



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

No. F. 11(1252)/DERC/2014-15/

**Petition No. 50/2015**

**In the matter of:      Petition for implementation of the Hon'ble Appellate Tribunal's Judgment dated 2<sup>nd</sup> March, 2015 in Appeal No. 177 & 178 of 2012 in regard to approval of Capital Expenditure Scheme for FY 2010-11.**

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

....Petitioner

**Coram:    Sh. B.P. Singh, Member**

**ORDER**

(Date of Order: 18.05.2018)

- 1) The instant Petition has been filed seeking implementation of the Hon'ble Appellate Tribunal's Judgment dated 2<sup>nd</sup> March, 2015 in Appeal No. 177 & 178 of 2012 with regard to approval of Capital Expenditure Scheme for FY 2010-11.
- 2) The petitioner in its appeal to APTEL has contended that the under-recovery in the revenue realized on account of non-achievement of the AT&C loss targets was not due to any fault of the appellant/petitioner and were mainly attributable to (a) non-refixation of the AT&C loss targets by the Commission in terms of the Hon'ble Tribunal's judgment in Appeal No. 36 of 2008; (b) non-approval of nearly 50% of the capex schemes during FY 2009-10 and FY 2010-11 by the Commission and (c) an average delay of more than six months in the grant of 'in principle' approval granted to the Capex schemes for reduction in AT&C loss in FY 2010-11. While remanding back the matter to the Commission, Hon'ble APTEL has observed the following:

*"40.9 We remand the matter to consider the contentions of the Appellant regarding non-achievement of AT&C loss target for FY 2010-11 due to delay/non-approval of the schemes which was beyond its control after considering whether there was delay in according approval to the loss reduction schemes submitted by the Appellant in FY 2009-10 which resulted in the non-completion of these schemes during FY*

*2010-11. If it is found that the proposed loss reduction schemes were not approved for no fault of the Appellant then the Appellant will be entitled to a relief. Accordingly, directed"*

- 3) To deliberate upon the issue whether the non achievement of AT&C Losses for the Financial Year 2010-11 was due to delay/non approval of the schemes, the Engineering Division, which processes for the approval of Schemes submitted by the DISCOMs was asked to analyze the matter and submit a report in this regard.
- 4) In the report the Engg. Division has submitted that :-
  - (i) the DISCOMs keep submitting Capex schemes from time to time including those of reducing AT&C losses. The Commission accords 'In-principle' approval after due diligence, keeping in view the necessity and objectives of the scheme, on a case to case basis.
  - (ii) the Commission has issued guidelines for approval of capital investment schemes on 15.03.2010, stipulating detailed terms & conditions and procedures to be observed by the DISCOMs while framing the proposals for capital investment schemes and submitting to the Commission for approval.
  - (iii) From the list of schemes submitted by petitioner vide their letter dated 21.07.2015, it is observed that petitioner had submitted 401 nos. of schemes said to be under AT&C Loss Reduction head in FY 2009-10. Out of these, 209 nos. of schemes were submitted in February 2009. These 209 nos. schemes were approved by the Commission in August 2009, i.e. in FY 2009-10.
  - (iv) Regarding implementation of 209 nos. approved schemes, only 181 nos. of schemes were capitalized by March, 2010. Whereas, 22 nos. schemes got capitalized between April, 2010 to March, 2011. Further, 4 nos. schemes were dropped by the petitioner and 2 nos. schemes got capitalized in March, 2013. Due to delay in execution of approved scheme, the petitioner could not even derive benefit from approved schemes for reduction of AT&C losses for the period under reference, i.e., FY 2010-11.
  - (v) Balance 192 nos. of schemes were submitted by the petitioner during the period November 2009 to February 2010. The Commission vide its letters dated 18.03.2010 has deferred the scheme submitted by the petitioner vide their letters dated 18.11.2009 and 15.02.2010 and directed the petitioner to submit these schemes again in

accordance with the guidelines for approval of capital investment schemes issued by the Commission vide its letter dated 15.03.2010. Thereafter, the petitioner vide its letter dated 09.06.2010 resubmitted the schemes including the schemes reverted by the Commission.

Therefore it is observed that there has been a delay on the part of the petitioner to submit the schemes, particularly 192 nos. schemes which were submitted during Nov. 2009 to Feb. 2010.

- (vi) It is observed from the list submitted by the petitioner that 100 nos. of schemes out of 192 nos. of schemes (submitted during Nov 2009 to Feb 2010) deferred by the Commission pertain to Load Growth, O&M and others, and do not directly relate to AT&C Loss reduction. Further, only 92 no. schemes which were deferred pertain to AT&C loss reduction.
- (vii) From the details submitted by the petitioner vide letter dated 21.07.2015, it is observed that the petitioner has taken around 6-8 months to capitalize the scheme, after 'in-principle' approval of the Commission. To achieve AT&C loss targets during the FY 2010-11, the schemes for reduction of AT&C losses should have been capitalized by end of FY 2009-10 so as to derive full benefit of AT&C loss reduction.
- (viii) Out of 209 nos. of schemes which were approved by the Commission in August 2009, many schemes were either capitalized at later part of 2010-11 or after FY 2010-11 or dropped by the petitioner.
- (ix) It is to be clarified that the process for 'in-principle' approval of schemes involves various activities such as examination of the submitted data, verification of estimated cost, seeking clarification / additional information from DISCOMs, conducting field inspection etc. Thus, approval of schemes is a time taking process that requires due diligence to technical as well as financial aspects of the proposed scheme.
- (x) The petitioner itself has admitted that a good number of Schemes pertain to electrification of left out pockets and miscellaneous schemes, which are mainly related to meeting the load growth. These schemes cannot be considered under AT&C loss reduction category.
- (xi) Execution of capital expenditure schemes is started by BRPL even before the 'in-principle' of the Commission is accorded.

(xii) The above fact is also demonstrated during the undergoing process of review of capitalization for FY 2006-07 to 2010-11, wherein it is observed that BRPL has executed schemes for Rs. 659.68 crore without approval of the Commission during FY 2006-07 to FY 2010-11.

5) At the request of the Petitioner a copy of the report of the Engineering Division was furnished to the Petitioner, who in turn has made following submissions on the report:-

(i) On the terms of the remand Order, the only question to be considered in this "limited remand" is as to whether the capex schemes were "*not approved for no fault of the BRPL*". The report of the Engineering Department does not (and in reality cannot) find fault with the petitioner being the reason why the capex schemes were "*....not approved..*"

The conclusion of the Engineering Department's Report seeks to focus on why the capex schemes were not implemented/ capitalized. Apart from the fact that the Report is misdirected in scope, even with regard to the actual contents, the Report is incorrect.

(ii) Guidelines w.r.t. New Capital Investment from DERC is dated 15-Mar-2010, much later than our schemes were submitted –

a. 84% of schemes in question (161 Schemes out of 192 Schemes) – Submitted 120 days (4 MONTHS) prior to notification.

b. 16% of schemes in question (31 Schemes out of 192 Schemes) – Submitted 31 days (1 Month) prior to notification.

DERC letter regarding "New Capital Investment Guidelines" dated 15.03.2010 also does not indicate any change w.r.t. the content of the schemes which were being submitted earlier. It clearly states that all submissions (15.03.2010 onwards) need to be as per the new guidelines.

As per the law laid down by the APTEL in Judgment dated 04.08.2011, in Appeal No. 199 of 2010 ( MSPGCL vs MERC), if a directive had been given when half the year is almost over for approval of capex schemes and bundling of DPR's, it could not have been applied retrospectively for the year in which it was passed. It could have been applied only prospectively from the next year onwards.

- (iii) Apart from the bare statement that the out of the 401 schemes submitted in February 2009, there is absolutely no reason why 209 schemes should have been approved six months after they were submitted in February. This clearly shows that the Report overlooks the fact that 209 schemes were approved six months after they were submitted.
- (iv) It is stated that 181 schemes out of 209 (i.e. 87%) of the schemes were capitalized within six months of the approval. Going by the same rationale, if the Schemes submitted in February 2009 had been approved in a reasonable time of say 1-2 months, i.e. by April 2009, then 181 schemes would have (taking the same time limit) been capitalized by September 2009 (i.e. 6 months from April). Hence the licensee would have taken the entire benefit of those 181 schemes in FY 2009-10.
- (v) There is no finding in the report that the six month time taken to approve the schemes was due to the fault of the Petitioner. At the very outset itself, therefore, the Engineering Department admits that its delay in approving 209 schemes is the direct and proximate cause of the licensee not deriving the benefits of 209 (or at least 181) schemes in FY 2009-10. Had the licensee reaped the benefits of 181 schemes in 2009-10 the licensee may well have overachieved its AT&C loss numbers.
- (vi) In point of fact the licensee for FY 2009-10 had achieved AT&C losses of 20.53% against a target of 20.23%. Hence because the Engineering Department delayed the approval of 209 schemes for 2009-10, the entire year of 2009-10 went by and whatever losses had to take place already took place. Therefore, by such delay of 6 months in approving the 209 schemes, the licensee was denied the opportunity of even earning an efficiency gain on AT&C losses for FY 2009-10.
- (vii) As per the target set by the Commission for FY 2010-11, the Licensee had to bring down AT&C Loss to 17% by 31st March 2011.
- (viii) The Licensee had reduced the AT&C Loss from 20.53% during FY 2009-10 (as trued-up by the Hon'ble Commission in Tariff Order

dated August 26, 2011) to 18.82% during FY 2010-11 (as trued-up by the Hon'ble Commission in Tariff Order dated July 13, 2012). Therefore the Licensee had reduced the AT&C Losses by half the target set by the Commission and in fact derived the benefit of the schemes approved by the Hon'ble Commission.

- (ix) The statement that the balance 192 schemes were "...submitted by BRPL during the period November 2009 to February 2010.." is gives an incorrect impression. Factually out of 192 schemes, 161 schemes (i.e. 84%) were submitted on 18 November 2009. The balance miniscule number of 31 schemes (16% were submitted in February 2010.
- (x) The revised schemes were re-submitted to the commission within 83 days thereafter. This was essentially for two reasons (i) new guidelines were only and essentially a change in the format and to a large extent the content of the schemes already submitted did not change; and (ii) During that period BPRL also submitted 1637 new schemes for FY 2010-11.
- (xi) Therefore, the petitioner only complied with the direction of the Hon'ble Commission given in letter dated 18-03-2010. There is no reason assigned by the Commission at the time BRPL was asked to re-submit the schemes that such re-submission was on account of any fault of BRPL. Rather the re-submission was solely on account of the Guidelines having been brought out 4 months after the submission of the schemes. Hence, as required by the Remand Order, there is no possibility of rendering any finding that the non-approval of the schemes was on account of any fault of BRPL.
- (xii) Out of the 192 schemes re-submitted, 114 pertained to LT schemes (conversion to LT AB cables), 44 schemes to electrification of left out pockets and 34 were miscellaneous pertained broadly to Service Line Replacement etc. The entire list of 192 schemes pertained wholly to AT&C loss reduction. The full list has been provided to the Commission.
- (xiii) The Commission has taken 6-8 months to approve schemes, it is inconceivable that 6-8 months to procure, install and commission

equipment is considered as excessive. The process of procurement etc. has (under the Commission's own instructions to be by a bidding process), then followed by a lead time for manufacture, then municipal approvals etc before installation and commissioning. In any event, the scope of the remand order is not to determine as to whether there was any delay in capitalizing the schemes but was limited to ascertaining whether the delay in APPROVING the schemes was on account of any fault of BRPL.

- (xiv) The Commission is ignoring the fact that 87% of approved schemes were implemented before start of FY 2009-10 and all schemes cannot be implemented immediately. However, the Commission is emphasizing on rest 13% schemes which is hardly 28 schemes and out of these, 22 were implemented during the year itself.
- (xv) It is the Commission which in its earlier tariff Order has not permitted the capitalization on account of not having the ratio computed based on the actual numbers as per the audited accounts of respective years.
- (xvi) Firstly the Opening Capital WIP is incorrect: This is clear from the audited accounts which are given hereunder:-

<b>Particulars</b>	<b>FY 03</b>	<b>FY 04</b>	<b>FY 05</b>	<b>FY 06</b>	<b>FY 07</b>
Op. WIP	0	27	35	693	433
Capex	31	91	923	519	207
Capitalisation	4	83	266	779	316
<b>CI. WIP</b>	<b>27</b>	<b>35</b>	<b>693</b>	<b>433</b>	<b>323</b>

Secondly, it is incorrect to suggest that only 50% of the CWIP is capitalized. In fact, as per the audited accounts, the figure of capitalization ranges from 81% to 153% as per the details given below:-

<b>Particulars</b>	<b>FY 08</b>	<b>FY 09</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>
Op. WIP	323	309	227	233	178
Capital Investment	247	377	305	302	207
Capitalisation	261	459	299	357	156
Closing work in progress	309	227	233	178	229
<b>% of opening work in progress capitalised during the year</b>	<b>81%</b>	<b>148%</b>	<b>132%</b>	<b>153%</b>	<b>87%</b>

6) The report of the Engineering Division vis-a-vis the written submission made by the Petitioner on the report has been analyzed in light of the prayers of the Appeal before the APTEL and observations of the APTEL on the matter, following are the observations:

- (i) The decision of the Commission to penalize the Petitioner for non achievement of its AT&C Loss targets was appealed by the petitioner before APTEL on the ground that the non achievement of the AT&C loss targets was not due to any fault of the appellant/petitioner rather it was mainly attributable to non approval of nearly 50% of the capex schemes during FY 2009-10 and FY 2010-11 by the Commission and an average delay of more than six months in the grant of 'in principle' approval granted to the Capex schemes for reduction in AT&C Loss in FY 2010-11. The Hon'ble APTEL remanded back the matter with the directions that DERC will examine whether there was delay in according approval to the loss reduction schemes submitted by the Appellant in FY 2009-10 with resulted in non completion of these schemes during 2010-11 and if it is so the appellant will be entitled to a relief.
- (ii) In view of the aforesaid directions of Hon'ble APTEL, there are two aspects to be considered, first whether there was delay in according approval to the schemes related to AT&C loss and second, whether such delay resulted in non-achievement of AT&C loss target.
- (iii) From the report of the Engineering division and counter submissions made by the petitioner it is evident that the time taken in according approval to the schemes submitted by the petitioner was of 4-6 months, which had been a usual practice in DERC without differentiating between the DISCOMs or the financial year. It may also be seen that the other DISCOMs with the same time gap of approval of schemes have achieved their AT&C loss targets. The set of procedure involved in DERC in approving the schemes was well known to the petitioner and this is why in some of the cases the petitioner has started work on certain schemes without approval of the Commission. From the data submitted by the petitioner, it is verified that the process of execution of several capital schemes



were started by the petitioner even before the 'in-principle' approval of the Commission.

- (iv) Total of 153 out of 209 nos. of schemes were capitalized by BRPL by February 2010, i.e., within a period of six months from the date of approval of the Commission. If the statement of BRPL that 6-8 months time required for procurement, installation and commissioning of equipment is normal is considered true, it can easily be concluded that the process for carrying out these 153 schemes was started by BRPL even before the Commission accorded 'in-principle' approval.
  - (v) Moreover, the delay is not such that it may be the cause which resulted in non completion of the schemes related to AT & C targets loss reduction. The approval of schemes does not lead to the reduction in losses until executed timely. Thus, the whole contention raised by the petitioner that non-achievement of AT & C target was because of the delay in approval process lacks merit.
  - (vi) The Commission adopts similar yardstick for approval of capital expenditure schemes submitted by different DISCOMs. When BYPL, which is a sister concern of BRPL, could over achieve the AT&C Loss reduction targets for the same financial year, in which BRPL could not achieve its targets, it can be inferred that the non-achievement was on part of BRPL.
- 7) Therefore, the contention of the petitioner that it could not achieve AT&C loss targets because of delay in approval of the scheme is not tenable because there were usual delays, which have not affected the other DISCOMs. In view of the above, no relief as such may be granted to the petitioner because it has failed to establish that non achievement of AT&C loss targets was attributable solely to delay in according approval to the AT& C loss related schemes by DERC.
- 8) In view of the above, the matter is disposed of.

**Sd/-**  
**(B.P. Singh)**  
**Member**