive as follows:

"6.8 The Commission directs the Petitioner to restrict the adjustment in units billed on account of delay in meter reading, raising of long duration provisional bills etc. to a maximum of 1% of total units billed. The adjustment in units billed shall be considered on a yearly basis. Further, the adjustment of Contra Entry, adjustment for Open Access consumers and adjustment on account of Provisional Billing related to period till two (2) months shall not be form the part of adjustment in units billed. Further, also the real adjustments/other adjustments shall be considered without sign change i.e. such adjustments either resulting into increase in revenue billed or decreased into revenue billed shall be considered on gross basis rather than net basis."

3.125 The same was also reiterated in the Tariff Order dated 30/09/2021.

3.126 During the prudence check sessions, the Petitioner submitted that the Commission vide its Order dated 7/04/2020 & 4/05/2020 allowed Distribution Licensees to raise the provisional bills due to grim situation of COVID-19 wherein the lockdown was

imposed and actual reading of meters was not possible. Considering the same as exceptional and force majeure, the Commission has decided not to consider the impact of above Orders under 1% adjustment. The impact of the Orders are as follows:

Sr. No.	Particulars	May, 2020	June, 2020	July, 2020	Aug., 2020
A	Gross Sales	922.4	1298.1	2919.3	1514.3
B	Provisional Billing	248.2	148.2	1664.6	327.0
C	% of Provisional Billing	26.91%	11.42%	57.02%	21.59%

3.127 In terms of Regulation 172 of Tariff Regulations, 2017, the Commission in public interest relaxed the direction 6.8 of Tariff Order dated 28/08/2020 and decided to not consider the impact of Order dated 7/04/2020 & 4/05/2020.

3.128 In line with above, the Commission during prudence check sessions analysed the Billing dump, live SAP, quarterly Form 2.1(a) and has not considered the Contra Entries *(being counter entries)*, adjustments related to Open Access consumers and Provisional Billing less than 2 months as adjustments in Units Billed. However, other adjustments submitted by the Petitioner have been considered without sign change (gross) as adjustments indicate total adjustments without +/- nature.

3.129 Accordingly, the adjustments related to adjustments in Units Billed is as follows:

Table 3. 15: Adjustment Sales in Units for FY 2020-21 (MU)

Particulars	Gross Sales	2.1a (Total Adjustment)	Contra Entry	Provisional to Actual billing					Open Access	Other Adjustment			% Adj (Total)	% Adj. Adding + & - both (excluding Contra, Open Access & 2 months Provisional)
				Within a month	Within 2 months	Within a Quarter	More than Quarter but within a Year	More than a Year		J	K	L(Net)		
	A	B	C	D	E	F	G	H	I				(B/A)	(F+G+H+J-K)/A
Quarter-1	2930	(400)	(3)	(173)	(35)	(1)	(0)	(0)	(1)	1	(8)	9	13.65%	0.34%
Quarter-2	5615	(2043)	(4)	(1920)	(96)	(10)	(1)	(0)	(3)	2	(11)	13	36.38%	0.48%
Quarter-3	2524	(81)	(3)	(30)	(15)	(17)	(13)	(0)	(0)	4	(6)	10	3.21%	1.58%
Quarter-4	2536	(50)	(4)	(23)	(9)	(2)	(8)	(0)	(1)	8	(12)	20	1.97%	1.18%
Total	**13605**	**(2573)**	**(15)**	**(2146)**	**(155)**	**(29)**	**(22)**	**(1)**	**(5)**	**14**	**(36)**	**50**	**18.91**	**0.75%**

3.130 Accordingly, after adjusting the impact of DERC Order dated 7/04/2020 & 4/05/2020, it is observed that the Adjustment Sales in units for FY 2020-21 is within the permissible limit of 1% of total units billed.

3.131 Based on the findings indicated in paras above, the Commission considers the Trued-up sales for FY 2020-21 as follows:

Table 3. 16: Commission Approved - Trued Up sales FY 2020-21 (MU)

Sr. No.	Consumer Category	As per Petitioner	As per Commission
1	Domestic	7667.1	7667.10
2	Non-Domestic	2200.5	2200.47
3	Industrial	420.5	420.50
4	Agriculture & Mushroom Cultivation	22.7	22.70
5	Public Utilities (Public Lighting & DJB)	374.0	374.03
6	Delhi International Airport Limited (DIAL)	15.3	15.28
7	Railway Traction	-	-
8	Delhi Metro Rail Corporation (DMRC)	187.2	187.23
9	Temporary Supply	108.8	108.41
10	Advertisement and Hoardings	0.6	0.57
11	Charging Stations for E-Vehicle	19.4	19.45
12	Self-Consumption	15.7	15.74
13	Enforcement	45.5	45.50
14	**Total**	**11077.4**	**11076.97**

DISTRIBUTION LOSS AND COLLECTION EFFICIENCY DURING FY 2020-21:

PETITIONER`S SUBMISSION

3.132 The Petitioner vide its letter dated RA/2021-222/01/A/451 Dated 15/11/2021, has submitted a representation on revision of Distribution Loss target for FY 2020-21 and subsequent year(s) of the business plan period due to the adverse impact of lockdown and COVID-19 pandemic. The Petitioner brought the following facts to the notice of the Commission:

Table 3. 17: Petitioner Submission - Effect of Lockdown and unlock phases on consumption of broad category

Sr. No.	Category	Sales in FY 2019-20 (MU)			Sales in FY 2020-21 (MU)			Growth %		
		Apr-Jun	Jul-Mar	Total	Apr-Jun*	Jul-Mar*	Total	Apr-Jun	Jul-Mar	Total
1	Domestic	2,072	5,622	7,694	2,060	5,607	7,667	-0.6%	-0.3%	-0.4%
2	Non-Domestic	848	1,974	2,822	284	1,917	2,200	-66.6%	-2.9%	-22.0%
3	Industrial	140	395	535	55	366	420	-60.9%	-7.3%	-21.4%
4	DMRC	103	309	412	11	176	187	-89.0%	-43.1%	-54.5%
5	DIAL	56	90	146	3	13	15	-95.1%	-86.1%	-89.5%
6	Others	134	760	894	117	424	541	-12.6%	-44.2%	-39.5%
7	**Total**	**3,353**	**9,150**	**12,503**	**2,530**	**8,502**	**11,032**	**-24.5%**	**-7.1%**	**-11.8%**

*Lockdown phase Apr 20 -Jun 20 and Unlock phase Jul 20 – Mar 21

- Change in Consumption Mix: The category wise consumption-mix is tabulated below Table:

Table 3. 18: Petitioner Submission - Comparison of consumption mix in FY 2020-21 as compared to FY 2019-20

Sr.No.	Category	Consumer Mix (%)		
		FY 2019-20	FY 20-21	Change
1	Domestic	61.5%	69.5%	8.0%
2	Non-Domestic	22.6%	19.9%	-2.6%
3	Industrial	4.3%	3.8%	-0.5%
4	DMRC	3.3%	1.7%	-1.6%
5	DIAL	1.2%	0.1%	-1.0%
6	Others	7.2%	4.9%	-2.2%
7	**Total**	**100.0%**	**100.0%**	

- Change in Proportion of consumption by Consumers drawing power at LT, 11 KV and 33/66 KV voltage Supply: A comparison of Distribution Loss approved by the Commission and change in consumption mix at different voltage level due to COVID-19, is tabulated as follows:

Table 3. 19: Petitioner Submission - Distribution loss and consumption mix at different voltage level

Particulars	Distribution Loss %	Sales in MU		Ratio		Absolute change %
		FY 20	FY 21	FY 20	FY 21	
Supply at 33/66KV	1.02%	558	203	4.46%	1.84%	-2.63%
Supply at 11 KV	2.24%	1743	1,296	13.94%	11.75%	-2.20%
Supply at LT	9.53%	10,202	9,534	81.60%	86.42%	4.82%
Total	**8.10%**	12,503	11,032			

- The Petitioner has submitted that the proportionate consumption in FY 21 in consumption at 33/66 KV and 11 KV voltage level dropped significantly by 2.63% and 2.20% respectively. As mentioned above, Distribution Loss level increased by 0.37% at gross level. The calculation of the same is shown in Table below:

Table 3. 20: Petitioner Submission - Impact of change in LT/HT/EHT mix on Distribution loss

Particulars	Energy Input (Derived)		Sales in MU		Distribution Loss	
	FY 20	FY 21	FY 20	FY 21	FY 20#	FY 21
Supply at 33/66KV	564	205	558	203	1.02%	1.02%
Supply at 11 KV	1783	1325	1743	1296	2.24%	2.24%
Supply at LT	11277	10538	10202	9534	9.53%	9.53%
Total	**13623**	**12068**	**12503**	**11032**	**8.22%**	**8.59%**

** Energy input across different voltage level is derived as per the distribution loss approved by Commission at different voltage level in Tariff order dated 28.08.2020.*

- Adverse impact on enforcement activities for detection, control and realization of theft: The impact of theft on Distribution Loss on realized basis and prospective basis is tabulated in Table below.

Table 3. 21: Petitioner Submission - Impact of Theft on Distribution Loss

Sr.No.	Particulars	UOM	Value
1	Theft impact in Regular Billing	MU	42
2	Energy Input	MU	11932
3	Total Impact of COVID-19 on Distribution loss due to reduced theft activities	%	0.35%

- Reduced capital works for loss reduction activities: During the period of lockdown, the licensee was unable to infuse capex including towards loss reduction activities. Hence, the Distribution Loss target is directly impacted and ought to be increased by

0.32%, as per the calculations contained in Table below:

Table 3. 22: Petitioner Submission - Revision in loss Target for FY 2020-21 due to capital works on loss reduction activities

Particulars	Q1	Q2	Q3	Q4	Total
Sales (MU)	2,530	3,573	2,443	2,486	11,032
Sales (%)	23%	32%	22%	23%	
Distribution loss	9.50%	8.10%	8.10%	8.10%	8.42%

3.133 The Petitioner has submitted that solely due to force majeure factors, its operations have been materially and adversely affected. Further, no amount of due care and diligence on BRPL's part could have prevented the state of affairs which the pandemic presented. Therefore, the Petitioner prayed that this Commission exercises its statutory, regulatory and other enabling powers to revise the Distribution Loss targets for BRPL.

3.134 Further, the Petitioner requested the Commission to revise the Distribution Loss target for FY 2020-21 and its consequent impact in the balance control period as per the methodology proposed in the Table as follows:

Table 3. 23: Petitioner Submission - Proposed request to revise the Distribution loss Target for Control period

Particulars	FY 21	FY 22	FY 23
As per Business Plan Regulation 2019	8.10%	8.00%	7.90%
Add: Impact of change in voltage wise Mix	0.37%		
Add: Impact on Theft and other loss reduction activities.	0.35%		
Add: Impact of reduced Capex in Q1	0.32%		
Proposed Distribution Loss	9.14%	9.04%	8.94%

3.135 The Commission vide its Order dated 08.07.2020 has already declared the COVID-19 pandemic force majeure event. The Petitioner, therefore, requested the Commission to kindly exercise its statutory, regulatory and other enabling powers and allow the impact of these force majeure conditions and revise the Distribution Loss target as per the proposal submitted hereinabove for FY 2020-21 and allow the consequent impact and revise the Distribution Loss target for the balance control period i.e., for FY 2021-

22 and FY 2022-23.

3.136 The Commission in its Business Plan Regulations, 2019 has specified the target for Distribution Loss Level for the current control period (FY 2020-21 to FY 2022-23), relevant extract of the Business Plan Regulations, 2019 is reproduced below:

" Regulation 25 (I) The Distribution Loss target in terms of Regulations 4(9)(a) of the DERC(Terms and Conditions for Determination of Tariff) Regulation 2017 for the Distribution licensees shall be as follows

Table 3. 24: Petitioner Submission - Target for Distribution Loss for the Control Period

Sr.No.	Distribution Licensee	2020-21	2021-22	2022-23
1	**BSES Rajdhani Power Ltd.**	**8.10%**	**8.00%**	**7.90%**
2	BSES Yamuna Power Ltd.	9.00%	8.75%	8.50%
3	Tata Power Delhi Distribution Ltd.	7.90%	7.80%	7.70%
4	New Delhi Municipal Council	9.00%	8.75%	8.50%

3.137 Accordingly, the Petitioner has computed the actual distribution loss level, which is as follows:

Table 3. 25: Petitioner Submission - Distribution loss levels for FY 2020-21

Sr.No.	Particulars	UOM	FY 2020-21
A	Energy Input	MU	11932.8
B	Energy Billed	MU	11077.4
C	Actual Distribution Loss	%	7.17%
D	Target Distribution Loss	%	8.10%
E	Over/ (Under) Achievement	%	0.93%

3.138 Further the 25(4) of the Business Plan Regulation, 2019 provided that *"Any financial impact due to Overachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be shared between the Distribution Licensee and Consumers as follows:*

in case actual Distribution Loss is between the loss target and loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 2/3rd to Consumers and 1/3rd to the Distribution Licensee;*

in case actual Distribution Loss is less than loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 1/3rd to Consumers and 2/3rd to the Distribution Licensee."*

3.139 Based on the above computation of incentive for overachievement of Distribution loss target is tabulated as follows:

Table 3. 26: Petitioner Submission - Computation of Incentive due Distribution Loss overachievement for FY 2020-21

Sr.No.	Particulars	UOM	FY 2020-21
A	Distribution loss Target for Previous Year (PYT)	%	9.50%
B	Distribution loss Target for Current Year (CYT)	%	8.10%
C	Actual Distribution Loss	%	7.17%
D	50% of (PYT - CYT)	%	0.70%
E	CYT-50% of (PYT - CYT)	%	7.40%
F	Energy Input	MU	11932.8
G	Average Power Purchase Cost	Rs./Unit	5.81
H	Total Incentive	Rs. Cr.	64.6
I	Petitioner Share 1 of incentive (less than Loss Target-50%*(PYT-CYT)	Rs. Cr.	16.2
J	Petitioner Share 2 of incentive (up to Loss Target-50%*(PYT-CYT)	Rs. Cr.	10.7
K	**Total Incentive to Petitioner**	**Rs. Cr.**	**26.9**

3.140 The Petitioner has submitted that the Commission has defined the collection efficiency in its Regulation 5(11) of the Tariff Regulations, 2017. The extract of Regulation 5(11) of Tariff Regulations 2017 is reproduced below:

"5 (11) Collection efficiency shall be measured as ratio of total revenue realized to the total revenue billed in same year.
Provided that Revenue realised or revenue billed on account of electricity duty, late payment surcharge, any other surcharge shall be excluded from the computation of collection efficiency"

3.141 **Regulation-26 (1)** of the Business Plan Regulations, 2019 specifies targets for Collection Efficiency from FY 2020-21 to FY 2022-23 at 99.50%. Extract of Regulation 26 of the Business Plan Regulations, 2019is reproduced below:

*"**26. TARGET FOR COLLECTION EFFICIENCY***

(1) The targets for Collection Efficiency for FY2020-21 to FY2022-23 of the Distribution Licensees shall be 99.50%.

(2) The financial impact on account of Collection Efficiency target shall be computed as per the formula specified in Regulation 163 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee.

(3) The financial impact on account of over-achievement in terms of Regulation 164 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee, from 99.50% to 100% shall be shared equally between Consumers and the Distribution Licensees."

3.142 The Petitioner has billed gross amount of Rs.9379.15 Crore during FY 2020-21 which includes amount on account of Electricity Tax, Regulatory Asset Surcharge, and Pension Surcharge. The Revenue Billed considered for the purpose of computation of AT&C losses during FY 2020-21 is tabulated below:

Table 3. 27: Petitioner Submission - Revenue Billed for AT&C Loss True-up for FY 2020-21

(Rs. Cr.)

Sr.No.	Particulars	UOM	FY 20-21
A	Total Revenue Billed As per Form 2.1 A	Rs. Cr.	9379.2
B	Less- Electricity Tax	Rs. Cr.	340.4
C	Less- Regulatory Assets Surcharge	Rs. Cr.	613.6
D	Less- Pension Trust Surcharge	Rs. Cr.	338.9
E	Net Revenue Billed	Rs. Cr.	8086.3

3.143 The Petitioner has collected the gross revenue of Rs.9431.73 Crore during FY 2020-21 which includes collection on account of Electricity Tax, Late Payment Surcharge, Regulatory Assets Surcharge and Pension Trust Surcharge. The Revenue Collected considered for the purpose of computation of AT&C losses during FY 2020-21 is tabulated as follows:

Table 3. 28: Petitioner Submission - Revenue Realised for AT&C Loss True-up for FY 2020-21

(Rs. Cr.)

Sr.No.	Particulars	UOM	FY 20-21
A	Total Revenue Realised as per Form 2.1 A	Rs. Cr.	9431.7
B	Less- Electricity Tax	Rs. Cr.	338.2
C	Less- Regulatory Assets Surcharge	Rs. Cr.	612.3
D	Less- Pension Trust Surcharge	Rs. Cr.	333.5
E	Less- Late Payment Surcharge	Rs. Cr.	35.6
F	Net Revenue Realised	Rs. Cr.	8112.0

3.144 Accordingly, in terms of Regulation 163 of Tariff Regulations, 2017 and Regulation 26(1) of Business Plan Regulations, 2019, the financial impact of overachievement of Collection efficiency target to be passed on to the Petitioner and Consumers is tabulated as follows:

Table 3. 29: Petitioner Submission - Financial Impact of Overachievement of Collection efficiency Target for FY 2020-21

Sr.No.	Particulars	UOM	FY 2020-21
A	Net Revenue Billed	Rs. Cr.	8086.30
B	Net Revenue Realised	Rs. Cr.	8112.00
C	Colle0ction Efficiency	%	100.32%
D	Collection Efficiency Target	%	99.50%
E	Revenue Realised over 99.50% CE Target	Rs. Cr.	66.22
F	**Total Petitioner Share**	Rs. **Cr.**	**46.00**
G	Consumer Share	Rs. Cr.	20.20

COMMISSION ANALYSIS

ENERGY INPUT

3.145 The Petitioner submitted its Energy Input at DISCOMs periphery at 11,932.8 MU. The Commission vide its Letter No. F.3(656)/Tariff-Fin./DERC/2021-22/7212/2153 dated 30/03/2022 directed Delhi SLDC to submit Statement for Energy Input *(net of Open Access and Net Metering if any)*, Station Wise Power Procurement, Short Term Transactions – Exchange, Bilateral, Banking etc., Additional UI Charges and Sustain Deviation Charges for the purpose of True up of FY 2020-21. Accordingly, the SLDC vide its email dated 22/04/2022 has submitted the joint signed statement. It was observed from this statement that Petitioner's consumption based on Special Energy

Meter (SEM) data was 12257.52 MU including Open Access schedule of 416.12 MU. Further, TOWMCL which is embedded generation in BRPL's Grid commercially supplies power to BRPL, TPDDL & Open Access consumer and also generated 0.78 MU from embedded Solar. Therefore, for the purpose of Energy Input, the Commission has considered 90.30 MU as the schedule of TOWMCL to BRPL for FY 2020-21 and 0.78 MU from solar embedded generation as indicated in the joint signed statement.

3.146 It is observed that the Petitioner had filed Review Petition against Tariff Order dated 28/08/2020 and in it they have submitted that DIAL self-generation should not form part of Energy Input of the Petitioner. The Commission in its Review Order dated 23/09/2021 rejected this issue and observed as under:

> *"**Commission's Analysis***
> *8.4.4 It is observed that as mentioned in Para 3.76 of the Tariff Order dated 28.08.2020 that Commission directed Delhi SLDC and the Review Petitioner to submit Joint Signed statement for Energy Input (Net of Open Access and Net Metering) for FY 2018-19.*
> *8.4.5 The said Joint Signed statement was submitted by the Review Petitioner wherein there was separate head of DIAL Solar Own Generation of 7.95 MU. Further, no Single Line Diagram certified by the Delhi SLDC was submitted in the True-up Petition by the Review Petitioner indicating that 7.95 MU of own generation of DIAL is not connected to their Grid. Therefore, the said quantum of 7.95 MUs was considered to be part of Energy input of the Review Petitioner and accordingly, this issue is rejected."*

3.147 Further, during prudence check of FY 2019-20, the Commission directed the Petitioner to submit SLDC verified Single Line Diagram (SLD) clearly depicting that the self-generation does not form part of the Petitioner's grid. The Petitioner vide its E-mail dated 15/03/2021 submitted as follows:

> *"SLDC certified DIAL Self Generation of 7.94 MU for FY 19-20 is enclosed herewith as Annexure 5A, SLD of DIAL own generation (5 MW Solar and 2.14 MW Solar plant) is enclosed herewith as Annexure 5B…."*

3.148 The Commission observes that SLD submitted by the Petitioner was not SLDC verified

for FY 2020-21 as well. Since, the Petitioner has not been able to substantiate the connectivity of DIAL self-generation through SLDC verified SLD, therefore, the Commission deems fit appropriate to consider the same in Energy Input in line with the findings in Review Order dated 23/09/2021, mentioned above.

3.149 In case of net metering, the Commission observed that the net metering is embedded generation and that there shall be no Distribution Loss on account of such energy and has accordingly not considered any energy from net metering consumed by the Consumers directly in the Energy input of the Petitioner.

3.150 Accordingly, the Energy Input of the Petitioner is as follows:

Table 3. 30: Commission Approved - Energy Input for FY 2020-21 (MU)

Sr. No.	Particulars	As per Petitioner	As per Commission
A	SLDC- Total Input Based on SEM Data	11932.8	12,257.52
B	SLDC- Input from TOWMCL- Non Solar		90.30
C	SLDC- Input from Solar		0.78
D	Total (A+B)	11932.8	12,348.60
E	Input from Net Metering of Solar Power	0.0	0
F	SLDC- Open Access Input	0.0	416.12
Actual Input (D+E-F)		**11932.8**	**11,932.48**

DISTRIBUTION LOSS

3.151 Regulation 25(1) of *DERC (Business Plan) Regulations, 2019* specifies the Distribution Loss Targets for FY 2020-21 as follows:

Table 3. 31: Distribution Loss Targets for FY 2020-21

DISTRIBUTION LICENSEE	FY 2020-21
BRPL	8.10%

3.152 Regulation 159 of *DERC (Terms and Conditions for Determination of Tariff) Regulations 2017* states,

> *"159. The Financial impact on account of over achievement or under achievement of distribution loss target shall be computed as under:*
>
> *Incentive or penalty = Q1*(L1-L2)*P*10^6*

Where,

Q1 = Actual Quantum of energy Purchased at Distribution periphery.

L1 = Distribution Loss Target in %

L2 = Actual Distribution Loss in %

P = Trued up Average Power Purchase Cost (APPC) per unit at distribution periphery in (Rs./kWh).”

3.153 Regulation 25(2) of *DERC (Business Plan) Regulations 2019*, states *“The amount for Overachievement/Underachievement on account of Distribution Loss target shall be computed as per the formula specified in the Regulation 159 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee*.”

3.154 Accordingly, the financial impact of overachievement or under-achievement on account of distribution loss target has been determined in accordance with the Regulation 159 of *DERC (Terms and Condition for Determination of Tariff) Regulations, 2017* as follows:

Table 3. 32: Commission Approved - Actual Distribution Loss for FY 2020-21

Sr. No	Particulars	UoM	As per Petitioner	As per Commission	Ref
A	Energy Input	MU	11932.8	11932.48	
B	Energy Billed	MU	11077.4	11076.97	
C	Actual Distribution Loss Level	%	7.17%	7.17%	(A-B)/A
D	Targeted Distribution Loss Level	%	8.10%	8.10%	As per BPR, 2019
E	Average Power Purchase Cost	Rs./Unit	5.81	5.73	
F	Financial Impact of Overachievement or Underachievement	Rs.Cr	64.6	63.65	A*(D-C)*E/10

3.155 Regulation 25(4) of *DERC (Business Plan) Regulations 2019* states,

“Any financial impact due to Overachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be shared between the Distribution Licensee and Consumers as follows:

i. in case actual Distribution Loss is between the loss target and loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 2/3rd to Consumers and 1/3rd to the Distribution Licensee;*

ii. in case actual Distribution Loss is less than loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 1/3rd to Consumers and 2/3rd to the Distribution Licensee."*

3.156 In accordance with the Regulation 25 (4) of *DERC (Business Plan) Regulations 2019,* the sharing of the financial impact of over achievement on account of Distribution Loss target has been computed as follows:

Table 3. 33: Commission Approved - Incentive/Dis-incentive for Distribution Loss

Sr. No.	Particulars	UoM	As per Petitioner	As per Commission	Remarks
A	Distribution Loss Target in previous Year	%	9.50%	9.50%	As per BPR 2019, 24(4)
B	Distribution Loss Target in Current Year	%	8.10%	8.10%	As per BPR 2019, 24(4)
C	Actual Distribution Loss	%	7.17%	7.17%	Table 3. 32
D	50% of (previous year target - current year target)	%	0.70%	0.70%	50%*(A-B)
E	Distribution loss target - 50% of (previous year target - current year target)	%	7.40%	7.40%	B-D
F	Actual Energy Input at Distribution periphery	MU	11932.80	11932.48	
G	Average Power purchase Cost	Rs/kWh	5.81	5.73	Table 3.58
H	Total Incentive	Rs. Cr	64.6	63.65	(B-C)*F*G/10
I	Petitioner Share 1 of incentive (less than Loss Target-50%*(PYT-CYT)	Rs. Cr	16.2	15.96	(B-E)*F*G/10*(1/3)
J	Petitioner Share 2 of incentive (up to Loss Target-50%*(PYT-CYT)	Rs. Cr	10.7	10.51	(E-C)*F*G/10*(2/3)

Sr. No.	Particulars	UoM	As per Petitioner	As per Commission	Remarks
K	**Total Incentive to Petitioner**	**Rs. Cr**	**26.9**	**26.47**	**I+J**
L	Incentive to Consumer	Rs. Cr	37.7	37.18	(B-E)*F*G/10*(2/3) +(E-C)*F*G/10*(1/3)

REVENUE BILLED

3.157 The Regulatory Auditor has verified the Revenue Billed by the Petitioner. Further, during prudence check sessions, the Commission has also verified the Revenue billed by the Petitioner from the Audited Form 2.1 (a), SAP and Audited Books of Accounts (Note 63) for FY 2020-21 and accordingly, the same is approved as follows:

Table 3. 34: Commission Approved - Revenue Billed for FY 2020-21 (Rs. Cr.)

Sr. No.	Consumer Category	As per Petitioner	As per Commission
1	Domestic	4042.3	4042.30
2	Non-Domestic	2866.7	2866.66
3	Industrial	480.8	480.83
4	Agriculture & Mushroom Cultivation	10.2	10.17
5	Public Utilities (Public Lighting & DJB)	329.3	329.32
6	Delhi International Airport Limited (DIAL)	16.5	16.46
7	Railway Traction	-	-
8	Delhi Metro Rail Corporation (DMRC)	159.5	159.51
9	Temporary Supply	144.0	143.98
10	Advertisement and Hoardings	0.9	0.88
11	Charging Stations for E-Vehicle	9.7	9.70
12	Self-Consumption	-0.4	-0.40
13	Net Metering	-	-
14	Enforcement	26.9	26.85
15	Units beyond 1% adjustment	-	-
16	**Net Billing**	**8086.3**	**8086.26**
Add:-			
17	Electricity Duty	340.4	340.40
18	RA Surcharge	613.6	613.60
19	Pension Trust Surcharge	338.9	338.90
20	**Gross Amount Billed**	**9379.20**	**9379.26**

REVENUE COLLECTED

3.158 During the prudence check sessions, the Commission verified the Revenue Collected by the Petitioner from the Audited Form 2.1 (a), SAP and Audited Books of Accounts for FY 2020-21 and the Revenue Collected as approved by the Commission, is as under:

Table 3. 35: Commission Approved - Revenue Collected for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	UOM	As per Petitioner	As per Commission	Ref
A	Actual Revenue realized including Electricity duty/tax, LPSC, Regulatory Surcharge, Pension trust surcharge	Rs. Cr.	9431.70	9431.70	**Note 63 of Annual Audited Accounts for FY 2020-21**
B	Less: LPSC	Rs. Cr.	35.60	35.60	
C	Less: Electricity Tax	Rs. Cr.	338.20	338.24	
D	Less: 8% RA Surcharge	Rs. Cr.	612.30	612.35	
E	Less: Pension Surcharge	Rs. Cr.	333.50	333.50	
H	**Net Revenue Realised**	**Rs. Cr.**	**8112.0**	**8112.01**	**A-B-C-D-E**

COLLECTION EFFICIENCY

3.159 Regulation 163 of *DERC (Terms and Conditions for Determination of Tariff) Regulations 2017* states:

> *"163. The financial impact on account of over or under achievement of collection efficiency targets shall be computed as under:-*
>
> *Incentive or penalty = (C1 – C2) * Ab*
>
> *Where,*
>
> *C1 = Actual Collection Efficiency in % =[Ar/Ab]*100*
>
> *Ar = Actual amount collected excluding electricity duty, late payment surcharge, any other surcharge in Rs. Cr.;*
>
> *Ab = Actual Amount Billed excluding Electricity Duty, LPSC and any other surcharges in Rs Cr.*
>
> *C2 = Target Collection Efficiency in %*

3.160 Regulation 164 of *DERC (Terms and Conditions for Determination of Tariff) Regulations 2017* states:

"Any financial impact on account of underachievement less than the target and overachievement above 100%with respect to Collection Efficiency targets shall be to the Licensee's account:

Provided that any financial impact on account of over achievement over and above the target and limited to100% with respect to Collection Efficiency targets shall be shared as per the mechanism indicated in the Business Plan Regulations of the Control Period."

3.161 Regulation 26 of *DERC (Business Plan) Regulations 2019* states:

"26. TARGET FOR COLLECTION EFFICIENCY

(1) The targets for Collection Efficiency for FY2020-21 to FY2022-23 of the Distribution Licensees shall be 99.50%.

(2) The financial impact on account of Collection Efficiency target shall be computed as per the formula specified in Regulation 163 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee.

(3) The financial impact on account of over-achievement in terms of Regulation 164 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee, from 99.50% to 100% shall be shared equally between Consumers and the Distribution Licensees."

3.162 The Commission in its Tariff Order dated 30/09/2021 decided that no incentive or penalty on account of collection efficiency due to COVID-19 causing lockdown from 24/03/2020 to 31/03/2020 and also allowed Actual O&M expenses and Actual Power Purchase Rebate for FY 2019-20 due to Covid-19 lockdown as under:

"3.99 The Commission considering the impact of lockdown for the period from 24th March, 2020 to 31st March, 2020, which has impacted consumers in an un-precedent manner, is of the view that in order to maintain balance between the stakeholders due to the impact of COVID-19, it is judicious to exercise the Power of Relaxation under Regulation 172 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Regulation 37 of DERC (Business

Plan) Regulations, 2017 and not to True-up Collection Efficiency. Accordingly, no incentive or penalty on account of over/under achievement on account of collection efficiency has been considered and allowed Actual O&M expenses and Actual Power Purchase Rebate for FY 2019-20.

3.163 As stipulated in above para of the Tariff Order, the Collection Efficiency for the period FY 2019-20 was not trued-up by the Commission due to spill over of collection pertaining to the period 24/03/2020 to 31/03/2020 to next financial year. However, it is observed from the Collection Efficiency claimed for FY 2020-21, i.e. 100.32% by the Petitioner that the spill over collection due to Covid-19 from 24/03/2020 to 31/03/2020 was received in FY 2020-21. Accordingly, after due diligence and in the interest of consumers, the Commission has decided to True-up the Collection Efficiency of FY 2019-20 & FY 2020-21 together as the deferred collection of FY 2019-20 was received during FY 2020-21.

3.164 Accordingly, the Collection Efficiency combined for FY 2019-20 & FY 2020-21 is as follows:

Sr. No	Particulars	UoM	Target	As per Petitioner	FY 2019-20	FY 2020-21	Combined
1	Amount Billed	Rs. Cr		8086.2	9343.76	8086.26	17430.02
2	Collection Efficiency	%	99.50%	100.32%	98.33%	100.32%	99.25%
3	Amount Collected	Rs. Cr		8112.0	9187.62	8112.01	17299.63
4	Over/(Under)-achievement	Rs. Cr.		66.22			(43.24)
5	Amount to be retained by petitioner and consumer shared 50:50 for achievement of collection Efficiency Target	Rs. Cr.		46.0			-
6	Entire 100% to be retained by the Petitioner	Rs. Cr					-

Sr. No	Particulars	UoM	Target	As per Petitioner	FY 2019-20	FY 2020-21	Combined
7	Total Incentive/ Disincentive to be retained by DISCOM	Rs. Cr		46.0			(43.24)

CASH COLLECTION EXCEEDING Rs. 4,000/-

3.165 As per the directive of the Commission *"No payment shall be accepted by the Distribution Licensees from its consumers at its own collection centres/mobile vans in cash towards electricity bill exceeding Rs. 4000/- except from blind consumers, for court settlement cases & payment deposited by the consumers at designated schedule commercial bank branches upto Rs. 50,000/-. Violation of this provisions shall attract penalty to the level of 10% of total cash collection exceeding the limit."*

3.166 The Commission has analysed the data submitted for cash collection during FY 2020-21 and it is observed that the cash collections above Rs. 4,000/- the Petitioner are on account of court settlement cases which is permitted as per the directive.

POWER PURCHASE QUANTUM (MU)

PETITIONER`S SUBMISSION

3.167 The Petitioner has submitted that the Petitioner has purchases most of the power from generating companies owned and/ or fully controlled by the Central Government and State Government by virtue of long term power purchase agreements which have been inherited from DTL (initially signed by M/s DTL) and assigned by the Commission as per its Orders dated 31/03/2007.

3.168 The Petitioner vide its letter No RA/2021-22/01/A/155 dated 21.06.2021 has submitted the Power Purchase Cost Statement for the period April 2020 to March 2021 duly certified by the Statutory Auditor.

3.169 The summary of actual power purchase quantum procured by the Petitioner during

FY 2020-21 is as follows:

Table 3. 36: Petitioner Submission - Power Purchase Quantum for FY 2020-21 (MU)

Sr. No	Particulars	Submission
A	Power Purchase:	
i	Gross Power Purchase Quantum	12826.4
ii	Power sold to other sources	423.1
iii	**Net Power Purchase**	**12403.2**
B	Transmission Loss:	470.4
iii	**Total transmission loss**	**470.4**
C	**Net power available after Transmission Loss***	**11932.8**

**Excluding Open Access*

3.170 The Petitioner has considered the energy input at BRPL Periphery as 11932.8 MU, subject to certification by Delhi SLDC. The Petitioner craves leave of the Hon'ble Commission to explain the workings if and when required by the Hon'ble Commission.

SHORT TERM POWER PURCHASE QUANTUM

PETITIONER`S SUBMISSION

3.171 During FY 2020-21, the Petitioner has procured through Bilateral/Banking/Intrastate/UI under short term purchase. The summary of source-wise details of short term power purchase is tabulated as follows:

Table 3. 37: Petitioner Submission - Details of Short Term Power Purchase

Sr. No	Particulars	FY 2018-19		FY 2019-20		FY 2020-21	
		Energy (MU)	(%)	Energy (MU)	(%)	Energy (MU)	(%)
A	Bilateral	366.7	17.0%	0.0	0.0%	484.0	17.7%
B	Banking	554.5	25.6%	1258.6	58.2%	786.6	28.8%
C	Exchange	183.8	8.5%	804.5	37.2%	1229.4	45.0%
D	Intra-State	86.7	4.0%	41.8	1.9%	209.3	7.7%
E	UI	7.8	0.4%	57.8	2.7%	20.5	0.8%
F	**Total**	**1199.5**		**2162.8**		**2729.9**	

3.172 The Petitioner submitted that as regards to short term power purchase, the Commission in its Tariff Order dated 28/08/2020 estimated a shortfall of 660 MU. However, the Petitioner purchased 2730 MUs and almost 92% of short-term energy through Bilateral, Banking and Exchange. The banking transactions involve marginal

cost and the prices at exchange are market discovered prices (over which the Petitioner has no control at all) and are determined transparently.

SHORT TERM POWER SALES QUANTUM

PETITIONER SUBMISSION

3.173 During FY 2020-21, the Petitioner has sold short term sale through Bilateral/Banking/Intrastate/UI mode. The Petitioner has tabulated the source-wise details of sale of surplus power as below:

Table 3. 38: Petitioner Submission - Details of Short Term Power Sales

Sr. No	Particulars	FY 2018-19		FY 2019-20		FY 2020-21	
		Energy (MU)	(%)	Energy (MU)	(%)	Energy (MU)	(%)
A	Bilateral	0.0	0.0%	0.0	0.0%	38.5	3.1%
B	Banking	1011.9	57.0%	902.7	76.0%	810.2	65.7%
C	Exchange	569.2	32.1%	232.3	19.6%	206.2	16.7%
D	Intra-State	15.1	0.8%	9.4	0.8%	2.9	0.2%
E	UI	177.7	10.0%	43.6	3.7%	175.4	14.2%
F	**Total**	**1773.8**		**1188.0**		**1233.4**	

3.174 The Commission in Tariff Order dated 23/07/2014 and 29/09/2015 advised that "the Petitioner should endeavour to maximise revenue from sale of surplus power and enter into more banking, intrastate and bilateral transactions."

3.175 Accordingly, the Petitioner sold about 69% of surplus power through Banking, Bilateral and Intra-State Transactions during FY 2020-21.

LONG TERM POWER PURCHASE QUANTUM

PETITIONER SUBMISSION

3.176 The total quantum purchased during FY 2020-21 and Plant wise Petitioner's share is tabulated below:

Table 3. 39: Petitioner Submission - Details of Power Purchase Quantum Station wise for FY 2020-21 (MU)

Sr. No	Stations	Total Generation	Energy at Delhi Periphery	Petitioner Share (As per Bills)
		MU	MU	MU
Central Sector Generating Stations (CSGS)				
A	NTPC			
i	ANTA GAS			7
ii	AURAIYA GAS			18
iii	DADRI GAS			74
iv	FARAKKA			56
v	KAHALGAON -I			106
vi	NCTPS			190
vii	RIHAND – I			401
viii	RIHAND – II			397
ix	RIHAND – III			558
x	SINGRAULI			181
xi	UNCHAHAR – I			58
xii	UNCHAHAR -II			108
xiii	UNCHAHAR -III			75
xiv	KAHALGAON -II			324
xv	DADRI-2(EXTENSION)			2225
xvi	Aravali Power Corporation Ltd			0
	Sub Total			4778
B	NHPC			
i	BAIRA SIUL			21
ii	CHAMERA – I			78
iii	CHAMERA – II			39
iv	CHAMERA – III			55
v	DHAULIGANGA			66
vi	DULHASTI			125
vii	SALAL			297
viii	TANAKPUR			18
ix	URI			139
x	SEWA –II			21
xi	Parbati– III			34
xii	Uri – II			91
	Sub Total			983
C	THDC			
i	Tehri HEP			132

Sr. No	Stations	Total Generation	Energy at Delhi Periphery	Petitioner Share (As per Bills)
		MU	MU	MU
ii	Koteshwar			82
	Sub Total			214
D	DVC			
i	DVC Chandrapur 7 & 8 (LT-3)			864
ii	Mejia Units -6 (LT-4)			308
	Sub Total			1173
E	NPCIL			
i	NAPS			218
ii	RAPP C Units 3&4			0.00
iii	RAPP C Units 5&6			172
	Sub Total			390
F	SJVNL			
i	Nathpa-Jhakri			291
	Sub Total			291
G	Others			
	PTC Tala			44
	PTC Wind			148
	Sasan UMPP			510
	Sub Total			702
H	Total Outside Delhi			8531
Delhi Generating Stations				
i	BTPS			0
ii	Gas Turbine			277
iii	Pragati – I			461
iv	Pragati -III, BAWANA			1258
v	TOWMCL			90
vi	Thyagraj Solar			1
vii	DMSW			56
viii	East Delhi Waste			0
I	Total Delhi Gencos			2143
J	SECI			
i	SECI Solar			42
ii	SECI Wind			159
J	SECI			202
K	Net Metering/Other			31
L	**Grand Total**			**10907**

3.177 The Petitioner requested the Commission to consider the actual gross power purchase quantum during FY 2020-21 as submitted in the above table.

COMMISSION ANALYSIS

3.178 The Commission in its Tariff Order dated 28/08/2020 has approved Gross Power Purchase Quantum of 12,890 MU from all sources including Central & State Sector Generating Stations and Short Term Sources for FY 2020-21.

3.179 The Commission vide its Letter dated 30/03/2022 directed Delhi SLDC to verify the figures of Long Term Power Purchase and Short Term Power purchase/sale for Delhi DISCOMs and submit a reconciliation to the Commission. The jointly signed statement by SLDC and the Petitioner for source wise Long Term Power Purchase and Short Term Power purchase/sale was submitted.

3.180 The Commission observed that there exists deviation in the Power Purchase Quantum submitted by the Petitioner and that submitted by SLDC to the Commission for few plants due to peripheral mismatches. The Petitioner has considered the power at Northern periphery whereas SLDC has considered the same at DTL periphery. During Prudence check, the DISCOMs submitted that the Power Purchase quantum is considered based on the units actually billed to them by the Generators. Due to the differential reporting of the energy by SLDC and the DISCOMs, the Commission considered the units actually billed by the Generators to the DISCOMs for the purpose of arriving at Power Purchase quantum. The summary of the same on account of Long-Term Sources is as follows:

Sr. No	Particulars	MU
1	SLDC	10866.56
2	BRPL	10872.00
3	Difference	5.44
4	Difference in %	0.05%

Note: Minor Difference are on account of revision of REA by Delhi SLDC/NRPC/WRPC/SRPC

3.181 Further, the Commission has considered Net Energy Credits as per Regulation 9 of

Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014.

3.182 Based on the audited Power purchase certificate and submission of SLDC, the Power Purchase Quantum of the petitioner is trued up for FY 2020-21 as follows:

Table 3. 40: Commission Approved - Power Purchase Quantum (MU)

Sr. No.	Particulars	As per Petitioner	As per Commission	Reference
	Power Purchase Quantum			
I	Long Term Power Purchase	12826.4	10,875.74	
II	Short Term Power Purchase		1,943.27	
III	Banking Import		786.60	
IV	Other Input (Net Metering / Self Generation)		31.23	
A	**Gross Power Purchase Quantum**	**12,826.4**	**13,636.84**	**(I+II+III+IV)**
V	Banking Export	423.10	810.25	
VI	Short Term Sale		423.14	
B	**Net Power Purchase Quantum**	**12,403.30**	**12,403.45**	**(I+II+III+IV-V-VI)**
C	**Transmission Loss**	**470.40**	**470.40**	
D	**Total Power MU**	**11,932.8**	**11,933.05**	

POWER PURCHASE COST

PETITIONER SUBMISSION

LONG TERM POWER PURCHASE:

3.183 The Petitioner has submitted that the power purchase cost is primarily based on the Tariff determined by the Appropriate Commission under Section 62(1)(a) or adopted under Section 63 of the 2003 Act for the supply of electricity from generating companies to distribution licensees. Accordingly, the Petitioner has considered the total cost on account of long term sources during FY 2020-21 which includes fixed cost, variable cost, arrears, other charges etc. as scheduling of power is controlled by SLDC.

MERIT ORDER DISPATCH (MOD) UNDER THE CONTROL OF DELHI SLDC, SALE OF SURPLUS POWER AND INCENTIVE THEREON:

3.184 As per Section 32 of the Electricity Act 2003, the scheduling is being done by Delhi SLDC and DISCOMs have no control over backing-down of the costly power plants.

3.185 Following points may be noted with respect to actual power purchase cost.

a) SLDC has clearly intimated that scheduling of Central Generating Stations and other inter-state Generating Stations is controlled by RLDC and hence DISCOM wise scheduling is not possible.

b) The availability of Plants is beyond the control of DISCOMs and the actual availability of Plants differs from the projections. The monthly MOD submitted by the DISCOMs is based on past Month ECR which may not be valid on real time basis.

c) Further, CERC (IEGC) 4thamendment 2016 Regulation provides as under:

"The CGS or ISGS may be directed by concerned RLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries and it is further stated that where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be ***compensated*** *depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be…*

In case of coal / lignite based generating stations, following station heat rate degradation or actual heat rate, whichever is lower, shall be considered for the purpose of compensation:

Sr. No.	Unit loading as a % of Installed Capacity of the Unit	Increase in SHR (for supercritical units) (%)	Increase in SHR (for sub-critical units) (%)
1.	85-100	Nil	Nil
2.	75-84.99	1.25	2.25
3.	65-74.99	2	4
4.	55.64.99	3	6

Compensation for the Station Heat Rate and Auxiliary Energy Consumption shall be worked out in terms of energy charges."

As can be inferred from above, there are multiple buyers from each generator and this part load operation will impact the MOD schedule of the buyers.

d) Further to the above, it is submitted by the Petitioner that operation of Plant is not under the control of DISCOMs, and Delhi DISCOMs allocation is around 10%-20% in a significant number of Plants. Since allocation of these Plants are on shared basis and operation of the same is on the basis of aggregation of demand and keeping into account the Grid Security, therefore, the decision of actual operation/availability of plant is not under control of the DISCOMs.

e) There are various instances where forced scheduling is done to maintain Grid security and the Petitioner vide letters dated 9/04/2020, 5/05/2020, 8/06/2020, 6/07/2020, 4/08/2020, 5/10/2020, 2/11/2020, 4/01/2021, 4/03/2021 submitted the details with reasons to Commission/SLDC for the same (on monthly basis).

3.186 Besides above uncontrollable situation, the Petitioner strictly follows of Merit Order Dispatch (MOD) while giving request of schedules to Delhi SLDC on daily basis.

3.187 As per Para 3.133 of Tariff Order of FY 2020-21, the Commission has excluded various power stations from Merit Order Dispatch principle which have must run status like Nuclear & Hydro, State GENCOs which are considered in the islanding scheme of Delhi (Even though, no such "islanding scheme" has ever either seen the light of day or been approved by this Commission and Eastern Region Plants where there is time delay in

revision of schedule.

3.188 Further, the Petitioner also requested the Commission to consider forced outage/Force Majeure data while considering scheduling and other factors which are beyond the control of Petitioner. In this regard, the Petitioner requested the Commission to consider the following:

FORCE SCHEDULING WHILE FOLLOWING MERIT ORDER DESPATCH PRINCIPLE:

3.189 Regulations 123 & 152 of the Tariff Regulations, 2017 provide as under:

"123.To promote economical procurement of power as well as maximizing revenue from Sale of Surplus Power the distribution licensee shall ensure the cost benefit for rate of sale of surplus power in the relevant slots through Banking, Bilateral and Power Exchange transactions ***other than the forced scheduling, as certified by the SLDC,*** *in comparison with the next higher variable cost of the generating stations from which power is surplus after meeting the demand of power in its area of supply;*

152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:

……Provided *that* the distribution licensee shall **submit report from State Load Despatch Centre (SLDC) for instances of forced scheduling** due to the reasons not attributable to the Distribution licensee for scrutiny of dispatch of power in Delhi on merit order basis in its area of supply;

*Provided that Sale th*rough Deviation Settlement Mechanism (Unscheduled Interchange) transactions other than **forced scheduling of power as certified by SLDC on monthly basis** shall be limited to the contingency limit as specified by the Commission in the Business Plan Regulations in order to promote Grid Discipline and optimise Power Purchase Cost;

*Provided that any A*dditional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges other than **forced scheduling of power as certified by SLDC paid by the Distribution Licensee** shall not be allowed in Power Purchase Cost;

….. "

Accordingly, the Petitioner has requested Delhi SLDC for certifying the Force Scheduling during FY 2020-21 vide letter no. RA/2021-22/01/A/440 dated 08.11.2021.

3.190 The Petitioner always tries to dispose-off its surplus power in an economic manner, which is also the mandate of Regulations 123 and 165 of Tariff Regulations, 2017, relevant extract of which is produced hereunder:

*"123. To promote economical procurement of power as well as maximizing revenue from Sale of Surplus Power the distribution licensee shall ensure the cost benefit for rate of sale of surplus power in the **relevant slots** through Banking, Bilateral and Power Exchange transactions other than the **forced scheduling**, as certified by the SLDC, in comparison with the next higher variable cost of the generating stations from which power is surplus after meeting the demand of power in its area of supply;*

165. Any financial impact of over realisation on account sale of Surplus Power as, specified in Regulation 123 of these Regulations, shall be adjusted as per the mechanism indicated in the Business Plan Regulations of the control period:

Provided that any financial impact of under realisation on account sale of Surplus Power as specified in Regulation 123 of these Regulations shall be to the account of distribution licensee."

3.191 The Petitioner respectfully submits that the extant Regulations contemplate a slot-wise/time block basis for the computation of incentives and not a monthly basis. Additionally, as per Indian Electricity Grid Code (IEGC) all the power (Long term + Short term) is scheduled/managed on a 15 mins time block. It is settled law that Regulations made under the Electricity Act, 2003 are equally binding upon the Regulatory Commissions including this Commission and cannot be deviated from. Accordingly, Petitioner has computed Incentive on sale of surplus in line with applicable Regulations of Commission. The summary of the incentives claimed is as under:

Table 3. 41: Petitioner Submission - Details of Total Sale Rate Incentives

Sr. No	Particulars	UOM	Amount
1	Total Incentive on Sale of Surplus Power	Rs. Cr.	0.28

3.192 The Petitioner requested the Commission to consider the above submissions while considering merit order dispatch, sale of surplus power and incentive thereon.

3.193 In view of the above, the details of station-wise power purchase cost during FY 2020-21 is tabulated as follows:

Table 3. 42: Petitioner Submission - Details of Power Purchase Cost Station wise for FY 2020-21

Sr. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Total Charges	Average Rate
		MU	Rs. Cr.	Rs. Cr.	Rs.Cr.	Rs.Cr.	Rs./ kWh
Central Sector Generating Stations (CSGS)							
A	**NTPC**						
i	ANTA GAS	7.1	9.8	1.9	0.2	11.9	16.80
ii	AURAIYA GAS	17.8	14.5	4.8	3.4	22.7	12.76
iii	DADRI GAS	73.7	16.5	21.1	1.7	39.4	5.35
iv	FARAKKA	56.4	5.6	15.1	0.9	21.6	3.83
v	KAHALGAON -I	105.8	14.9	24.1	-0.1	39.0	3.68
vi	NCTPS	190.3	360.3	69.0	83.9	513.1	26.96
vii	RIHAND – I	401.1	38.4	57.7	-0.5	95.6	2.38
viii	RIHAND – II	397.3	27.0	56.9	0.6	84.5	2.13
ix	RIHAND – III	557.9	78.4	79.0	1.1	158.5	2.84
x	SINGRAULI	181.1	13.1	25.7	-0.2	38.6	2.13
xi	UNCHAHAR – I	58.1	7.6	17.5	1.3	26.4	4.55
xii	UNCHAHAR -II	107.9	13.8	32.6	3.1	49.6	4.60
xiii	UNCHAHAR -III	74.8	11.5	22.7	1.8	36.0	4.81
xiv	KAHALGAON -II	323.9	43.6	69.2	0.4	113.1	3.49
xv	DADRI-2(EXTENSION)	2224.9	544.2	730.0	126.6	1400.7	6.30
xvi	Aravali Power Corporation Ltd	0.4	11.0	0.1	5.1	16.1	425.15
	Sub Total	**4778.4**	**1210.1**	**1227.4**	**229.3**	**2666.8**	**5.58**
B	**NHPC**						
i	BAIRA SIUL	21.0	3.5	1.6	0.0	5.1	2.45
ii	CHAMERA – I	77.6	7.0	8.9	0.6	16.5	2.13
iii	CHAMERA – II	38.9	5.7	3.9	0.6	10.2	2.63
iv	CHAMERA – III	54.7	13.5	10.8	-2.5	21.8	3.98

Sr. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Total Charges	Average Rate
		MU	Rs. Cr.	Rs. Cr.	Rs.Cr.	Rs.Cr.	Rs./ kWh
v	DHAULIGANGA	65.5	9.7	8.0	2.9	20.6	3.14
vi	DULHASTI	125.1	32.9	31.5	13.6	78.1	6.24
vii	SALAL	297.0	23.9	18.3	42.3	84.5	2.84
viii	TANAKPUR	18.2	4.4	3.2	-0.1	7.6	4.17
ix	URI	139.2	12.6	11.4	10.6	34.6	2.48
x	SEWA –II	21.4	4.9	5.7	26.7	37.3	17.39
xi	Parbati– III	33.8	16.7	5.2	0.0	21.9	6.49
xii	Uri – II	90.8	20.1	17.1	-14.7	22.4	2.47
	Sub Total	**983.1**	**155.1**	**125.5**	**79.9**	**360.5**	**3.67**
C	**THDC**						
i	Tehri HEP	131.9	26.6	26.1	-0.1	52.6	3.99
ii	Koteshwar	82.2	18.6	18.6	0.0	37.2	4.53
	Sub Total	**214.2**	**45.2**	**44.7**	**-0.1**	**89.8**	**4.20**
D	**DVC**						
i	DVC Chandrapur 7 & 8 (LT-3)	864.5	139.8	221.8	0.1	361.7	4.18
ii	Mejia Units -6 (LT-4)	308.1	41.6	90.9	0.0	132.5	4.30
	Sub Total	**1172.6**	**181.4**	**312.6**	**0.1**	**494.2**	**4.21**
E	**NPCIL**						
i	NAPS	218.3	0.0	64.9	-23.0	41.9	1.92
ii	RAPP C Units 3&4	0.0	0.0	0.0	-0.2	-0.2	0.00
iii	RAPP C Units 5&6	171.6	0.0	64.0	-25.1	38.9	2.27
	Sub Total	**389.9**	**0.0**	**129.0**	**-48.4**	**80.6**	**2.07**
F	**SJVNL**						
i	Naptha-Jhakri	290.8	36.2	33.1	0.0	69.3	2.38
	Sub Total	**290.8**	**36.2**	**33.1**	**0.0**	**69.3**	**2.38**
G	**Others**						
i	PTC Tala	43.8	0.0	9.5	0.0	9.5	2.16
ii	PTC Wind	147.6	0.0	52.1	0.0	52.1	3.53
iii	Sasan UMPP	510.4	7.4	58.7	8.1	74.2	1.45
	Sub Total	**701.8**	**7.4**	**120.2**	**8.1**	**135.7**	**1.93**
H	**Total CSGS**	**8530.9**	**1635.5**	**1992.5**	**269.0**	**3896.9**	**4.57**

Sr. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Total Charges	Average Rate
		MU	Rs. Cr.	Rs. Cr.	Rs.Cr.	Rs.Cr.	Rs./ kWh
I	**Delhi Generating Stations**						
i	BTPS	0.0	0.0	0.0	37.2	37.2	0.00
ii	Gas Turbine	277.1	72.2	90.7	-12.9	150.0	5.41
iii	Pragati – I	461.5	37.0	193.0	7.4	237.4	5.14
iv	Pragati -III, BAWANA	1257.8	438.3	332.2	0.1	770.6	6.13
v	TOWMCL	90.3	0.0	26.3	0.0	26.3	2.92
vi	Thyagraj Solar	0.5	0.0	0.0	0.2	0.2	3.57
vii	DMSW	56.1	0.0	39.4	0.0	39.4	7.03
viii	East Delhi Waste	0.0	0.0	0.0	0.0	0.0	0.00
ix	IP Arrears	0.0	0.0	0.0	2.6	2.6	0.00
x	RPH Arrears	0.0	0.0	0.0	5.3	5.3	0.00
	Sub Total	**2143.2**	**547.6**	**681.6**	**39.9**	**1269.1**	**5.92**
J	**SECI**						
i	SECI Solar	42.5	0.0	23.4	0.0	23.4	5.50
ii	SECI Wind	159.2	0.0	30.4	0.0	30.4	1.91
	Sub Total	**201.6**	**0.0**	**53.7**	**0.0**	**53.7**	**2.66**
	Net Metering/Other	**31.2**	**0.0**	**24.8**	**-10.0**	**14.8**	**4.74**
	Grand Total	**10907.0**	**2183.0**	**2752.6**	**298.9**	**5234.6**	**4.80**

3.194 In accordance with the above, the Petitioner requested the Commission that the aforesaid power purchase cost incurred from long term sources during FY 2020-21 may kindly be allowed.

COMMISSION ANALYSIS

3.195 The Commission, in its Tariff Order dated 28/08/2020 had projected the Long-term Power Purchase cost at Rs. 5,461 Cr.

3.196 The Consultant in their Regulatory Audit Report has submitted that they had verified all the invoices raised by Generating Stations consisting of Capacity Charges (Fixed Charges), Energy Charges (Variable Charges) and other charges for FY 2020-21 vis-à-

vis Petitioner's claim submitted in the Petition and Audited Power Purchase Certificate.

3.197 Further, the Commission during the prudence check sessions has verified all the invoices raised by Generating Stations consisting of Capacity Charges (Fixed Charges), Energy Charges (Variable Charges) and other charges for FY 2020-21 as submitted in the Petition and Audited Power Purchase Certificate.

3.198 Accordingly, the Long-Term Power Purchase Cost as considered by the Commission for True-up is as follows:

Table 3. 43: Commission Approved - Long Term Power Purchase Cost for FY 2020-21

Sr. No.	Particulars	Quantum (MU)	Amount (Rs. Cr.)
1	**Long Term Sources (Other Than Renewables)**	**10,875.74**	**5,225.00**
1a	NTPC	4,778.05	2,687.86
1b	NHPC	983.15	360.52
1c	Others	5,114.54	2,171.41
1d	Reactive Energy Charges (DTL)		5.21

SHORT TERM POWER PURCHASE

PETITIONER SUBMISSION

3.199 The Petitioner has considered the power purchase cost through short term sources during FY 2020-21 which includes the cost on account of purchase through bilateral, banking, exchange, intra-state and UI. The Petitioner has deducted the UI Charges paid below threshold frequency as decided by CERC for short term power purchase.

3.200 The source-wise details of short term power purchase cost during FY 2020-21 are tabulated as follows:

Table 3. 44: Petitioner Submission - Details of Short Term Power Purchase for the year FY 2020-21

Sr. No	Particulars	FY 2018-19		FY 2019-20		FY 2020-21	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Cr.)
A	Bilateral	4.16	152.5	0.00	-0.3	3.91	189.3
B	Banking	5.10	282.5	5.60	704.2	5.62	441.9
C	Exchange	4.80	88.2	3.65	293.5	3.72	457.0

Sr. No	Particulars	FY 2018-19		FY 2019-20		FY 2020-21	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Cr.)
D	Intra-State	4.77	41.3	3.92	16.4	3.83	80.1
E	UI	20.24	15.8	4.49	26.0	4.27	8.8
F	**Total**	**4.84**	**581.0**	**4.81**	**1039.8**	**4.31**	**1177.0**

SALE OF SURPLUS ENERGY

PETITIONER SUBMISSION

3.201 The Petitioner has put in significant efforts to maximize the revenue through sale of surplus power.

3.202 The source-wise details of revenue realized through sale of surplus energy during FY 2020-21 are tabulated as follows:

Table 3. 45: Petitioner Submission - Details of Short Term Power Sales for the year FY 2020-21

Sr. No	Particulars	FY 2018-19		FY 2019-20		FY 2020-21	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
A	Bilateral	0.00	0.0	0.00	0.0	2.75	10.6
B	Banking	5.23	528.9	5.17	467.1	5.28	428.0
C	Exchange	3.24	184.4	2.20	51.1	2.18	44.9
D	Intra-State	2.55	3.8	2.47	2.3	2.40	0.7
E	UI	1.35	24.0	1.38	6.0	1.89	33.1
F	**Total**	**4.18**	**741.2**	**4.43**	**526.5**	**4.19**	**517.3**

3.203 The Petitioner has considered the average rate of banking transactions @Rs. 5.62/kWh as per applicable Tariff Regulations, 2017.

3.204 The Petitioner requested the Commission to consider the revenue on account of sale of surplus power while approving the net power purchase cost as submitted in the above table.

COMMISSION ANALYSIS

3.205 The Commission in its Tariff Order dated 28/08/2020 has directed the Petitioner as follows:

"6.10k. To strictly adhere to the guidelines on short-term power purchase/sale of power issued by the Commission from time to time and to take necessary steps to restrict the cost of power procured through short term contracts, except trading through Power Exchange & IDT, at Rs.5/kWh. In case the cost of power proposed to be procured exceeds the above ceiling limit, this may be brought to the notice of the Commission within 24 hours detailing the reasons or exceptional circumstances under which this has been done. In the absence of proper justification towards short term power purchase at a rate higher than the above ceiling rate (of Rs.5/kWh), the Commission reserves the right to restrict allowance of impact of such purchase on total short term power purchase not exceeding 10 Paisa/kWh during the financial year."

3.206 The Commission has examined the Short-Term Power Purchase transactions and found that the Petitioner has not violated the above mentioned directive.

CONTINGENCY LIMIT OF 5% ON UI SALE:

PETITIONER SUBMISSION

3.207 The Petitioner has submitted that as per *Business Plan Regulations 2019*, the Commission has defined a contingency limit on UI. Relevant extract is shown below:

"28. CONTINGENCY LIMIT FOR SALE OF POWER THROUGH DEVIATION SETTLEMENT MECHANISM (UNSCHEDULED INTERCHANGE CHARGES)

(1) The Contingency Limit for disposing off of Power through Deviation Settlement Mechanism in terms of the Regulation 152 (c) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensees shall be 5% of Net Power Procured by the Distribution Licensee for the relevant month."

3.208 Petitioner has submitted that Petitioner is well within the limits during the FY 2020-21 as stipulated by the Commission in Business Plan Regulations, 2019.

COMMISSION ANALYSIS

3.209 Regulation 28 of *DERC (Business Plan) Regulations, 2019* stipulates,

"28(1) The Contingency Limit for disposing off of Power through Deviation Settlement Mechanism in terms of the Regulation 152 (c) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensees shall be 5% of Net Power Procured by the Distribution Licensee for the relevant month."

"28(2)In case the Distribution Licensee disposes off more than 5% of the net Power procured by the Licensee for the relevant month through Deviation Settlement Mechanism (Unscheduled Interchange Charges) than the rate of realisation through UI shall be considered at the average rate of power purchase/sale through exchange during same month for Delhi region."

3.210 The Commission has verified the same. Accordingly, no impact on account of Contingency Limit in considered for FY 2020-21 by the Commission.

ADDITIONAL UI CHARGES AND SUSTAINED DEVIATION CHARGES:

PETITIONER SUBMISSION

3.211 The Petitioner has filed following petitions before the Commission for issues related to Additional UI and sustained deviation. The Commission is requested to consider the same while Truing-up of FY 2020-21:

1) Petition (42 of 2017) under Section 86(1) (k) read with Section 33(4) of the Electricity Act, 2003 seeking adjudication of dispute regarding incorrect methodology adopted by SLDC while preparing intra-state deviation settlement accounts and unlawfully retaining the UI Pool Accounts.
2) Petition (45 of 2020) seeking inter alia appropriate directions to DTL to install necessary infrastructure including technical infrastructure which would enable the Petitioner to implement the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (hereinafter "the 2014 Regulations"), as amended.

3) Petition (47 of 2020) under Regulation 57 of the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001 for direction for revision of the methodology for levying Sustained Deviation Penalty to Distribution Licensees of NCT of Delhi.

3.212 Further, the Petitioner has stated that as per clause 152 of Tariff Regulations, 2017, the additional/penal UI Charges is not pass through. Relevant extract is shown below:

"Provided that any Additional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges ***other than forced scheduling of power as certified by SLDC*** *paid by the Distribution Licensee shall not be allowed in Power Purchase Cost;* ***(Emphasis Added)****"*

3.213 In this regard, the Petitioner has requested Delhi SLDC for certifying the Force Scheduling during FY 2020-21 vide letter no. RA/2021-22/01/A/440 dated 08.11.2021.

3.214 Accordingly, the Petitioner requested the Commission for considering the Additional UI and Sustained deviation Charges in Power Purchase cost of the Petitioner pending certification from Delhi SLDC.

3.215 **With regard to the Banking Transactions**, Regulation 121(3) of the Tariff Regulations, 2017 states as under:

"121. While approving the cost of power purchase, the Commission shall determine the quantum of power to be purchased considering:

....

(3) Normative cost of banking transaction at the rate of average power purchase cost of the portfolio of the distribution licensee;"

(Emphasis Added)

3.216 However, the Commission vide its letter dated 16/11/2018 indicated that the normative cost of banking transactions shall be weighted average rate of all long term sources considering only variable cost for the relevant year.

3.217 In such event of conflict between the provisions of Regulations and DERC letter, the Petitioner has considered the average rate of banking transactions @Rs.5.62/kWh as per applicable Tariff Regulations, 2017, as Commission in its Order dated 28/12/2017

in Petition No. 39 of 2017 has itself taken the view that "if there is some conflict between the provisions of Regulations and the provisions of the Orders made there under, the law is very clear on the supremacy of the Regulations over the Orders."

3.218 In view of the above, the Petitioner requested the Commission to allow the power purchase cost during FY 2020-21 from short term sources including Trading Margin as submitted in the Format – F1 for FY 2020-21 of the Petition.

COMMISSION ANALYSIS

3.219 The Commission observed that the Petitioner has considered Additional UI Charges and Sustained Deviation Charges to the extent of Rs. 4.97 Cr. and Rs. 0.73 Cr. respectively for FY 2020-21 in their Power Purchase Cost. Such Additional UI charges are imposed on the Petitioner to maintain the Grid discipline. The third proviso of Regulation 152 (c) of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 stipulates as follows:*

> *"Provided that any Additional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges other than forced scheduling of power as certified by SLDC paid by the Distribution Licensee shall not be allowed in Power Purchase Cost"*

3.220 Further, the Commission observed from the statement submitted by SLDC that the Petitioner has been levied penalty under Additional Deviation Settlement and Sustained Deviation for FY 2020-21 amounting to Rs. 4.86 Cr. and Rs. 1.22 Cr. respectively in accordance with the CERC Regulations.

3.221 The Commission in its Tariff Order dated 28/03/2018 in line with Hon'ble APTEL's Judgment dated 20/07/2016 decided as follows:

*"**COMMISSION'S ANALYSIS***

3.235 The Commission has given the detailed reasoning regarding penal nature of payment towards additional UI Charges due to non-adherence of the scheduled drawl by the Petitioner in its various Tariff Orders which has also been upheld by the Hon'ble APTEL in its judgement in Appeal No. 271/2013 as follows:

" 7.6) Penal interests are applicable at the specified rates for over-drawal of electricity for each time block when grid frequency is below 49.5 Hz. The time block under UI Regulations is 15 minutes. We are totally unable to accept the contention of the appellant that the appellant has taken all the necessary steps to ensure compliance with the requirements of UI Regulations, overdrawal from grid below 49.5 Hz frequency is inevitable despite efficient management of the appellant. These are the problems which are to be sorted out by a Discom by making efficient management, proper scheduling of power and procurement etc. What is provided under the Regulation is that the State Commission is bound to follow those Regulations, without giving any dilution or relaxation in the provisions of Act or Rules. We are unable to accept the appellant's contention that over-drawal or under-drawal depends on the scheduled generation available, since, the generation available changes constantly and further due to loss of generation the schedules are affected resulting in over-drawal by Discoms. In view of the above discussions, we do not find any merit in the contentions of the appellant and hence, this Issue No.8 is decided against the appellant."

3.236 Therefore, this matter does not merit consideration."

3.222 In line with Tariff Order dated 28/03/2018 and Judgement dated 20/07/2016 in Appeal No. 271 of 2013, the Commission has disallowed the Additional Deviation Settlement Mechanism (ADSM) (Unscheduled Interchange) Charges and Sustained Deviation Charges (SDC) of Rs. 4.79 Cr. and Rs. 0.73 Cr. respectively for FY 2020-21 and considered Rs. 4.86 Cr. and Rs. 1.22 Cr., as provided by SLDC, penalty for ADSM and SDC for FY 2020-21.

3.223 **Banking Transactions:** The Commission has analysed the Banking Transactions made by the Petitioner for FY 2020-21. *Regulation 121 (3) of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* specifies that the Normative cost of banking transaction is considered at the rate of average power purchase cost of the portfolio of the distribution licensee read as follows:

"While approving the cost of power purchase, the Commission shall determine

the quantum of power to be purchased considering:

1) *Availability of Generating Stations which may be based on Load Generation Balance Report published by Central Electricity Authority (CEA) for relevant Financial Year;*
2) *Principles of merit order schedule and dispatch based on the ranking of all approved sources of supply in the order of their variable cost of power purchase on monthly basis;*
3) *Normative cost of banking transaction at the rate of Average Power Purchase Cost of the portfolio of the Distribution Licensee;*
4) *The gap between Average Power Purchase Cost of the power portfolio allocated and average revenue due to different consumer mix of all the distribution licensee:*

Provided that the Commission may adjust the gap in Power Purchase Cost by reassigning the allocation of power amongst the Distribution Licensees out of the overall power portfolio allocated to the National Capital Territory of Delhi by Ministry of Power, Government of India."

3.224 Further, the Commission vide its letter dated 16/11/2018 provided clarification to DISCOMs that Normative Cost of Banking Transactions shall be weighted average rate of all long-term sources considering only Variable Cost for the relevant year. Relevant extract of the Commission's letter dated 16/11/2018 is as follows:

"……that the normative cost of Banking transactions shall be weighted average rate of all long-term sources considering only variable cost for the relevant year. Further, the sample calculation for incentive on sale of surplus power is annexed herewith."

3.225 During the prudence check sessions and further scrutiny of the information submitted by the Petitioner, it is observed that the Petitioner has not considered the Variable Cost for the relevant year for evaluating the normative cost of Banking transactions for FY 2020-21 as mandated in above mentioned letter.

3.226 It is pertinent to state that when Delhi Distribution Licensee is in Surplus, then they

Bank their Surplus Energy to those entities (especially outside Delhi) which are in power deficit. This Surplus Banked power is out of the Long Term sources of Delhi Distribution Licensee whose Fixed Cost is borne by them, however, the power not being put to use in Delhi is being Banked to other Deficit State. Accordingly, the Commission vide its letter dated 16/11/2018, has considered the Variable Cost of Weighted Average Rate of all Long-Term Sources as the Normative Cost of Banking Transactions.

3.227 Further, it is pertinent to state that the Banking Transactions are revenue neutral in nature i.e., the variable cost considered for Forward Banking & Reverse Banking leads to no impact in Power Purchase Cost since the Forward Banking & Reverse Banking transactions spill over to multiple years after considering the impact of Banking Return Ratio. The concept of revenue neutral in Banking transactions has also been endorsed by Hon'ble APTEL in Appeal No. 14 of 2012, wherein Hon'ble APTEL rejected the claim of the Distribution Licensee related to Financing Cost incurred in relation to Power Banking, as follows:

> *"113. The learned Counsel for the Delhi Commission submits that the Banking contracts have to be revenue neutral in nature and hence if power has been bought under "banking arrangement", then the same power will be sold back by the utility with 4% extra power. This extra power that is sold at the rate at which it had bought power at the first place serves like the financing cost of the power banked. Hence, no additional funding cost for banked power has been allowed.*
>
> *…*
>
> *117. Thus, the licensee looses carrying cost for Rs 40 Cr. However, in order to make banking arrangements tariff neutral some element of interest is also added. Accordingly, the utility which had banked energy would get 4% additional energy at the time of return to offset the carrying cost for the banked energy…*
>
> *..*

118. Thus the Licensee gets Rs 1.6 Cr extra as Notional cost of additional energy received to offset the carrying costs. Accordingly, the issue is decided against the Appellant."

3.228 The Commission in its Tariff Order dated 30/09/2021 revised the Normative Cost of Banking Transactions based on letter dated 16/11/2018. The Commission has considered the same approach for FY 2020-21 for determining the Normative cost of Banking Transmission, considering Variable Cost of weighted average rate of all Long-Term Sources for FY 2020-21 as follows:

Table 3. 46: Revised working of Normative Cost of Bank transaction

Particulars	UoM	FY 2020-21
Banking Export	MU	(810.25)
Banking Import	MU	786.60
Banking Export Rate- As per Petitioner	Rs. /kWh	5.28
Banking Import Rate- As per Petitioner	Rs. /kWh	5.61
Banking Export	Rs. Cr.	(428.04)
Banking Import	Rs. Cr.	441.19
Net Banking (Import - Export)	MU	(23.65)
Normative Cost on Banking i.e., Variable Cost of weighted average rate of all long-term sources - as per Clarification issued vide DERC letter dated 16/11/2018 on DERC Tariff Regulations, 2017 and BPR, 2017	Rs. /kWh	2.50
Net Normative Cost / (Sale) to be allowed	Rs. Cr.	(5.91)

INCENTIVE ON SALE OF SURPLUS POWER

3.229 Regulation 121 of *DERC (Terms and Conditions for determination of Tariff) Regulations 2017*, stipulates that *while approving the cost of power purchase, the Commission shall determine the quantum of power to be purchased considering the principles of merit order schedule and despatch based on ranking of all approved sources of supply in the order of their variable cost of power purchase on monthly basis*.

3.230 As per the above mentioned Regulation, the Petitioner is required to procure the power in an economical manner following the principle of Merit Order Dispatch which is an integral part of this process. As per Merit Order Dispatch principle, the plants are stacked in least cost approach of their Variable Cost. The demand is then met through

stations in ascending order of their Variable Cost subject to various technical constraints and the balance power though available from the left over stations after meeting the required demand, are thus not scheduled. Such balance power as available from the left over stations could have been backed down considering Technical Constraints or kept under reserve shutdown and such surplus costly power could have been avoided.

3.231 The Commission further observes that it has directed SLDC vide its letter dated 21/11/2013 to implement DISCOM-wise scheduling in Delhi based on the request of the Distribution Licensees.

3.232 The Commission has excluded various power stations from Merit Order Dispatch principle which have must run status like Nuclear & Hydro, State GENCOs which are also considered in the islanding scheme of Delhi and Eastern Region Plants where there is time delay in revision of schedule.

3.233 Regulation 123 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* states,

> *"123.To promote economical procurement of power as well as maximizing revenue from Sale of Surplus Power the distribution licensee shall ensure the cost benefit for rate of sale of surplus power in the relevant slots through Banking, Bilateral and Power Exchange transactions other than the forced scheduling, as certified by the SLDC, in comparison with the next higher variable cost of the generating stations from which power is surplus after meeting the demand of power in it's area of supply;"*

3.234 Regulation 165 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* states,

> *"165. Any financial impact of over realisation on account sale of Surplus Power as, specified in Regulation 123 of these Regulations, shall be adjusted as per the mechanism indicated in the (Business Plan) Regulations of the control period:*

Provided that any financial impact of under realisation on account sale of Surplus Power as specified in Regulation 123 of these Regulations shall be to the account of distribution licensee."

3.235 Regulation 29 of *DERC (Business Plan) Regulations 2019* defines the incentive sharing mechanism as follows:

"29. INCENTIVE SHARING MECHANISM FOR SALE RATE OF SURPLUS POWER

(1) The computation of incentive for Sale Rate of Surplus Power in terms of the Regulation 165 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensees shall be as follows:

i. The variable cost of the generating station for which power is surplus and required to be sold through Power Exchanges shall be considered as the previous month's billed variable cost of such generating station.

ii. The variable cost of the generating station for which power is surplus and required to be sold through Banking and Bilateral arrangements shall be considered as the previous month's billed variable cost of such generating station prevalent at the date of entering into such contracts:

Provided that the normative cost of banking transactions shall be weighted average rate of variable cost of all long term sources.

iii. The incentive shall be the product of Rate difference (Actual Sale Rate-Variable Cost) and Quantum of Power actually sold.

(2) The incentive computed under sub-clause (1) above shall be shared between the Consumers and the Distribution Licensees in the following prescribed manner: -

i. The incentive realisation upto 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 2/3rd to the Consumers and 1/3rd to the Distribution Licensees.

ii. The incentive realisation above 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 1/3rd to the Consumers and 2/3rd to the Distribution Licensees."

3.236 The Commission vide its letter dated 16/11/2018, in respect of clarification sought by the Petitioner for rate of Banking transaction and mechanism for incentive of surplus power as per various provisions of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* and *DERC (Business Plan) Regulations, 2017*, has clarified as under:

"the normative cost of banking transactions shall be weighted average rate of all long term sources considering only variable cost for the relevant year. Further the sample calculation for incentive on sale of surplus power is annexed herewith."

3.237 The Commission through the above referred letter dated 16/11/2018 clarified by way of sample calculation the computation of the incentive on a monthly basis in line with the Regulation 165 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017*.

3.238 Further, it is observed that the Petitioner has not submitted the month-wise data of sale on account on banking transactions, the same has not been considered while computing the incentive/(dis-incentive) on sale of surplus power. Accordingly, the methodology followed by the Commission is as per the above letter of the Commission and whenever there was a surplus sale of power, such surplus sale of power has been considered from the station having higher variable cost as lower variable cost stations must have been used first for the consumers.

3.239 Further, in the cases where the sale rate of surplus power was excess of power purchase cost of high variable cost station, that case only was considered for the calculation of Incentive on surplus power.

3.240 For the purpose of calculation of cost of higher variable cost station, ECR of previous

month has been considered which is as per Regulation 29 of Business Plan Regulations, 2019. Accordingly, Dis-incentive on sale of surplus power, in line with the Regulation and the clarification issued by the Commission for FY 2020-21 is as follows:

Table 3. 47: Commission Approved - Dis-incentive on Sale of Surplus Power (Rs. Cr.)

Months	As approved by the Commission		
	Exchange	Bilateral	Intrastate
Apr-20	-	-	-
May-20	-	-	-
Jun-20	-	-	-
Jul-20	-	-	-
Aug-20	-	-	-
Sep-20	-	-	-
Oct-20	(0.80)	-	-
Nov-20	-	-	-
Dec-20	-	-	-
Jan-21	-	-	-
Feb-21	(1.97)	-	-
Mar-21	0.52	-	-
Total	**(2.25)**	**-**	**-**
Total			**(2.25)**

3.241 The dis-incentive of Rs. 2.25 Cr. has been considered by the Commission in Revenue towards ARR in True up of FY 2020-21.

TRANSMISSION CHARGES

PETITIONERS SUBMISSION

3.242 The Petitioner has considered the Transmission charges for FY 2020-21 as follows:

Table 3. 48: Petitioner Submission - Transmission Charges for FY 2020-21(Rs. Cr.)

Sr. No	Particulars	Submission
i	Power Grid Corp. of India Ltd.	738.5
ii	Delhi Transco Ltd.	333.7
iii	Other Transmission etc.	19.0
iv	Open Access Charges	78.6
v	**Total Transmission charges**	**1169.8**

COMMISSION ANALYSIS

3.243 The Commission has verified the Transmission charges from the books of accounts and bills raised by various parties. Accordingly, the Commission allows the total

Transmission Charges of Rs. 1163.80 Cr. for FY 2020-21 as follows:

Table 3. 49: Commission Approved - Transmission Charges (Rs. Cr.)

Particulars	Amount
Transmission Charges	
Power Grid Corp. of India Ltd. and CTU	738.47
Delhi Transco Ltd. Wheeling Charges	431.85
Delhi Transco Ltd. – STOA Refund	(101.07)
Delhi Transco Ltd. SLDC Charges	2.87
Bhakra Beas Management Board	0.47
Damodar Valley Corporation	2.42
NTPC Ltd.	13.16
Solar Energy Corporation of India	2.02
SubTotal (A)	**1091.15**
Open Access Charges (B)	**78.62**
Other Charges	**(5.97)**
Total (A+B+C)	**1163.80**

REBATE ON POWER PURCHASE AND TRANSMISSION CHARGES

PETITIONER SUBMISSION

3.244 The Petitioner has submitted that the Commission vide letter dated 5/06/2014 specified the format for submission of details of rebate on power purchase and transmission charges. As regards the long term generating and transmission companies charges, rebate is not allowed on interest charges and other billing items which are in nature of reimbursement, such as Income Tax, Other Taxes, Cess, Duties etc. Rebate is generally allowed on all other billing items. The rebate on power purchase and Transmission Charges is tabulated below:

Table 3. 50: Petitioner Submission - Details of Rebate Claimed for FY 2020-21 (Rs. Cr.)

Sr. No.	Power Suppliers	Rebatable Amount	Non-Rebatable Amount	Total Bill Amount	Actual Amount claimed against FY 2020-21 (Rs. Cr.)
		(Rs. Cr.)	(Rs. Cr.)	(Rs. Cr.)	Total Rebate
1	NTPC	2691.3	(3.4)	**2687.9**	73.7
2	NHPC	277.2	83.3	**360.5**	11.1
3	Nuclear	77.8	2.7	**80.6**	0.9
4	SJVNL	69.3	0.0	**69.3**	2.6
5	THDC	89.8	0.0	**89.8**	2.1
6	Tala HEP	9.5	0.0	**9.5**	0.0

Sr. No.	Power Suppliers	Rebatable Amount	Non-Rebatable Amount	Total Bill Amount	Actual Amount claimed against FY 2020-21 (Rs. Cr.)
		(Rs. Cr.)	(Rs. Cr.)	(Rs. Cr.)	Total Rebate
6.1	PTC Wind	52.1	0.0	**52.1**	0.9
7	DVC	494.1	0.1	**494.2**	4.9
8	Power stations in Delhi				
8.1	IP	2.6	0.0	2.6	
8.2	RPH	5.3	0.0	5.3	
8.3	GAS TURBINE	150.0	0.0	150.0	
8.4	Pragati-I	237.4	0.0	237.4	
8.5	Bawana	770.6	0.0	770.6	
8.6	TOWMCL	26.3	0.0	26.3	0.4
8.7	Thyagraj Solar	0.2	0.0	0.2	
8.8	Delhi MSW	39.4		39.4	0.4
8.9	East Delhi Waste Processing Company	0.0		0.0	
9	ARAVALI	16.3	(0.1)	**16.1**	0.4
10	SASAN	66.5	7.6	**74.2**	1.4
11	SECI	30.4	23.4	**53.7**	0.4
12	Short term Purchases	189.3		**189.3**	3.8
12.1	Short term Power Purchase Through Power Exchange	**0.0**	457.0	**457.0**	
12.2	Banking Arrangement Purchase	**0.0**	441.9	**441.9**	
12.3	Banking Arrangement Sale of Power	**0.0**	(428.0)	**(428.0)**	
12.4	Intra State Power Purchase	**0.0**	80.1	**80.1**	
12.5	Other Payments	**0.0**	14.8	**14.8**	
13	UI PURCHASE DTL SLDC	**0.0**	8.8	**8.8**	
14	Transmission Charges				
14.1	Power Grid Corp.of India Ltd.	739.7	(58.0)	681.7	28.7
14.2	Central Transmission Utility of India Limited	59.6	(2.8)	56.8	
14.3	Delhi Transco Ltd.	330.8	2.9	333.7	
14.4	Bhakra Beas Management Board	0.0	0.5	0.5	
14.5	Damodar Valley Corporation	2.4		2.4	
14.6	NTPC Ltd.	13.2		13.2	
14.7	Solar Energy Corporation of India	**0.0**	2.0	2.0	

Sr. No.	Power Suppliers	Rebatable Amount	Non-Rebatable Amount	Total Bill Amount	Actual Amount claimed against FY 2020-21 (Rs. Cr.)
		(Rs. Cr.)	(Rs. Cr.)	(Rs. Cr.)	Total Rebate
15	**Open Access Charges**	**0.0**	78.6	**78.6**	
16	**NRLDC/WRLDC/ERLDC charges billed by Power Vendors**	**0.0**	1.0	**1.0**	
	Total Transmission Charges	1145.6	24.1	**1169.8**	28.7
	Total Power Purchase Cost	**6441.2**	**712.2**	**7153.3**	**131.7**
17	**Short term Sale**				
17.1	Bulk Sale of Power	10.6		10.6	0.2
17.2	Short term Power Sale Through Power Exchange	0.0	44.9	44.9	
17.3	INTRASTATE SALE	0.0	0.7	0.7	
17.4	UI SALE DTL SLDC	0.0	33.1	33.1	
	Total Sale	**10.6**	**78.6**	**89.2**	**0.2**
	Net Rebate				**131.6**

3.245 The Petitioner has submitted that the normative rebate ought not be applied at the time of truing-up due to the following reasons:

a) The Revenue from the Tariff was not enough during FY 2020-21 to meet actual power purchase cost and other expenses. Therefore, the recovery of power purchase cost during FY 2020-21 was deferred due to delay in issuance of PPAC Orders. Also, the Commission itself directed Delhi Discoms to approach CERC for deferment of huge arrears bills of Genco/Transco.

b) Normative rebate cannot be considered at the stage of true-up. A large part of the tariff of the Discoms is unrecovered in the form of Regulatory Assets. The accumulated Regulatory Assets is of no immediate value to the Petitioner in discharging contractual liabilities for carrying out its business year on year. The Petitioner has faced an acute stringency of cash flow on account of the huge accumulated Regulatory Assets. It is no consolation to the Petitioner that someday

the tariff may be revised by taking into account of the Regulatory Asset. Factually, on account of cash crunch (due to accumulated Regulatory Asset) the Petitioner was unable to take advantage of the rebate offered by Genco/Transcos.

c) In any event, the deduction of a normative rebate assuming a maximum of 2% of the power purchase cost is ex-facie in contravention of Hon'ble Tribunal's Judgment in Appeal No. 153 of 2009 which expressly restricted such a deduction to 1% of the power purchase cost.

d) A similar issue is pending before Hon'ble Tribunal in Appeal No. 235-236 of 2014. Further, in true-up proceedings for FY 2015-16, the Petitioner has again raised the issue before the Commission, vide its letter dated 18/08/2017

e) Furthermore, the Petitioner vide letter dated 08/04/2015 submitted a number of reasons as to why the normative rebate ought not to be considered.

f) The Hon'ble APTEL in Judgment dated 02/03/2015 (Appeal 177 of 2012) has again confirmed the Judgment dated 30/07/2010 (Appeal 153 of 2009) and directed that normative rebate of upto 1% can be considered as per the norms specified for working capital in the Tariff Regulations, 2011 which means that actual rebate is to be considered and if actual rebate availed exceeds 1% then 1% is to be considered. Relevant extracts are reproduced below:

"6.1 According to the Appellant, the State Commission has acted contrary to the findings of this Tribunal in Appeal no. 142 of 2009 wherein the Tribunal directed to consider rebate ***upto 1%*** *as non-tariff income from the total rebate of 2% on power purchase.*

6.2 According to Shri Pradeep Misra, Learned Counsel for the State Commission this issue is pending consideration in Appeal no. 14 of 2012 wherein the judgment has been reserved. The State Commission has made detailed submissions in Appeal no. 14 of 2012. The Learned Counsel reiterated the detailed submissions made in Appeal no. 14 of 2012. 6.3 The Tribunal in Appeal no. 14 of 2012 on 28.11.2013 reiterated the view taken by this Tribunal in Appeal no. 153 of 2009. This Tribunal in Appeal no. 153 of 2009. Decided as under: "The second issue relates to the deduction of rebate due to the early

*payment of the power purchase cost from the ARR. The Appellant, through its efficient management, has paid all the bills immediately on raising of the bills by the generating company and, therefore, it has to be allowed a rebate of 2 per cent. Therefore, there is no justifiable reason for the State Commission to reduce the power purchase cost by rebate earned by the Appellant. The normative working capital provides for power purchase cost for one month. Therefore, rebate of 1 per cent available for payment of power purchase bill within one month should be considered as non-Tariff income and to that extent benefit of 1 per cent rebate goes to reducing the ARR of the Appellant. The rebate earned on early payment of power purchase cost cannot be deducted from the power purchase cost and rebate earned **only up to 1 per cent alone** can be treated as par of the non-Tariff income. Therefore treating the rebate income for deduction from the power purchase cost is contrary to the MYT Regulations. As such this issue is answered in favour of the Appellant." The Tribunal in Appeal no.142 of 2009 reiterated the above decision of the Tribunal." **(Emphasis added)***

g) The concept of normative rebate is based on assumptions that the system is perfect and business is being conducted as usual. The assumption that:

i. There is no creation of Regulatory Asset. However, there is an accumulated figure of Rs.4189.5 Crore upto FY 2019-20 as Regulatory Asset;

ii. APTEL's judgments have been implemented. However, in point of fact, that is not the case and various judgments are yet to be implemented;

iii. There is no major variation in power purchase cost, which is also not the case.

Pertinently, to the best of the knowledge of the Petitioner, in no other state any DISCOM has been able to avail maximum normative rebate when aforesaid conditions are not met.

h) Without prejudice to the above, the Commission in the past Tariff Orders has considered rebate on entire power purchase cost incurred by the Petitioner. However, the Commission has made certain disallowances. Therefore, the Commission has considered the rebate even on disallowed power purchase cost thereby doubly penalizing the Petitioner.

3.246 The Petitioner has filed an IA no. 5/2020 dated 04/12/2020 before this Commission that a rebate due to the Corona Pandemic was allowed by the Central Government through NTPC. The amount of rebate given by the NTPC is Rs.41.37 Crore. However, the DERC has allowed a rebate of Rs.71.30 Crore. The Officers of the Commission have pointed out that they were in receipt of a letter directly from the Central Government through Delhi Government prescribing a rebate of Rs.71.30 Crore.

3.247 In view of the above submissions, the Petitioner has requested the Commission to consider the actual rebate on power purchase and Transmission Charges during FY 2020-21 as there was steep surge in adverse impact of COVID-19 in FY 2020-21.

COMMISSION ANALYSIS

3.248 Regulation 119 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, specifies that:

"Distribution Licensee shall be allowed to recover the net cost of power purchase from the long term sources whose PPAs are approved by the Commission, assuming maximum normative rebate available from each source, for supply to consumers"

3.249 The Commission noted from power purchase agreement that the maximum normative rebate in case of NPCIL is 2.5% and 2% for other CGS, SGS and Transmission Companies. Accordingly, the Commission has considered the maximum normative rebate on Rebatable amount based on the submissions of the Petitioner as follows:

Rebate Details for FY 2020-21						Amount
Sl. No.	Party/Company	Rebate able Amount (Rs. Cr.)	Non-Rebate able Amount (Rs. Cr.)	Total Bill Amt (Rs. Cr.)	Petitioner (Rs. Cr.)	(Rs. Cr.)
1	NTPC	2,691.30	(3.40)	2,687.90	73.70	40.37
2	NHPC	277.20	83.30	360.50	11.10	4.16
3	Nuclear	77.80	2.70	80.60	0.90	1.95
4	SJVNL	69.30	-	69.30	2.60	1.04
5	THDC	89.80	-	89.80	2.10	1.35
6	Tala HEP	9.50	-	9.50	-	0.14
6.1	PTC Wind	52.10	-	52.10	0.90	1.04
7	DVC	494.10	0.10	494.20	4.90	7.41
8	Power stations in Delhi					
8.1	IP	2.60	-	2.60		0.05
	RPH	5.30	-	5.30		0.11
8.2	GAS TURBINE	150.00	-	150.00		3.00
8.3	Pragati-I	237.40	-	237.40		4.75
8.4	Bawana	770.60	-	770.60		15.41
8.5	TOWMCL	26.30	-	26.30	0.40	0.53
8.6	Thyagraj Solar	0.20	-	0.20		0.00
8.7	Delhi MSW	39.40	-	39.40	0.40	0.79
8.8	EAST DELHI WASTE PROCESSING COMPANY	-	-	-	-	
9	ARAVALI	16.30	(0.10)	16.10	0.40	0.24
10	SASAN	66.50	7.60	74.20	1.40	1.00
11	SECI	30.40	23.40	53.70	0.40	-
						-
12	Short term Purchases	189.30	-	189.30		-
12.01	Short term Power Purchase Thru Power Exchange	-	457.00	457.00		-
12.03	Banking Arrangement Purchase	-	441.90	441.90		-
12.03	Banking Arrangement Sale of Power	-	(428.00)	(428.00)		-
12.04	Intra State Power Purchase	-	80.10	80.10		-
12.05	Other Payments	-	14.80	14.80		-
13	UI PURCHASE DTL SLDC	-	8.80	8.80		-
14	**Transmission Charges**					
14.1	Power Grid Corp. of India Ltd.	739.70	(58.00)	681.70	11.09	11.10
14.2	Delhi Transco Ltd.	330.80	2.90	333.70		6.62
	Central Transmission Utility of India LTd.	59.60	(2.80)	56.80		
14.3	Bhakra Beas Management Board	-	0.50	0.50		-
14.4	Aravali Power Company Private Ltd			-		-
14.5	Damodar Valley Corporation	2.40	-	2.40		0.04
14.6	NTPC Ltd.	13.20		13.20		0.20
14.7	SASAN			-		-
14.8	Solar Energy Corporation of India	-	2.00	2.00		-
15	Open Access Charges		78.60	78.60		-
16	NRLDC/WRLDC/ERLDC charges billed by Power Vendors		1.00	1.00		-
	Total Transmission Charges	**1,145.60**	**24.10**	**1,169.80**		
	Total Power Purchase Cost	**6,441.20**	**712.20**	**7,153.30**	**131.70**	**-**
17	Short term Sale					
	Bulk Sale of Power	10.60		10.60		
	Short term Power Sale Thru Power Exchange		44.90	44.90		
	INTRATATE SALE		0.70	0.70		
	UI SALE DTL SLDC		33.10	33.10		
	Total Sale		**10.60**	**78.60**	**89.20**	**-**
	Net Rebate				**131.60**	**101.28**

3.250 Further, it is also noted from the submission of the Petitioner that during FY 2020-21,

Special Rebate on account of COVID-19 also provided by CGS/CTU which has been considered by the Commission as follows:

Rebate Amount provided by CGU/CTU for FY 20-21			
Sr. No.	**Name of Supplier**	**Rebate Doc. Date**	**Rebate Amount (Rs Cr.)**
1	SJVN Ltd.	07-06-2020	1.77
2	THDC India Ltd.	11-06-2020	2.08
3	PGCIL	12-06-2020	21.49
4	NTPC Ltd.	12-06-2020	41.37
5	Aravali Power	23-06-2020	0.40
6	NHPC Ltd.	30-06-2020	8.45
	Total		**75.56**

3.251 Accordingly, Total Rebate considered by the Commission towards Power Purchase Cost of the Petitioner amounts to Rs. 176.84 Cr.

RENEWABLE PURCHASE OBLIGATION

PETITIONER SUBMISSION

3.252 The Petitioner has filed a detailed representation/Petition No. 58 of 2021 dated 17/11/2021 before the Commission regarding RPO of FY 2018-19, FY 2019-20, FY 2020-21 and FY 2021-22.

3.253 Therefore, in view of the above, the Petitioner has requested that the Commission takes cognisance of the pending adjudication matter before the Commission and allow the Prayers in the Petition No. 58 of 2021.

COMMISSION ANALYSIS

3.254 Regulation 27 of *DERC (Business Plan) Regulations 2019* states,

"27. TARGET FOR RENEWABLE PURCHASE OBLIGATION

The targets for Renewable Purchase Obligation (RPO) in terms of Regulation 124 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 of a Distribution Licensee from FY 2020-21 to FY 2022-23

shall be computed as a percentage of total sale of power to its retail consumers in its area of supply excluding procurement of hydro power. The target for RPO shall be met through purchase of power from various Renewable Energy sources or purchase of Renewable Energy Certificates ('REC') or combination of both, and shall be as follows:

Sr. No.	Distribution Licensee	2020-21	2021-22	2022-23
1	Non Solar Target	10.25%	10.25%	10.50%
2	Solar Target	7.25%	8.75%	10.50
3	Total	17.50%	19.00%	21.00%

3.255 Regulation 27(5) of *DERC (Business Plan) Regulations 2019* states that non-compliance of the RPO targets shall attract penalty @10% of the weighted average floor price of solar and non-solar renewable energy certificate, as specified by CERC for the relevant year, for quantum of shortfall in RPO.

3.256 Regulation 27(6) of *DERC (Business Plan) Regulations 2019* states that amount of penalty imposed on the distribution licensee due to non-compliance of the RPO targets shall be reduced from the ARR during the true up of the relevant financial year in terms of Regulation 124 of *DERC (Terms and Conditions of Determination of Tariff) Regulations 2017.*

3.257 It is observed that Petitioner has purchased 1,531.94 MU power from Hydro Stations which is to be excluded from total MU billed for the purpose of calculation of MU to achieve the RPO targets.

3.258 Accordingly, the Petitioner's RPO targets and penalty on account of non-fulfilment of RPO targets for FY 2020-21 has been computed as follows, which is reduced from power purchase cost as per above stipulated Regulations:

Table 3. 51: Commission Approved - Penalty on account of non-fulfilment of RPO targets for FY 2020-21

Sr. No.	Particulars	UoM	Details
1	Total Consumption	MU	11,076.97
2	Purchase from Hydro Power	MU	1,531.94
3	Consumption excluding Hydro power	MU	9,545.03

Sr. No.	Particulars	UoM	Details		
	RPO Obligation		Solar	Non-Solar	Total
4	Actual RPO for FY 2020-21	%	7.25%	10.25%	17.50%
5	Actual RPO for FY 2020-21	MU	692.01	978.37	1670.38
6	RPO Met	MU	74.26	453.08	527.35
i	*SECI*	*MU*	*42.48*	-	*42.48*
ii	*Thyagraj*	*MU*	*0.55*	-	*0.55*
iii	*Net-Metering roof-top*	*MU*	*31.23*	-	*31.23*
iv	*PTC Wind*	*MU*	-	*147.58*	*147.58*
v	*TOWMCL*	*MU*	-	*90.26*	*90.26*
vi	*DMSW*	*MU*	-	*56.09*	*56.09*
Vii	*SECI-Wind*	*MU*	-	*159.15*	*159.15*
7	*REC Purchased*	*MU*	-	-	-
8	Balance Obligation	MU	617.75	525.28	1143.03
9	Floor price	Rs./kWh			1.00
10	**RPO Penalty @ 10% REC at Floor Price (Rs. Cr.)**				**11.43**

TOTAL POWER PURCHASE COST

PETITIONER SUBMISSION

3.259 Based on the above submissions, the actual power purchase cost claimed during FY 2020-21 is shown below:

Table 3. 52: Petitioner Submission - Power Purchase Cost during FY 2020-21 based on Auditor's Certificate (Rs.Cr.)

Sr. No.	Particulars	Submission
A	**Power Purchase Cost**	
i	Gross Power Purchase Cost	6411.6
ii	Power sold to other sources	517.3
iii	Net Power Purchase Cost	5894.3
B	**Transmission Charges**	
i	Inter-state transmission charges	738.5
ii	Intra-state transmission charges	333.7
iii	Other Transmission charges	97.6
iv	Total Transmission charges	1169.8
C	**Rebate**	
i	Power Purchase Rebate	103.1
ii	Rebate on Transmission Charges	28.7
iii	Total rebate	131.6
D	**Net Power Purchase Cost including Transmission charges net of rebate**	**6932.5**

3.260 The Petitioner requested the Commission to approve the power purchase cost during FY 2020-21 as submitted in the above table.

COMMISSION ANALYSIS

3.261 Based on the above submissions, the Commission approves the Power Purchase Cost for the Petitioner for FY 2020-21 as follows:

Table 3. 53: Commission Approved - Power Purchase Cost for FY 2020-21

Sr. No.	Particulars	Petitioner Submission		As approved	
		Quantum (MU)	Amount (Rs. Cr.)	Quantum (MU)	Amount (Rs. Cr.)
1	**Power Purchase Cost**				
i	Long Term Power Purchase	12826.40	6411.60	10875.74	5225.00
ii	Other Cost & Net Metering			31.23	6.19
iii	Short Term Power Purchase		(517.30)	1943.27	735.83
iv	Banking Import			786.60	-
	Gross Power Purchase Cost		**5894.30**	**13636.84**	**5967.01**
v	Banking Export	423.10		810.25	-
vi	Short Term Power Sales			423.14	89.24
vii	Normative Cost on Banking Transactions				(5.91)
	Net Power Purchase Cost	**12403.30**	**5894.30**	**12403.45**	**5871.86**
2	**Transmission Charges**				
i	Transmission Charges		1169.80		1091.15
ii	Open Access Charges				78.62
iii	Other Transmission Charges				(5.97)
	Total Transmission Loss/Charges	**470.40**	**1169.80**	**470.40**	**1163.80**
3	Penalty: Additional UI Charges				4.86
4	Penalty: Sustain Deviation Charges				1.22
5	**Rebate**				
i	Rebate on Power Purchase and Transmission Charges		131.60		101.28
ii	Special Rebate provided by CGS/CTU on account of COVID		-		75.56
	Total Rebate		**131.60**		**176.84**
6	Less: RPO Penalty				11.43
7	**Net Power Purchase including Transmission Loss/ Charges net of Rebate**		**6932.50**		**6841.30**

Sr. No.	Particulars	Petitioner Submission		As approved	
		Quantum (MU)	Amount (Rs. Cr.)	Quantum (MU)	Amount (Rs. Cr.)
8	Total Power (MU)	11932.80		11933.05	
9	Per Unit Power Purchase Cost (Rs./kWh)		5.81		5.73

OPERATION AN MAINTENANCE EXPENSES (O&M) EXPENSES

PETITIONER SUBMISSION

3.262 The Petitioner has submitted that Regulation 4(3) read with Regulation 87/ 92 of the Tariff Regulations, 2017 provides that Utilities shall be allowed O&M Expenses on normative basis as specified by the Commission in its Business Plan Regulations for the respective Control Period.

3.263 The Petitioner has further referred Regulation 23 of Business Plan Regulations, 2019 regarding the Operation and Maintenance Expenses for the period FY 2020-21 to FY 2022-23 as under:

*"**23. Operation and Maintenance Expenses***

Normative Operation and Maintenance Expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be follows:

Table 8: O&M Expenses for BRPL for the Control Period

Particulars	*Unit*	*2020-21*	*2021-22*	*2022-23*
66 kV Line	*Rs. Lakh/ Ckt. Km*	***3.855***	*4.002*	*4.156*
33 kV Line	*Rs. Lakh/ Ckt. Km*	***3.855***	*4.002*	*4.156*
11 kV Line	*Rs. Lakh/ Ckt. Km*	***1.150***	*1.194*	*1.239*
LT lines system	*Rs. Lakh/ Ckt. Km*	***6.148***	*6.384*	*6.629*
66/11 kV Grid S/s	*Rs. Lakh/ Ckt. Km*	***1.033***	*1.073*	*1.114*
33/11 kV Grid S/s	*Rs. Lakh/ Ckt. Km*	***1.033***	*1.073*	*1.114*
11/0.415 kV DT	*Rs. Lakh/ Ckt. Km*	***2.563***	*2.661*	*2.763*

…

(4) The Distribution Licensee shall be allowed O&M expenses for a particular financial year of the control period by multiplying the norms for O&M expenses of that particular year with the respective average network capacity during the

financial year i.e. (average of network capacity at start of Financial year and network capacity at the end of Financial year) ….”

3.264 As evident from the above, the normative O&M expenses for FY 2020-21 are computed by multiplying the average capacity of line length and transformers during FY 2020-21 with approved per unit rates for FY 2020-21.

3.265 The Petitioner vide its letter No. RA/2021-22/01/A/40 dated 16/04/2021 has provided the Commission with the details of network capacity addition during FY 2020-21.

3.266 The Petitioner has accordingly computed the average network capacity for FY 2020-21 as follows:

Table 3. 54: Petitioner Submission - Network Capacity for FY 2019-20 and FY 2020-21

Particulars	FY 2019-20	Additions	FY 2020-21
66/33 kV Line (ckt. km)	1174.0	69.0	1243.0
11KV line (ckt. km)	7730.5	334.6	8065.0
LT Line System (ckt. km)	12543.6	574.2	13117.8
66/11 & 33/11 kV Grid S/s (MVA)	6075.5	300.0	6375.5
11/0.415KV DT (MVA)	6204.3	176.6	6380.9

Table 3. 55: Petitioner Submission - Avg. Network Capacity for FY 2020-21

Particulars	UoM	FY 2019-20	FY 2020-21	Average
66/33 kV Line	ckt. Km.	1174.0	1243.0	1208.5
11KV line	ckt. Km.	7730.5	8065.0	7897.8
LT Line System	ckt. Km.	12543.6	13117.8	12830.7
66/11 & 33/11 kV Grid S/s	MVA	6075.5	6375.5	6225.5
11/0.415KV DT	MVA	6204.3	6380.9	6292.6

3.267 The Petitioner has applied the norms approved for FY 2020-21 in the Business Plan Regulations, 2019 to the respective average network capacity for FY 2020-21 as tabulated below:

Table 3. 56: Petitioner Submission - O&M Expenses during FY 2020-21 (Rs. Cr.)

Assets/ lines	Avg. Quantity	Norms		Amount (Rs. Cr)
66 kV lines	1208.5 ckt. Km.	3.855	Rs. Lakh/ ckt km	46.6
33 kV lines				

Assets/ lines	Avg. Quantity	Norms		Amount (Rs. Cr)
11 kV lines	7897.8 ckt. Km.	1.150	Rs. Lakh/ ckt km	90.8
LT lines system	12830.7 ckt. Km.	6.148	Rs. Lakh/ ckt km	788.8
33/11 kV grid sub-station	6225.5 MVA	1.033	Rs. Lakh/ MVA	64.3
66/11 kV grid sub-station				
11/0.415 kV DT	6292.6 MVA	2.563	Rs.Lakh/ MVA	161.3
Total				**1151.8**

3.268 The Petitioner has requested the Commission to allow the normative O&M expenses of Rs. 1151.8 Crore during FY 2020-21 as submitted in the above table as per the DERC Business Plan Regulation, 2019.

COMMISSION ANALYSIS

3.269 The Commission at Regulation 23 of DERC (Business Plan) Regulations, 2019 has notified norms for Operation and Maintenance Expenses for FY 2020-21 in terms of Regulation 4(3) of DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 as follows:

"23. Operation and Maintenance Expenses

(1) Normative Operation and Maintenance Expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be follows:

Table 2: O&M Expenses for BRPL for the Control Period

Particulars	*Unit*	*2020-21*	*2021-22*	*2022-23*
66 kV Line	*Rs. Lakh/ Ckt. Km*	*3.855*	*4.002*	*4.156*
33 kV Line	*Rs. Lakh/ Ckt. Km*	*3.855*	*4.002*	*4.156*
11 kV Line	*Rs. Lakh/ Ckt. Km*	*1.150*	*1.194*	*1.239*
LT line system	*Rs. Lakh/ Ckt. Km*	*6.148*	*6.384*	*6.629*
66/11 kV Grid S/s	*Rs. Lakh/ MVA*	*1.033*	*1.073*	*1.114*
33/11 kV Grid S/s	*Rs. Lakh/ MVA*	*1.033*	*1.073*	*1.114*
11/0.415 kV DT	*Rs. Lakh/ MVA*	*2.563*	*2.661*	*2.763*

……."

3.270 The Petitioner has submitted the actual network capacity as on 31/03/2021 as above

and claimed towards the O&M expenses Rs. 1151.83 Cr. The physical verification of the assets capitalised is still being undertaken by the Commission for FY 2020-21. Accordingly, the Commission provisionally considered 100% of capitalisation as per Audited book of Accounts for FY 2020-21. The petitioner has demanded the O&M Expenses of Rs. 1151.83 Cr. and the Commission has approved the said amount of Rs. 1151.83 Cr. on Normative basis subject to finalization of capitalization.

Table 3. 57: Commission Approved- Normative O&M Expenses for FY 2020-21 (Rs. Cr.)

Particulars	Capacity as on 31st March 2020 (a)	Capacity addition during FY 2020-21 (b)	Capacity as on 31st March 2021 (c=a+b)	Average Capacity for FY 2020-21 (d=(a+c)/2)	Multiplying factor (as per BPR 2019) (e)	Provisional Commission approved O&M for FY 2020-21 (Rs. Crore) (f=d*e)
66KV line	1174.012	68.993	1243.005	1208.508	3.855	46.588
33KV line						
11KV line	7730.474	334.570	8065.044	7897.759	1.150	90.824
LT Line System	12543.552	574.228	13117.780	12830.666	6.148	788.829
66/11KV Grid Substation	6075.500	300.000	6375.500	6225.5	1.033	64.309
33/11KV Grid Substation						
11/0.415KV DT	6204.289	176.564	6380.853	6292.571	2.563	161.279
Total						**1151.830**

ADDITIONAL O&M EXPENSES

PETITIONER SUBMISSION

3.271 As regards additional expenses, Regulation-11 of Tariff Regulations, 2017 states as under:

"11. The Distribution Licensee shall submit Annual Tariff Petition, at least, one hundred and fifty (150) days prior to the end of relevant financial year which shall contain:

...

(9) Actual and expected additional expenses on account of O&M beyond the control of Distribution Licensee for the ensuing & previous year respectively;

…"

3.272 As regards projection of O&M Expenses, Regulation 87 of Tariff Regulations, 2017 states that

"87.

…

Provided further that the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M expenses."

3.273 Accordingly, the Petitioner hereby claims item wise amount on account of additional O&M expenses which are uncontrollable in nature and not covered in the above-mentioned normative O&M expenses and are in line with the above regulation.

LOSS ON SALE OF RETIRED ASSETS

PETITIONER SUBMISSION

3.274 Regulation 45 of Tariff Regulations, 2017 states as under

"45. Loss or Gain due to de-capitalisation of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year."

3.275 In view of the above and as per the methodology provided in the Tariff Regulations, 2017, the Petitioner claims Rs.16.01 Crore for retirement of assets for the year FY 2020-21 as per audited accounts as submitted in our letter No. RA/2021-22/01/A/472 dated 26/11/2021.

COMMISSION ANALYSIS

3.276 Regulation 45 to 47 of DERC (Terms and Conditions for Determination of Tariff)

Regulations, 2017 stipulates as under:

"45. Loss or Gain due to de-capitalization of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year.

46. Loss or Gain due to de-capitalization of asset proposed by the Utility itself for the reasons not covered under Regulation 45 of these Regulations shall be to the account of the Utility.

47. Loss or Gain due to de-capitalization of asset after the completion of useful life of asset shall be to the account of the Utility."

3.277 DISCOM has submitted the data, and the analysis & prudence check of the submitted data is going on. DISCOMs are still submitting various justifications/ clarifications/ data in order to get their claims verified. The actual impact shall be considered, once finalized.

IMPACT ON ACCOUNT OF ARREARS PAID ON ACCOUNT OF 7TH PAY COMMISSION REVISION

PETITIONER SUBMISSION

3.278 The Petitioner has referred Regulation-23 (5) of DERC Business Plan Regulations, 2019 states as under:

"23. Operation and Maintenance Expenses

(5)The impact of difference of amount on account of actual implementation of Seventh Pay Revision and Interim Relief already considered for determination of norms for O&M Expenses, if any, shall be allowed separately in line with the methodology adopted for computation of norms for O&M Expenses, at the time of True up of ARR for relevant Financial year subject to prudence check."

3.279 The Petitioner has stated that a Wage Revision Committee was constituted by the GoNCTD vide office memorandum bearing No. F.11(62)/2015/Power/271 dated

25/01/2016 to examine and recommend to the Government the Pay Revision for the employees.

3.280 Such recommendations became applicable on the Petitioner as per the tripartite agreement.

3.281 The Committee had given recommendation vide order no DTL/108/04/2017-HR(Policy) /101 dated 28/07/2017 for payment of Interim Relief (IR) to the eligible employees at the rate of 2.57 times of Basic pay + Grade Pay w.e.f. 01/01/2016.

3.282 The Petitioner has implemented the Wage Revision Committee (WRC) Report recommendations w.e.f. 01/01/2016 as accepted by DTL Board vide its office order HR/CC/2020-211208 dated 15/10/2020 for payment of 7th Pay Commission to the eligible employees of the erstwhile DVB during the year.

3.283 Accordingly, the Petitioner was paying Special Interim Relief to its eligible employees since FY 2017-18 based on recommendation of the WRC vide Order No DTL/108/04/2017-HR(Policy)/101 dated 28/07/2017. The impact for FY 2020-21 is Rs. 181.88 Crore and the total impact including amount incurred in earlier years is Rs. 416.82 Crore. The Petitioner has already paid Rs.266.93 Crore (including Rs.122.14 Crore paid in FY 2020-21) and balance liability towards arrear of Leave Salary Contribution, Pension Contribution and Employee superannuated prior to January 2021 will be paid in due course.

Table 3. 58: Petitioner Submission - Total impact of 7th Pay Commission for FY 2020-21 (Rs. Cr.)

Particulars	Gross Earnings	LSC & PC	Total	Actual Paid
FY 2017-18 (Including Arrear w.e.f 01.01.2016)	55.5	48.3	103.8	55.5
FY 2018-19	40.2	21.2	61.4	40.2
FY 2019-20	49.0	20.7	69.7	49.0
FY 2020-21	129.0	52.9	181.9	122.1
Total – till FY 2020-21 (1+4)	**273.7**	**143.1**	**416.8**	**266.9**

3.284 Accordingly, the interim relief of 7th Pay Commission paid by the Petitioner to the employees during FY 2020-21 is Rs.122.14 Crore. The differential amount yet to be paid by the Petitioner is Rs.149.9 Cr. This amount includes Rs.12 Cr. towards retirees

and the balance amount Rs.138 Cr. pertains to LSC and PC both for active employees and retirees.

3.285 Further, the Petitioner would like to submit that the payment related to LSC and PC are regularly paid from Jan'21 onwards in respect of revised LSC and PC derived after implementation of 7th Pay. The balancing amount of LSC and PC i.e. Rs.138 Cr. for the period from 01/01/2016 to 31/12/2020 is not paid in view of cash crunch.

3.286 In view of the stressed cash flow situation, the Petitioner vide its letter letter No. RA/2020-21/01/A/407 dated 22/12/2020 apprised the Commission regarding implementation of revised 7th Pay Commission impact in line with DTL order dated 18/08/2020 and requested to allow the special additional rebate due to current adverse cash flow situation.

3.287 However, the Commission vide letter dated 05/01/2021 didn't accept the proposal and stated that the differential amount on account of actual pay-out of 7th Pay Commission and interim relief considered for determination of normative O&M expenses in Business Plan Regulations, 2019 will be allowed as an additional O&M expenses at the time of True Up of relevant financial year.

3.288 The Commission has allowed the impact of 7th Pay Commission on normative basis for FY 2020-21 to FY 2022-23 by considering an escalation factor of 3.83% (3 times) on the average value of FY 2016-17 to FY 2018-19. However, the same ought to be allowed on actual basis due to change in law. Accordingly, Petitioner requested the Commission to allow the incremental impact of 7th Pay Commission of Rs.88.7 Crore paid to employees during FY 2020-21 as tabulated below:

Table 3. 59: Petitioner Submission - Incremental Impact of 7th Pay Commission during FY 2020-21 (Rs. Cr.)

S. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
1	Actual Impact of 7th Pay Commission Paid		49.4*	40.2		
2	Considered for base year FY 2017-18 (equivalent to average value from FY 2017 to FY 2019)		29.9			
3	Escalation rate			3.83%	3.83%	3.83%

S. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
4	Considered as Normative in FY 21			31.0	32.2	33.4
5	Actually paid in FY 21					122.1
6	Incremental Impact					**88.7**

** The total payment of Rs. 55.53 Cr. done in FY 2017-18 on account of 7th Pay Commission include the arrears w.e.f 01/01/2016, and therefore, the same is prorated to 24 months. Accordingly, the actual value of payment considered during FY 2016-17 to FY 2017-18 is computed as Rs. 49.36 Cr.*

COMMISSION ANALYSIS

3.289 In view of Regulation 23(5) of DERC (Business Plan) Regulations, 2019, the Commission has considered the revision in its employees' cost on account of the 7th Pay revision subject to actual payment of the dues. During the prudence check, the Commission observed from the audited financial statement indicated the actual payment of such dues at Rs. 122.1 Cr. towards revision in its employee's cost on account of the 7th Pay Commission. Thus, Commission has allowed Rs. 88.7 Cr towards statutory pay revision under additional O&M expenses, as calculated in above Table.

LEGAL EXPENSES

PETITIONER SUBMISSION

3.290 The Petitioner has referred Regulation 23(7) of *Business Plan Regulations, 2019* states as under:

> *"23…*
> *(7) The Distribution Licensee may claim the legal expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:*
> *Provided that the legal expenses on account of cases filed against the Orders or Regulations of the Commission before any Court and the legal claims (compensation/penalty) paid to the consumer, if any, shall not be allowed."*

3.291 With respect to the above Regulation, the Petitioner would like to mention that

Distribution business is a regulated business under the aegis of this Commission and the right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) of the Constitution includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business. Moreover, the Electricity Act, 2003, allows the Petitioner the right to avail its statutory remedies under section 111 and other applicable provisions. Therefore, actual legal expenses without any distinction should be allowed as an expense in the ARR.

3.292 Out of the total expenses, Rs. 0.39 Cr. pertains towards filing appeals against the Orders including Tariff Orders to protect the stakeholder's interest. The category wise total legal expenses amounting to Rs.15.47Crore is summarised in Form 7(a).

3.293 Thus, the Petitioner requested the Commission to allow actual legal expenses of Rs.15.47 Crore for FY 2020-21 over and above the normative O&M expenses.

COMMISSION ANALYSIS

3.294 Regulation 23(7) of DERC (Business Plan) Regulations, 2019 stipulates as under:

"The Distribution Licensee may claim the legal expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:

Provided that the legal expenses on account of cases filed against the Orders or Regulations of the Commission before any Court and the legal claims (compensation/penalty) paid to the consumer, if any, shall not be allowed."

3.295 During the prudence check, the Commission observed that the petitioner has claimed the total legal expenses of Rs. 15.47 Cr. The Commission is of the view that the legal expenses incurred by the petitioner on account of cases filed against the Orders or Regulations of the Commission before any Court and the legal Claims is not allowed as per DERC (Business Plan) Regulations, 2019, (Rs. 7.87 Cr). Accordingly, remaining Legal Expenses Rs. 7.60 Cr. are being allowed by the Commission.

OMBUDSMAN EXPENSES

PETITIONER SUBMISSION

3.296 As per the directions of the Commission, the Petitioner has incurred an expenditure of Rs.0.91 Crore for the year FY 2020-21. Accordingly, the Petitioner is claiming the same for FY 2020-21. It must be noted that legal fees (including Ombudsman fees) is required to be spent to protect the constitutionally guaranteed rights of the Petitioner and hence ought to be allowed by the Commission.

COMMISSION ANALYSIS

3.297 During the prudence check, BRPL has clarified that the above expenses have been incurred for the establishment of the expense for the office of the Ombudsman. The Ombudsman Expenses of Rs. 0.91 Cr. during FY 2020-21 has been considered by the Commission as the Ombudsman Expenses are the expenses which are used in the running the establishment of Ombudsman, Electricity. Hence, allowed.

INCREMENTAL LICENSEE FEES PAID ON ASSETS

PETITIONER SUBMISSION

3.298 The Petitioner has stated that the Petitioner pays License fees to GoNCTD for land rights. The Commission has allowed the license fees to be paid to GoNCTD on normative basis by applying an escalation factor of 3.83% on the on the average value of FY 2016-17 to FY 2018-19. However, the same ought to be allowed on actual basis due to change in law. Accordingly, Petitioner requested the Commission to allow the incremental license fees of Rs.2.8 Crore paid to GoNCTD. The Calculation of the same is shown below:

Table 3. 60: Petitioner Submission - Incremental License Fee paid for FY 2020-21 (Rs.Cr.)

Sr. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
1	Actual License fees paid to GoNCTD	6.1	8.5	13.5		
2	Considered for base year FY 2017-18 (equivalent to		9.4			

Sr. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
	average value from FY 2017 to FY 2019)					
3	Escalation Rate			3.83%	3.83%	3.83%
4	Considered as Normative in FY 21			9.7	10.1	10.5
5	Actually paid in FY 21					13.3
6	**Incremental Impact**					**2.8**

COMMISSION ANALYSIS

3.299 The Commission has determined the norms for O&M expenses in DERC (Business Plan) Regulations, 2019 based on the actual O&M expenses by applying an escalation factor of 3.83% on the average value of FY 2016-17 to FY 2018-19 of the Petitioner.

3.300 The actual O&M expenses considered by the Commission include the expenses on account of the license fee paid on assets to GoNCTD. The O&M expenses determined by the Commission contain both elements of escalation on a year-to-year basis and additional O&M expenses on account of an increase in network capacity. After considering the license fee paid on assets considered in base year O&M expenses with a due escalation factor of 3.83%. Therefore, the additional differential claim sought by the Petitioner has been dis-allowed by the Commission.

SYNDICATION FEE/BANK CHARGES REGARDING LOAN OF WORKING CAPITAL AND REGULATORY ASSETS

PETITIONER SUBMISSION

3.301 Regulation-23 (6) of DERC Business Plan Regulations, 2019 states as under:

"(6) The Distribution Licensee may claim the expenses for raising loan for working capital and regulatory assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:

Provided that if this amount has been included in the interest on working capital and/or

Regulatory assets, the same shall not be allowed."

3.302 Accordingly, the Petitioner requested the Commission to allow an Rs.1.72 Crore paid on account of raising loan for working capital and regulatory assets under O&M expenses during FY 2020-21, as the said expenses is not the part of normative O&M expenses.

Table 3. 61: Petitioner Submission - Syndication Fee/Bank charges regarding loan of Working Capital and Regulatory Assets during FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
1	Working Capital Loan	0.4
2	Non Capex Loan	1.3
3	**Total**	**1.7**

COMMISSION ANALYSIS

3.303 Regulation 23(6) of DERC (Business Plan) Regulations, 2019 stipulates as under:

"The Distribution Licensee may claim the expenses for raising loan for working capital and regulatory assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:

Provided that if this amount has been included in the interest on working capital and/or Regulatory assets, the same shall not be allowed."

3.304 The charges for raising working capital loans and loan for financing RA shall be allowed if the same do not form part of Interest cost. The fresh borrowings are already netted-off with processing charges and the impact of same shall come in the Interest Cost. Moreover, there is nothing on record (or mentioned separately in Annual Audit Report of 2020-21) to prove that the petitioner has paid Rs. 1.72 towards raising working capital loans and loan for financing RA, hence the above claim regarding loan on working capital and regulatory assets cannot be accepted.

COVID EXPENSES

PETITIONER SUBMISSION

3.305 The Petitioner submitted that since the beginning of FY 2020-21, the country was grappling with pandemic outbreak of COVID-19. The Petitioner being a Distribution Licensee and coming under essential services had to carry on with its day to day operations and maintained 24 X 7 uninterrupted supply of power. Further, the Commission vide letter dated 08/07/2020 advised the Petitioner to take appropriate steps for maintaining uninterrupted and reliable power supply to consumers.

3.306 In order to do so, it had to ensure that its employees are well protected so as to continue serving its consumer. In this regard, the Petitioner had to take the following measures on urgent basis which was not contemplated earlier and thus not factored in while projecting the ARR for FY 2020-21:

- **Medical Facilities**

  The Petitioner provided a special COVID Protection & Medical Kit at the door step of employees who were home quarantined (Mask, Sanitizer, Oximeter, Thermometer, medicine box, etc.) prepared under guidance of our senior doctors. This was done to ensure that there is a minimal impact of COVID-19 on such employees who contracted COVID-19 disease while on duty so that they recovered early and were back to serve its consumers.

- **Distribution of COVID Protection Kits**

  Employees were provided with, masks, gloves, face shields, sanitizer etc. for their personal protection and we were doing sanitization of all our building and offices on regular basis in order to reduce employee's downtime and maintain continuous supply of power during COVID-19 pandemic.

  Every office/work station were religiously following each and every instruction/precaution issued by Union Home Ministry or by Govt. of NCTD. At entry gate of every building/premises security guards with proper protection were doing thermal scanning of each and every employee who entered the building.

- **Establishment of Quarantine facility**

  Self-isolation/quarantine was required for an individual who got infected from

Corona virus. As many of our workers lived in small houses where they did not have enough room to undergo proper quarantine, we established centers and rooms with all the facilities for such workers to safely quarantine themselves and provide proper medical aid/facility to them.

- **Insurance Facility**

  Every worker were provided a one-time COVID life cover of minimum Rs.10 lakhs during the pandemic situation. An emergency fund has been created to provide immediate financial help to an employee for treatment of COVID-19.

- **Incentive Schemes for the Workers**

  In an attempt to boost the morale of our workers and to motivate them to keep performing their duties of providing essential service to the citizens of NCT of Delhi, we have launched special incentive scheme for our workers. Under this scheme we provided incentives to those employees who worked in the field, including the containment zones and were exposed to COVID-19.

3.307 In view of above, the Petitioner is claiming Rs.6.1 Crore as expenses incurred on account COVID-19. These expenses were unforeseen and therefore, do not form part of normative O&M expenses allowed by the Commission in the Business Plan Regulations, 2019.

3.308 The Petitioner requested the Commission to allow the above expenses on actual basis.

COMMISSION ANALYSIS

3.309 The petitioner has claimed various expenses to the tune of Rs. 6.1 Cr. during the COVID period. In Commission's Suo-moto Order dated 07.04.2020 regarding mitigation of impact of covid-19 on electricity distribution licensees and consumers of delhi has considered the following rebate scheme is approved for all consumers for the actual/provisional bills raised during the period of March 24, 2020 till June 30, 2020 as below:

i. Payment in Day 1-7 of the Billing Date: 1.0% of the Bill amount (excluding arrears if any) or Rs 200 (whichever is lower)

ii. Payment in Day 8-14 of the Billing Date: 0.5% of the Bill amount (excluding arrears if any) or Rs 150 (whichever is lower)

iii. No rebate if the consumer is making part payment

iv. Additional rebate of Rs 20 per bill shall be provided to the consumer if the consumer furnishes the meter reading(s) himself.

3.310 However, BRPL has claimed Rs. 6.1 Cr. amount under the head of Medical Facilities, Distribution of COVID Protection Kits, Establishment of Quarantine facility, Insurance facility and Incentive Schemes for the Workers which is not covered in the Commission's Order dated 7/04/2020 , therefore, the same is not allowed by the Commission.

EXPENSES ON ACCOUNT OF NEW INITIATIVES

PETITIONER SUBMISSION

3.311 In FY 2020-21, the Petitioner had undertaken the following initiatives towards innovation and R&D for ultimate aim of improving the consumer experience and efficiency as well as lowering the cost of service.

1. **Enterprise live Data Lake connecting various data sources across organization:**

   Data lake is a disruptive system integrator for digital utilities. The platform is able to connect to existing and future systems with prebuilt connectors and data flows to support common business processes and utility operations. BRPL has started creation of data lake as proof of concept and integrating the different source of data like SCADA, Gide and feeder level data, DT and consumer AMR, Net-Metering, GIS, Asset Management (SAP R/3), i-Outage Management System, Customer Care and Billing System (SAP ISU). Expenditure for data lake POC during FY 2020-21 is Rs.10,00,000/- during FY

2020-21.

2. **Predictive asset maintenance using Drone based AI/ML analytics platform:**

In order to have a more robust practice of condition monitoring of the overhead lines and grid substations, BRPL has planned to use Drones along with manual patrolling in the initial phase on pilot basis. This drone programme can also be used to accurately map assets on the GIS with high accuracy, Inspection of EHV towers and EHV lines by Drone for condition Monitoring like preventive, predictive maintenance, identifying the phase to phase clearance, Phase to ground clearance, Loose connection or any other Mechanical or electrical abnormalities, power theft detection, asset mapping and assessment of vegetation encroachment around Discom infrastructure. Capital expenditure for predictive and preventive maintenance of 219 numbers of EHV line and 5 EHV grid with capacity of 729 MVA along with 19 HVDS system and 62 street lights for POC is Rs.7 Lakh during FY 2020-21.

3. **Market Based Economic Dispatch: Price Forecasting and Automated Power Scheduling / Demand Forecasting**

It is well known to us that accurate Day Ahead demand forecasting is required for optimised Purchase and Sale decision on day Ahead basis. But, with the evolving power market, and its design focusing on short-term/spot based competitive procurement mechanisms, like introduction of RTM, G-TAM, SCED, DSM linking with DAM and evolving design towards MBED & Derivatives, and with reducing dependence on Long Term procurement, it is imminent for Discoms to proactively adapt to the changes, and make optimal use of the market to reduce overall procurement cost. Expenditure for Market Based Economy Dispatch incurred during FY 2020-21 is Rs. 32 Lakh during FY 2020-21.

4. **Behavioural Energy Efficiency Program:**

BRPL launched India's first Behavioural Energy Efficiency (BEE) Pilot program

in its licensee area. A total of 2.6 lakh domestic customers in South and West Delhi were covered in the pilot. In this, insights on how energy is being used by these customers were analysed and detailed bi-monthly Home Energy Report (HER) were given to the consumers on their electricity usage. The program was rolled-out in the month of October, 2018 for a period of 1.5 years. Considering the saving achieved under the program and global experience, a Detailed Project Report has been prepared and submitted to the Commission for its approval for expansion and continuation of BEE Home Energy Report program. The expenditure for behavioural energy efficiency program in FY 2020-21 is Rs.56 Lakh during FY 2020-21.

5. Automated Demand Response Program (POC):

BRPL partnered with IIM Ahmedabad and sustained impact to conduct ADR POC Program. This ADR POC Program is first of its kind in India where domestic consumers participated in the Demand Response events and consumers can also “opt out” even after “opt in” selected by participating consumers during ADR intervention through smart plug Application.

A customizable web-based platform is developed for on boarding the consumers through which utility can publish the events, send notifications to the participating consumers about the events and participating consumers can give their approval to events published by utility through mobile based app.

Automated Demand Response program is successfully demonstrated for peak shaving of AC loads with temperature control as well as On/Off control using smart device like smart plugs and IR blasters. Load shifting of Geyser loads is also demonstrated in winter. Total 22 consumers (Residential and C&I) participated in the POC program.

ADR POC project report is submitted to Commission and requested to give in principle approval for large scale deployment of ADR Program for domestic and C&I consumers and requested for Support to finalize Implementing Agency and Demand Aggregator through open tender and to incentivize the participating

consumers as per DPR submitted vide letter dated 23/09/2019. Cost for POC is Rs.0.03 Crore during FY 2020-21.

6. Load Research Study of BRPL with TERI

The commission had given its approval to undertake Load Research Study of BRPL on dated 06/12/2019. The Energy Resources Institute (TERI) was awarded to conduct Load Research Study through competitive bidding process as directed by Commission. The study covered comprehensive research of utility level demand profile, key operational parameters, system level and consumer category level load profiling covering major consumer categories like domestic, commercial, Industrial and agricultural. Category wise load research has been further supported through in-depth consumer surveys (based on sampling technique) and visit selected energy intensive industrial units to understand the process and operational procedures. Detailed Load Research Study report is submitted to the Commission. Expenditure incurred for Load research study is Rs. 0.35 Crore during FY 2020-21.

7. Mandatory Energy Audit

BRPL is the first DISCOM which has completed 2nd Phase Mandatory Energy Audit to fulfil the statutory compliance as per Government of India Gazette notification no 02/11(06)/05 – BEE dated 28.04.2010 and submitted the audit report under PAT cycle. Expenditure incurred for Mandatory Energy Audit is Rs.0.03 Crore. As per draft energy audit regulation 2021, Energy audit to be conducted in each year.

3.312 Accordingly, the summary of the above expenses on account of new initiatives incurred during FY 2020-21 by the Petitioner is tabulated below:

Table 3. 62: Petitioner Submission - Expenses on account of new initiatives incurred during FY 2020-21 (Rs.Cr.)

Sr. No	Particulars	FY 2020-21
1	Enterprise live Data Lake connecting various data sources across organization:	0.1

Sr. No	Particulars	FY 2020-21
2	Predictive asset maintenance and asset mapping using Drone based AI/ML analytics platform	0.1
3	Market Based Economic Dispatch: Price Forecasting and Automated Power Scheduling / Demand Forecasting:	0.3
4	Behavioural Energy Efficiency Program	0.6
5	Automated Demand Response Program (POC)	0.03
6	Load Research Study of BRPL	0.4
7	Mandatory Energy Audit	0.03
8	**Total**	**1.5**
9	**Total inclusive of taxes @18%**	**1.7**

COMMISSION ANALYSIS

3.313 The petitioner has claimed additional O&M expenses to the tune of Rs. 1.7 Cr. under the head of certain new initiatives. However, these are normal activities/part of business and should be covered under O&M expenses, hence the above expenses cannot be allowed.

INCREMENTAL GST IMPACT

PETITIONER SUBMISSION

3.314 With effect from 01/07/2017, the Petitioner was required to pay GST (@18%) instead of service tax (12% to 15%). Further, as per the circular no. 34/8/2018 – GST, there are few services that are provided by the Petitioner to consumers which are now deemed as GST taxable services. However, the GST rate is 18% which is higher than the service tax rate.

3.315 The Commission has allowed the GST charges on normative basis for FY 2020-21 by considering an escalation factor of 3.83% on the average value of FY 2017-18 to FY 2018-19. It is submitted that law is very clear towards implementation of any new tax and time and again the impact on account of the same have been allowed by various statutory authorities as pass through. It is submitted that there are plethora of Orders approving impact of increase in tax/introduction of new taxes, Change in law and such additional costs have been allowed as pass through. The said relief has also been

approved by Hon'ble CERC/APTEL for various competitively Bid Projects awarded under Section 63 of the Electricity Act, 2003 and therefore not allowing such impact to be recovered on actual basis for tariff determined under Section 62 of the Act shall be in gross violation to the statue and therefore the impact needs to be allowed on actual basis due to change in law.

3.316 It is also pertinent to note that as the 7th Pay Commission was implemented from January, 2016, the Commission has proportionately reduced the 7th Pay Commission impact for 3 months in order to consider only 3 years impact to compute normative rates of O&M expenses.

3.317 Accordingly, Petitioner requested the Commission to allow the incremental GST charges impact of Rs.13.7 Crore paid to employees during FY 2020-21 as follows:

Table 3. 63: Petitioner Submission - Incremental GST Impact during FY 2020-21 (Rs.Cr.)

Sr. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
1	Actual GST/Service Tax as per Audited Accounts	41.2	58.6	73.2		
2	Considered for base year FY 2017-18 (equivalent to average value from FY 2017 to FY 2019)		57.7			
3	Escalation Rate			3.83%	3.83%	3.83%
4	Considered as Normative in FY 21			59.9	62.2	64.5
5	Actually paid in FY 21					78.3
6	**Incremental Impact**					**13.7**

3.318 The Petitioner requested the Commission to allow the aforesaid expenses while truing up the expenses for FY 2020-21.

COMMISSION ANALYSIS

3.319 Regulation 23 of DERC (Business Plan) Regulations, 2019 stipulates the normative O&M expenses of the Petitioner. The Commission has determined the norms for O&M expenses based on the actual O&M expenses of the Petitioner during FY 2016-17 to FY 2018-19. In the actual O&M expenses, the expenditure incurred towards legal fee, legal

claims, rebate paid to the consumer on monthly bills, provisions, loss on sale of retirement of assets have not been considered.

3.320 Under DERC (Business Plan) Regulations, 2019 and through its Statement of Reasons Business Plan Regulation, 2019, the Commission has clarified that revision of minimum wages/Any Statutory impact of GST has already been included in the norms of O&M expenses. The additional claim of expenses related to manpower based contract is part of the normative O&M expenses and do not qualify for the second proviso to the Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017. Hence, the claim of incremental impact of Rs. 13.7 Crores cannot be allowed.

INCREMENTAL SMS CHARGES

PETITIONER SUBMISSION

3.321 The Petitioner has submitted that the Commission vide its letter ref no. F.17(47)/Engg/DERC/2014-15/C.F 4741/3682 dated 13/01/2016 issued the directives to send the SMS to consumer on various occasions. The Petitioner complied with the said directives and hence, incurred an amount of Rs.2.30 Crore in FY 2020-21.

3.322 The Commission has allowed the SMS charges on normative basis for FY 2020-21 by considering an escalation factor of 3.83% on the average value of FY 2016-17 to FY 2018-19. However, the same ought to be allowed on actual basis.

3.323 Since, these expenses are incurred as per the directions of the Commission, the Petitioner requested to allow the incremental impact of SMS charges equivalent to Rs. 1.4 Crore as a part of additional expenses as tabulated below.

Table 3. 64: Petitioner Submission - Incremental SMS Charges during FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
1	Actual SMS Charges as per Audited Accounts	0.7	0.6	1.1		
2	Considered for base year FY 2017-18 (equivalent to average value from FY 2017 to FY 2019)		0.8			

Sr. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
3	Escalation Rate			3.83%	3.83%	3.83%
4	Considered as Normative in FY 21			0.8	0.9	0.9
5	Actually paid in FY 21					2.3
6	**Incremental Impact**					**1.4**

COMMISSION ANALYSIS

3.324 Under DERC (Business Plan) Regulations, 2019, the Hon'ble Commission has clarified that SMS charges has already been included in the norms of O&M expenses and hence, the incremental impact of Rs. 1.40 cannot be allowed separately.

TOTAL ADDITIONAL O&M

PETITIONER SUBMISSION

3.325 In view of the above submissions, the additional O&M expenses claimed as a part of truing-up requirement for FY 2020-21 are shown below:

Table 3. 65: Petitioner Submission - Additional O&M Expenses for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
1	Loss on Sale of Retired Assets	16.0
2	Incremental impact of 7th Pay Commission	88.7
3	Legal Expenses	15.5
4	Ombudsman/legal Fees	0.9
5	Incremental License Fee paid on assets	2.8
6	Syndication Fee/Bank charges regarding loan of Working Capital and Regulatory Assets	1.7
7	Covid -19 additional expenses	6.1
8	Expenses on account of new initiatives	1.7
9	Incremental GST Impact	13.7
10	Incremental SMS Charges	1.4
11	**Total**	**148.5**

3.326 The Petitioner has requested the Commission to allow the amount as proposed in the table above while truing up the expenses for FY 2020-21.

COMMISSION ANALYSIS

3.327 In line with above discussions, the Commission has approved the following Additional O&M for FY 2020-21:

Table 3. 66: Commission Approved - Additional O&M Expenses for FY 2020-21

Sr. No.	Particulars	Petitioner's Submission (Rs. Crore)	Commission's Approved (Rs. Crore)
1	Loss on Sale of Retired Assets	16.0	-
2	Arrears paid on account of 7th Pay Commission	88.7	88.70
3	Legal Expenses	15.5	7.60
4	Ombudsman Expenses	0.9	0.91
5	Incremental License Fee paid on assets#	2.8	-
6	Syndication fee/ Bank charges regarding loan on Working Capital and Regulatory Assets#	1.7	-
7	Covid-19 additional expenses	6.1	-
8	Expenses on account of new initiatives#	1.7	-
9	Incremental GST Impact#	13.7	-
10	Incremental SMS Charges#	1.4	-
	Total	**148.5**	**97.21**

#Not allowed as O&M Expenses is being permitted on normative basis.

CAPITAL EXPENDITURE AND CAPITALISATION
PETITIONER SUBMISSION

3.328 The Petitioner has considered the capital expenditure and capitalisation for FY 2020-21 as per the directions of Hon'ble APTEL given in Judgment dated 06.10.2009 (Appeal 36 of 2008) and 02.03.2015 (Appeal 177 of 2012) which is the law as of date.

3.329 The Petitioner has also considered de-capitalisation of assets from FY 2002-03 to FY 2020-21 provided that the Commission also allows the loss on assets/ retirement of assets as per the Petition No. 46 of 2012 filed on 19.11.2012. Accordingly, the actual capitalisation and de-capitalisation for FY 2020-21 has been considered to derive the closing balance of GFA as under:

Table 3. 67: Petitioner Submission - Gross Fixed Assets for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
A	Opening GFA	7664.4
B	Capitalisation during the year	620.6
C	De-capitalisation	53.1
D	Closing GFA	8231.9
E	Average GFA	7948.2

COMMISSION ANALYSIS

3.330 The Petitioner has made the actual capitalisation in their Audited Books of Accounts for FY 2020-21 for Rs. 620.60 crores. The Commission is in process of finalisation of capitalisation and physical verification of assets for FY 2020-21. Further, the Commission observed that the Petitioner has made the provision of Rs. 7.83 crores capitalised towards 7th Pay Commission. Further, the Commission observed that the Employee Expenses capitalised by the petitioner are in excess of 10% of total Employee Expenses. The Regulation 24(3) of DERC Business Plan Regulations, 2019 stipulates as under:

> *"24(3) Employee expenses and A&G expenses shall be allowed to be capitalized equivalent to lower of 10% of (total Employee Expenses and A&G Expenses) or actuals in a particular financial year."*

3.331 The excess Employee Expenses capitalised by the distribution licensee beyond the norm of 10% of total Employee Expenses has been disallowed.

3.332 Further, as stipulated in previous section of Tariff Order, an amount of Rs. 0.07 Cr. has been considered by the Commission on account of EIC.

3.333 Pending finalisation of physical verification, the Commission has provisionally considered 100% of the capitalisation submitted by the petitioner based on their Audited Report provided by M/s Ravi Ranjan & Co LLP* after deducting the provisions made on account of 7th Pay Commission and excess capitalisation on account of Employee Expenses as under:

Sr. No.	Particulars	Amount (Rs. Cr.)
1	Capitalisation as per Audited Accounts	620.60
	Disallowance	
2	Provision made and capitalised on account of 7th Pay Commission	7.83
3	Excess Employee Expense Capitalised	17.00
4	Addition on account of EIC	0.07
5	Subtotal (1-2-3)	595.84
6	**100% of additions during the year**	**595.84**

**In case, subsequently the Audited Report is found at variance during physical verification, suitable adjustments shall be done in line with the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.*

3.334 De-capitalization of assets of the Petitioner as claimed and subsequently confirmed by the Consultant in their Regulatory Audit Report amounting to Rs. 53.10 Cr. has been considered by the Commission for FY 2020-21.

3.335 Further, as discussed in previous section of the Tariff Order, the Opening GFA for FY 2020-21 is changed to Rs. 7268.44 Cr. and the same has been considered as follows:

Table 3. 68: Provisionally Approved Capitalization upto FY 2020-21 (Rs. Cr.)

Particulars	Petitioner submission	Approved
Provisional Trued up opening balance of Gross Fixed Assets	7664	7,268.44
Add- Capitalization during the year	621	595.84
Less- Retirement/ De-capitalization for the year	(53)	(53.10)
Closing balance of Gross Fixed Assets	8232	7,811.18
Average Gross Fixed Assets	7948	7,539.81

MEANS OF FINANCE

PETITIONER SUBMISSION

3.336 During FY 2020-21, the Petitioner has capitalised Rs.620.6 Crore which includes Rs.53.1 Crore and Rs.144.5 Crore on account of De-capitalisation and Consumer Contribution capitalised, respectively during the year. The Petitioner has sought financing of Capitalisation (net of de-capitalisation and Consumer Contribution) through debt and equity in the ratio of 70:30 as shown below:

Table 3. 69: Petitioner Submission - Financing of Capitalisation for FY 2020-21(Rs.Cr.)

S. No	Particulars	FY 2020-21
A	Total Capitalisation	620.6
B	De-capitalisation	53.1
C	Consumer Contribution	144.5
D	**Balance Capitalisation**	**422.9**
E	Debt	296.0
F	Equity	126.9

COMMISSION ANALYSIS

CONSUMER CONTRIBUTION & GRANT

3.337 The Commission has considered the closing balance of Consumer Contribution and Grants approved for FY 2019-20 as discussed in previous section of Tariff Order as opening balance of Consumer Contribution and Grants for FY 2020-21. The Commission verified the additions towards Consumer Contribution and Grants during the year from the audited financials of the Petitioner.

3.338 Accordingly, the addition to the Consumer Contribution/Grants for the year have been considered as follows:

Table 3. 70: Commission Approved - Consumer Contribution/Grants (Rs. Cr.)

Sr. No.	Particulars	As per Commission	Remarks/ Ref.
A	Opening Balance	842.49	
B	Consumer Contribution during the year	144.52	
C	Closing Balance	987.01	A+B
D	Average of Cumulative Capitalized Consumer Contribution/Grants	914.75	(A+C)/2

DEPRECIATION

PETITIONER SUBMISSION

3.339 For the purpose of computing depreciation for True-up of FY 2020-21 in accordance with the Tariff Regulations, 2017, the Petitioner has followed the same methodology as considered by the Commission in the past i.e. the average rate of Depreciation based on the Audited Accounts of the Petitioner has been applied on the average GFA net of Consumer Contribution and Grants.

3.340 The Petitioner has tabulated the average rate of Depreciation for FY 2020-21 based on the Audited Accounts as below:

Table 3. 71: Petitioner Submission - Depreciation Rate for FY 2020-21

Sr. No	Particulars	Actual
A	Opening GFA as per audited accounts	7626.0
B	Closing GFA as per audited accounts	8193.4
C	Average of GFA	7909.7
D	Depreciation as per Audited Accounts	368.4

Sr. No	Particulars	Actual
E	**Average depreciation rate**	**4.66%**

3.341 As per Companies Act, the depreciation rate in case of a regulated entity has to be adopted as prescribed by the Regulator. The depreciation has been computed in the audited accounts based on the schedule of depreciation rates given in the Tariff Regulations, 2017. In audited accounts, the depreciation has been computed based on life of assets as specified in the Regulations. In case the Commission desires the computation in support of depreciation on assets appearing in audited accounts, the same can be provided.

3.342 The Petitioner has calculated the allowable depreciation after excluding consumer contribution and Grants from the Gross Fixed Assets as under:

Table 3. 72: Petitioner Submission - Depreciation for FY 2020-21

Sr. No	Particulars	FY 2020-21
A	Average GFA	7948.2
B	Average Consumer Contribution and Grants	878.0
C	Average assets net of consumer contribution & Grants	7070.1
D	Average rate of depreciation	4.66%
E	**Depreciation**	**329.3**

3.343 The Petitioner has calculated the cumulative depreciation on fixed assets at the end of FY 2020-21 as tabulated below:

Table 3. 73: Petitioner Submission - Cumulative Depreciation on fixed assets upto FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
A	Opening balance of cumulative depreciation	3339.2
B	Additions during the year	329.3
C	Closing balance of cumulative depreciation	3668.5
D	Accumulated Depreciation on De-capitalised Assets at the beginning of FY	310.5
E	Depreciation on De-capitalized Assets during the FY	34.8
F	Accumulated Depreciation on De-capitalised Assets at the end of FY	345.3

3.344 The depreciation has been utilised for repayment of loan as under:

Table 3. 74: Petitioner Submission - Utilisation of Depreciation for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
A	Depreciation	329.3

Sr. No	Particulars	FY 2020-21
B	Depreciation utilised for debt repayment	329.3

COMMISSION ANALYSIS

3.345 Regulations 78 to 83 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* stipulates the provisions of Depreciation as follows:

"78. Annual Depreciation shall be computed based on Straight Line Method for each class of asset as specified in Appendix-1 of these Regulations.

79. The base value for the purpose of depreciation shall be the capital cost of the asset approved by the Commission. Depreciation shall be chargeable from the first year of commercial operation and in case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

80. The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that any depreciation disallowed on account of lower availability of the generating station or generating unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life and the extended life.

81. Land other than the land held under lease shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.

82. In case of existing assets, the balance depreciable value as on 1st April of any financial year shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31st March of the preceding financial year from the gross depreciable value of the assets.

83. The Depreciation for Life extension projects/scheme shall be allowed in the manner as indicated in Regulation 51 of these Regulations."

3.346 Based on the Regulatory Audit Report of the Consultant, the Commission has considered Depreciation Rate as 4.56% for FY 2020-21 on provisional basis, therefore, depreciation on the assets capitalised provisionally is computed as below:

Table 3. 75: Commission Approved - Depreciation for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	Approved
A	Average of Fixed Assets	7,539.81
B	Average Consumer Contribution	914.75
C	Average Fixed Assets (net of consumer contribution & grant)	6,625.06
D	Average depreciation rate	4.56%
E	**Allowable Depreciation**	**302.10**

3.347 The Commission has considered the opening balance of accumulated depreciation as Rs. 2845.31 Cr. as discussed in previous section of the Tariff Order. Accordingly, the accumulated depreciation for FY 2020-21 is as follows:

Table 3. 76: Commission Approved - Accumulated Depreciation (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Remarks/ Ref.
A	Opening balance of cumulative depreciation	3060	2845.31	As per previous section of Tariff Order
B	Additions during the year	302	302.10	
	Less- Depreciation towards Retirement		34.80	As per Petitioner
C	Closing balance of cumulative depreciation	3362	3,112.61	A+B-C

WORKING CAPITAL

PETITIOINER SUBMISSION

3.348 The Petitioner has computed the Working Capital Requirement for FY 2020-21 based on the actual Power Purchase cost and revenue available towards ARR as submitted for Truing up of FY 2020-21. The Working Capital Calculation for FY 2020-21 for Truing up is as follows:

Table 3. 77: Petitioner Submission - Working Capital Requirement (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
A	Annual Revenues from Tariff & Charges	9187.0
A1	Receivables equivalent to two months average	1531.2
B	Power Purchase Expenses	6932.5
B1	Less: 1/12th of power purchase expenses	577.7
C	Working Capital	953.5
D	Opening Working Capital	928.9
E	**Change in Working Capital**	**24.6**

3.349 The Working capital as shown above has been considered for calculation of Regulated Rate Base for FY 2020-21.

COMMISSION ANALYSIS

3.350 Regulation 84(4) of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* stipulates the working capital determination for Distribution Licensee as follows:

> *"84. The Commission shall calculate the Working Capital requirement for:*
>
> *(4) Distribution Licensee as follows:*
>
> *(i) Working capital for wheeling business of electricity shall consist of ARR for two months of Wheeling Charges.*
>
> *(ii) Working capital for Retail Supply business of electricity shall consist of:*
>
> *(a) ARR for two months for retail supply business of electricity;*
>
> *(b) Less: Net Power Purchase costs for one month;*
>
> *(c) Less: Transmission charges for one month; and"*

3.351 The Commission has computed the Working Capital considering the net Power Purchase Cost including Transmission Charges and ARR as approved in the truing up for FY 2020-21 as follows:

Table 3. 78: Commission Approved - Working Capital for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Ref.
A	ARR	9187	8,768.37	Table No. 3.98
A1	Receivables equivalent to two month of ARR	1531	1,461.40	A/6
B	Power Purchase Expenses	6933	6,841.30	Table No. 3.53
B1	Less: 1/12th of power purchase expenses	578	570.11	B/12
C	Working Capital	954	891.29	A1-B1
D	Opening Working Capital	929	928.84	As per previous section of TO
E	**Change in Working Capital**	**25**	**(37.55)**	**D-E**

REGULATED RATE BASE (RRB)

PETITIONER SUBMISSION

3.352 The Petitioner has computed the Regulated Rate Base (RRB) for FY 2020-21 as below:

Table 3. 79: Petitioner Submission - Regulated Rate Base for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
A	RRB Opening	4758.9
B	ΔAB (Change in Capital Investments)	128.4
C	Investments Capitalized	567.4
D	Depreciation	329.3
E	Add: Depreciation on De-capitalised Assets	34.8
F	Consumer Contribution	144.5
G	Change in WC	24.6
H	RRB Closing	4911.9
I	**RRB (i)**	**4847.7**

COMMISSION ANALYSIS

3.353 Regulation 65 to 70 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* stipulates as under:

> *"65. Return on Capital Employed shall be used to provide a return to the Utility, and shall cover all financing costs except expenses for availing the loans, without providing separate allowances for interest on loans and interest on working capital.*
>
> *66. The Regulated Rate Base (RRB) shall be used to calculate the total capital employed which shall include the Original Cost of Fixed Assets (OCFA) and Working Capital. Capital work in progress (CWIP) shall not form part of the RRB. Accumulated Depreciation, Consumer Contribution, Capital Subsidies / Grants shall be deducted in arriving at the RRB.*
>
> *67. The RRB shall be determined for each year of the Control Period at the beginning of the Control Period based on the approved capital investment plan with corresponding capitalisation schedule and normative working capital.*
>
> *68. The Regulated Rate Base for the ith year of the Control Period shall be computed in the following manner:*

RRBi = RRB i-1 + ΔABi /2 + ΔWCi;

Where,
"i" is the ith year of the Control Period;

RRBi: Average Regulated Rate Base for the ith year of the Control Period;

ΔWCi: Change in working capital requirement in the ithyear of the Control Period from (i-1)th year;

ΔABi: Change in the Capital Investment in the ith year of the Control Period;

This component shall be arrived as follows:
ΔABi = Invi – Di – CCi - Reti;
Where,
Invi: Investments projected to be capitalised during the ith year of the Control Period
and approved;
Di: Amount set aside or written off on account of Depreciation of fixed assets for the ith year of the Control Period;
CCi: Consumer Contributions, capital subsidy / grant pertaining to the ΔABi and capital grants/subsidies received during ith year of the Control Period for construction of service lines or creation of fixed assets;
Reti: Amount of fixed asset on account of Retirement/ Decapitalisation during ith Year;
RRB i-1: Closing Regulated Rate Base for the Financial Year preceding the ith year of the Control period. For the first year of the Control Period, Closing RRB i-1 shall be the

Opening Regulated Rate Base for the Base Year i.e. RRBO;
RRBO = OCFAO – ADO – CCO+ WCO;
Where;
OCFAO: Original Cost of Fixed Assets at the end of the Base Year;
ADO: Amounts written off or set aside on account of depreciation of fixed assets pertaining to the regulated business at the end of the Base Year;
CCO: Total contributions pertaining to the OCFAo, made by the consumers, capital subsidy /grants towards the cost of construction of distribution/service lines by the Distribution Licensee and also includes the capital grants/subsidies received for this purpose;

WCO: working capital requirement in the (i-1)thyear of the Control Period.
Return on Capital Employed (RoCE) for the year "i" shall be computed in the following manner:

RoCE=WACCi RRBi*

Where,
WACCi is the Weighted Average Cost of Capital for each year of the Control Period;
RRBi – Average Regulated Rate Base for the ith year of the Control Period.

70. The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:

$$\text{WACC} = \left[\frac{D}{D+E}\right] * r_d + \left[\frac{E}{D+E}\right] * r_e$$

Where,
D is the amount of Debt derived as per these Regulations;
E is the amount of Equity derived as per these Regulations;
Where equity employed is in excess of 30% of the capital employed, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The amount of equity in excess of 30% treated as notional loan. The interest rate on excess equity shall be the weighted average rate of interest on the actual loans of the Licensee for the respective years. Where actual equity employed is less than 30%, the actual equity and debt shall be considered;

Provided that the Working capital shall be considered 100% debt financed for the calculation of WACC;

Rd is the Cost of Debt;
Re is the Return on Equity."

3.354 Accordingly, the Commission approves the RRBi for FY 2020-21 as follows:

Table 3. 80: Commission Approved - RRBi for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Ref.
A	Opening Original Cost of Fixed Assets ($OCFA_o$)		7,268.44	Table No. 3.68

Sr. No.	Particulars	As per Petitioner	As per Commission	Ref.
B	Opening Accumulated depreciation (ADo)		2,845.31	Table No. 3.76
C	Opening consumer contributions received (Cco)		842.49	Table No. 3.70
D	Opening Working capital (WCo)		928.84	Table No. 3.78
E	Opening RRB (RRBo)	4758.90	4,509.48	E = A-B-C+D
F	Investment capitalised during the year (INVi)	567.4	595.84	Table No. 3.68
G	Depreciation during the year (Di)	329.3	302.10	Table No. 3.76
H	Depreciation on decapitalised assets during the year	34.8	34.80	
I	Consumer contribution during the year (Cci)	144.5	144.52	Table No. 3.70
J	Fixed assets retired/decapitalised during the year		53.10	Table No. 3.68
K	Change in capital investment (ΔABi)	128.4	130.92	(F-G+H-I-J)
L	Change in working capital during the year (ΔWci)	24.6	(37.55)	Table No. 3.78
M	RRB Closing	4911.90	4,602.84	E+K+L
N	RRBi	**4847.70**	**4,537.39**	E+K/2+L

DEBT AND EQUITY, INTEREST ON LOAN, WACC

PETITIONER SUBMISSION

3.355 The Petitioner has submitted that in accordance with Judgment dated 28/11/2014 in Appeal No. 61 & 62 of 2012, the Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance for calculation of average debt during the year. The average debt and equity for FY 2020-21 is tabulated below:

Table 3. 81: Petitioner Submission - Average Debt and Equity for FY 2021-21 (Rs.Cr.)

Sr. No	Particulars	Debt	Equity
A	Opening	2457.3	2119.3
B	Additions during the year		
i	*Capex*	296.0	126.9
ii	*Working capital*	24.6	
C	Less: Repayment	245.7	
D	Closing	2532.2	2246.2
E	**Average**	**2494.8**	**2182.7**

3.356 With regard to the rate of interest on loan, Regulation 22 of Business Plan Regulations, 2019 states that:

> ***"22. MARGIN FOR RATE OF INTEREST ON LOAN***
>
> *(1) The rate of interest on loan for a financial year shall be Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1st April of that financial year plus the Margin. The Margin, in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 towards capitalisation of Assets, Working Capital and Regulatory Assets for Distribution Licensee, is allowed as the difference between the weighted average rate of interest on actual loan portfolio and the MCLR as on 1st April of that financial year:*
>
> *Provided that the Margin shall not exceed 5.00%, 4.25% and 3.50% for the first, second and third year of the control period, respectively:*
>
> *Provided further that the rate of interest on loan (MCLR plus Margin) in any case shall not exceed approved base rate of return on equity i.e. 14.00%.*
>
> *(2) The Distribution Licensee shall follow transparent mechanism to avail Loans and, to the extent possible, shall endeavour to invite open tender for availing Loans."*

3.357 Further, with regard the cost of debt on working capital loans, the Regulation 85 of the Tariff Regulations, 2017 states as under:

> ***"INTEREST ON WORKING CAPITAL***
>
> *85. Rate of Interest On Working Capital shall be considered as the bank rate as on 1stApril of the year plus margin as specified by the Commission for the Control Period and shall be trued up on the basis of prevailing bank rate as on 1st April of the respective financial year:*
>
> *Provided that the rate of interest availed through open tendering process (Competitive Bidding) among Scheduled Banks, Financial Institutions etc., shall not be trued up.*

86. Interest on working capital shall be payable on normative basis notwithstanding that the Utility has availed any loan for the working capital."

3.358 The Petitioner has submitted the margin for computation of interest on working capital stated as under:

Table 3. 82: Petitioner Submission - Rate of Interest on Loan (%)

Sr. No.	Particulars	Rate
A	Rate of Interest on Capex Loan	12.73%
B	Rate of Interest on Working Capital	11.37%
C	SBI MCLR as on 01.04.2020*	7.75%
D	**Margin for Capex Loan for FY 2020-21**	**4.98%**
E	**Margin for Working Capital Loan for FY 2020-21**	**3.62%**

SBI MCLR Rate enclosed as **Annexure 3A.2*

3.359 Accordingly, the rate of interest on term loan and working capital is equivalent to minimum of (i) approved base rate of RoE of 14.00%, (ii) rate of interest w.r.t actual loan and working capital portfolio during FY 2020-21 and (iii) Bank Rate of 7.75% as on April 1, 2020 plus margin for rate of interest on loan as per Business Plan Regulations, 2019. Thus, the rate of interest on loan and working capital comes out to be 12.73% and 11.37% respectively and subsequently, computed the blended interest rate on loan tabulated as under:

Table 3. 83: Petitioner Submission - Weighted Average Interest Rate on Loan (%) for FY 2020-21

Sr. No.	Particulars	FY 2020-21
A	Closing Balance of Debt	2532.2
B	Closing Debt at 100% Working Capital	953.5
C	Closing Balance of CAPEX Loan	1578.7
D	Rate of Interest on Loan	12.73%
E	Rate of Interest on Working Capital	11.37%
F	**Blended Rate of Interest on Loan**	**12.22%**

3.360 The Petitioner has requested the Commission to approve the rate of interest on loan (rd) as 12.22% for FY 2020-21.

3.361 Further, in order to comply with the Directives issued by the Commission, the

Petitioner vide its letter No. RA/2021-22/01/A/485 dated 01.12.2021 has submitted the statement of interest on all type of loans availed from various Banks/Financial Institutions for FY 2020-21.

3.362 The Petitioner has considered the rate of interest of loans during 2020-21 i.e. 12.22% and RoE at 16%. Further, as per Regulation 21 of DERC Business Plan Regulations, 2019:

> ***"21. TAX ON RETURN ON EQUITY***
>
> *The base rate of return on equity as allowed by the Commission under Regulation 20(1) and Regulation 20(2) of these Regulations shall be grossed up with the Minimum Alternate Tax or Effective Tax Rate of the respective financial year in terms of Regulation 72 and 73 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as per the following formula:*
>
> *Rate of Return on Equity= 16/[(100-Tax Rate)/100]*
>
> *where, Tax Rate is Minimum Alternate Tax (MAT) or Effective Tax Rate, as the case may be."*

3.363 In addition to above Regulation, a new section 115BAA has been inserted in the Income Tax Act with effect from Financial Year (FY) 2019-20. Section 115BAA allows every domestic company to avail an option to pay Income-tax at the rate of 22% (effective tax rate is 25.17% including surcharge and cess), subject to certain specified conditions. If a Company exercises the option to switch to pay tax u/s 115BAA, MAT will not be applicable to it. However, once the option is exercised, the Company cannot subsequently opt out from it. The Petitioner has carried out the detailed analysis for switching over to section 115BAA and is of the view that since the Company is presently not availing any deductions under the existing tax regime and due to the availability of substantial brought forward losses and unabsorbed depreciation, it will be beneficial to shift to the new tax regime u/s 115BAA. In view of the above, the Petitioner has decided to avail the option to switch over to the new tax regime u/s 115BAA w.e.f. FY 2019-20.

3.364 In line with the above submission, the grossed-up return on equity is 21.38% as effective tax rate is 25.17%. The Petitioner has submitted the computation of WACC as under:

Table 3. 84: Petitioner Submission - Weighted Average Cost of Capital (WACC) (Rs. Cr.)

Sr. No.	Particulars	Rate
A	Average Equity	2182.7
B	Average Debt	2494.8
C	Return on Equity	16.00%
D	Income Tax Rate	25.17%
E	Grossed up Return on Equity	21.38%
F	Rate of Interest	12.22%
G	**Weighted average cost of Capital**	**16.49%**

3.365 The Petitioner has submitted the RoCE for FY 2020-21 as follows:

Table 3. 85: Petitioner Submission - Return on capital employed (ROCE) (Rs.Cr.)

Particulars	FY 2020-21
Weighted Average Cost of Capital (WACC)	16.49%
RRB (i)	4847.7
RoCE	**799.6**

3.366 The Petitioner requested the Commission to allow RoCE based on the above computations.

COMMISSION ANALYSIS

3.367 Regulation 22 of the *DERC (Business Plan) Regulations, 2019* stipulates the margin for rate of interest on loan as follows:

"22. MARGIN FOR RATE OF INTEREST ON LOAN

(1) The rate of interest on loan for a financial year shall be Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1 st April of that financial year plus the Margin. The Margin, in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 towards capitalisation of Assets, Working Capital and Regulatory Assets for Distribution Licensee, is allowed as the difference between the weighted average rate of

interest on actual loan portfolio and the MCLR as on 1 st April of that financial year:

Provided that the Margin shall not exceed 5.00%, 4.25% and 3.50% for the first, second and third year of the control period, respectively: Provided further that the rate of interest on loan (MCLR plus Margin) in any case shall not exceed approved base rate of return on equity i.e. 14.00%.

(2) The Distribution Licensees shall follow transparent mechanism to avail Loans and, to the extent possible, shall endeavour to invite open tender for availing Loans."

3.368 Accordingly, the WACC, ROCE as approved by the Commission for the Petitioner is as follows:

Table 3. 86: Commission Approved - WACC and ROCE for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Ref.
A	RRBi	4847.7	4,537.39	Table No. 3.80
B	Opening Equity for net Capitalisation (limited to 30%)		1,074.19	
C	Closing Equity limiting to 30% of net capitalization		1,113.47	
D	Average Equity for net Capitalisation (limited to 30%)		1,093.83	
E	Opening Debt at 70% of net capitalization		2,506.45	
F	Closing Debt at 70% of net capitalization		2,598.09	
G	Average Debt at 70% of net capitalisation		2,552.27	
H	Debt at 100% of working capital		891.29	
I	Debt- balancing figure		3,443.56	I=G+H
J	Rate of return on equity (re)		16.00%	L=J+K
K	Rate of debt (rd) on capitalization		12.73%	
L	Rate of debt (rd) on working Capital		11.37%	
M	Rate of interest on debt(rd)		12.38%	
N	WACC	16.49%	13.25%	
P	**RoCE**	**799.60**	**601.16**	**Q=A*N**

INCOME TAX

COMMISSION ANALYSIS

3.369 The Commission based on the submitted data for Income Tax return as mentioned in previous section of the Tariff Order has computed the income tax for FY 2020-21 as follows:

Table 3. 87: Commission Approved - Income tax for FY 2020-21 (Rs. Cr.)

Sr. No.	Income Tax	Approved
A	Average Equity for Capitalisation (limited to 30%) (Rs. Cr.)	1,093.83
B	Rate of return (re) (%)	16.00%
C	Return on equity (Rs. Cr.)	175.01
D	Income Tax Rate (%)	0.00%
E	Return on equity including income tax (Rs. Cr.)	175.01
F	Tax (Rs. Cr.)	0.00
G	Actual Tax Paid (Rs. Cr.) – Note 44 of Audited Accounts	-
H	**Tax allowed (Rs. Cr.)**	**0.00**

NON-TARIFF INCOME

PETITIONER SUBMISSION

3.370 The Petitioner has stated that the items which have been added apart from the income shown as per Audited Accounts are as under:

Table 3. 88: Petitioner Submission - Non-Tariff Income for FY 2020-21

Sr. No	Particulars	Amount (Rs. Cr.)
A	Other Operating Income	142.3
B	Other Income	62.6
I	**Total Income as per Accounts**	**204.9**
C	Add: Interest on CSD	36.4
D	Add: Differential in SLD	-5.9
II	**Total Other Income**	**235.4**
D	Less: Income from other business	
a	Street Light	15.0
III	**Net Income to be considered**	**220.3**
A	Less: Interest on Contingency Reserve	0.1
B	Less: LPSC	35.7
C	Less: Write-back of misc. provisions	0.1
D	Less: Short term gain	7.8

Sr. No	Particulars	Amount (Rs. Cr.)
E	Less: Transfer from Consumer contribution for capital works	45.0
F	Less: Bad debts recovered	1.5
G	Less: Interest on Inter-company Loans	16.3
H	Less: Commission on collection of Electricity Duty	10.2
I	**Net Non-Tariff Income**	**103.8**

3.371 The Petitioner requested the Commission to allow the NTI during FY 2020-21 as submitted in the above table.

COMMISSION ANALYSIS

3.372 Regulation 94 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* states,

"94. The Utility shall submit forecast of Non-Tariff Income to the Commission, in such form as may be stipulated by the Commission from time to time, whose tentative list is as follows:

(i) Income from rent of land or buildings;

(ii) Net Income from sale of de-capitalised assets;

(iii) Net Income from sale of scrap;

(iv) Income from statutory investments;

(v) Net Interest on delayed or deferred payment on bills;

(vi) Interest on advances to suppliers/contractors;

(vii) Rental from staff quarters;

(viii) Rental from contractors;

(ix) Income from Investment of consumer security deposit;

(x) Income from hire charges from contactors and others, etc."

3.373 The Commission has trued up the Non-Tariff Income in accordance with the Regulation 94 of DERC Tariff Regulations, 2017 as stated above in subsequent paras:

1) Interest on Consumer Security Deposit (CSD)

3.374 As the Commission has considered Consumer Security Deposit for funding of Revenue

Gap, therefore the Petitioner has considered the rate of Carrying cost for computing the interest on Consumer Security Deposit. Hence, the difference of normative interest on CSD and that booked in the Audited Accounts has been added in NTI as under:

Table 3. 89: Petitioner Submission - Interest on CSD (Rs.Cr.)

Sr. No	Particulars	FY 2020-21
A	Opening Balance of CSD	818.2
B	Closing Balance of CSD	832.9
C	Average Balance	**825.6**
D	Interest Rate	12.77%
E	Interest on CSD	105.4
F	Interest booked in Audited Accounts	69.0
G	**Net Interest to be considered**	**36.4**

COMMISSION ANALYSIS

3.375 The Commission has verified the Consumer Security Deposit with the Petitioner from the Audited financial statements for FY 2020-21. Further, it is observed from the Note 22 and Note 31 of Audited financial statements for FY 2020-21, the Consumer Security Deposit have been bifurcated by the Petitioner under two heads i.e. other financial liabilities – non-current and other financial liabilities – current. The Commission has considered the amount of Consumer Security Deposit depicting under both the heads of the liabilities as the interest is to be paid on total liability towards the Consumer Security Deposit laying under current and non-current financial liability.

3.376 The Commission has considered the working capital interest rate for FY 2020-21 as trued up is 11.37% for the purpose of determining normative Interest on Consumer Security Deposit.

3.377 The actual amount of interest paid to the consumers comes to Rs. 69.00 Cr. as per the Note 40 of Annual Audited Books of Accounts for FY 2020-21. Accordingly, the difference in the normative interest income and the actual interest booked as expense for FY 2020-21 is being considered as part of the Non-Tariff Income of the Petitioner as follows:

Table 3. 90: Commission Approved - Consumer Security Deposit for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	Petitioner submission	As per Commission	Ref.
A	Opening Balance of Consumer Security Deposit	818.17	886.86	Note 22 & 32 of Audited Accounts
B	Closing Balance of Consumer Security Deposit	832.94	903.36	
C	Average Balance of Consumer Security Deposit	825.56	895.11	(A+B)/2
D	Working Capital Interest Rate	12.77%	11.37%	WACC
E	Normative amount of Interest	105.42	101.77	E=C*D
F	Actual Amount of Interest	69	69.00	Note 40 of Audited Accounts
G	**Difference to be additionally offered as NTI**	**36.42**	**32.77**	**G=E-F**

2) Difference on account of Service Line Development (SLD) Charges

PETITIONER SUBMISSION

3.378 The Petitioner has stated that the Commission in its Tariff Order dated 29/09/2015 ruled as under:

> *"3.373 The Commission has considered the service line charges as income for a period of three years for true-up up to FY 2011-12. The service line charges up to FY 2012-13 have been considered as part of revenue gap up to FY 2012-13 as discussed in earlier paragraphs. For FY 2013-14, service line charges of Rs. 43.37 Crore as per audited financial statement of FY 2013-14 are being considered as part of the non-tariff income of the Petitioner."*

3.379 The Petitioner has challenged the aforesaid issue before Hon'ble ATE in Appeal 297 of 2015 which is pending. Without prejudice to the contentions in the Appeal, the Petitioner has added the difference between the SLD Charges received during FY 2020-21 and that appearing in the Other Income in the Audited Accounts for the purpose of computation of Non-Tariff Income as under:

Table 3. 91: Petitioner Submission - Difference on account of SLD (Rs. Cr.)

Sr. No	Particulars	FY 2020-21
1	Received during the year	37.1
2	SLD Appearing in Other Income	43.0
	Difference Considered	**-5.9**

3.380 Accordingly, the Petitioner has adjusted the negative impact of Rs. 5.9 Crore during FY 2020-21 for the purpose of computation of Non-Tariff Income.

COMMISSION ANALYSIS

3.381 The Commission has been considering the SLD charges on receipt basis as part of the Non-Tariff income of the Petitioner.

3.382 The Commission verified the Audited Financial Statements and observed that the accounting treatment of the Petitioner continues to amortise the SLD over a period of three years. However, without pre-judice to the contentions in the Appeal 297 of 2015, the Petitioner has offered the SLD on receipt basis. Accordingly, the Commission has considered an amount of Rs. (-) 5.89 Cr. as income from SLD and made part of Non-Tariff Income.

3) Income from Other Business (Street Light Maintenance Charges)

PETITIONER SUBMISSION

3.383 The Petitioner has submitted that apart from distribution licensee's business, the Petitioner is also generating revenue from other business. These other businesses are being operated in parallel by the Petitioner along with the Distribution Business. The Petitioner is exercising its fundamental right to carry out these unrelated businesses.

3.384 Section 51 of the 2003 Act entitles the Distribution Licensee such as the Petitioner to engage in any other business for optimum utilization of its assets. Section 51 also requires that a certain proportion of "the revenues" derived from such business be utilized for reducing the wheeling charges. Section 51 is an enabling provision contained in the legislation with some purpose. Disallowance of the legitimate

expenses relating to other business would be ex facie contrary to Section 51 of the 2003 Act and would lead to discouraging the distribution licensee such as the Petitioner from generating income from other business, which is otherwise undertaken considering the interest of consumers at large and optimum utilization of assets of distribution business. The Petitioner has engaged in the businesses (as described in subsequent paragraphs) which are within the scope of Section 51 of the 2003 Act and has hereinafter provided reasons for this Commission to consider: (1) The Income by deducting the expenditure from the Revenue; and (2) Reworking of the proportion of the Revenues to be retained by the Petitioner in excess of the 20% which was stipulated in the 2005 Regulations as "a general principle" and entitling the Petitioner to "approach the Commission for change of the aforesaid sharing formula with proper justification, for approval of the Commission".

3.385 Regulation 3(5) of *DERC (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) (First Amendment) Regulations, 2005* is as follows:

> *"3(5) In addition to the sharing of costs under sub-clause (3) above, the Licensee shall account for and ensure due payment to the Licensed Business a certain proportion of revenues from the other Business as follows:*
> *where the Licensee utilizes the assets and facilities of the licensed business for other business the Licensee shall retain 40% of the net revenue from such business and pass on the remaining 60% of the net revenue to the regulated business; and*
>
> *where the Licensee does not utilize the assets and facilities of the licensed business for other business, the Licensee shall retain 60% of the net revenue from such business and pass on the remaining 40% of the net revenue to the regulated business;"*

3.386 Accordingly, the claims on account of street light maintenance business are discussed below:

3.387 The Petitioner has submitted that the responsibility of maintaining street light is not

contained in the Distribution License of the Petitioner. The Electricity Act, 2003 does not mandate the Distribution Licensee to maintain Street Lights. Further, as per Section-42 of Delhi Municipal Corporation Act, 1957, it is the responsibility of MCDs to maintain Street lighting system which is reproduced below:

"42. Obligatory functions of the Corporation

….

(o) the lighting, watering and cleansing of public streets and other public places;

…

(w) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;"

3.388 With the unbundling and restructuring of Delhi Vidyut Board (DVB) into corporate entities and privatisation of Distribution Business, the past legacy of maintenance of public lighting was passed on to the Petitioner as matter of course, though as distribution licensee the maintenance of public lighting was not their function. In fact, the Petitioner vide letter dated 24/03/2004 intimated the Commission that maintenance of street lighting is the responsibility of MCDs under DMC Act and not the Petitioner. Also the Commission in Order dated 03/09/2003 ruled as under:

"10. Having heard the submission of the parties, the Commission observed that it was the prerogative of the MCD, either to get the work done themselves or through the DISCOMs, in the latter alternative, scope of works, as also the commercial terms and conditions, shall need to be proposed by MCD. Thereafter, the Commission shall determine the maintenance charges, etc. after having considered the responses of the DISCOMs."

3.389 The Petitioner has stated that maintenance of street lighting is an activity assigned to the Petitioner by MCDs under DMC Act and does not fall under Regulated Business.

3.390 However, there was a dispute between the Delhi DISCOMs and MCDs on scope of work of the activities and charges at which the maintenance is to be undertaken by

Delhi DISCOMs. During FY 2003-04, the Commission received number of complaints on the poor conditions of street light prevailing in respect of Public Lighting in Delhi. Consequently, in order to settle the matter, the Commission vide letter dated 15/10/2003, identified the scope of works as maintenance of existing streetlights, addition of new streetlights, installing of high mast lights, transformers, etc. Further, the Commission vide Order dated 5/03/2004 determined the rates for maintenance of street lights. These rates were further amended by the Order issued by the Commission on 24/09/2009.

3.391 It is further submitted that the determination of rates and scope of work by the Commission does not mean that maintenance of streetlights fall under Licensed Activity and is a part of regulated business. The scope of work and determination of rates by the Commission, in which this Commission acted almost as a Mediator or a Conciliator rather than an adjudicator has helped MCD and the Petitioner to reach at a consensus. Since it is no part of the jurisdiction available under the EA for this Commission to adjudicate a dispute between the MCDs and the Petitioner, the consent of the Petitioner and the MCDs to approach this Commission to seek its assistance in resolving such dispute could not clothe this Commission with a jurisdiction that it did not otherwise have in law.

3.392 Therefore, the Petitioner is maintaining Street Lights not as an obligation under Licensed Business or a part thereof but on behalf of road owning agencies, viz. SDMC, NDMC, EDMC, NHAI, PWD in the areas comprising South and West Delhi.

3.393 For carrying out the maintenance services the Petitioner optimally engages its existing manpower, Technicians, Electricians, Electric Men, Line Engineers and also outsources further manpower.

3.394 Since the activity of maintenance of Street Lights is neither a licensed activity nor an activity related to licensed business so no part of the cost of such activity nor the revenue accrued therefrom should form part of the ARR of the licensed business.

3.395 In point of fact, the cost of such activity does not form part of the O&M cost in the

ARR since the O&M costs is permitted by the Commission on normative base which has no reference to the actual expenses of the Petitioner. For example, the R&M expenses are given as a percentage of Gross Fixed Assets.

3.396 In view of the aforesaid, the Petitioner requested that entire income on account of maintenance of Street Lights may be allowed to be retained by the Petitioner as it is neither a non-tariff income nor an income within the scope of Section 51 of the 2003 Act. The Commission in Tariff Order dated 28/03/2018 has stated that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner.

COMMISSION ANALYSIS

3.397 The Commission in its Order dated 5/03/2004 regarding directions for street lighting in the areas of MCD stated,

"11. … The best way doing this would be to have an in-built system of providing incentives in case of good performance and likewise, impose penalties in case the performance is lower than expectations…

The Commission would like to evolve a system whereby good performance is rewarded. Similarly, poor performance also needs to be discouraged and therefore, the Commission directs that full maintenance charges may be paid for 90% performance. Performance higher than 90 shall earn an incentive for the DISCOMS according to the following table:

Performance level achieved	***Incentive***	***Example***
Between 90-95%	*1% for each percentage in over achievement from target of 90%*	*Actual Performance 93% Incentive 93-90 = 3%*
Between 95-97%	*1.5% for each percentage in over achievement from target of 95%*	*Actual Performance 97% Incentive = 5 + 3 = 8%*
Above 97%	*2.0% for each percentage in over achievement from target of 97%*	*Actual Performance 99% Incentive = 8 + 4 = 12%*

Performance less than 90% shall attract disincentive for the DISCOMS according to the following table:

Performance level achieved	*Incentive*	*Example*
Between 80-90%	*1% for each percentage in shortfall to achieve target of 90%*	*Actual Performance 83%* *Disincentive 90-83 = 7%*
Between 70-80%	*1.5% for each percentage in shortfall to achieve target of 80%*	*Actual Performance 77%* *Disincentive 10+4.5 = 14.5%*
Above 70%	*2.0% for each percentage in shortfall to achieve target of 70%*	*Actual Performance 60%* *Disincentive 25 + 20 = 45%*

The incentive or disincentive would not be a pass through in the calculation of the Annual Revenue Requirement and the payment would be made by the 15th day of the following month."

3.398 The Petitioner could not substantiate its claim be way of documentary evidence of the performance levels achieved in order to claim the incentive. The Petitioner shall be allowed incentive, if any, on account of street light maintenance for FY 2020-21 on production of documentary evidence without any carrying cost. Accordingly, Commission has not considered the same as a part of Non-Tariff Income.

4) Late Payment Surcharge

PETITIONER SUBMISSION

3.399 The Petitioner submitted that it levied LPSC @ 1.5% per month on flat basis till FY 2012-13. The Commission was therefore allowing only financing cost of LPSC to the Petitioner by computing the principal amount (LPSC divided by 18% (12 x 1.5%) and allowing carrying cost on the principal amount. The difference between the amount of LPSC and the interest on principal amount was passed on the consumers by way of NTI.

3.400 Based on the representation of Foundation of Rubber & Polymer Manufacturers, the

Commission vide letter dated 13/12/2012 communicated that LPSC should be charged proportional to the number of days of delay in receiving payment from the consumers by the Petitioner. The Commission in Tariff Order dated 29/09/2015 again directed the Petitioner to charge LPSC proportionate to the number of days of delay in receiving the payment from the consumers of the DISCOMs.

3.401 The Petitioner in this Petition requested the Commission to allow the entire LPSC instead of financing cost of LPSC during FY 2020-21 as the Petitioner charged LPSC proportionate to the number of days of delay and not on flat basis. The methodology of charging LPSC proportionate to the number of days of delay leads to recovery of only financing cost of LPSC for the delay in payment and not on flat basis. However, the Commission without referring to its direction for change in charging of LPSC continued with the earlier methodology which was utilised for computation of financing of LPSC till FY 2012-13. Such treatment has actually resulted in allowance of financing cost of LPSC at much lower rate.

3.402 It is further submitted that the concept of financing cost of LPSC was introduced by the Commission in Tariff Order dated 26/08/2011 as LPSC was considered as a part of revenue realisation for the purpose of computation of AT&C Loss as per Clause-4.7 (c) of DERC Tariff Regulations, 2007. As per DERC Tariff Regulations, 2011, the methodology of computation of revenue realisation for the purpose of computation of AT&C Loss has been changed and LPSC is no longer being included as a part of revenue realisation for computation of AT&C Loss from FY 2012-13 onwards. Since the methodology for computation of AT&C Loss has been changed, the Petitioner ought to be allowed entire LPSC instead of financing cost of LPSC.

3.403 It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the amount delayed through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is time taking process and therefore, in case of any default

on part of consumers to pay electricity bills in time, the Petitioner has to face the following penalties:

a) **Penalty on account of under-achievement of AT&C Loss:** In case of any under-achievement of AT&C Loss, the Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.

b) **Penalty in repayment of Loans:** In present scenario, the Petitioner is not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result, the Petitioner has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.

c) **Penalty by Generators:** Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

3.404 The Petitioner has stated that such treatment tantamount to discrimination between Gencos, Transcos and DISCOMs which is depicted in the table below:

Table 3. 92: Petitioner submission - Treatment of LPSC to various utilities in Delhi

Sr. No	Particulars	Delhi Gencos and Transcos	Delhi DISCOMs
1	Before FY 2013-14	LPSC @ 1.5% per month; LPSC collected allowed to Gencos and Transcos irrespective of actual cost of financing delay in payment; Therefore, LPSC not considered as Non-Tariff Income.	LPSC @ 1.5% per month; Only financing cost of delayed payment by computing principal amount, i.e., LPSC Collected/ 18% allowed to DISCOMs; Difference between LPSC collected and financing cost of delayed payment considered as NTI.
2	From FY 2013-14	Same treatment continued.	LPSC @ 1.5% proportional to number of days of delay; Same formulae for

Sr. No	Particulars	Delhi Gencos and Transcos	Delhi DISCOMs
			computing principal amount despite of change in treatment;

3.405 The Petitioner requested the Commission to allow entire LPSC of Rs.35.65 Crore during FY 2020-21 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

COMMISSION ANALYSIS

3.406 Regulation 94 of *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017* states,

> *"94. The Utility shall submit forecast of Non-Tariff Income to the Commission, in such form as may be stipulated by the Commission from time to time, whose tentative list is as follows:*
>
> *...*
>
> *(v) Net Interest on delayed or deferred payment on bills;*
>
> *..."*

3.407 The Commission during the prudence check has verified and trued up the Working Capital Interest Rate at 11.37%. Accordingly, the Commission has considered the net interest on delayed or deferred payment on bills as Non-Tariff Income of the Petitioner as follows:

Table 3. 93: Commission Approved - Financing Cost of LPSC (Rs. Cr.)

Sr. No.	Particulars	As per Commission	Ref.
A	LPSC earned	35.65	Note No. 36 of Audited Accounts
B	Out of above LPSC, Rs. 3.52 Cr. pertains to 11.80% as per DERC Covid Order dated 7/04/2020	3.52	
C	Late payment surcharge rate as per Regulations (%)	18%	
D	Principal Amount	208.33	
E	Normative Interest Rate	11.37%	WACC
	Financing Cost (Considered in NTI)	**23.69**	**C*D**

5) Write-Back of Miscellaneous Provisions

PETITIONER SUBMISSION

3.408 The Commission in Tariff Order dated 28.03.2018 did not consider the write-back of miscellaneous provisions and relied on the previous Tariff Orders and stated as under

"3.369 The A&G expenses for the base year FY 2010-11 have been benchmarked for the purpose of MYT period FY 2012-13 to FY 2014-15 without adjusting provision for miscellaneous expenses. Thus, the Petitioner has been allowed O&M expenses on a normative basis without considering whether actually spent or provisioned. The Commission is of the view that the provisions written back are to be included in the Non-Tariff Income."

3.409 As regards above, it is submitted that the aforesaid treatment is contrary to the statement given in the same Tariff Order where the Commission has stated as under:

"4.199 The Commission has removed abnormal expenses such as provision for retirement of fixed assets, Loss on Sale/Discarding of Assets, Provision for Doubtful debts, Inventory of stores and spares written off, bad debts written off, transfer from opening provision of doubtful debts and has added lease rentals transferred from R&M expenses to the total A&G expenses as per submission of the Petitioner

Particulars	2006-07	2007-08	2008-09	2009-10	2010-11
A&G Expenses as per audited accounts	136.82	157.58	108.28	144.94	109.62
Less: Provision for retirement of fixed assets	-	-	-	14.48	12.29
Less: Loss on Sale/ Discarding of Assets	1.18	2.25	2.23	0.22	2.88
Less: Provision of Doubtful Debts	76.05	91.99	41.14	-	20.24
Less: Bad Debts written off	0.00	-	-	-	199.59
Less: Inventory of stores & spares written off	-	-	-	-	-
Less: Transfer from opening provision for doubtful debts	-	-	-	78.24	(199.59)

Particulars	2006-07	2007-08	2008-09	2009-10	2010-11
Less: Fines and penalties incl. under Sundry Expenses				*1.68*	
Add: Lease rentals transferred from R&M Cost	*1.57*	*1.55*	*2.42*	*1.54*	*1.55*
Net A&G cost	*61.16*	*64.89*	*67.33*	*51.86*	*75.76*

3.410 The Petitioner has submitted that If the cost of the provisions were not considered by the Commission while projecting the A&G expenses, in any case, the revenue from any recovery under such provision cannot be added to the ARR.

3.411 Further, the Commission in Tariff Order dated 29.09.2015 has also reversed the write-back of excess provisions for doubtful debts allowed during the earlier period, i.e., FY 2007-08 to FY 2011-12. The extracts are reproduced as under:

> *"3.121 As per Regulation 5.23 of MYT Regulation 2007, the miscellaneous receipts from the consumers shall constitute non-tariff income of the licensee. Write back of provision of doubtful debts related to recovery of debts forms part of miscellaneous receipts of the petitioner. The Commission is of the view that the target of AT&C loss has been fixed by considering the collection efficiency at 99.5% with a scope of 0.5% provisions for bad/doubtful debts. Therefore, any recovery on account of bad and doubtful debts shall constitute non-tariff income of the licensee to the extent of 0.5% provision on debtors. Accordingly, the income on account of any such write back of provision for doubtful/bad debts is considered as Non-tariff income."*

3.412 The finding that *"… collection efficiency of 99.5% with a scope of 0.5% provisions for bad/ doubtful debts…."* is factually inaccurate. By virtue of the billing lag which is inherent in an annual tariff re-determination, even if the collection efficiency were assumed to be 100%, even then the actual collection would still be in the range of 99% to 99.25%.

3.413 In this regard, it is submitted that the amount of Rs.0.11 Crore appearing as Excess provisions written back in Note 37 of the Audited Accounts is an accounting entry

reversing the amount of excess Provisions created for Retirement of fixed Assets in previous years and was not forming part of A&G expenses considered by the Commission during previous financial years. Hence, the amount of Rs.0.11 Crore ought not to be considered as part of Non-Tariff Income for FY 2020-21.

COMMISSION ANALYSIS

3.414 The Commission has allowed the said amount of Rs. 0.11 Cr. as a part of Non-Tariff Income for FY 2020-21.

6) Short Term Gain

PETITIONER SUBMISSION

3.415 The Commission in its Tariff Order dated August 31, 2017 has ruled as under

"3.593 The Petitioner has submitted that short term gain is on account of interest received on fixed deposits maintained by the Petitioner as margins kept with the funding agency for loans availed. Therefore, the Commission is of the view that interest on these fixed deposits should be allowed to be reduced from the Non-Tariff Income as Rs. 10.12 Cr. and Rs. 3.00 Cr. for FY 2014-15 and FY 2015-16 respectively."

3.416 The Petitioner requested the Commission to allow the Petitioner to retain the income of Rs.7.77 Crore on account of interest received on fixed deposits during FY 2020-21 and reduce the same from the Non-Tariff Income.

COMMISSION ANALYSIS

3.417 Regulation 94 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 stipulates that income from statutory investments will form part of Non-Tariff Income, accordingly, the Commission allows the income from such investments amounting to Rs. 7.77 Cr. to be reduced from Non-Tariff Income.

7) Transfer from Consumer Contribution and Capital Works

PETITIONER SUBMISSION

3.418 The Petitioner has submitted that the Commission in Tariff Order dated 31/07/2019 has allowed transfer from consumer contribution for capital works to be reduced from NTI for FY 2017-18 on the ground that the consumer contribution is not considered for calculation of depreciation and RoCE and the Petitioner is making book adjustments in compliance of accounting standards and has no impact on the cash flows. Therefore, amount transferred from Consumer contribution and capital works are allowed to be reduced from Non-Tariff Income.

3.419 The Petitioner has requested the Commission to reduce the amount of Rs.45.02 Crore from the Non-Tariff Income during FY 2020-21.

COMMISSION ANALYSIS

3.420 The Commission is of the view that the consumer contribution is not considered for calculation of depreciation and RoCE and the Petitioner is making book adjustments in compliance of accounting standards and has no impact on cash flows. Therefore, amount transferred from Consumer contribution and capital works are allowed to be reduced from Non-Tariff Income.

8) Income on Account of Bad Debts Recovered

PETITIONER SUBMISSION

3.421 The Commission in Tariff Order dated 31.08.2017 has ruled as under:

"3.601. The Petitioner has submitted that any amount recovered as bad debts is an energy income which is required to be included in the amount collected during the year as the same is received against the amount billed in the previous years. The amount billed and collected in previous years has already been considered for the purpose of AT&C Loss calculation during respective years. It is observed that the amount recovered from the bad debts written off

by the Petitioner is part of total collection for the relevant year has also been indicated under the head "other income" in the audited financial statement of FY 2014-15 and FY 2015-16. Therefore, the income on account of bad debts recovered in reduced from Non-Tariff Income."

3.422 The Petitioner has requested the Commission not to consider Rs.1.54 Crore of income recovered on account of bad debts (shown in Note 36 of Audited Accounts) as Non-Tariff Income during FY 2020-21.

COMMISSION ANALYSIS

3.423 The amount billed and collected in previous years has already been considered for the purpose of AT&C loss calculation during respective years. It is observed that the amount recovered from the bad debts written off by the Petitioner is part of total collection for the relevant year has also been indicated under the head 'other income'. Therefore, the income on account of bad debts recovered amounting to Rs. 1.50 Cr. is reduced from Non-Tariff Income.

9) Collection Charges on Electricity Duty

PETITIONER SUBMISSION

3.424 The Commission in Tariff Order dated 31.08.2017 stated as under:

"The Commission is of the view that collection of electricity duty is not a separate function/job and electricity duty is collected with electricity bills as normal collection of electricity dues billed by the Petitioner. Therefore, the Petitioner's submission that there is extra cost on account of collection of electricity duty is neither indicated in the audited financial statement nor justified. Accordingly, amount on account of Commission on Electricity Duty has not been reduced from Non-Tariff Income."

3.425 The Petitioner has submitted that as an agent on behalf of Municipal Corporations of Delhi (SDMC, NDMC and EDMC), collects and pays to the MCDs the Electricity Duty.

For undertaking this activity, there is incidence of use of assets and facilities of the licensed business towards collection of the Electricity Duty. As such this collection activity is a separate business and optimally utilizes the assets of the Petitioner. Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 permits the Petitioner to engage in any other business for optimal utilization of its assets.

3.426 Further, the Petitioner has submitted that MCDs pay commission to the Petitioner for collecting Electricity Duty on its behalf. This commission paid by MCDs is purely Other Business within Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 and accordingly the same would apply to the aforesaid amount earned by the Petitioner as the commission paid by MCDs. For undertaking the activity of collection of Electricity Duty, the Petitioner has expended certain expenses towards incentivizing the existing manpower, engaging additional and external collection agencies which are included in the actual employee expenses.

3.427 Further, the Petitioner has to perform in-house operations also for which the Petitioner is required to incur additional O&M Expenses. Some of these in-house activities involve maintenance of records regarding Electricity Duty (Amount of Electricity Billed, Collected, Outstanding, Paid to GoNCTD etc.), cash-handling activities, interaction with GoNCTD, etc. which involves cost. The Petitioner incurs security and conveyance expenses towards transfer of money. Additionally, the Petitioner has also engaged various collection agencies for which the Petitioner has to pay service charges for such engagement. All these expenses are not being allowed by Commission since O&M Expenses are allowed on a normative basis. It is further submitted that the commission of Electricity Duty is being provided as compensation in lieu of the Petitioner's efforts in collecting and accounting and other services rendered by the Petitioner to GoNCTD. It is submitted that if GoNCTD were to perform such similar activity, it would have involved costs. The Petitioner has reduced the

efforts on behalf of GoNCTD, required for collection of Electricity Duty in terms of manpower and other expenses. It is submitted that the income earned as commission on collection of Electricity Duty ought to be utilized to defray the additional expenses incurred by the Petitioner while undertaking such activities.

3.428 The Petitioner in its Petition for Truing-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff of FY 2016-17, had submitted that it has to incur additional O&M expenses and other in-house activities involving maintenance of records, cash handling activities, etc., which involve costs. Since these expenses incurred are not being separately allowed by the Commission, the entire income earned through this activity ought not to be reduced from the ARR by treating it as non-tariff income. However, the Commission in the Tariff Order dated 31.08.2017 (refer to Para No. 3.611) has treated the entire income earned on the aforesaid activity as part of non-tariff income and reduced the ARR of the Petitioner in contravention of its very own 2005 Regulations.

3.429 The Petitioner submitted that simply because the Electricity Duty is collected along with the electricity bills, that does not mean that the activity of collecting, managing and accounting for the Electricity Duty, do not attract the incidence of any expenses. For example, if in future, the Petitioner were to engage in another business i.e., to collect water supply bills or telephone bills or gas utility bills, it cannot be said that because the Petitioner collects these amounts along with its electricity bills, these other businesses are distribution functions of the Petitioner or no separate expenses are required for carrying out these other businesses.

3.430 The collection of Electricity Duty by the Petitioner is not a licensed activity. The responsibility for collection of Electricity Duty does not fall upon the licensee either under Section 12 of EA, 2003, nor under the license granted to the Petitioner by the Commission. It is an activity carried out by the Petitioner as a part of the legacy inherited by it from the erstwhile DVB. Even the erstwhile DVB carried out such functions, not as a part of its function of distribution of electricity, but under a statutory mandate of Section 3 of the Delhi Municipal Corporation (Assessment and

Collection of Tax on the Consumption, sale or supply of electricity) Bye laws 1962 ("Bye Laws"). Hence, the activity of collection of Electricity Duty has nothing whatsoever to do with the functions of a distribution licensee under EA, 2003. Since such function is carried out using the assets of the distribution business, such function is clearly attributable to an 'other business' under Section 51 of EA, 2003.

3.431 The income/commission which is earned by the Petitioner has no connection whatsoever to the ARR of the Petitioner or to the licensed business. As such, this income/commission can never be categorised as non-tariff income. This is particularly so when Regulation 4.7(c) of the MYT Regulations, 2011 clearly provides that the collection of Electricity Duty will not be taken into account in computing the Collection Efficiency. If the revenue realisation from the collection of Electricity Duty does not add to the revenue collection for the purpose of 'Collection Efficiency', the income/commission on such collection earned by the Petitioner cannot form a part of the ARR as Non-Tariff income.

3.432 The Petitioner submitted that the Income from commission received on account of collection of Electricity Duty i.e., Rs.10.15 Crore ought to be deducted from Non-Tariff Income.

COMMISSION ANALYSIS

3.433 The Commission is of the view that collection of electricity duty is not a separate function/job and electricity duty is collected along with electricity bills as normal collection of electricity dues billed by the Petitioner. Therefore, the Petitioner's submission that there is extra cost on account of collection of electricity duty is neither indicated in the audited financial statement nor justified. Accordingly, amount on account of Commission on Electricity Duty has not been considered in Non-Tariff Income.

10) Interest on Inter-Company Loans

PETITIONER SUBMISSION

3.434 The Petitioner has stated that the Commission in its Tariff Order dated 28/03/2018 has ruled as under:

> *"3.129 The Commission has considered the submission of the petitioner that the fund used for funding the loan to sister concern is not utilized for the regulated business and the petitioner is not entitled for any return or interest on these funds from ARR. Therefore, the interest on intercompany loan is allowed to be reduced from Non-Tariff Income."*

3.435 The Petitioner offered loan to BYPL which otherwise would have been borrowed by BYPL from some other bank/financial institution. The Petitioner has not claimed the cost of such a loan in its ARR and the interest earned should not be deducted from its ARR as a non-tariff income. Such interest earned is on account of inter-company transfer and is not incidental to electricity business. Usage of the funds available to the Petitioner in the form of equity is in terms of Regulation 94 and Regulation-5.35 proviso of Tariff Regulations, 2017 and DERC MYT Regulations, 2011 respectively is specifically excluded from Non-Tariff Income. Under those circumstances, the interest earned on the loan given by the Petitioner from its equity cannot be shared by regulated business of the Petitioner. The aforesaid principle of demarcation is well recognized by the Hon'ble Tribunal in a catena of Judgments specifically starting from Judgment dated 04/04/2007 in Appeal No.251 of 2006 which is carried forward all the way upto the Judgment dated 28/11/2013 in Appeal No.138 of 2012.

3.436 In all these Judgments, it has been categorically stated that the licensed business must be treated as a water tight compartment and only the expenses and revenue of the business form as a business activity and statement of affairs of the licensed business. Hence, no part of an unlicensed and an unrelated activity could form either a cost component or a revenue component in the ARR.

3.437 Moreover, such an interest is not non-tariff income. In case the Petitioner would not

have given the loan to BYPL, the funds available with the Petitioner would have been invested elsewhere and the interest/ income earned on the same would have been retained by the Petitioner. Such an interest is akin to earning moneys on investments from shareholders' funds which are specifically exempted from deduction from ARR.

3.438 Therefore, the Petitioner requested the Commission to allow the Petitioner to retain the interest Rs.16.27 Crore earned of on inter-company loans.

COMMISSION ANALYSIS

3.439 The Petitioner has funded its sister concern (BYPL) at an interest rate of 12.34% per annum for an average loan amount of Rs. 132.89 Cr during FY 2020-21. The Petitioner submits that had the loan not be given to BYPL, the funds available with the Petitioner would have been invested elsewhere and the interest/ income earned on the same would have been retained by the Petitioner.

3.440 The Commission observed that the Petitioner has huge outstanding dues towards Generating and Transmission Companies in its financial statements. At the end of FY 2020-21, the Commission observed that the petitioner has booked the LPSC payable towards its creditors as financing cost in its books of accounts. The Commission has been directing the Petitioner to make timely payment of bills to all the generating companies and transmission utilities.

3.441 The deferment/ delay in payment of dues to the creditors invite late payment surcharge cost at 18% per annum which is ultimately burdening the Petitioner's financial condition.

3.442 The Commission examined the net worth of the Petitioner and observed the availability of Share holders' funds towards regulated business as follows:

Table 3. 94: Availability of average Equity during FY 2020-21 (Rs. Cr.)

Equity Available for Regulatory Asset	Normative Requirement	Actual Available
Opening Equity as per net Worth		2079.76
Equity As per Net Worth		2851.07
Average Net Worth		2465.42

Equity Available for Regulatory Asset	Normative Requirement	Actual Available
Equity Used for Capitalization	998.07	998.07
Equity Available for Regulatory Asset	1358.21	1467.34
Funds towards sister concern		132.89
Equity Utilised towards investment accruing short term gain (Note 6 & 13)		239.67
Funds available towards Regulatory Assets		1094.78

3.443 It is evident from the financial statements that the Petitioner is not having surplus funds and has used funds out of regulated business to fund its sister concern leaving inadequate Equity funds towards funding of Regulatory Assets of the Petitioner.

3.444 In view of Regulation 94 of the *DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017*, the Commission has considered the funding towards Inter-DISCOM on the condition that the petitioner must not burden the books of accounts due to non-payment of the dues to creditors. As a detriment, the Commission has decided to give the treatment as per the methodology adopted for LPSC earned.

3.445 Accordingly, the income on account of Inter-DISCOM funding is allowed to be reduced from the NTI as follows:

Table 3. 95: Commission Approved - Income on account of Inter-DISCOM funding during FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	Amount	Ref.
A	Interest income	16.27	Note 37 & 14 of Audited Accounts
B	Rate of Interest for inter Discom transfer	12.24%	
C	Average Loan Amount	132.89	A/B
D	LPSC payable	23.92	C*18%
E	Financing Cost	7.65	A-D
F	**Interest Income reduced from NTI**	**8.62**	**A-E**

11) Income from Advances from Consumers

COMMISSION ANALYSIS

3.446 It is observed that the Petitioner had claimed the advances received from consumers as revenue collected as discussed in earlier sections. As deliberated in Order dated 28/08/2020, the Commission is of the view that the advance available with the

Petitioner is a liability and may have to be returned to the Consumer in case not billed in future. The Commission further sought the monthly advance balances available with the Petitioner. It was observed that the advances opening and closing balances for the financial year were higher than the average monthly balance with the petitioner on such account. Accordingly, the Commission considered the financing cost based on the working capital interest rate on the monthly average balances held with the petitioner at Rs. 9.20 Cr. to be reduced from the Non-tariff income of the Petitioner.

Table 3. 96: Commission Approved - Interest rate for the computation of financing cost

As on	31-Mar-20	30-Apr-20	31-May-20	30-Jun-20	31-Jul-20	31-Aug-20	30-Sep-20	31-Oct-20	30-Nov-20	31-Dec-20	31-Jan-21	28-Feb-21	31-Mar-21	Total
Actual amount collected as advance		21.85	49.31	33.36	19.68	18.96	19.00	19.89	21.31	61.00	68.50	69.58	51.38	
SD release		20.42	20.39	20.35	20.24	20.10	20.05	20.00	19.97	19.94	19.89	19.85	19.80	
Interest on SD		29.53	24.89	22.61	21.25	20.49	20.19	20.01	19.94	19.85	19.65	19.56	50.43	
Other reasons		-	-	-	-	-	-	-	-	-	-	-	-	
Total	97.52	**71.81**	**94.60**	**76.33**	**61.17**	**59.55**	**59.24**	**59.90**	**61.22**	**100.78**	**108.03**	**109.00**	**121.61**	
Monthly average		84.66	83.20	85.46	68.75	60.36	59.39	59.57	60.56	81.00	104.41	108.51	115.30	
Monthly Interest	11.37%	**0.80**	**0.79**	**0.81**	**0.65**	**0.57**	**0.56**	**0.56**	**0.57**	**0.77**	**0.99**	**1.03**	**1.09**	**9.20**

3.447 In view of above, the Non-tariff income approved by the Commission for FY 2020-21 is as follows:

Table 3. 97: Commission Approved - Non Tariff Income for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	As per Petitioner	As per Commission	Reference
1	Other Operating Revenue	142.30	142.31	Note 36 of Annual Accounts

Sr. No	Particulars	As per Petitioner	As per Commission	Reference
2	Other Income	62.60	62.55	Note 37 of Annual Accounts
3	**Total other income**	**204.90**	**204.86**	**3=(1+2)**
4	Add: Interest from CSD	36.40	32.77	Table No. 3.90
5	Add: Income on SLD	(5.90)	(5.89)	Para No. 3.384
6	**Total Income for computation of NTI**	**235.40**	**231.74**	**6=(3+4+5)**
7	Less: Income from other business	-	-	-
A	Street Light	15.00	-	-
8	**Net Income for computation of NTI**	**220.40**	**231.74**	**8=(6-7)**
9	Less: Interest on CR	0.11	-	-
10	Less: LPSC	35.70	23.69	Table No. 3.93
11	Less: write-back of misc. provisions	0.10	0.11	Para No. 3.416
12	Less: Short term gain	7.80	7.77	Para No. 3.420
13	Less: Transfer from Consumer contribution for capital works	45.00	45.02	Para No. 3.423
14	Less: Bad debts recovered	1.50	1.50	Para No. 3.426
15	Less: Interest on inter-company loans	16.30	8.62	Para No. 3.448
16	Less: Commission on Collection charges on ED	10.20	-	Para No. 3.436
17	Less: Interest on Income Tax	-	-	-
18	Add: Advance from Consumers interest	-	9.20	Para No. 3.349
19	**Net NTI**	**103.80**	**154.24**	**19=[8-sum(9:17)+18]**

INCOME FROM OPEN ACCESS SALES

PETITIONER SUBMISSION

3.448 The Petitioner has submitted that in addition to the Income derived from Other Business, the income of Rs.70.99 Crore recovered as Open Access Charges during FY 2020-21 has been considered for offsetting the revenue (gap)/surplus for the year.

COMMISSION ANALYSIS

3.449 The Commission has accordingly considered an amount of Rs. 70.99 Cr. as Aggregate Revenue Requirement for FY 2020-21.

AGGREGATE REVENUE REQUIREMENT FOR TRUING-UP OF FY 2020-21

PETITIONER SUBMISSION

3.450 The Petitioner has submitted the Annual Revenue Requirement for FY 2020-21 sought for True-up is tabulated below:

Table 3. 98: Petitioner Submission - Aggregate Revenue Requirement for FY 2020-21 (Rs.Cr.)

Sr. No	Particulars	Submission
A	Purchase of power including Transmission and SLDC Charges & Incentives	6932.5
B	O&M Expenses	1151.8
C	Additional O&M Expenses	148.5
D	Depreciation	329.3
E	Return on Capital Employed (RoCE)	799.6
F	**Sub-total**	**9361.8**
G	Less: Non-Tariff Income	103.8
H	Less: Income from Open Access	71.0
I	**Aggregate Revenue Requirement**	**9187.0**

COMMISSION ANALYSIS

3.451 The Aggregate Revenue Requirement as approved by the Commission for FY 2020-21 is as follows:

Table 3. 99: Commission Approved - Aggregate Revenue Requirement for FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Reference
A	Power Purchase (including Trans. & SLDC Charges &Incentives other than incentive on sale of surplus power)	6932.5	6,841.30	Table No. 3.53
B	O&M Expenses	1151.8	1,151.83	Table No. 3.57
C	Additional O&M Expenses	148.5	97.21	Table No. 3.66
D	Depreciation	329.3	302.10	Table No. 3.76
E	RoCE/ Finance Charges	799.6	601.16	Table No. 3.86
	Income Tax		-	Table No. 3.87
F	Sub-total	**9361.8**	**8,993.60**	**F=sum(A:E)**
G	Less: NTI	103.8	154.24	Table No. 3.96
H	Less: Income from other business	0.0	0.00	-
I	Less: Income from Open Access	70.99	70.99	Para No. 3.451

Sr. No.	Particulars	As per Petitioner	As per Commission	Reference
J	Aggregate Revenue Requirement	9187.0	8,768.37	J=(F-G-H-I)

REVENUE AVAILABLE TOWARDS ARR

PETITIONER SUBMISSION

3.452 The Computation of net revenue available after adjusting the Incentive towards lower Distribution Loss Level and Higher Collection Efficiency is given below. It is worth to mention that for the purpose of computing surplus or deficit for the year, the amount of net revenue is considered based on actual collection only.

Table 3. 100: Petitioner Submission - Revenue available towards ARR for FY 2020-21

Sr.No.	Particulars	UOM	FY 2020-21
A	Net Revenue Realised (excluding RA, PT Surcharge & E tax)	Rs. Cr.	8112.0
B	Less - Overachievement due to Lower Distribution Loss	Rs. Cr.	26.9
C	Less - Overachievement due to Higher Collection Efficiency	Rs. Cr.	46.0
D	Revenue available towards ARR	Rs. Cr.	8039.2

3.453 The Petitioner has submitted the revenue available towards ARR tabulated as under:

Table 3. 101: Petitioner Submission - Revenue for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	Submission
A	Total Revenue Collected	8112.0
B	Less: Amount to be retained by Petitioner on account of over achievement of T&D Loss Targets	26.9
C	Less: Amount to be retained by Petitioner on account of Over achievement of Collection Efficiency Targets	46.0
D	Less: Incentive on Sale of Surplus Power	0.3
E	Less: Carrying Cost	258.4
F	**Revenue available towards ARR**	**7780.5**

COMMISSION ANALYSIS

3.454 The Commission has computed the Revenue available towards ARR as follows:

Table 3. 102: Commission Approved - Revenue Available towards ARR for FY 2020-21 (Rs.Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission	Reference/ Remark
1	Actual Revenue realised excluding Electricity duty, LPSC, Regulatory Surcharge, Pension trust surcharge	8112.0	8,112.01	
	Less:-			
2	Carrying Cost	258.4	-	
3	Incentive/(Penalty) on account of Transmission & Distribution Loss	26.9	26.47	Table No. 3.33
4	Incentive/(Penalty) on account of Collection Efficiency	46.0	(43.24)	Para No. 3.166
5	Incentive/(Penalty) on Sale of Surplus Power	0.3	(2.25)	Table No. 3.47
6	**Revenue available towards ARR**	**7780.5**	**8,131.03**	**6=[1-sum(2:5)**

REVENUE (GAP)/ SURPLUS

PETITIONER SUBMISSION

3.455 The Petitioner has submitted the revenue gap during FY 2020-21 tabulated as under:

Table 3. 103: Petitioner Submission - Revenue (Gap) for FY 2020-21 (Rs. Cr.)

Sr. No	Particulars	Submission
A	ARR for FY 2020-21	9187.0
B	Revenue available towards ARR	7780.5
C	**Revenue (Gap)/Surplus**	**(1406.6)**

3.456 The Petitioner requested the Commission to true up the expenses and revenue for FY 2020-21 as submitted above.

COMMISSION ANALYSIS

3.457 The Revenue (Gap)/ Surplus after true up of ARR for FY 2020-21 as approved by the Commission is as follows:

Table 3. 104: Commission Approved - Revenue (Gap)/ Surplus during FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	As per Petitioner	As per Commission
A	ARR	9187	8,768.37
B	Revenue Available Towards ARR without Carrying Cost	8039	8,131.03
C	**Revenue (Gap)/Surplus**	**(1148)**	**(637.35)**

CONSOLIDATED REVENUE (GAP)/SURPLUS

REVENUE (GAP)/SURPLUS TILL FY 2020-21

3.458 The Revenue (Gap)/Surplus upto FY 2020-21 is summarised in the table as follows:

Table 3. 105: REVENUE (GAP)/SURPLUS TILL FY 2020-21 (Rs. Cr.)

Sr. No.	Particulars	TO dated 30/09/2021 upto FY 2019-20	FY 2020-21	Remarks
A	Opening Balance of Revenue (Gap) / Surplus (now revised due to prior period true up)	(3,474.79)	(11,518.08)	As per Prior Period Section of TO
B	Impact of Past Period True Up	(479.48)		
C	Revenue Requirement for the year	9,576.91	8,768.37	Table No. 3.104
D	Revenue realized	9,095.27	8,131.03	
E	(Gap) / Surplus for the year	(481.64)	(637.35)	
F	8% Surcharge for the year	728.87	612.35	Table No. 3.35
G	Net (Gap)/Surplus	247.23	(25.00)	G = E+F
H	Rate of Carrying Cost	12.59%	12.58%	
I	Amount of Carrying Cost	(482.41)	(1,450.46)	
J	Closing Balance of (Gap)/Surplus	(4,189.46)	(12,993.53)	J = A+G+I

Annexure I

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.11(1935)/DERC/2021-22

Tariff Petition No. 03/2022

In the matter of: **Petition for Aggregate approval of True up of Expenses upto FY 2020-21 and Aggregate Revenue Requirement (ARR) for FY 2022-23.**

BSES Rajdhani Power Ltd.
Through its: **CEO**
BSES Bhawan,
Nehru Place,
New Delhi – 110019.

...Petitioner/Licensee

Coram:
Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson
Hon'ble Dr. A. K. Ambasht, Member

INTERIM ORDER
(Date of Order: 17.03.2022)

1. The Commission in its meeting No. 2022/01 held on 10.03.2022 at 12:30 pm at its Head Office took up for consideration an agenda item with regard to the Tariff Petitions filed by DISCOMs, GENCOs and TRANSCO for truing up of expenses for FY 2020-21 and Aggregate Revenue Requirement (ARR) for FY 2022-23.

2. The Commission deliberated that under Section 86(1)(a) of the Electricity Act, 2003 it has the mandate to discharge the following function, namely: -

> *" (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State....."*

3. It was noted that the Tariff Petition filed by BSES Rajdhani Power Ltd. (BRPL) for truing up of expenses for FY 2020-21 and Aggregate Revenue Requirement (ARR) for FY 2022-23 has been scrutinised and found generally in order as per the DERC Comprehensive (Conduct of Business) Regulations, 2001. Further, the Commission observed that the said function under Section 86(1)(a) of the Electricity Act, 2003 is regulatory in nature and these functions are determined as per Section 62 and 64 of the Electricity Act, 2003.

4. On due consideration, the Tariff Petition has been admitted by the Commission. Further, the Petitioner shall have to furnish clarifications/additional information, as and when required by the Commission.

(Dr. A.K. Ambasht)
Member

(Justice Shabihul Hasnain 'Shastri')
Chairperson

WEAR FACE MASK WASH HANDS REGULARLY MAINTAIN SOCIAL DISTANCING

Annexure II

LIST OF RESPONSES RECEIVED FROM STAKEHOLDERS ON TRUE UP OF FY 2020-21

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
1.	1	Sh. S.R. Abrol	L-2, 91B, DDA, LIG, Kalkaji New Delhi	9971225322	Domestic	DISCOMs	06.04.2022
2.	2	Ms. Asha	L-2, 91B, DDA, LIG, Kalkaji New Delhi	9971225322	Domestic	DISCOMs	06.04.2022
3.	3	Sh. Sanjay Bansal	House No. 1066, Block – F, Kamla Nagar New Delhi	-	Domestic	DISCOMs	12.04.2022
4.	4	Sh. A.K. Wardhan	Plot No. 179, F-5, Shastri Nagar New Delhi	-	Domestic	DISCOMs	12.04.2022
5.	5	Sh. Ajay Singh	Plot 5C, 3rd Floor, Karol Bagh Delhi	-	Domestic	DISCOMs	12.04.2022
6.	6	Sh. J.N. Prasad HON FL LT (RETD) President	Ex. Serviceman Association Najafgarh, RZ/21, Gopal Nagar Extn. New Delhi 110 043	9250696469	Domestic	DISCOMs	12.04.2022
7.	7	Sh. Manmohan Kumar	House No. 35, Block C Pocket – 4 Rohini Sector 20, Delhi	-	Domestic	DISCOMs	18.04.2022
8.	8	Sh. Abhijeet	House No. 37, Block C, Libaspur 110 042	-	Domestic	DISCOMs	18.04.2022
9.	9	Sh. Chander Prasad	House No. 54, Block –H Pitampura 110 034	-	Domestic	DISCOMs	18.04.2022
10.	10	Sh. Satish Kumar	House No. 90A, 3rd Floor, Block A, Gandhi Vihar Delhi 110 009	-	Domestic	DISCOMs	18.04.2022
11.	11	Sh. B.S. Sachdev President	Elderly People's Forum Varishth Nagrik Manorajan Kendra, Ist Floor, C-4, Keshav Puram, Delhi 110 035	9891059738	RWA	DISCOMs	18.04.2022
	11A	Sh. B.S. Sachdev President	Elderly People's Forum Varishth Nagrik Manorajan Kendra, Ist Floor, C-4, Keshav Puram, Delhi 110 035	9891059738	RWA	DISCOMs	19.04.2022
	11B	Sh. B.S. Sachdev President	Elderly People's Forum Varishth Nagrik Manorajan Kendra, Ist Floor, C-4, Keshav Puram, Delhi 110 035	9891059738	RWA	DISCOMs	28.04.2022
12.	12	Sh. Karan Jolly	Green Energy Plantation Pvt. Ltd.	46711000	Agriculture	DISCOMs	08.04.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			48/1, Commercial Centre, Malcha Marg, Chanakya Puri, New Delhi 110 021				
13.	13	Sh. Hemant Kumar	28/7 Second Floor, Patel Nagar, Delhi 110 008	-	Domestic	TPDDL	13.04.2022
14.	14	Sh. Ashok Bhasin President	North Delhi Resident's Welfare Federation 1618, Main Chandrawal Road Delhi 110 007 Ashok.bhasin2015@gmail.com	9818375106	RWA	DISCOMs	13.04.2022
	14A	Sh. Ashok Bhasin President	North Delhi Resident's Welfare Federation 1618, Main Chandrawal Road Delhi 110 007 Ashok.bhasin2015@gmail.com	9818375106	RWA	DISCOMs	17.05.2022
15.	15	Ms. Sugata Ghosh	House 1523, Ganesh Pura Trinagar, Delhi 110 035	-	Domestic	DISCOMs	18.04.2022
16.	16	Sh. Rajender Sobti	House No. 75, Pkt. 11 Sector, 24, Rohini Delhi 110 085	-	Domestic	TPDDL	18.04.2022
17.	17	Sh. Govind Singh	House No. 35, 1st Floor, Block G, Prashant Vihar, Rohini 110 085	-	Domestic	TPDDL	18.04.2022
18.	18	Sh. Vinod Bhatt	Shop No. 5 N-Block , DDA Market, Mangolpuri 110 083	-	Domestic	TPDDL	18.04.2022
19.	19	Sh. Arun Sharma	FD – 55 Pitampura 110 034	-	Domestic	TPDDL	18.04.2022
20.	20	Sh. Ravi Malik	House No. 335 1st Floor, Streen No. 9 Shalimar Bagh 110 088	-	Domestic	DISCOMs	18.04.2022
21.	21	Sh. Jaspal Singh	D-12 SF	-	Domestic	DISCOMs	18.04.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			Narina Vihar, Moti Nagar				
22.	22	Sh. Mukesh Kumar	House No. 504, GF Pkt 3, Sector C-12, DSIDC, Narela New Delhi 110 040	-	Domestic	TPDDL	19.04.2022
23.	23	Sh. Arvind Pratap Singh	House No. 47, Block WZ Basai Darapur, New Delhi 110 015	-	Domestic	DISCOMs	19.04.2022
24.	24	Sh. Satish Kumar	Plot 46, Pkt D, Sector 4, DSIDC Bawana	-	Domestic	DISCOMs	19.04.2022
25.	25	Sh. Jagdish Khurana	Plot 136, Pocket-7, 2nd Floor, Sector -22 Rohini-85	-	Domestic	DISCOMs	19.04.2022
26.	26	Sh. Ramesh Chand	Shop No. 37 K-Block, LSC Market Sultanpuri Delhi 110 041	-	Domestic	DISCOMs	19.04.2022
27.	27	CA Sanjay Gupta Vice President	C-4/15, Model Town-III Delhi 110 009 sanjayrsons@gmail.com	9311025900	RWA	DISCOMs	23.04.2022
28.	28	Sh. Satish Joshi	Satish_j@hotmail.com	9818846659	Commercial	BYPL	24.04.2022
29.	29.	Sh. B.K. Gupta	Missionanti420@gmail.com	-	Domestic	DISCOMs	25.04.2022
30.	30	Sh. Rakesh Tayal	Sunder Vihar, New delhi Rakesh79tayal@gmail.com	981907502	Domestic	BRPL	17.04.2022
31.	31	Sh. Vipin Gupta	A-17, Antriksh Apartments New Town Co-op. Group Housing Society Ltd. Sector-14 Extn., Rohini, Delhi 110 085 Vipin.bfi@gmail.com	9010001240	RWA	DISCOMs	18.04.2022
32.	32	Sh. Sat Goel	sgoel@ismp2.HBS.edu	9650241273	Domestic	DISCOMs	11.04.2022 20.04.2022
33.	33	Er. Sarbajit Roy	B-59, Defence Colony New Delhi 110 024	9953586513	Domestic	DISCOMs	25.04.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
	33A	Er. Sarbajit Roy	Sroy.mb@gmail.com B-59, Defence Colony New Delhi 110 024 Sroy.mb@gmail.com	9953586513	Domestic	DISCOMs	10.05.2022
34.	34	Sh. Rakesh Gupta President	Delhi Watch Material Dealers Association Dwmda123@gmail.com	9810036939	Domestic/ Industrial	DSICOMs	24.04.2022
35.	35 35A	Sh. Rahul Arora Social Engineer Sh. Rahul Arora Social Engineer	Rahul1943@gmail.com Rahul1943@gmail.com	- -	Domestic Domestic	DISCOMs DISCOMs	21.04.2022 09.05.2022
36.	36	Sh. Ajay Aggarwal President	Shop No. 17, Block-A, Saraswati Vihar, DDA Market, Pitampur, Delhi 110 034	9555350061	NGO	DISCOMs	20.04.2022
37.	37	Sh. Suresh Kumar Gupta Director	The Midland Fruit & Vegetable Products (India) Pvt. Ltd. Jombo House, Dr, Jha Marg, Okhla ndustrial Area, Phase III New Delhi 110 020	01142602167	Industrial	DISCOMs	22.04.2022
38.	38	Sh. Nagendra Prakash Bhargava	Jumbo International Manufacturer Exporters Jumbo House, Dr. Jha Marg Okhla Industrial Area, Phase-III New Delhi 110 020	01141802505	Industrial	DISCOMs	25.04.2022
39.	39	Sh. Neeraj Rastogi	Plot No. 1123, Block A DSIDC Bawana	-	Domestic	DISCOMs	02.05.2022
40.	40	Sh. Brijender Singh	House No. 37, Khasra No. 21/53/11, Ist Floor,	-	Domestic	TPDDL	02.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			Kewal Park Extn. Delhi				
41.	41	Sh. Ranjit Malik	House No. B-89 Gandhi Vihar Market, Delhi 110 009	-	Domestic	DISCOMs	02.05.2022
42.	42	Sh. Jameel Ahmed	D-1/203, 3rd Floor, Sector-11, Rohini, Delhi 110 085	-	Domestic	DISCOMs	02.05.2022
43.	43	Sh. Naveen Gupta	House No. B-29 Near Metro Station Sarai Rohilla	-	Domestic	DISCOMs	02.05.2022
44.	44	Sh. Balraj	49D, Block – 5 Sector -3 Bawana New Delhi 110 039	-	Domestic	TPDDL	02.05.2022
45.	45	Sh. Neeraj Thakur	House No. 34, 4th Floor, Block D Pocket 2, Sector 20, Rohini Delhi 110 086	-	Domestic	DISCOMs	02.05.2022
46.	46	Sh. Bharat Kumar	E-32, Gali No. 3, Near Shastri Nagar Metro Station Shastri Nagar New Delhi 110 052	-	Domestic	DISCOMs	02.05.2022
47.	47	SH. Mahendra Wadhwa	Plot No. 129, Ist Floor, D-Pocket, Sector, 2 DSIDC Bawana Delhi 110 039	-	Domestic	DISCOMs	02.05.2022
48.	48	SH. Joginder Prasad	B-4/345 2nd Floor, Sector 110 008 Rohini Delhi 110 085	-	Domestic	TPDDL	02.05.2022
49.	49	Sh. Banwari Lal Ojha	House No. 232 3rd Floor, D-Block Nehru Vihar Delhi 110 054	-	Domestic	DISCOMs	02.05.2022
50.	50	Sh. Ashwani	House No. 124, Block-C	-	Domestic	DISCOMs	02.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			Phase-II, Shopping Centre Ashok Vihar Delhi 110 052				
51.	51	Sh. Satya Parkash	AD-132 Shalimarbagh Delhi 110 088	-	Domestic	TPDDL	02.05.2022
52.	52	Sh. Sumit Nath	Plot No. 42/7, Block A Ramesh Nagar, Delhi 110 015	-	Domestic	DISCOMs	02.05.2022
53.	53	Dr. Anil Gupta Chairman	Friends Colony Inudstrialist Association Plot No. 26, Lane No. 3 Friends Colony Industrial Area, G.T. Road, Shahdaa, Delhi 110 095 Friendscolony1998@gmail.com	9312215009	Industrial	BYPL	02.05.2022
54.	54	Sh. Vineet Jain General Secretary	East Delhi Manufacturers Association (Regd.) B-17, Jhilmil Industrial Area, Behind Jhilmil Metro Station Delhi 110 095 Edmaeastdelhi@gmail.com	9871102111	Industrial	BYPL	02.05.2022
55.	55	Sh. Abhishek Kumar	H.No. 142, Pocket C Phase – 3, Ashok Vihar, Delhi 110 052	-	Domestic	DISCOMs	02.05.2022
56.	56	Sh. Rajan	H. No. 1145, Kh. NO. 265, Shanti Nagar, Trinagar Delhi 110 035	-	Domestic	DISCOMs	02.05.2022
57.	57 57A	Dr./Er. Sarbajit Roy	B-59, Defence Colony New Delhi 110 024 Sroy.mb@gmail.com B-59, Defence Colony New Delhi 110 024	9953586513 9953586513	Domestic Domestic	DISCOMs DISCOMs	25.04.2022 17.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
		Dr./Er. Sarbajit Roy	Sroy.mb@gmail.com				
58.	58	Sh. B.K. Gupta	Missionanti420@gmail.com	-	Domestic	DISCOMs	25.04.2022
59.	59	SH. Satish Joshi	Satish_j@hotmail.com	9818846659	Domestic	DISCOMs	25.04.2022
60.	60	Sh. Brajesh Monga	C-18, Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi 110 026	-	Domestic	DISCOMs	27.04.2022
61.	61	Sh. Arun Kaushik	Plot No. 165, Ground Floor, Block-G, Pkt-6 Sector C-7, Industrial Area, Narela	-	Domestic	DISCOMs	02.05.2022
62.	62	Ms. Anju Kumari	B-154, Hari Enclave, Khasra-42 Delhi 110 041	-	Domestic	DISCOMs	29.04.2022
63.	63	Sh. Amit Kumar	Shop – 59 , DDA Market Shakurpur, Delhi	-	Domestic	DISCOMs	29.04.2022
64.	64	Sh. Vikrant Nayak	Plot No. 5, 2nd Floor, C-Block, Patel Nagar, New Delhi 110 008	-	Domestic	DISCOMs	29.04.2022
65.	65	Sh. Rajinder Jindal Hony.General Secretary	All India Federation of Plastic Industries Suite No. 17, (Ist Floor)40, D.L.F Industrial Area, Kirti Nagar, New Delhi 110 015	9810079904	Industrial/ Commercial	DISCOMs	26.04.2022
66.	66	Sh. Arun Kumar Datta	222, Pocket-E, Mayur VIhar Phase II Delhi 110 091	-	RWA	TPDDL	06.05.2022
	66A	Sh. Arun Kumar Datta	222, Pocket-E, Mayur VIhar Phase II Delhi 110 091	-	RWA	BYPL	08.05.2022
67.	67	Sh. Rakesh Jain Secretary	Vikrant Tower Owners Association carebio@gmail.com	9312537622	RWA	DISCOMs	27.04.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
68.	68	Sh. Sushant Gaur	Pitampura BSES Power Ltd. Area Sushi.gaur1948@gmail.com	-	Domestic	DISCOMs	09.05.2022
69.	69	Sh. Atul Kumar Goyal	14A/23, WEA, Karol Bagh, New Delhi 110 005 Atulkumargoyal9@gmail.com	-	Domestic	BRPL	03.05.2022
70.	70	Sh. Prashant Chavan	P.S. Chavan & Co. Chartered Accountants, 17/212, Ramkrishna Nagar, Swami Vivekanand Road, Khar (West) Mumbai 400 052 Prashant.pscl07@gmail.com	-	Domestic	DISCOMs	25.04.2022
71. 71A	71 Sh. Saurabh Gandhi Gen. Secretary	Sh. Saurabh Gandhi Gen. Secretary	United Residents of Delhi (URD) C6/7 Rana Pratap Bagh, Delhi 110 007 United Residents of Delhi (URD) C6/7 Rana Pratap Bagh, Delhi 110 007	7503141516 7503141516	RWA RWA	DISCOMs TPDDL	04.05.2022 10.05.2022
72.	72	Sh. Hemanta Madhab Sharma	146(FF), Vinobapuri Lajpat Nagar-2 New Delhi 110 024 hemantahemanta@rediffmail.com	9810566869	RWA	BRPL	17.05.2022
73.	73	Sh. Manmohan Verma Chief Petron	C-1/128, Sector – 5, Rohini, Delhi 110 085 Mmverma.rwc@gmail.com	9540089600	RWA	DISCOMs	
74.	74	Sh. Nalin Tripathi Vice President	22-D Pocket C, Siddhartha Extension New Delhi 110 014	9810036122	RWA	BRPL	10.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			Nalin_ntlaw@yahoo.co.in				
75.	75	Sh. B.B. Tiwari	sarwasharpan@gmail.com	-	RWA	BRPL	10.05.2022
			sarwasharpan@gmail.com	-	RWA	TPDDL	11.05.2022
	75A	Sh. B.B. Tiwari	sarwasharpan@gmail.com	-	RWA	BYPL	11.05.2022
	75B	Sh. B.B. Tiwari					
76.	76	Sh. Yashpal	Sector-3/G-27/152 Rohini, Delhi	9818702630	Domestic	TPDDL	
77.	77	Sh. Narender Vashisht Gen. Secretary	D-26/15, Street No. 4-C, Guru Gobind Singh Marg, Anand Parbat Indl. Area, New Delhi 110 005	9811261601	Indl. Area	DISCOMs	05.05.2022
78.	78	Sh. Pankaj Gupta Gen. Manager	Delhi Metro Rail Corporation ltd. Metro Bhawan, 13, Fire Brigade Lane, Barakhamba Road, New Delhi 110 001	-	Industrial Area	BRPL	10.05.2022
	78A	Sh. Pankaj Gupta Gen. Manager	Delhi Metro Rail Corporation ltd. Metro Bhawan, 13, Fire Brigade Lane, Barakhamba Road, New Delhi 110 001	-	Industrial Area	BYPL	10.05.2022
	78B	Sh. Pankaj Gupta Gen. Manager	Delhi Metro Rail Corporation ltd. Metro Bhawan, 13, Fire Brigade Lane, Barakhamba Road, New Delhi 110 001	-	Industrial Area	TPDDL	10.05.2022
79.	79	Sh. Abhishek Srivastava	BSES Yamuna Power Ltd. Shakti Kiran Building, Karkardooma Delhi 110 032 BSES Yamuna Power Ltd.	-	DISCOM	IPGCL PPCL	09.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
	79A	Sh. Abhishek Srivastava	Shakti Kiran Building, Karkardooma Delhi 110 032	-	DISCOM	DTL	10.05.2022
	79B	Sh. Abhishek Srivastava	BSES Yamuna Power Ltd. Shakti Kiran Building, Karkardooma Delhi 110 032	-	DISCOM	DTL	12.05.2022
80.	80	Sh. Kanishk Khetterpal DGM	BSES Rajdhani Power Ltd. BSES Bhawan, Nehru Place, New Delhi 110 019	-	DISCOM	IPGCL PPCL	10.05.2022
	80A	Sh. Rajul Aggarwal Head Regulatory Affairs	BSES Rajdhani Power Ltd. BSES Bhawan, Nehru Place, New Delhi 110 019	-	DISCOM	DTL	17.05.2022
81.	81	Sh. Peyush Tandon	Tata Power Delhi Distribution Ltd. NDPL House Hudson Lane Kinngsway Camp Delhi 110 009	-	DISCOM	DTL	05.05.2022
	81A	Sh. Peyush Tandon	Tata Power Delhi Distribution Ltd. NDPL House Hudson Lane Kinngsway Camp Delhi 110 009	-	DISCOM	PPCL	06.05.2022
	81B	Sh. Peyush Tandon	Tata Power Delhi Distribution Ltd. NDPL House Hudson Lane Kinngsway Camp Delhi 110 009	-	DISCOM	IPGCL	05.05.2022
82.	82	Sh. Mukesh Sood	RWA Green Flats Rajouri Garden New Delhi 110 027	-	RWA	BRPL	10.05.2022
83.	83	Sh. S.S. Bhatia	DDA Markets Joint Action Committee, 152, Pkt G-27, Sector-3 Rohini Delhi 110 085	9971671919 9818534672	RWA	DISCOMs	09.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
			Dmjacdelhi2006@gmail.com				
84.	84	Sh. Brijesh Mathur	Mathur.b@gmail.com	-	Domestic	DISCOMs	11.05.2022
85.	85	Sh. Jogendra Behera CRO & VP (Regulatory & Market Economics)	Indian Energy Exchange C-001/A/1, 9th Floor Max Tower, Sector 16B Noida, Gautam Buddha Nagar, Uttar Pradesh 201301 Kshitij.Dhingra@iexindia.com	0120-4648100	Commercial	DISCOMs	13.05.2022
86.	86	Sh. Praveen Gupta Joint Secretary	Brotherhood Society (RWA) Model Town Delhi 110 009 prakaand@gmail.com	9899296833	RWA	BYPL	10.05.2022
87.	87 87A	Sh. Dhani Ram Sh. Dhani Ram	D/16-303, Sector-7 Rohini, Delhi 120085 Cgdhaniram@gmail.com	- -	RWA RWA	BYPL BRPL	11.05.2022 11.05.2022
88.	88	Sh. Vijender Gupta	Deputy Ganj Sadar Bazar Residence Welfare Association 4617, Deputy Ganj, Sadar Bazar Delhi 110 006 Vijendergupta57@gmail.com	9811300379	RWA	DISCOMs	11.05.2022
89.	89	Sh. Arpan Hedge	Apran.hedge1970@gmail.com	-	Domestic	BRPL	14.05.2022
90.	90	Sh. Harmeet Singh President	2462, Basti Punjabian, Roshanara Road, Subzi Mandi Delhi 110 007	9873364739	RWA	TPDDL	10.05.2022
91.	91	Sh. Yash Tandon	Yashtandon151996@gmail.com	-	Domestic	DISCOMs	27.04.2022
92.	92	Sh. Ashok Kumar General Manager (C&RA)	33KV Grid S/Station Building,	-	Transmission	BYPL	19.05.2022

Sr. No.	R. No.	Name	Address	Contact No.	Category	Company/ Licensee	Date of Receipt
	92A	Sh. Ashok Kumar General Manager (C&RA)	IP Estate, New Delhi 110 002 33KV Grid S/Station Building, IP Estate, New Delhi 110 002	-	Transmission	BRPL	19.05.2022
	92B	Sh. Ashok Kumar General Manager (C&RA)	33KV Grid S/Station Building, IP Estate, New Delhi 110 002			NDMC	19.05.2022
	92C		33KV Grid S/Station Building, IP Estate, New Delhi 110 002			TPDDL	
93.	93	Sh. Balkishan Gupta President	House No. 1449/204, 30 Futa Road Durga Puri Loni Road, Shahdara, Delhi 110 093	9212721361	RWA	DISCOMs	20.05.2022

Annexure-III

STAKEHOLDERS WHO HAVE ATTENDED THE VIRTUAL PUBLIC HEARING FOR THE PETITION FILED BY DISCOMs, GENCOs, AND TRANSCO ON THE APPROVAL PETITION FOR TRUING UP OF EXPENSES UPTO FY 2020-21

Sr. No.	Name	Address
1	CA Sanjay Gupta	RWA Model Town
2	Sandeep Kapoor	Narela Reloction Industrial Welfare association
3	Dr. Mohanthi Prasad Yadav	RWA
4	Dr. Pradeep Gupta	Domestic Consumer
5	Bhanu Singh Bishnoi	Domestic Consumer
6	Saurabh Gandhi	United Residence oF Delhi (URD)
7	Manmohan Verma	EWS Residence Welfare Association
8	B. B. Tiwari	United Residence oF Delhi (URD)
9	Pankaj Agarwal	RWA Joint Front
10	Rajesh Kumar Dokwal	Domestic Consumer
11	Sarbajit Roy	India Against Corruption
12	Chandra Pal Singh	RWA Jyoti Sadan
13	Chetan Sharma	GK II Complex RWA
14	Mukesh Sood	RWA Mig Green Flats, Rajouri Garden
15	Manoj Kumar	RWA Sangam Vihar
16	Brijesh Mathur	Domestic Con
17	Peyush Tandon	TPDDL
18	Dr. M. K. Aggarwal	RWA Balbir Nagar Ext, Shahdara
19	Balkishan Gupta	RWA Durgapuri, Shahdara
20	Ashok Kumar	Delhi Transco Limited
21	Sumesh Lilothia	RWA Sadar Bazar
22	Arun Kumar Dutta	Domestic Consumer & RWA
23	Harsh Arya	DMRC
24	Surendra Kumar Gupta	DMRC
25	Anil Kumar Jha	RWA Mandawali
26	Alok Vasudeva	RWA Prasad Nagar
27	Sanjeev Kumar Gupta	Domestic consumer
28	Gurdip Singh	RWA MTA
29	Chandrakant Shrivas	DMRC
30	Somya Tripathi	DMRC
31	Ritu Bhatia	Mahila pragatisheel Association
32	Pankaj Gupta	DMRC
33	Kunwar Pratap Singh	Bhajanpura jan sanhyog sabha Ragd.
34	Khalid Mubeen	RWA Ahata
35	H.P.Singh Sehrawat	Pitampura
36	Satya Prakash	RWA Basti Julahan
37	Jag Mohan	Saini Coop. House Building Society
38	Ajay Gupta	Media
39	Shailender Khatri	Rajpura Gurmandi RWA

Sr. No.	Name	Address
40	Rajan Asthana	RWA - SG Dilshad Garden
41	Kapil Verma	RWA, Dilshad Garden
42	Puneet Goel	RWA Gali Nathan Singh
43	Narender Chhabra	CHHABRA ELECTRONICS, Damodar Park Indl. Area
44	Prakash Mathur	RWA R Block Dilshad Garden
45	Rohit Arora	East Delhi RWA
46	Raj Rani Sharma	RWA, EAST END ENCLAVE
47	Pradeep Arora	Domestic
48	Rajul Agarwal	BRPL
49	Kanishk Khetterpal	BRPL
50	Mayank Ahlawat	BRPL
51	Amit Joshi	BRPL
52	Archana Singh	BRPL
53	Monika Dhyani	BRPL
54	Ravi Kalra	BRPL
55	Akash Gupta	BRPL
56	Vishnu Kumar	BRPL
57	Gaurav Thapan	BRPL
58	Rajesh Bansal	BRPL
59	Surya Shankar Banerji	BRPL
60	Raj Arora	BRPL
61	B.S.Vohra	East Delhi RWA Bhagidari
62	Rajiv Kakria	RWA GK
63	Rajeev Chowdhury	BYPL
64	Prachi Jain	BYPL
65	Abhishek Srivastava	BYPL
66	Vikas Dixit	BYPL
67	Sameer Singh	BYPL
68	Brajesh Kumar	BYPL
69	Garima Belwal	BYPL
70	Deepak Benjamin	BYPL
71	Lalit Mohan Sharma	RWA
72	Anita Juyal Sharma	Domestic
73	Shehzad Amhad	Domestic
74	Anil Bhardwaj	Domestic
75	Nice Johney	RWA
76	Rajesh Aggarwal	Shahdara RWA
77	Hemant Madhab Sharma	Domestic Consumer
78	Sat Goel	Domestic
79	Manmohan Verma	RWA
80	Rajendra Yadav	IPGCL
81	Rajendra Yadav	PPCL
82	Balram Choudhary	Domestic
83	Pawan Gour	RWA
84	RK Soni	RWA

Sr. No.	Name	Address
85	DK Bhandari	RWA
86	Ashok Bhasin	Domestic
87	Chandermohan kapahi	Domestic
88	Chander Mohan Jain	Power and energy consultants pvt. Ltd.
89	Mahesh Kumar Mittal	NDMC
90	Lalit Chopra	NDMC
91	A W Ansari	NDMC
92	Sandeep Gaur	NDMC
93	Chanda Sharma	NDMC
94	Sanjay Kumar	Domestic

Annexure-IV

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 884 OF 2010

DELHI ELECT. REGULT. COMMISSION Appellant(s)

VERSUS

BSES RAJDHANI POWER LTD.& ORS. Respondent(s)

WITH
CIVIL APPEAL No(s). 980 OF 2010

WITH
CIVIL APPEAL No(s). 9003-9004 OF 2011

WITH
CIVIL APPEAL No(s). 1854-1855 OF 2014

O R D E R

IN C.A. Nos. 884 and 980 of 2010

Having heard learned counsel for the parties, perused the impugned order and the materials placed on record, we are of the view that these appeals do not involve any substantial question of law. The civil appeals are accordingly dismissed.

Signature Not Verified
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Anita Malhotra
Date: 2021.12.09
15:22:58 IST
Reason:

We are also of the view that the appellant has to comply with the directions issued by the Appellate

Authority, namely, Appellate Tribunal for Electricity within a reasonable time. Therefore, we direct the appellant to comply with the directions contained in the impugned order within a period of three months from today, if not already complied with, and file a compliance report before this Court within two weeks thereafter.

Pending applications, if any, also stand disposed of.

IN C.A. Nos. 9003-9004 of 2011

Having heard learned counsel for the parties, perused the impugned order and the materials placed on record, we are of the view that these appeals do not involve any substantial question of law. The civil appeals are accordingly dismissed.

We are also of the view that the appellant has to comply with the directions issued by the Appellate Authority, namely, Appellate Tribunal for Electricity within a reasonable time. Therefore, we direct the appellant to comply with the directions contained in the impugned order within a period of three months from today, if not already complied with, and file a compliance report before this Court within two weeks thereafter.

Pending applications, if any, also stand disposed of.

IN C.A. Nos. 1854-1855 of 2014

Having regard to the disposal of the Civil Appeal Nos. 884 and 980 of 2010 as above, these appeals do not survive for consideration by this Court. The civil appeals are accordingly dismissed. However, the observations made by the Appellate Authority against the Commission(DERC) in the impugned order are expunged.

Pending applications, if any, also stand disposed of.

.....J.
(S. ABDUL NAZEER)

.....J.
(KRISHNA MURARI)

NEW DELHI
DECEMBER 01, 2021

ITEM NO.101 COURT NO.7 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 884/2010

DELHI ELECT. REGULT. COMMISSION Appellant(s)

VERSUS

BSES RAJDHANI POWER LTD. & Ors. Respondent(s)

(FOR FOR EARLY HEARING APPLICATION ON IA 37216/2021)

WITH C.A. No. 980/2010

C.A. No. 9003-9004/2011
(FOR ON IA 5/2014)

CONMT.PET.(C) No. 141/2014 In W.P.(C) No. 328/1999
(FOR ON IA 1/2014)

C.A. No. 1854-1855/2014
(IA No. 1/2014 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

W.P.(C) No. 104/2014
(IA No. 121684/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 109382/2021 - CLARIFICATION/DIRECTION
IA No. 2/2014 - EXTENSION OF TIME
IA No. 1/2014 - GRANT OF INTERIM RELIEF
IA No. 148652/2021 - INTERVENTION/IMPLEADMENT
IA No. 6/2014 - MODIFICATION)

W.P.(C) No. 105/2014
(IA No.55601/2017-APPROPRIATE ORDERS/DIRECTIONS
IA No. 55601/2017 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 2/2014 - EXTENSION OF TIME
IA No. 1/2014 - GRANT OF INTERIM RELIEF
IA No. 7/2014 - MODIFICATION)

C.A. No. 4012/2014
(IA No. 1/2014 - EX-PARTE STAY
IA No. 2/2014 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4011/2014
(IA No. 1/2014 - EX-PARTE STAY
IA No. 2/2014 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4013/2014
(IA No. 1/2014 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4010/2014
(IA No. 1/2014 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 8387-8389/2014
(IA No. 4/2014 - EX-PARTE STAY)

C.A. No. 8464-8466/2014
(IA No. 4/2014 - STAY APPLICATION)

CONMT.PET.(C) No. 83/2015 In W.P.(C) No. 104/2014
(IA No. 62371/2019 - APPROPRIATE ORDERS/DIRECTIONS)

CONMT.PET.(C) No. 59/2015 In W.P.(C) No. 105/2014
(IA No. 62373/2019 - APPROPRIATE ORDERS/DIRECTIONS)

CONMT.PET.(C) No. 60/2015 In W.P.(C) No. 105/2014
(FOR ON IA 1/2015)

CONMT.PET.(C) No. 84/2015 In W.P.(C) No. 104/2014
(FOR ON IA 1/2015)

CONMT.PET.(C) No. 822/2016 In CONMT.PET.(C) No. 83/2015 In W.P.(C) No. 104/2014

CONMT.PET.(C) No. 821/2016 In CONMT.PET.(C) No. 59/2015 In W.P.(C) No. 105/2014

CONMT.PET.(C) No. 826/2016 In CONMT.PET.(C) No. 84/2015 In W.P.(C) No. 104/2014

CONMT.PET.(C) No. 827/2016 In CONMT.PET.(C) No. 60/2015 In W.P.(C) No. 105/2014

W.P.(C) No. 1005/2021
(FOR ADMISSION and IA No.112102/2021-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 01-12-2021 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE KRISHNA MURARI

6

For Appellant(s)	Mr. Nikhil Nayyar,Sr.Adv. Ms. Pritha Srikumar, AOR Ms. Neha Mathen,Adv. Mr. Naveen Hegde,Adv. Ms. Mansi Bingrajka,Adv. Mr. Aditya Rajagopal,Adv. Mr. Arvind Datar,Sr.Adv. Mr. Amit Kaur,Adv. Mr. Anupam Varma,Adv. Mr. Pukhrambam Ramesh Kumar, AOR Mr. Rahul Kinra,Adv. Mr. Aditya Gupta,Adv. Mr. Aditya Ajay,Adv. Mr. Karun Sharma,Adv. Dr. Abhishek Manu Singhvi,Sr.Adv. Mr. Shri Venkatesh,Adv. Mr. Nitin Saluja, AOR Mr. Ashutosh K.Srivastava,Adv. Mr. Nihal Bharadwaj,Adv. Mr. S.Wasim A.Qadri,Sr.Adv. Mr. Lakshmi Raman Singh, AOR Mr. Chirag M. Shroff, AOR Mr. Tamim A.Qadri,Adv. Mr. Saeed Qadri,Adv. Mr. Siddhartha Chowdhury, AOR Mr. Chirag M. Shroff, AOR
For Respondent(s)	Mr. Arvind Datar,Sr.Adv. Mr. Dhruv Mehta,Sr.Adv. Mr. V.P.Singh,Adv. Mr. Raghav Chadha,Adv. Ms. Urvashi Misra,Adv. Ms. Aishwarya Modi,Adv. Mr. Harpreet Singh Ajmani, AOR Mr. Arvind Datar,Sr.Adv. Mr. Amit Kaur,Adv. Mr. Anupam Varma,Adv. Mr. Pukhrambam Ramesh Kumar, AOR Mr. Rahul Kinra,Adv. Mr. Aditya Gupta,Adv. Mr. Aditya Ajay,Adv. Mr. Karun Sharma,Adv.

7

Mr. Nikhil Nayyar,Sr.Adv.
Ms. Pritha Srikumar, AOR
Ms. Neha Mathen,Adv.
Mr. Naveen Hegde,Adv.
Ms. Mansi Bingrajka,Adv.
Mr. Aditya Rajagopal,Adv.

Mr. S.Wasim A.Qadri,Sr.Adv.
Mr. Lakshmi Raman Singh, AOR
Mr. Chirag M. Shroff, AOR
Mr. Tamim A.Qadri,Adv.
Mr. Saeed Qadri,Adv.

Mr. K. V. Mohan, AOR
Mr. K.V.Balakrishnan,Adv.
Ms. Anushree Bardhan, Adv.

Mr. Siddhartha Chowdhury, AOR

Mr. Pramod Dayal, AOR

Mr. Chirag M. Shroff, AOR

Mr. B. Krishna Prasad, AOR

M/S. Cyril Amarchand Mangaldas Aor, AOR

Mr. Uttam Dutt,Adv.
Mr. T. V. S. Raghavendra Sreyas, AOR

Mr. Manu Seshadri,Adv.
Mr. Abhijit Lal,Adv.
Mr. Satya Mitra, AOR

Mr. Vivek Singh, AOR
Mr. K.K.Singh,Adv.

Mr. Sriharsha Peechara, Adv.
Mr. Arjun Krishnan, AOR

Mr. K. V. Mohan, AOR
Mr. K.V.Balakrishnan,Adv.

Mr. Piyush Beriwal,Adv.
Mr. Gurmeet Singh Makker, AOR
Ms. Shradha Deshmukh,Adv.
Mr. Shyam Gopal,Adv.
Mr. Chinmayee Chandra,Adv.

UPON hearing the counsel the Court made the following

O R D E R

IN C.A. Nos. 884 and 980 of 2010, 9003-9004 of 2011 & 1854-1855 of 2014

The appeals are dismissed in terms of the signed order.

Pending applications, if any, also stand disposed of.

REST OF THE MATTERS

At the request of Mr. Dhruv Mehta, learned senior counsel, list all the remaining matters after six weeks.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
COURT MASTER (NSH)

(Signed order is placed on the file)

Annexure-V

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATIONS No. 633-634 of 2022
IN
CIVIL APPEALS No.9003-9004 OF 2011

BSES Rajdhani Power Ltd. Etc. ..... Applicants

VERSUS

Delhi Electricity Regulatory Commission & Another ..... Respondents

IN THE MATTER OF:
Delhi Electricity Regulatory Commission ..... Appellants

VERSUS

BSES Rajdhani Power Ltd. & Anr. Etc. ..... Respondents

WITH
MISCELLANEOUS APPLICATION NO.1261 of 2022 in CIVIL APPEAL NO.884 of 2010

MISCELLANEOUS APPLICATION NO.1262 of 2022 in CIVIL APPEAL NO.980 of 2010

MISCELLANEOUS APPLICATION NO.918 of 2022 in CIVIL APPEAL NO.884 of 2010

AND

MISCELLANEOUS APPLICATION NO.919 of 2022 in CIVIL APPEAL NO.980 of 2010

O R D E R

1. The applicants – BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited (BYPL) (collectively, 'the applicants') are the distribution licensees in the NCT of Delhi, undertaking distribution business (wheeling and retail supply of electricity) in their respective

Signature Not Verified
Digitally signed by Anita Malhotra
Date: 2024.01.03 14:59:20 IST
Reason:

areas of supply. The applicants filed Tariff Appeals before the Appellate Tribunal for Electricity (APTEL) challenging the disallowances in their respective Tariff Orders passed by the Delhi Electricity Regulatory Commission (DERC). APTEL disposed of the appeals by a common Judgment dated 12.07.2011, wherein it decided some of the specific issues in favour of the applicants.

2. The judgment of the APTEL was under challenge at the instance of DERC before this Court. This Court on 01.12.2021, dismissed the appeals and directed the DERC as under:

> "Having heard learned counsel for the parties, perused the impugned order and the materials placed on record, we are of the view that these appeals do not involve any substantial question of law. The civil appeals are accordingly dismissed.
>
> We are also of the view that the appellant has to comply with the directions issued by the Appellate Authority, namely, Appellate Tribunal for Electricity within a reasonable time. Therefore, we direct the appellant to comply with the directions contained in the impugned order within a period of three month from today, if not already complied with, and file a compliance report before this Court within two weeks thereafter."

3. In response to the directions contained in the above order, DERC filed a compliance affidavit/report which was opposed by the applicants.

MISCELLANEOUS APPLICATIONS NO. 633-634/2022 IN CIVIL APPEALS NO.9003-9004 OF 2011, MISCELLANEOUS APPLICATION NO. 1261 OF 2022 IN CIVIL APPEAL NO. 884 of 2010 and MISCELLANEOUS APPLICATION NO. 1262 of 2022 in CIVIL APPEAL NO.980 OF 2010

4. Mr. Kapil Sibal and Mr. Dhruv Mehta, learned senior counsel appearing for the applicants, argued that the judgment of this Court has not been complied with by the DERC. According to them, 'carrying cost' has to be allowed on Debt-Equity ratio of 70:30. Secondly, DERC is bound to allow interest at the prevalent market rate of State Bank of India's Prime Lending Rate (SBI PLR) for each year.

5. On the other hand, Mr. Nikhil Nayyar, learned senior counsel appearing for the DERC, submitted that the judgment of this Court has been complied with.

Issue No.1 – Carrying Cost

6. In the judgment dated 30.07.2010 in Appeal No.153 of 2009 titled "**NDPL v. DERC"** – 2010 ELR (APTEL) 0891, it was held that the appellant's claim is in line with the view of the State Commission that 'carrying cost' is to be allowed in the ratio of 70:30.

7. In Civil Appeals No.9003-9004 of 2011, DERC had specifically raised the question of law as regards funding of revenue gap in the Debt-Equity ratio 70:30 as under:

> "Whether the Appellate Tribunal is right in directing the revenue gap to be funded in the debt equity ratio of 70:30 when such revenue gap funding does not add to the gross block of capital assets to be serviced through debt and equity is only a transitional funding to be serviced through debt and internal accruals of the distribution licensees?"

8. This Court has not accepted the contention of the DERC. As noticed above, the appeals filed by the DERC have been dismissed by this Court.

9. It is evident from the compliance affidavit/report dated 23.03.2022 that DERC has not applied the Debt-Equity ratio of 70:30. We are of the view that DERC ought to have allowed funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30. There is no question of recomputing the carrying cost rate based on purported equity on the basis of net worth from the audited books and balancing figure as debt. Therefore, we direct DERC to allow funding of regulatory asset/revenue gap on a normative Debt-Equity ratio of 70:30.

Issue No.2 – Rate of interest on carrying cost

(10) On this question, the direction of the APTEL in its judgment dated 12.07.2011, is as under:

> "11. The sixth issue is regarding interest rate for carrying cost.
>
> 11.1. This issue also had been dealt with in this Tribunal's Judgment dated 30.7.2010 reported in 2010 ELR (APTEL) 0891 between **North Delhi Power Ltd. vs. DERC** (Appeal No.153 of 2009). The relevant extracts of the Judgment are reproduced below:
>
> > 45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accrual and/or internal accrual has to be paid for by way of carrying cost. The carrying cost is a legitimate expectation of the distribution company. The State Commission instead of applying the principle of PLR for the carrying cost has wrongly allowed the rate of 9% which is not the prevalent market lending rate. Admittedly, the prevalent market lending rate was higher than the rate fixed by the State Commission in the tariff order. Therefore, the State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate. "

11. The above view has been upheld by this Court.

12. It is evident from the compliance report that instead of taking the prevalent market lending rate, DERC has taken weighted average rate of interest on term loans for period FY 2007-2011 and for FY 2012-13 onwards and has considered normative rates as approved in the Tariff Order dated 13.07.2012.

13. In our view, it is clear that DERC has substituted the words 'prevailing market rate keeping in view the prevailing Prime Lending Rate' with the words 'actual interest rate paid by BRPL and BYPL on their loans' which is not permissible in view of the aforesaid judgment of the APTEL. A comparison of the two is given below:

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21
BRPL Rates of	11.03 %	11.47 %	11.30 %	11.87 %	13.11 %	15.26 %	15.02 %	15.14 %	14.19 %	14.07 %	13.85 %	13.38 %	12.25 %	12.24 %
BYPL Rate of	10.93 %	11.66 %	11.37 %	11.56 %	13.28 %	15.19 %	15.17 %	15.40 %	14.63 %	14.28 %	14.16 %	13.93 %	12.53 %	12.20 %
SBI PLR	12.69 %	12.79 %	11.87 %	12.26 %	14.40 %	14.61 %	14.58 %	14.75 %	14.29 %	14.04 %	13.68 %	13.68 %	13.58 %	12.27 %

14. Therefore, we direct DERC to allow SBI PLR as provided in the Table above, on 70% debt component for funding regulatory asset/revenue gap in the ratio of 70:30.

15. In case DERC has failed to comply with any other direction(s) contained in the order of the APTEL, confirmed by this Court in the above appeals (C.A. No(s).9003-9004 of 2011), liberty is reserved to the applicants – BRPL and BYPL to move the competent authority/Tribunal for appropriate relief(s) in accordance with law.

16. With these directions the matter(s) is closed and M.A. No(s).633-634 of 2022, M.A. No.1261 of 2022 and M.A. No.1262 of 2022 are disposed of accordingly.

MISCELLANEOUS APPLICATION NO.918 of 2022 in CIVIL APPEAL NO. 884 of 2010 & MISCELLANEOUS APPLICATION NO.919 of 2022 IN CIVIL APPEAL NO. 980 OF 2010 :

Issue No. 1 - Distribution Losses and AT and C Losses

17. As regards the findings related to Distribution losses and AT and C losses, challenged by the DERC in the appeals, vide impugned judgment dated 6th October, 2009 and 30.10.2009, passed by APTEL, it had directed BRPL and BYPL[hereinafter referred to as 'the non-applicants'] to submit an appropriate representation to the DERC within one month from the date of passing of the order and if the said representation was made, the DERC was directed to dispose of the same within a period of two months.

18. It is not in dispute that the non-applicants did submit a representation in compliance with the above directions and the DERC passed an order on 20.04.2015, though belatedly. The said order is subject matter of Appeals No.155 and156 of 2015, pending before APTEL. In view of the pendency of the above appeals in relation to Distribution losses and AT and C losses, it will not be appropriate for this Court to go into the said issue. The non-applicants having assailed the subsequent order before the appropriate forum, parties ought to await the decision of the said appeals.

19. We expect APTEL to dispose of the above appeals filed by the non-applicants as expeditiously as possible, having regard to their long pendency.

Issue No. 2 - Capital Expenditure and Capitalization Charges

20. In respect of Capital expenditure and Capitalization charges that were questioned by the DERC in the appeal, paragraphs 56 and 57 of the impugned judgment dated 6.10.2009 are

relevant and have been relied upon by both sides. For ready reference, the said paragraphs are extracted herein below:

> "56. We do feel that it was imprudent on the part of the appellant to resist the comparison to the prices paid to REL with the prices paid for similar products by NDPL. The appellant has realized the folly now. In view of the appellant resisting the comparison mentioned above, the Commission also gave up all efforts to compare. The fact, however, remains that both the appellant as well as NDPL has incurred capital expenditures of various nature and has purchased goods and commodities in furtherance of the same. The Commission has to treat all the distribution companies at par. It is not disputed that the NDPL has purchased products of the same description although they may be different in their quality and technical specifications. Of the long list of articles which are involved in the dispute in hand some may be comparable to articles purchased by the NDPL. If for those articles the Commission has allowed same price there is no reason why the appellant should not have been allowed the same price provided, however, they are lower than the price paid to REL for those products. The Commission has to treat all the distribution licensees on the same scale and no one of them can be either victimized or favoured on account of the stands or pleas taken by them during the tariff hearings. At the same time the Commission is duty bound to make the prudent check on all the claims made by the distribution licensees.
>
> 57. The NDPL submitted its records before the Commission simultaneously with the appellant during the tariff hearing of the relevant year. As such the records are expected to be with the Commission. We think it is appropriate to allow the appellant an opportunity to prove, item wise, that the price paid by it to REL was not higher than the price paid by NDPL and allowed to it by the Commission for similar products. The onus would be entirely on the appellant to prove that the products purchased by it and the one purchased by NDPL offered for comparison are of the same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the quantity purchased, vender rating etc. In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin. Till such exercise is completed the appellant will have to accept the decision of the Commission as reflected in the view of the Chairperson."

21. Both sides state in unison that wherever the price in respect of a comparable commodity which has been paid by the non-applicants to REL, happens to be the same or is lower than the price that has been allowed to NDPL, the DERC has allowed the price paid to REL.

22. The divergence of stand is in respect of the understanding of the directions in the last part of paragraph 57 of the impugned judgment, namely, the situation where the DERC has been directed to allow a lesser price in the event NDPL's price happens to be lower than the price of purchases made by REL + 5% profit margin.

23. Paragraph 57 of the impugned judgment ends by recording that till completion of the exercise contemplated to be undertaken by the BRPL to prove that the price paid by it to REL was not higher than the price paid by NDPL for similar products and so allowed by the DERC, the BRPL will have to accept the decision of the DERC, as may be taken by the Chairperson of DERC and the same applies to BYPL in terms of judgment dated 30.10.2009.

24. Mr. Nikhil Nayyar, learned senior counsel appearing for the DERC seeks to urge that the appellant has duly complied with the directions issued in para 57 of the impugned judgment as can be seen from a perusal of its order passed on 12.04.2022 and enclosed with the affidavit of compliance dated 22.04.2022. He refers to the summary of comparison in a tabulated form in paragraph 43 of the order which is extracted below:

"43. The summary of above comparison works out to be as under:

Sl. No.	Description	Line Items (Nos.)	Amount as per BRPL (Rs. Cr.)	Amount approved (Rs. Cr.)
A: Items not comparable				
A 1: Purchases made by BRPL without description of the Material in the Purchase Orders				
Sl. No.	Description	Line Items (Nos.)	Amount as per BRPL (Rs. Cr.)	Amount approved (Rs. Cr.)
1	A1.1 HVDS	423	528.82	330.51
2	A1.2 Supply of material for Grid substation	5	43.67	27.29
3	A2 Items not comparable with the purchases of NDPL due to different technical specifications	176	94.13	58.83
4.	A3: Items either consumables or not Purchased by NDPL	140	56.49	35.31
B: Items comparable with NDPL				
B 1: Items for which price paid to REL is less than NDPL				
5	Items for which price paid to REL is less than NDPL as per PO	159	133.80	133.80
6	Items for which price paid to REL is less than NDPL as per GRN	32	46.25	46.25
B 2: Items for which price paid to REL is more than NDPL				
7	Items for which price paid to REL is more than NDPL as per PO	154	94.9	59.31*
8	Items for which price paid to REL is more than NDPL as per GRN	38	7.17	4.48*
	Total	1127	1005.23	695.78

*As per Tariff Order dated. 23/02/2008, since the details of REL purchase as mandated by Hon'ble APTEL has yet not been submitted by BRPL & BYPL."

25. As is apparent from the table above, under column B are listed the items that are comparable with NDPL. Sub-column B-1 refers to items for which the price paid by the BRPL to REL is less than the price paid by NDPL, which is not disputed by either side.

26. The rub of the matter lies in respect of sub-column B-2, that refers to items for which the price paid to REL is more than NDPL. It is noteworthy that at the foot of the table, a note is appended with an asterisk stating that *"as per Tariff Order dated 23.02.2008, since the details of REL purchase as mandated by APTEL has yet not been submitted by BRPL and BYPL".* In other words, though para 57 of the impugned judgment records that the DERC will allow a lesser price to the BRPL if NDPL's purchase price is lower than the price of REL's purchase + 5% profit margin, the DERC has passed an order dated 12.04.2022, applying the rate in terms of the Tariff Order dated 23.02.2008, on an observation that the REL purchase price has not been submitted by the non-applicants, which in our opinion, is impermissible.

27. There was no scope of imposing a price stipulated in the Tariff Order dated 23.02.2008, when APTEL has clarified the position in paragraphs 56 and 57 of the impugned judgment, extracted above. To the above extent, the order dated 12.04.2022, passed by the DERC is unsustainable and is accordingly set aside. The DERC is directed to recompute the amount payable to the non-applicants for the commodities purchased by it, strictly in terms of the directions issued in paragraphs 56 and 57 of the impugned judgment dated 6.10.2009. We may reiterate that the above direction is restricted to the items specified in sub-column B-2 of the table forming part of paragraph 43 of the order dated 12.04.2022, passed by the DERC.

28. The next submission made by Mr. Dhruv Mehta, learned senior counsel appearing for the non-applicants is that the DERC has fixed an amount in respect of the items mentioned in Column "A" of the table in paragraph 43 of the order dated 12.04.2022, which relates to items

that are not comparable and has declined to pay even a nominal amount to the non-applicants towards the said items by taking a stand that there is no comparison between a High Voltage Distribution System (HVDS) provided by the non-applicants vis-à-vis the rates for the same system as provided by NDPL. It is submitted that while NDPL had given a breakup of the materials provided since it has purchased the items individually, the non-appliocants had purchased the whole dwelling unit at one go and had therefore raised a bill based on the price of the dwelling unit.

29. The aforesaid submission is however disputed by Mr. Nikhil Nayyar, learned senior counsel appearing for the DERC. It is his contention that the non-applicants failed to provide the comparable item-wise breakup of the comparable items for the DERC to conduct an evaluation and arrive at a conclusion on comparison of prices of the items.

30. Learned counsel for the non-applicants responds by stating that his clients are willing to prepare a statement reflecting the item-wise breakup of the materials supplied by NDPL and indicate the components of the dwelling unit purchased by the non-applicants, as a whole, for ease of comparison. Besides that, the non-applicants shall also furnish the details of the colony-wise dwelling units that have been purchased by it for the DERC to undertake the exercise of comparison, as has been directed by APTEL.

31. The aforesaid exercise shall be completed by the non-applicants within four weeks. The DERC shall pass an order on the above aspect within four weeks therefrom after affording an opportunity of hearing to the non-applicants.

32. In view of the above order, the summary of comparisons made in Column A of the table at paragraph 43 of the order dated 12.04.2022, shall be kept in abeyance.

33. The last issue raised by learned senior counsel for the non-applicants is that the DERC has not made proper compliance of the impugned judgment on the aspect of capitalization of fresh assets for which the non-applicants was directed to submit appropriate applications to the Electrical Inspector. It is submitted that while the impugned judgment had directed that capitalization of fresh assets of the DISCOM ought to be allowed in respect of all future assets calculated from the 16th day reckoned from the day the application for the EIC certificate is filed, to ensure that safety protocols are maintained, the DERC has proceeded to extend the directions to the existing assets as well, which is beyond the scope of the directions issued in paragraph 118 of the impugned judgment.

34. The relevant observations made in paragraph 118 of the impugned judgment with respect to capitalization are as follows:

> "Capital expenditure and capitalization disallowance, lower approval of capitalization from fresh investment during the MYT period and impact of lower approval of capital expenditure and capitalization on ROCE and RRB:
>
> The view of the Chairman of the Commission with his power of casting vote is approved. So far as purchase from REL is concerned, the Commission's view is accepted subject to our directions in paragraph 57 & 58 of the judgment. For capitalization of fresh assets the DISCOM shall make appropriate applications to the Electrical inspector and the capitalization of such assets will be allowed w.e.f. 16th day of filing of the application and payment of necessary fee."

35. Though it is the stand of learned counsel for the DERC that if the entire judgment on the above aspect is read and understood in the correct perspective, particularly paragraphs 67 and 68, the import would be otherwise, we are of the view that for the purposes of ascertaining compliance of the impugned judgment, it is the directions in the operative paragraph 118 that must be adhered to. The words used in the said paragraph are *"capitalization of the fresh assets"* during the MYT period. That being the position and since this Court is confining itself to examining compliances of the impugned judgment and no further, it is hereby clarified that the DERC was required to consider the issue of capitalization of fresh assets of the DISCOM alone. The DERC is therefore directed to undertake a fresh exercise in the light of the above observations.

36. With these directions, the matter is closed and Miscellaneous Application No. 918 of 2022 in Civil Appeal No. 884 of 2010 and Miscellaneous Application No. 919 of 2022 in Civil Appeal No. 980 of 2010 are disposed of. All the pending applications also stand disposed of.

.....J.
[S. ABDUL NAZEER]

.....J.
[HIMA KOHLI]

New Delhi;
December 15, 2022.

ITEM NO.52+54 COURT NO.3 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Item No.52:
Civil Appeal No(s). 4906/2015

BSES RAJDHANI POWER LTD. Appellant(s)

VERSUS

DELHI ELECTRICITY REGULATORY, COMMISSION Respondent(s)

([ONLY MA 918/2022 in C.A. No. 884/2010 AND MA 919/2022 in C.A. No. 980/2010 ARE LISTED UNDER THIS ITEM.])

WITH MA 918/2022 in C.A. No. 884/2010
(M.A. Nos. 918 AND 919/2022 FOR PLACING COMPLIANCE AFFIDAVIT BEFORE COURT
IA No. 104409/2022 - APPROPRIATE ORDERS/DIRECTIONS)

MA 919/2022 in C.A. No. 980/2010 (FOR ADMISSION)

With
Item No.54:
Miscellaneous Application Nos.633-634/2022
in C.A. Nos.9003-9004/2011
(IA No. 51413/2022 - APPROPRIATE ORDERS/DIRECTIONS)

WITH MA 1262/2022 in C.A. No. 980/2010
(IA No. 104715/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 93329/2022 - APPROPRIATE ORDERS/DIRECTIONS)

MA 1261/2022 in C.A. No. 884/2010
(IA No. 104773/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 93633/2022 - CLARIFICATION/DIRECTION)

Date : 15-12-2022 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MS. JUSTICE HIMA KOHLI

For the parties:

Mr. Kapil Sibal,Sr.Adv.
Mr. Arvind Datar,Sr.Adv.
Mr. Dhruv Mehta,Sr.adv.
Mr. Amit Kapur,Adv.
Mr. Buddy A.Ranganadhan,Adv.
Mr. Anupam Varma,Adv.
Mr. Pukhrambam Ramesh Kumar, AOR

Mr. Rahul Kinra,Adv.
Mr. Aditya Gupta,Adv.
Mr. Aditya Ajay,Adv.
Mr. Karun Sharma,Adv.
Ms. Manu Tiwari,Adv.
Mr. Wahengbam Immanuel Meitei,Adv.
Mr. Girdhar Gopal Khattar,Adv.
Ms. Isnain Muzaiml,Adv.

Mr. Nikhil Nayyar,Sr.Adv.
Ms. Pritha Srikumar, AOR
Ms. Neha Mathen,Adv.
Mr. Naveen Hegde,Adv.
Ms. Mansi Binjrajke,Adv.
Mr. Aditya Rajagopal,Adv.

M/S. Cyril Amarchand Mangaldas, AOR

Ms. Radhika C.,Adv.
Mr. Hitesh Kumar Sharma,Adv.
Mr. Akhileshwar Jha,Adv.
Mr. Ravish Kumar Goyal,Adv.
Ms. Niharika Dewivedi,Adv.
Mr. Nitin Sharma,Adv.
Mr. Narendra Pal Sharma,Adv.
For Dr.(Mrs.)Vipin Gupta, AOR

UPON hearing the counsel the Court made the following

O R D E R

Miscellaneous Applications and all the pending applications stand disposed of in terms of the signed order.

(ANITA MALHOTRA)
AR-CUM-PS

(KAMLESH RAWAT)
COURT MASTER

(Signed order is placed on the file.)

Annexure-VI

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4324 OF 2015

BSES RAJDHANI POWER LTD. ...APPELLANT(S)

VERSUS

DELHI ELECTRICITY REGULATORY COMMISSION ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 4323 OF 2015

BSES YAMUNA POWER LTD. ...APPELLANT(S)

VERSUS

DELHI ELECTRICITY REGULATORY COMMISSION ...RESPONDENT(S)

J U D G M E N T

S. ABDUL NAZEER, J.

Signature Not Verified
Digitally signed by SONIA BHASIN
Date: 2021.10.18 17:29:54 IST
Reason:

These two appeals have been filed by BSES Rajdhani Power Ltd. (C.A. No.4324 of 2015) and BSES Yamuna Power Ltd. (C.A.

No.4323 of 2015) (hereinafter referred to as 'Appellants') challenging certain findings of the Appellate Tribunal for Electricity, New Delhi ('APTEL') in the common judgment and order dated 28.11.2014 ('Impugned Order') passed in Appeal Nos.61 and 62 of 2012 ('Tariff Appeals'). The Tariff Appeals were filed by the appellants before the APTEL challenging certain findings of the Delhi Electricity Regulatory Commission ('DERC') in the Tariff Order dated 26.08.2012 for Truing Up of financials for FY 2008-09 and FY 2009-10 and Aggregate Revenue Requirement ('ARR') for FY 2011-12. DERC has also filed appeals (C.A. Nos.8660-61 of 2015) challenging certain findings in the common impugned order and the said appeals will be heard and decided separately.

2. The Appellants are Distribution Licensees ("Discoms") in terms of Section 2(17) of the Electricity Act, 2003 ('2003 Act'). The primary function of a Discom is to give supply to any premises upon an application being made by a consumer in compliance with the applicable laws, including paying requisite charges, except where prevented by force majeure conditions like cyclones or floods.

3. The Appellants purchase 90% to 95% of the power from Central and State Generating Companies. Tariff of Central Generating Stations is determined by the Central Electricity Regulatory Commission ('CERC') and, therefore, the Appellants have no control over the tariff to be paid to the Central Generating Stations. Simultaneously, the tariff for the State Generating Companies is determined by the State Regulator i.e. DERC.

4. It is the case of the Appellants that since privatization, the ARR determined by the DERC was not even sufficient to meet the actual power purchase cost which has led to creation of a huge revenue gap. It is also contended that the DERC in repeated disregard to its statutory regulations and its own statutory advice has refused to make periodic increase in the tariff rate. The actions of the DERC have resulted in a situation where the Appellants are deeply indebted and have been forced to borrow/take loans to fund their day-to-day operations which, in turn, have also dried up leaving the Appellants without adequate monies to pay their suppliers.

5. The Appellants have challenged the finding of the APTEL in the Impugned Order on the following issues:

A. Change in methodology in computation of Aggregate Technical and Commercial (AT&C) losses [Issue 14 in Impugned Order]
B. Change in methodology for computation of Depreciation [Issue 15 in Impugned Order]
C. Disallowance of salary for Fundamental Rules and Supplementary Rules (FR/SR) structure [Issue 23 in Impugned order]
D. Disallowance of interest accrued on Consumer Security Deposit retained by Delhi Power Corporation Limited (DPCL) [Issue 29 in Impugned Order]
E. Disallowance of Fringe Benefit Tax [Issue 34 in Impugned Order]
F. Reduction in Million Units (MUs) in relation to Enforcement sale for the purpose of calculation of AT&C Loss [Issue 14 in Impugned Order]

6. It is to be noticed that the above-mentioned Issue 'C' has been challenged only by BSES Rajdhani Power Ltd. in C.A. No.4324 of 2015 while the remaining issues have been challenged by both

BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. and are subject-matter of C.A. No.4324 of 2015 and C.A.No.4323 of 2015.

7. The Tariff Appeals were filed by the Appellants challenging the disallowances in their respective Tariff Orders dated 26.08.2012 passed by the DERC for:

(a) Determination of ARR and Tariff for FY 2011-12; and

(b) Truing up of financials for FY 2008-09 and FY 2009-10.

8. According to the appellants, the present Civil Appeals give rise to substantial questions of law under Section 125 of the 2003 Act on six issues. It is contended that the said substantial questions of law have arisen primarily because the DERC has, *inter alia,* deliberately refused to follow statutory regulations while truing up. Further, it is contended that APTEL's Impugned Order has failed to note the illegal manner of truing up followed by DERC and, more importantly, APTEL has failed to follow its own rulings in previous cases.

9. However, the respondents have contended that the appellants have entirely failed to establish the existence of any substantial question of law as required under Section 125 of the 2003 Act, read with Section 100 of the Code of Civil Procedure, 1908 ('CPC') on any of the above issues.

10. Before considering the detailed submissions on each of the above issues, it is necessary to provide an overview of the current and historical legal framework of electricity laws in India, including the tariff determination process, and the role and powers of the DERC in the tariff determination process.

11. Prior to independence, the Indian Electricity Act, 1910 ('1910 Act') governed the supply and use of electrical energy in India. Part-II of the 1910 Act was related to supply of electricity and contained provisions concerning:

(a) Grant of license for supply of electricity by the State Government in consultation with the State Electricity Boards ("SEB") and

(b) Obligation and rights of licensees, consumers, etc. along with other modalities.

Part-III of the 1910 Act dealt with Supply, Transmission and Use of Energy by Non-licensees. Part-IV of the 1910 Act provided for constitution, duties of advisory boards at the State and Central levels along with other authorities such as electrical inspectors and Central Electricity Board ("CEB"). CEB, under Section 37 of the 1910 Act, was empowered to make rules to regulate the generation, transmission, supply, and use of energy.

12. On 10.09.1948, the Electricity (Supply) Act, 1948 ("Supply Act, 1948") was notified to provide for: (a) the rationalization of the production and supply of electricity, (b) taking of measures conducive to electrical development; and (c) all matters incidental to the above. The Supply Act, 1948 was a more detailed and comprehensive code and provided for establishment of SEBs to control generation, distribution, and utilization of electricity within their respective states and the Central Electricity Authority ('CEA') for planning and development of the national power system.

13. On 02.07.1998, the Electricity Regulatory Commissions Act, 1998 ('Commissions Act, 1998') was notified with effect from 25.04.1998 as an Act to provide for the establishment of a Central

Electricity Regulatory Commission ("CERC") and State Electricity Regulatory Commission ("SERC"), for rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and other matters connected therewith or incidental thereto. Chapter-VI of the Commissions Act, 1998 was related to energy tariff and provided for the determination of tariff by Central and State Commissions.

14. Insofar as the National Capital Territory ("NCT") of Delhi is concerned, on 08.03.2001, the Delhi Electricity Reforms Act, 2000 ("Reforms Act, 2000") was notified to:

(a) provide re-structuring of the electricity industry (unbundling of generation, transmission, and distribution),

(b) increasing avenues for participation of private sector in the electricity industry; and

(c) generally, for taking measures conducive to the development and management of the electricity industry in an efficient, commercial, economic, and competitive manner in the NCT of Delhi and for matters connected therewith or incidental thereto.

15. With effect from 01.07.2002, pursuant to the unbundling, restructuring and reform of the erstwhile Delhi Vidyut Board ("DVB") and privatization of distribution of electricity, the appellants succeeded to the respective Distribution Undertakings and Business in their area of supply. The appellants have been granted Distribution and Retail Supply License by DERC to undertake distribution (wheeling) and retail supply of electricity in their respective areas of supply in the NCT of Delhi. From 01.07.2002 till 31.03.2007, the Delhi Transco Ltd. ("DTL") was entrusted with the responsibility of bulk procurement and bulk supply of power in the NCT of Delhi.

16. In the year 2003, the Parliament repealed the previous three laws viz., the 1910 Act, the Supply Act, 1948 and the Commissions Act, 1998, and enacted a comprehensive consolidated law called the Electricity Act, 2003. The objectives of the Act are:-

(a) to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity,

(b) taking measures conducive to development of electricity industry, promoting competition therein,

protecting interest of consumers and supply of electricity to all areas,

(c) rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies,

(d) constitution of the CEA, Electricity Regulatory Commissions, and establishment of an Appellate Tribunal and for matters connected therewith or incidental thereto.

17. The scheme of the 2003 Act is predicated on consolidating all laws governing electricity and repealing the existing laws. The legislative policy of distancing the Government from the tariff determination was carried forward in the 2003 Act. The intent and purpose of the 2003 Act is to liberalize the electricity sector and to ensure that the distribution and supply of electricity is conducted on commercial principles. The legislature intended to promote factors that encourage and reward efficiency, competition, economical use of resources and optimum investments and safeguard the interest of the consumers vis-à-vis recovery of cost of electricity in a reasonable manner as envisaged under Section 61 of the 2003 Act.

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18. Being regulated licensees responsible for distribution and retail supply of electricity in their designated areas within the NCT of Delhi in terms of Section 12 of 2003 Act, the annual revenue requirement of the Appellants to conduct the licensed business and consequently the tariff to be recovered from the consumers, is regulated by the DERC, being the State Electricity Regulatory Commission. DERC is vested with a substantial set of divergent powers – legislative, executive, adjudicatory and advisory – each being distinctly defined and governed by law. One of the critical issues arising in these Civil Appeals relates to sanctity of each such function and their interplay. In this regard, it is noteworthy that Section 3 of the 2003 Act provides as under:

> "Section 3. National Electricity Policy and Plan. -
> (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.
> (2) The Central Government shall publish National electricity Policy and tariff policy from time to time.
> (3) The Central Government may, from time to time in consultation with the State Governments, and the

Authority review or revise the National Electricity Policy and tariff policy referred to in sub-section (1).

(4)The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years.

Provided xxx xxx xxx

(5)The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy."

19. Section 14 of the 2003 Act provides for grant of licences on application made under Section 15 of the Act - (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area which may be specified in the licence.

20. Section 43 of the 2003 Act provides for the universal supply obligation of the Discoms, which is as under:

"43. Duty to supply on request –
(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

Provided xxx xxx xxx

(2) & (3) xxx xxx xxx"

21. Section 61 of the 2003 Act lays down the guiding principles for tariff which are as under:

> "61. Tariff regulations.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-
>
> (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
> (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
> (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
> (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
> (e) the principles rewarding efficiency in performance;
> (f) multi-year tariff principles;
> (g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;
> (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
> (i) the National Electricity Policy and tariff policy:
>
> Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood

immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier."

22. Sections 62 and 64 of the 2003 Act lay down the procedure for determination of tariff for, *inter alia*, wheeling and retail sale of electricity as under:

"**62. Determination of tariff.**-

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:
Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;
(b) transmission of electricity;
(c) wheeling of electricity;
(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be

specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. The Electricity Act, 2003.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

"64. Procedure for tariff order.-
(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;
(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

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(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order."

23. ARR of the Appellants, and consequently the tariff to be recovered from the consumers, is regulated by the DERC, and determined under Section 62 read with Section 61 of the 2003 Act.

24. Section 86 of the 2003 Act lays down the functions of the State Commissions i.e. DERC in this case, and the rule-making power of the Central Government is set out in Section 176 thereof.

25. Before considering the other questions, let us consider the preliminary objection raised by learned counsel for the respondent-DERC as to whether the appeals involve any substantial question of law as required under Section 125 of the 2003 Act read with Section 100 of the CPC?

26. Section 125 of the 2003 Act provides for an appeal to this Court against the decision or order of the APTEL which reads as under:

"**125. Appeal to Supreme Court.**-
Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication

> of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure,1908 (5 of 1908):
>
> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

27. Thus, an appeal to this Court under Section 125 could be filed on the grounds specified in Section 100 of the CPC. Under Section 100 of the CPC, an appeal could be filed only when the case involves 'a substantial question of law', as may be framed by the appellate court. Thus, the existence of a 'substantial question of law' arising from the judgment of the APTEL is *sine qua non* for exercise of jurisdiction by this Court under Section 125 of the 2003 Act.

28. The expression 'appeal' has not been defined in the CPC. Black's Law Dictionary (10th Edn.) defines an 'appeal' as "a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority." An appeal is judicial examination of a decision of a subordinate court by a higher court to rectify any possible error(s) in the order under appeal. The law provides the

remedy of an appeal in recognition of the fact that those manning the judicial tiers too may commit errors.

29. The test to determine whether a question is a substantial question of law or not was laid down by a Constitution Bench of this Court in **Sir Chunilal V. Mehta & Sons Ltd. v. The Century Spg. & Mfg. Co. Ltd.**[1] as under : (AIR p. 1318, para 6)

> "*6.* ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. Thus, the word 'substantial' as qualifying 'question of law' means, of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence,

1 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

or academic. For determining whether a case involves substantial question of law, the test is not merely the importance of the question, but its importance to the case itself necessitating the decision of the question. The appropriate test for determining whether the question of law raised in the case is substantial would be to see whether it directly and substantially affects the rights of the parties. If it is established that the decision is contrary to law or the decision has failed to determine some material issue of law or if there is substantial error or defect in the decision of the case on merits, the court can interfere with the conclusion of the lower court or tribunal. The stakes involved in the case are immaterial as long as the impact or effect of the question of law has a bearing on the *lis* between the parties.

31. Thus, in a second appeal, the appellant is entitled to point out that the order impugned is bad in law because it is *de hors* the pleadings, or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against the provision of law or the decision is one which no Judge acting judicially could reasonably have reached. Once the appellate

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court is satisfied, after hearing the appeal, that the appeal involves a substantial question of law, it has to formulate the question and direct issuance of notice to the respondent/s.

32. Now, let us consider as to whether the present appeals involve any substantial question(s) of law.

33. The APTEL has recorded findings on 35 issues raised by the appellants. According to the appellants, six issues decided by the APTEL give rise to substantial question of law which are as follows:

1. Change in methodology in computation of AT&C Losses.
2. Change in methodology for computation of Depreciation.
3. Disallowance of salary for FR/SR Structure.
4. Disallowance of interest incurred on Consumer Security Deposit retained by DPCL.
5. Disallowance of Fringe Benefit Tax.
6. Reduction in MUs in relation to Enforcement sale for the purpose of calculation of AT&C Losses (this issue deals with theft/unauthorized use of electricity).

34. Mr. Arvind P. Dattar and Mr. Dhruv Mehta, learned senior counsel appearing for the appellants, would submit that the findings of the APTEL on Issue Nos.1, 2, 3 and 5 are contrary to the binding DERC Tariff Regulations. It is argued that the Regulator cannot 'change the rules of the game after it has begun' in the 'truing up exercise'. In this regard, they have taken us through the findings of the DERC in the Tariff Order and also the findings of the DERC after the truing up stage. It is further argued that the tariff order is in the nature of a quasi-judicial determination and that in the guise of truing up, the DERC cannot amend a tariff order.

35. On the other hand, Mr. Nikhil Nayyar, learned senior counsel appearing for the respondent-DERC, submits that one of the facets of the tariff determination exercise is the process of 'truing up'. Since the initial tariff order is prepared by the DERC, based on the projections submitted by the Discoms as its ARR petition, the subsequent tariff order is issued after the financial year pursuant to the 'truing up' exercise. It is also pointed out that the findings on the aforesaid six issues are neither contrary to law nor opposed to any regulations.

36. Having considered the submissions of the learned counsels for the parties and after perusing the Impugned Order, we are of the view that these appeals involve the following substantial questions of law:

"**On Issue No.1**

(a) Whether the impugned findings on Issue No.1 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e), 62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which:

(i) Tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

(ii) Regulator cannot "change the rules of the game after it has begun" in the 'truing up exercise'?

(b) Whether the impugned findings violate the principles and methodology for tariff determination specified in the binding DERC's Tariff Regulations?

On Issue No.2

(a) Whether the impugned Findings on Issue No.2 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e), 62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which:

(i) Tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

(ii) Regulator cannot "change the rules of the game after it has begun" in the 'truing up exercise'?

(b) Whether the impugned findings violate the principles and methodology for tariff determination specified in the binding DERC's Tariff Regulations?

On Issue No.3

(a) Whether the impugned Findings on Issue No.3 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e), 62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which:

(i) Tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

(ii) Regulator cannot "change the rules of the game after it has begun" in the 'truing up exercise'?

(b) Whether the impugned findings violate the binding statutory Transfer Scheme and the Tri-Partite Agreements between the GONCTD, the DVB and the Employees' Unions, which form the basis of the privatization of Discoms?

On Issue No.4

(a) Whether the impugned findings on Issue No.4 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e), 62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

On Issue No.5

(a) Whether the impugned Findings on Issue No.5 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e),

62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which:

(i) Tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

(ii) Regulator cannot "change the rules of the game after it has begun" in the 'truing up exercise'?

(b) Whether the impugned findings violate the principles and methodology for tariff determination specified in the binding DERC's Tariff Regulations?

On Issue No.6

(a) Whether the impugned Findings on Issue No.6 are contrary to the mandate of Sections 3, 61(b), (c), (d) and (e), 62, 64 (read with the Tariff Policy) and 86(3) of the 2003 Act in terms of which Tariff must ensure recovery of all costs of undertaking distribution of electricity with reasonable return, rewarding efficiency in performance?

(b) Whether the impugned findings are against settled law that when a statute creates a legal fiction i.e. energy assessed is "deemed" to be consumed, the same has to be given effect to with all its consequences i.e. same quantum of energy is to be accounted for as supplied?

37. One of the substantial questions of law raised on four issues (Issue Nos.1, 2, 3 and 5) is whether it is permissible to amend the tariff order made under Section 64 of the 2003 Act during the 'truing up' exercise which needs to be answered before answering each of the aforesaid issues.

38. Section 82 of the 2003 Act envisages the constitution of a State Electricity Regulatory Commission. By virtue of Section 84 of the Act, such State Commission comprises of a Chairperson and Members, being persons possessing "*ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management*", with the Chairperson being a person who is, or has been, a Judge of a High Court.

39. DERC, constituted under Section 82 of the 2003 Act, is an expert body vested with wide powers and functions under the Act. This includes the power to frame regulations and the power to determine tariff.

40. Under Section 86 of the 2003 Act, the State Commission carries out various functions including determination of "*the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State*". The process of determination of tariff in the present case, as part of the broader regulatory power of the Commission, is to be done in accordance with Section 62 and 64 of the 2003 Act. As per Section

62, the Appropriate Commission (the State Commission in the present case) shall determine the tariff in accordance with the provisions of the Act for *inter alia* retail supply of electricity.

41. In addition to the above functions, the State Commission is also vested with the power to make regulations, under Section 181 of the 2003 Act, - dealing with *inter alia "the terms and conditions for determination of tariff under Section 61"* and "*issue of tariff order with modifications or conditions under sub-section (3) of Section 64".*

42. It is pertinent to note that while framing the Regulations, the State Commission is required to be guided by the principles specified in Section 61 of the 2003 Act.

43. In framing such regulations, the Commission, as an expert policy making body, is entrusted with the duty of striking a balance between the various competing concerns and interests. This balance is expressed in the DERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007 ("2007 MYT Regulations") which are the relevant regulations governing the issues in the present case.

44. DERC, for a given Multi-Year period (also called the Control Period), frames regulations for determination of tariff. DERC then determines the ARR for the said Control Period in a Tariff Order known as the Multi-Year Tariff Order based on the data available.

45. It is also necessary to note that sub-section (6) of Section 62 of the 2003 Act mandates that the Tariff Order shall continue to be in force for such period as may be specified in the Tariff Order unless amended or revoked. Therefore, if any of the parties are aggrieved by any of the clauses in the Tariff Order, they are at liberty to seek its amendment or revocation under this provision. Secondly, the said order is also appealable under Section 111 of the 2003 Act before the Appellate Tribunal and thereafter before this Court under Section 125. The Tariff Order made under Section 64 is quasi-judicial in nature and it is binding *as-it-is* on the parties unless it is amended or modified in a process known to law.

46. Mr. Arvind Datar and Mr. Dhruv Mehta, learned senior counsel appearing for the appellants have submitted that 'truing up' cannot be used to upset the methodology used for determination of ARR. According to them, such a conduct essentially amounts to

'changing the rules of the game after the game has started' or 'changing the goal post' with the sole intention to deny legitimate allowances to the appellants. It is also argued that 'truing up' stage is not an opportunity for the DERC to re-think *de novo* on the basic principles, premises and issues involved in the initial projections of revenue requirement of the licensee. It was also argued that DERC has no unfettered power to control the tariff determination process as well as 'truing up' exercise.

47. On the other hand, Mr. Nikhil Nayyar, learned senior counsel appearing for the respondent-DERC, has submitted that one of the facets of tariff determination exercise is the process of 'truing up'. Since the initial tariff order is prepared by the DERC based on projections submitted by the Discoms with its ARR petition, the subsequent tariff order is issued after the financial year pursuant to the 'truing up' exercise. The process of 'truing up' requires the DERC to carry out a prudence check. A prudence check is not a mere accounting or mathematical exercise. A prudence check requires a scrutiny of reasonableness of the expenditure incurred or proposed to be incurred by the Discoms and also such other factors that the

DERC considers appropriate for determination of tariff. DERC being an expert body, due deference ought to be given to their understanding as recorded in various regulations. It is argued that the controlling factor throughout the entire 'truing up' exercise is the MYT Regulations itself. It is further argued that the tariff determination exercise carried out by the DERC is a continuous process. The tariff determination exercise includes the initial tariff order - in the instant case it is 23.02.2008 - a 'truing up' *inter alia* the ARR and Multi-Year Tariff Order for the years, F.Y. 2007-08 to F.Y.2010-11, as well as the subsequent Tariff Order dated 26.08.2011, *inter alia*, 'true up' for F.Y. 2008-09 and F.Y. 2009-10. Mr. Nayyar has placed reliance on the judgment of this Court in **Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited & Others**[2] in support of his submissions.

48. We have carefully considered the submissions of the learned senior counsel for the parties. We have already noticed that the State Electricity Regulatory Commissions constituted under Section 82 of the 2003 Act are a multi-member body comprising a Chairper-

2 (2016) 8 SCC 743

son and members being persons having adequate knowledge, of ability, integrity and standing who have adequate knowledge, and have shown capacity, in dealing with problems relating to engineering, finance, commerce, economics, law or management, with the Chairperson being a person who is or has been Judge of a High Court. Under Section 86 of the 2003 Act, the State Commission carries out various functions including determination of tariff for generation, supply, transmission and wheeling of electricity in wholesale, bulk or retail as the case may be within the State. The process of determination of tariff has to be done in accordance with Sections 62 and 64 of the 2003 Act. It is well settled that the Commission (in this case, the DERC) performs a quasi-judicial function while determining tariff. This has been expressly recognized by the Constitution Bench of this Court in **PTC India Limited v. Central Electricity Regulatory Commission, Through Secretary**[3] as under:

> **"50.** Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of

3 (2010) 4 SCC 603

> tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

49. The DERC determines the tariff of the licensee under Section 62 in such a manner as determined by the 2007 MYT Regulations. This function is governed, *inter alia*, by safeguarding all consumers' interest and at the same time recovering the cost of electricity in a reasonable manner, such that 'distribution and supply of electricity are conducted on commercial principles' which encourage and reward competition, efficiency, economic use of resources, good performance and optimum investments.

50. DERC determines ARR of the licensee i.e. costs of undertaking the licensed business which are permitted in accordance with the requirement specified by DERC which is to be recovered from the tariff in the year end. ARR determined by DERC is based on projec-

tions. Since the tariff and the ARR are regulated, the Discoms cannot recover anything more than from its consumers than what is allowed by the DERC.

51. As noticed above, a tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority. Apart from this, we are also of the view that at the stage of 'truing up', the DERC cannot change the rules/methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR.

52. 'Truing up' has been held by APTEL in **SLDC v. GERC**[4] to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of 'truing up' has been dealt with in much detail by the APTEL in its judgment in **NDPL v. DERC**[5] wherein it was held as under:-

4 2015 SCC Online APTEL 50 [Para. 17]

5 2007 ELR (APTEL) 193

> "60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence."

53. This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink *de novo* on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff

determination and re-opening the original tariff determination order thereby setting the tariff determination process to a naught at 'true-up' stage.

54. In **Gujarat Urja Vikas Nigam Ltd. (supra)**, this Court was considering a case where tariff was incorporated in the power purchase agreement between a generating company and a distribution licensee. This Court held that it is not possible to hold that the tariff agreed by and between the parties, though finding a mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. We are of the view that this judgment is not applicable to the facts of the present case.

55. Revision or re-determination of the tariff already determined by DERC on the pretext of prudence check and truing up would amount to amendment of the tariff order, which can be done only as per the provisions of sub-Section (6) of Section 64 of the 2003 Act within the period for which the Tariff Order was applicable. In our view, DERC cannot amend the tariff order for the period 01.04.2008 to 31.03.2010 in the guise of 'true-up' after the relevant financial

year is over and the same is replaced by a subsequent tariff Order. This would amount to a retrospective revision of tariff when the relevant period for such tariff order is already over. Therefore, we hold that it is not permissible to amend the tariff order made under Section 64 of the 2003 Act during the 'truing up' exercise.

56. **Issue Nos. 1, 2, 3, and 5**: We have already noticed that one of the substantial questions of law involved in Issue Nos.1, 2, 3 and 5 is whether the Regulator can 'change the rules of the game after it has begun' in the 'truing up exercise'.

57. **Issue No. 1**: In the original MYT determination (Tariff Order dated 28.05.2009), the DERC took into account the full late payment surcharge ('LPSC') revenue as also the DVB arrears while computing the targets of Collection Efficiency as under:-

> "3.10. An analysis of the components of AT&C loss level indicates that the revenue collection on account of sale of energy was Rs.2810.3 Crs. However, this amount could not be verified from the audited accounts of the petitioner. The petitioner has, instead, submitted a daily collection sheet to substantiate its collection of Rs.2810.3 Crs.

3.11 The Commission is not receptive to the methodology of verifying the collection from the Daily Collection Sheet as proposed by the petitioner. Accordingly, the petitioner was directed during the validation session to reconcile the amount of cash collected bases on the opening levels of debtors, sales made during the year, DVB arrears collected and the closing level of debtors, with the total collections shown for FY 07-08. However, the petitioner expressed inability to reconcile the figures using this methodology.

3.12.The petitioner was, thereafter, directed to provide a copy of the daily collection sheet duly audited by its Statutory Auditors. The petitioner was also directed that the Statutory Auditors should establish that the amount mentioned in the Daily Collection Sheet does not included any collections on account of other sources of revenue like sale of power through bilateral, intra-state, UI, etc. and revenue from operations (non-energy).

3.13. In response to the above, the petitioner submitted a copy of its Statutory Auditor's certificate certifying the Day-wise Collection Statement for FY 07-08 vide its letter no.RCM/08-09/245 dated 16th February, 2009. The Certificate clarified the exclusion of collections made on account of trading of energy, non-energy charges, subsidy

received from GoNCTD, etc. and inclusion of LPSC, electricity duty, amount collected by BYPL on behalf of BRPL, etc.

3.14. Accordingly, based on the clarifications provided in the statutory auditor's certificate and the audited financial statements, the amount mentioned in the Daily Collection Sheet submitted by the petitioner has been taken into account.

...

3.24. In the light of the above background, the revised AT&C loss levels of the petitioner for the first year of the Control Period i.e. FY 07-08 is as summarized in the Table 6 below:

Table 6: Trued-up AT&C loss for FY 07-08 (Rs.crs.)

Particulars	Amount
Add:	
Theft Collection	60.4
Subsidy	48.4
Rebate	47.8
DVB Arrears collected from Government Bodies by DPCL	64.5
Total Other Collections during FY 07-08	221.0
(A) Total Collections in FY 07-08	3031.27
(B) Billed Revenue considered for AT&C	2889.99

(C) Collection Efficiency (A/B)	104.89%
Distribution Loss Level FY 07-08	30.89%
AT&C Loss for FY 07-08	27.51%"

58. However, while truing up for the year in question, the DERC has retrospectively sought to take away part of the LPSC revenue by deducting the Financing Cost on LPSC in comparing the actual Collection Efficiency with the projected Collection Efficiency. Hence, allowing the Financing Costs on LPSC revenue and then deducting it from the LPSC revenue would tantamount to giving by one hand and taking it away by the other. This order of the DERC is contrary to the original MYT determination.

59. **Issue No.2**: In the Original Determination Order dated 28.05.2009 (F.Y. 2008-09), DERC has allowed depreciation on the assets funded by consumer contributions. However, DERC changed the methodology of computation of ARR at the stage of true up. According to the learned counsel for the respondent, DERC had inadvertently made an error and adopted an approach contrary to the mandate of 2007 MYT Regulations while computing the depreciation when originally issuing the tariff order, which was rectified in

the true up exercise. However, learned counsel for the appellants submit that no error has been committed by the DERC in the tariff order dated 28.05.2009 and it is only after considering the relevant MYT Regulations that depreciation to the appellants on the assets that were funded by consumer contributions was allowed.

60. Perusal of the Tariff Order dated 28.05.2009 would clearly indicate that after considering the contentions of the parties the aforesaid depreciation has been allowed. We have already held that it is not permissible to amend the tariff order during true up exercise. On the pretext of prudence check and truing up, DERC could not have amended the tariff order.

61. **Issue No.3** : During projection of expenses for the entire control period, the Tariff Order dated 23.02.2008 had projected employee expenses considering *inter alia* the impact of the anticipated Sixth Central Pay Commission Report. The relevant portion of the said Tariff Order is as under:

> "*4.99 The Petitioner has submitted the employee expenses for FY07 as Rs 137.60 Cr and has considered the same as the base for the Control Period. The Petitioner has considered the following factors while projecting the*

escalation factor for the employee expenses for the Control Period:

(a) Anticipated 6th Pay Commission report

(c) Research of lead HR consultants on salary trends in the country

(c) Initiatives undertaken to retain quality manpower and demand for employees in the power industry.

(d) Inflation during last 12 months € increase in employees to cater to growth of consumers.

4.100 The Petitioner has projected its total employee expenses for the Control Period considering different escalation rates for different components of the employee expenses. The annual growth rates for various components of employee expenses as proposed by the Petitioner are given below:

(a) Basic Salary: The year on year increase in basic salary for all the employees during the Control Period has been estimated at 23.2%, 11.1%, 11.3%, and 11.5% for FY08, FY09, FY10 and FY11 respectively.

(b) Dearness Allowance (DA): Annual estimated increase in DA is considered as 9%, 6%, 6%, and 6% for FY08, FY09, FY10 and FY11 respectively.

(c) Terminal Benefits: Contribution to terminal benefits/liability fund is considered at 26% of basic salary and dearness allowance for each year of the Control Period.

(d) Other Allowances and expenses including HRA: Considered in proportion to the basic salary."

62. The DERC, while projecting employee expenses for the entire control period in its MYT Tariff Order dated 23.02.2008, had categorically acknowledged the uncontrollable nature of the Sixth Central Pay Commission Report as well as the impact of the same on the salaries of FR&SR employees and held that since the salary of FR&SR employees was an uncontrollable item and that it would be trued up on actuals as under:

"4.108 During the privatization process, part of the employees of the erstwhile DVB were transferred to BRPL. As per the Transfer Scheme, the terms and conditions of service applicable to the erstwhile Board employees in the Transferee Company shall in no way be less favourable than or inferior to that applicable to them immediately before the Transfer. Further, their services shall continue to be governed by various rules and laws applicable to them prior to privatization. Thus the salary/compensation and promotion of the erstwhile DVB employees in BRPL are still governed by the rules and pay scales as specified by the GoNCTD.

4.109 In consideration of the above, the Commission has recognized the uncontrollable nature of the 6th Pay Commission recommendations in determination of employee expenses during the Control Period. The Commission has assumed that the revision in pay, if any, shall be applicable from January 1, 2006. The

Commission has considered an increase of 10% in total employee expenses for the values in FY06 (3 months) and FY07 due to the same.

...

4.112 Similarly, the increase in salaries has been considered for each year, but the impact of such increase has only been taken from FY09 onwards. The Commission shall true-up the impact on account of 6th Pay Commission recommendations based on the actual impact of the same.

4.113 The summary of the revised employees expenses considering the effect of 6th Pay Commission recommendations is given below:

Table 72: Revised Employee Expenses for FY06 and FY07 (Rs Cr)

Particulars	FY06	FY07
Employee Cost Approved in True up	167.54	184.05
Less: SVRS Amortization approved	(46.41)	(46.45)
Net Employee Expenses	121.13	137.60
Employee expenses pertaining to DVB employees	75.64	85.92
Employee expenses pertaining to Non-DVB employees	45.50	51.68
10% escalation due to Pay Commission recommendations	1.89	8.60
Revised Employee Expenses	123.02	146.19

4.114 For the calculation of the employee expenses for the Control Period, the Commission has considered the following:

(a) Revised employee expenses for the base year have been escalated as per the escalation factors mentioned in Table 67 to arrive at the employee expenses for the Control Period.

(b) All arrears due to the impact of the 6th Pay Commission recommendations would be payable in FY09. For the purpose of projecting the arrears arising due to recommendation of the 6th Pay Commission for FY08, the Commission has considered the difference between the employee expenses for FY08 arrived by escalating the revised employees expenses for FY07 (i.e. Rs 146.19 Cr) and the employees expenses for FY08 arrived by escalating the trued up employee expenses (net of SVRS amortization) for FY07 (i.e. Rs 137.60 Cr)."

63. However, contrary to its own undertaking, the DERC in Tariff Order dated 26.08.2011 has erroneously changed its own methodology at the stage of truing up, by not allowing employee expenses of FR/SR employees as per actuals. The DERC, at the stage of truing up, has changed the methodology and disallowed the actual salary of FR&SR employees, which is impermissible. The DERC in the Tariff Order dated 26.08.2011 has acted contrary to its own undertaking of truing up the impact of employee expenses on account of the Sixth Central Pay Commission Report.

64. **Issue No.5** : This issue is in relation to disallowance of fringe benefit tax. The DERC has allowed fringe benefit tax in the MYT Order dated 23.02.2008. Relevant extract of the MYT Order dated 23.02.2008 is as under:

> *"Commission's Analysis*
>
> *4.242 The Commission is of the opinion that projecting the actual tax liability for the Control Period is difficult and complex. Thus for simplicity, the Commission provisionally approves Rs 5.00 Cr each year towards income tax and fringe benefit expenses. The Commission would, however, true-up the tax expenses based on the actual tax liability at the end of each year of the Control Period. The Commission has allocated the tax expenses into Wheeling and Retail Supply in the ratio of 20:80, respectively."*

65. The DERC, at the stage of truing up for the F.Y. 2008-09, has changed the methodology and disallowed the fringe benefit tax incurred by the appellants.

66. We have already taken a view that DERC cannot re-open the basis of determination of tariff at the stage of 'truing up'. Revision or redetermination of the tariff already determined by the DERC on the pretext of prudence check and truing up would amount to amendment of tariff order, which is not permissible in law. Truing

up stage is not an opportunity for DERC to re-think *de novo* the basic principles, premises and issues involved in the initial projection of the revenue requirements of the licensee.

67. Therefore, the findings of the DERC, as confirmed by the APTEL in the impugned order, on issue nos. 1, 2, 3 and 5 are contrary to the order of the original MYT determination (Tariff Order(s) dated 23.02.2008 and 28.05.2009) which are accordingly set aside. In view of the above, it is unnecessary for us to consider the other substantial questions of law on the aforesaid four issues.

68. **Issue No.4**: This issue relates to disallowance of interest incurred on Consumers Security Deposit retained by Delhi Power Company Limited ('DPCL'). The DERC in the tariff order dated 26.08.2011 has disallowed the interest on Consumers Security Deposit paid for pre-privatization period received by DVB, which is yet to be transferred to the appellants. The APTEL has confirmed this order of the DERC. It is to be stated here that, at the time of unbundling of the erstwhile DVB (w.e.f. 01.07.2022), the quantum of Consumers Security Deposit reflected in the opening balance-

sheet notified in terms of statutory transfer scheme, was not transferred by the DPCL (the Holding Company wholly owned by the Government of NCT of Delhi) to the appellants and other successor private Discoms. The appellants being distribution licensees under the 2003 Act are required to and are continuing to pay interest on the said Consumers Security Deposit in terms of Section 47(4) of the 2003 Act even though the principal sum was never transferred to them in its entirety by DPCL.

69. The DERC by its order dated 23.04.2007 has held that it does not have power to issue any directions to DPCL.

70. Learned counsel for the respondent-DERC submits that the appellants have sought transfer of deposits along with interest from DPCL and the issue of DPCL to make this payment is pending before the Delhi High Court in W.P. (Civil) No.2396/2008. It is further submitted that, should the appellants succeed in their claim against DPCL and receive the deposit amount along with interest, the amount would be made over to the appellants along with interest. As such, if the expenses were to be presently allowed in the

ARR, and interest burden was passed on to the consumers presently, the Discoms would, in effect, receive double benefit at the time of disposal of the writ petition since the consumers would have already borne the costs of interest which would also be then made over by DPCL to the appellants. It is argued that, as a Regulator, it is incumbent upon the DERC to protect the consumers' interest.

71. We are of the view that disallowing interest paid by the appellants towards Consumers Security Deposit held by DPCL in the ARR of the appellants is wholly misconstrued. Interest on consumers' deposit which is being paid by the appellants is a legitimate expense. It is not in dispute that the security deposit was not transferred by the DPCL to the appellants. However, the appellants were required to bear the costs of the same. In case, the principal sum on Consumers Security Deposit held by DPCL is transferred to the appellants with interest, the appellants would, subject to their legitimate expenditures, retain such interest and benefit of any balance of excess interest received by the appellants would be passed on to the consumers in tariff. Therefore, there is no merit in the contention of the learned counsel for the respondent

that if the interest burden is passed on to the consumers presently, the appellants would, in effect, receive a double benefit in case they succeed in the writ petition pending before the High Court.

72. Therefore, we hold that the appellants are entitled to recover interest on Consumers Security Deposit as held by the DPCL. We direct the DERC to allow the interest on Consumers Security Deposit held by the DPCL and impact thereof to the appellants. The findings of the DERC and the APTEL in this regard are set aside.

73. **Issue No.6**: This issue pertains to enforcement sales i.e. sales which are deemed to have been occurred in cases of electricity theft. The question for consideration is whether the impugned findings in the order of the APTEL are against the legal principle that when the statute creates a legal fiction i.e. energy assessed is 'deemed' to be consumed, the same has to be given effect to with all its consequences i.e. same quantum of energy is to be accounted for as supplied?

74. Electricity transmitted may be stolen or used unauthorizedly. While theft/unauthorized use was approximately 60% before

privatization, it has now been brought down to 7 to 8%. Unauthorized use and theft are dealt with in Section 126 of the 2003 Act, relevant clauses whereof are as under:

> "Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, **he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.**
>
> [...]
>
> [(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve

months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).”

(Emphasis supplied)

75. The Vigilance/Enforcement Department detects theft/unauthorized use of electricity. After giving due opportunity, the bills are generated for electricity stolen/unauthorized use. These are called enforcement sales/assessed sales. The statutory charge for such theft/unauthorized use is twice the normal rate.

76. While settling enforcement cases of small consumers, Lok Adalats often provide discounts to errant consumers on the assessed equivalent of the rupee amount and not on the assessed units of energy. The assessment of units of energy as deemed to be sales to the consumers is in accordance with Section 126 of the 2003 Act read with provisions for such assessment specified by the DERC itself.

77. In a particular case of unauthorized use of electricity under Section 126, suppose using the 'LDHF formula' (specified by DERC itself), the appellants assess the consumer as having consumed 100 units of electricity.

(a) By virtue of the Supply Code Regulations framed by the DERC itself, these 100 units are to be treated as "sales".
(b) Upon the assessment of 100 Units, the Appellant raises a bill on the said consumer. Under Section 126 of the Electricity Act, the bill has to be raised at twice the normal billing rate. If the normal ABR were Rs. 5 per Unit, the Section 126 Bill will be raised for Rs 1,000 (i.e. 100×[Rs 5×2]);
(c) By virtue of a Settlement which is entered into between the Appellant and the consumer before the Lok Adalat etc., suppose the Appellant agrees to give up Rs 200, the Appellant then recovers Rs 800/- rather than Rs 1,000/-.
(d) Now, though the settlement is only for the Rupee equivalent of the Assessed Bill and not the 'Units sold', the DERC now takes Rs 800, divides it by Rs 10 (i.e. twice the ABR) and arrives at an imaginary 'sales' figure of electrical energy of 80 Units.
(e) This is in complete contrast to the Assessment of Energy sold of 100 Units in terms of the LDHF Formula specified by the DERC itself according to which the sales are "deemed to be" 100 units.
(f) Therefore, by entering into a settlement before the Lok Adalat (which is in harmony with the entire Lok Adalat philosophy), the Appellant first loses Rs 200 in monetary terms and then loses 20 Units of electricity which the Appellant is

> deemed to have sold such consumer in the first place.

78. Learned counsel for the appellants submit that when the statute creates a legal fiction, i.e. energy assessed is deem to be consumed, the same has to be given effect to with all its consequences i.e. same quantum of energy is to be accounted for as supplied. However, learned counsel appearing for the respondent DERC submitted that that concurrent findings of the DERC and the APTEL cannot be reversed and the methodology adopted by the Commission has to be maintained.

79. Having considered this question in detail, we are not in agreement with the stand taken by the respondent. We are of the view that the methodology adopted by the DERC is contrary to the settled principle of law that when the law deems a certain imaginary state of affairs as real, DERC would not let its imagination boggle at treating the 100 units as sales. We are of the view that such imaginary state of affairs must be taken to its logical end and commend the treatment of 100 units as 'sales'.

80. We are of the view that the assessed energy has to be considered as supply by the appellants in enforcement cases. Therefore, we direct the DERC to consider assessed energy for calculation of enforcement sales and allow the impact of the same along with carrying costs. In view of our conclusion as above, we do not deem it necessary to answer the other contentions on this issue.

81. The substantial questions of law are answered accordingly. Resultantly, the appeals are allowed and the order(s) of the DERC and the judgment of the APTEL impugned herein, to the extent mentioned above. are hereby set aside. Parties to bear their respective costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(KRISHNA MURARI)

New Delhi;
October 18, 2022.