

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

**Petition No. 47 of 2007**

**In the matter of:**

BSES Rajdhani Power Limited  
Through its: **CEO**  
BSES Bhawan,  
Nehru Place,  
Delhi-110019.

...**Petitioner**

**Petition No. 48 of 2007**

**In the matter of:**

BSES Yamuna Power Limited  
Through: its **CEO**  
Shakti Kiran Building,  
Karkardooma,  
Delhi-110092.

...**Petitioner**

**Coram:**

**Sh. Berjinder Singh, Chairman & Sh. K. Venugopal, Member.**

**Appearance:**

1. Sh. Arun Kanchan, CEO, BYPL;
2. Sh. R. C. Mehta, AVP, BRPL;
3. Sh. V. P. Singh, Advocate (BYPL & BRPL);
4. Sh. Anuj Berry, Advocate (BYPL & BRPL);
5. Sh. R. C. Natrajan, BRPL.

**ORDER**

(Date of Hearing: 24.07.2007)

(Date of Order: 07.09.2007)

1. The present Petitions have been filed by the Petitioner Companies namely, BRPL & BYPL before this Commission for seeking mainly the following reliefs:
  - a) Recovery of arrears pursuant to ATE Order as "Additional Energy Charge" with immediate effect as mentioned in para 5 of the present Petitions.
  - b) Considering the socio-economic factors, consumers billed under the category of JJ Clusters may be exempted from the "Additional Energy Charges".
  - c) Recovery of arrears through any other suitable mechanism.
2. Sh. V. P. Singh, Ld. Counsel for the Petitioners, during the course of arguments made the following submissions:

a) That the Petitioners have filed the Petitions in the backdrop of the judgement dated 23.05.2007 passed by the Hon'ble Appellate Tribunal for Electricity (hereinafter called as 'ATE') in the Appeals No. 266 & 267 of 2006. These Petitions covered various issues as described below:

- (i) Depreciation,
- (ii) Adjustment for prior period in transfer of stores/R & M Expenses,
- (iii) Capital Expenditure,
- (iv) Second truing up,
- (v) Payment for contractual employees,
- (vi) A&G Expenses,
- (vii) Reactive Energy charges,
- (viii) Interest.

While the issue at (i) is consequent to an order dated 15.02.2007 of the Hon'ble Supreme Court of India in Civil Appeal No. 2733/06, other issues were covered by the Appellate Tribunal for Electricity Order dated 23.05.2007.

b) That an estimated amount of Rs. 293 crore (excluding the capital expenditure and capitalization to be finalized for the F.Y. 2004-05 and FY 2005-06 in terms of ATE Order) is on account of additional depreciation including carrying cost, the other expenses estimated at Rs. 74 crore cover all other items except depreciation. The Petitioner has also indicated that in case of depreciation, the Board of Directors have decided to recover the said depreciation amount through tariff in a phased manner over the next two years i.e. beginning from FY 2007-08.

c) That w.e.f. 1.4.2007, the Licensees are purchasing power directly from the Generators. The Power Purchase Allocation order runs counter to the National Tariff Policy, which prescribes allocation of PPAs based on load profiles of the DISCOMs so that the retail tariffs should be uniform in the State during the first control period for different categories of consumers. While the Power purchase Allocation Order states that the Statutory provisions including the National Tariff Policy would be the guiding factor, the same has not been reflected in the order issued by the Commission while watering it down to a concept of similar but not the same tariff.

d) That the demand pattern in the area of supply has imposed a strain on the petitioners cash flow, more so, in the first half of the year, as the revenue realized are not commensurate with the quantum and cost of power during the first half of the financial year.

- e) That presently, the entire Northern Region including Delhi is experiencing shortage of power leading to overdrawl by constituents so as to meet their respective demand. This situation may worsen in the coming months when the requirement of additional power increases. The consensus view taken in the Coordination Forum was that whatever opportunities are sighted, an attempt should be made to arrange power in the overall interest of Delhi consumers and load management by shedding be resorted to only in exceptional circumstances. Therefore, arrangement of power to meet the shortfall has been done through the Delhi Power Procurement Group (DPPG) to the best of their ability. Contracts have been entered into with the Traders/Generators, etc. where the transmission of power involved wheeling not only within the region but across various regions which entails higher transmission losses in addition to constraints on availability of transmission corridors. The cost of such additional sourced power at Delhi periphery, is estimated in the range of Rs. 7.00 to Rs. 9.90 per unit, depending upon the source. The procurement of such high cost incremental power is also due to the skewed allocation made in the Power Purchase Allocation order. In view of these constraints the Licensees have prayed for "additional energy charges" as an interim measure to bridge the present situation.
- f) That while all the issues raised above are common to both the petitioners, the figures relating to depreciation and other expenses as claimed in the petition of M/s BYPL are Rs. 81 crore and Rs. 120 crore, respectively.
- g) That the judgement of the Hon'ble Supreme Court and Appellate Tribunal for Electricity are binding on all parties and should, therefore, be implemented immediately. It was also explained that in a similar situation, the tariff was ordered to be increased and charged as additional energy charges, by the Maharashtra Electricity Regulatory Commission (MERC).

When the query was posted to the Petitioners regarding the status of the implementation of the order of the MERC, the Learned Counsel was unable to clarify as to why this order of the MERC was never implemented. The Commission understands that subsequently M/s. Reliance Energy Ltd. Mumbai filed a petition before the Hon'ble ATE for converting the energy charge increase into a Regulatory Asset and the ATE was pleased to restore status quo in the matter due to a pending appeal in the Supreme Court.

- h) It was submitted by the Learned Counsel that there is no need for any public hearing for implementation of the orders of the Appellate Courts. It was also contended that since MYT for the period 2007-08 to 2010-11 may not be issued before the year end, the interim tariff hike as prayed for, may be granted by the Commission.
  - i) It was further explained by the Learned Counsel that as a result of assignment of PPAs w.e.f. 01.04.07, the DISCOMs have to arrange power and since the additional power being purchased has become very expensive, the Petitioners are facing a serious cash crunch, which can be overcome through an interim increase in tariff, pending final order on MYT which is likely to be announced by the end of the calendar year.
2. The Commission has carefully considered the averments of the Petitioners contained in the Petitions as well as pleadings during the course of hearing. The following issues need to be considered for arriving at a conclusion in the matter:
- a) The Electricity Act, 2003 provides in sub-section (4) of Section 62 that 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.
  - b) The Commission has issued the Tariff order for the FY 2006-07 in September, 2006, after obtaining leave of the Hon'ble Supreme Court of India. The order came into effect on 1.10.2006 and will be in force till the next tariff order is issued.
  - c) The Commission notified the MYT regulations on 30.05.2007 for the control period from F.Y. 2007-08 to F.Y. 2010-11 and directed all the utilities in Delhi to file their tariff petitions as per the MYT Regulations.
  - d) The Policy Direction period of 5 years commencing from 1<sup>st</sup> July, 2002 has just ended on 31.03.07. The transition from the Policy Direction period to the control period of the MYT is to be done in a smooth way, duly taking into account the petitions filed to be filed by the Generating Companies as well as DTL which was given the responsibility of arranging power supply upto 31.03.2007. Decisions to be taken in these three petitions may have a bearing while fixing the tariff for the period 2007-08 to 2010-11.

- e) All the three distribution utilities in Delhi have offered a DISCOM adjustment ever since the tariff orders for 2005-06 were issued by the Commission where by, adjustment has been given to domestic and agricultural consumers.
  - f) While the BRPL and BYPL have filed their petitions for immediate interim tariff hike, the Commission has not received any such petition from M/s. NDPL.
  - g) All the adjustments to be carried out consequent to the order of the ATE dated 23.05.07 are to be done at the time of truing up/fixing of tariff for the FY 2007-08 on the basis of tariff petitions to be filed by the Petitioners. The exact quantum of the adjustment would be known only when the petitions are filed and prudency checks are carried out by the Commission. **The Appellate Tribunal for Electricity has also directed in its Order dated 23.05.2007 that these claims shall be taken up by the Commission at the time of truing up.** Further, the Appellate Tribunal for Electricity specifically directed the Commission that the capital expenditure for the Financial Year 2005-06 would be appropriately considered by the Commission during the truing up in the next Tariff Order. The Appellate Tribunal for Electricity also directed the Commission to allow all expenses pertaining to employee expenses, depreciation, and interest in the next truing up exercise. With respect to prior period adjustment in transfer of store/R&M expenses and excess provision written back, the Commission's submission that this aspect would be considered at the time of final truing up for the Financial Year 2005-06 in the next Tariff Order was accepted by the Tribunal.
  - h) In respect of the additional depreciation to be allowed, the Petitioners have requested for spread over of the amount over two years. The Commission is yet to take a view on this issue.
  - i) The judgment of the Hon'ble Court of Delhi dated 02.07.2007 in W.P.(C) No. 2705/2002.
3. Every year the utilities in Delhi make gains from additional AT & C Loss reduction, bilateral sales and UI charges. The estimated amounts in this regard for the year 2006-07 are as under:
- a) Gain on account of additional AT & C Loss reduction – about 400 crore during 2006-07.
  - b) UI and bilateral transaction amounting to Rs. 610 crore.

- c) Refunds from Central Sector generating companies – Rs. 210 crore approx.
- d) Collection of DVB arrears.

The precise amounts in respect of such items and others for the current year will be known only when tariff petitions are filed by the present Petitioners as well as other utilities in Delhi namely NDPL, DTL, IPGCL and PPCL.

- 4. As regards the power purchase cost being high in the first six months, this is not a new issue. This has been the trend of the power procurement cost in Delhi based on the experience of past many years. To cite an example of the same, typically in 2006-07, the monthwise average cost was around Rs. 2.30 per unit in the month of April which increased up to almost Rs. 2.98 per unit by August, went down in October/November but increased in December to about Rs. 2.88 per unit and went down again in February & March. This is on account of the fact that Delhi's consumption pattern peaks during July-August and then reaches another peak in winter in December-January.
- 5. The Commission while allocating PPA's to various Distribution utilities in Delhi had kept in mind the different backgrounds obtaining in respective utilities and does not agree with the issues raised by the Petitioners regarding non-compliance of some of the provisions of the National Electricity Policy etc. To overcome the problems being faced or likely to be faced by some of the utilities, the Commission had carved out some capacity as "unallocated capacity" and kept the same at the disposal of Govt. of NCT of Delhi who have also implemented this arrangement by allocating the entire 15% unallocated quota to BYPL upto September, 2007. Any teething trouble in this arrangement needs to be addressed separately from time to time.
- 6. The tariff orders of the Commission being for a full year, the average power purchase cost for the full year is worked out duly taking into account availability of power from long term power purchase agreements with central sector Generating stations and Delhi's own generating stations as well as bilateral purchases which are estimated at a price higher than the regulated price. This exercise also takes into account unscheduled interchanges which take place over a year on an estimate basis. The cash flow problem stated by the Petitioners alone is not an adequate reason for an interim hike in the tariff. The Commission's endeavour has been to smoothen the tariff shocks through the Contingency Reserve proposed to be established in the MYT tariff order as

provided in the MYT Regulations and not to subject millions of consumers all over Delhi with frequent tariff variations.

7. The Commission is thus not in favour of an interim tariff hike at this juncture and will issue the final Tariff Order for the MYT period within 3-4 months, thereby not disturbing the tariff setting process as of now. In the light of the above, the prayer of the Petitioners cannot be acceded to at this stage and the Petitioners are advised to file their tariff petitions for 2007-08 expeditiously so as to enable the Commission to pass the Tariff Orders for the MYT period at the earliest as also implement the judgments of both viz the Hon'ble Supreme Court of India and the Hon'ble Appellate Tribunal for Electricity.

The Petitions are disposed of accordingly.

Sd/-  
(K. Venugopal)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN