



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

No. F.11(1317)/DERC/2015-16/5076

Petition No. 87/2015

In the matter of : Petition seeking adjudication of dispute between the petitioner (TPDDL) and the Respondent (DTL) as regards the applicability of the Tariff Order dated 29.09.2015 passed for DTL w.e.f 01.10.2015 for computation of the wheeling charges for FY 2015-16.

Tata Power Delhi Distribution Ltd.
Through its Managing Director
NDPL House,
Hudson Lines, Kingsway Camp
Delhi 110 009

.....Petitioner

VERSUS

Delhi Transco Limited.
Shakti Sadan, Kotla Marg,
New Delhi 110 002

....Respondent

Coram: Sh. B.P. Singh, Member

ORDER

(Date of Order: 02.05.2018)

1. The instant Petition has been filed by M/s Tata Power Delhi Distribution Limited (TPDDL) seeking adjudication of dispute in respect of the invoice No. DTL/TPDDL/WC/15-16/28 dated 09.10.2015 raised by Delhi Transco Limited (DTL) claiming a differential amount Rs. 36.37 Crores approx. to be paid by the petitioner for the period April, 2015 to August 2015 on the basis of the latest Tariff Order for the Respondent dated. 29.09.2015 passed by the Commission for FY 2015-16.
2. The Petition was admitted *vide* order dated 28.12.2015. The Commission also ordered a stay on the Invoice No. DTL/TPDDL/WC/15-16/28 dated 19.10.2015 to the extent that it is related to the payment of arrears of Rs. 36.37 Cr. till further orders of the Commission.

Petitioner's Submissions:

3. The Petitioner has made the following submissions that:
 - (i) The Commission framed DERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 on 02.12.2011 under Section 181 of the Act ("Transmission Tariff Regulations, 2011"). Subsequently, as per the

provisions of Regulations 4.1 of Transmission Tariff Regulations 2011, the Commission adopted Multi Year Tariff (MYT) Framework for approval for Aggregate Revenue Requirement (ARR) of Respondent for the Control Period from 01.04.2012 to 31.03.2014, which was further extended for a period of one year upto 31.03.2015.

- (ii) On 29.09.2015, the Hon'ble Commission passed the Tariff Order for DTL on True up of ARR from FY 2012-2013 to FY 2013-14 and Approval of ARR for FY 2015-16 for Transmission Business, wherein the Commission has specifically directed that the Tariff Order would be applicable from 01.10.2015 and would remain in force until replaced by the subsequent Tariff Order and/or amended, reviewed or modified in accordance with the provisions of the Electricity Act, 2003 and the Regulations made thereunder.
- (iii) However, on 09.10.2015, the Respondent DTL raised bill bearing Invoice No. DTL/TPDDL/WC/15-16 dated 09.10.2015 with due date of payment being 08.11.2015, in which an amount of approximately Rs. 36 crores was claimed by way of differential transmission dues from the period April, 2015 to August, 2015. The claim has been arrived at by comparing the amount paid by Petitioner as per the prevailing tariff Order as opposed to the amount chargeable from April, 2015 to August, 2015 calculated on the basis of the order dated 29.09.2015.
- (iv) The Commission may allow recovery of distribution and retail tariff prospectively. It is not open to the Petitioner to change the different tariff from its consumers as has been done by DTL. Even the working capital is allowed to the Petitioner for one month only. Accordingly, the Petitioner will not be able to pay the illegal retrospective demand from the revenue available with the Petitioner.
- (v) The retrospective tariff illegally charged by the Respondent DTL would result in undue financial and cash flow crisis upon the Petitioner, which is already reeling under the burden of excessive regulatory assets. It is further noteworthy that the Petitioner is allowed to recover tariff prospectively and therefore the Petitioner has no means to recover the retrospective invoice raised by Respondent in the same financial year.
- (vi) The Respondent DTL is a Transmission Licensee and is only entitled to charge tariff as determined by the Hon'ble Commission and from the date notified by the Hon'ble Commission. Therefore, the Respondent cannot recover tariff over and above the tariff determined by the Commission in terms of Section 62 of the Electricity Act, 2003, read with Regulations issued by the Commission.

Respondent's Submission:

4. In its reply the Respondent DTL has submitted that :-
- (i) The Invoice dated 09.10.2015 is as per the Tariff Order passed by the Commission as well as in accordance with the formula given in the MYT Regulations, 2011.
 - (ii) The Hon'ble Commission passed the Tariff order of DTL for FY 2015-16 on 29.09.2015 whereby the Hon'ble Commission allowed Rs. 1018.41 Crore as ARR of DTL for FY 2015-16 and has directed DTL to recover the said amount on prorata basis from the beneficiaries in the ratio of transmission charges.
 - (iii) In compliance of the above order of Hon'ble Commission, DTL has raised the monthly bills for September, 2015 claiming wheeling charges including revised wheeling charges for the period 1st April, 2015 to 31st August, 2015.
 - (iv) Merely because the Tariff Order was passed on 29.09.2015 does not mean that the ARR for the period 01.04.2015 to 31.03.2016 as approved by the Hon'ble Commission will not be recovered by DTL.
 - (v) It is respectfully submitted that the bills raised for the past period is in consonance with the order of Hon'ble Commission dated 29.09.2015. The bills as raised will only result in the recovery of the full amount of ARR i.e. Rs. 1018.41 Crores for the FY 2015-16 which is nothing but the ARR determined.
 - (vi) The Hon'ble Commission has specifically determined and directed DTL to recover amount of Rs. 1018.41 Crores on pro-rata basis from its beneficiaries and if the wheeling charges are recovered only effective 01.10.2015, then only Rs. 900.66 Crores will be recovered and there will be deficit of Rs. 117.75 Crores approximately. Therefore, bills have been raised for the concerned tariff period namely 01.04.2015 to 31.03.2016 so that full amount of ARR Rs. 1018.41 Crores can be recovered for the FY 2015-16.
 - (vii) The Judgement on which TPDDL is relying upon does not apply in the present case. Further, it is stated that DTL has levied wheeling charges including the revised wheeling charges for the period of April, 2015 to Sept, 2015 to recover full amount of ARR of Rs. 1018.41 for the period of 2015-16 as per the order of the Commission.
 - (viii) The differential transmission dues from the period of April 2015 to August, 2015 claimed by DTL is only to recover full amount of ARR Rs. 1018.41 Crores on pro-rata basis for the FY 2015 as per the Commissions Tariff Order dated 29.09.2015 of DTL for FY 2015-16. Moreover, the bills so raised by DTL will not

in any manner give any additional recovery to DTL over and above the ARR.

- (ix) The Tariff order by very nature entitles DTL to issue invoices including revised wheeling charges for the period of April, 2015 to September, 2015 to recover the whole amount of ARR of Rs. 1018.41 Crores. The fallacy in accepting the contention of TPDDL is that DTL will be able to recover only 900.66 Crores only which will result into a deficit Rs. 117.75 crores which does not stand to any logic and is not the intention of the Commission. It is stated that the invoices raised by DTL claiming revised wheeling charges for the period of April, 2015 to September, 2015 are in compliance of Tariff order dated 29.09.2015 of the Commission.
- (x) The payment of loan by TPDDL is as per the commercial decision of TPDDL and DTL is not concerned with the same. IT is stated that DTL is only claiming the amount which TPDDL is liable to pay under the law and merely by claiming financial hardship. TPDDL cannot avoid its liability under the law.
5. DTL has also filed its written submissions stating that the petitioner is confusing with the General Principles of prospective application of an order/notification and the applicability of a Tariff Order which is meant for a particular Tariff Period. If the Tariff order is made applicable from 01.10.2015 as being contended by the Petitioner, then the Total ARR recovered will be only Rs. 900.66 Crores which will result in an under recovery/deficit of Rs. 117.75 Crores approximately. This will certainly defeat the whole purpose of a Tariff Order for FY 2015-16.
6. In fact this principle of application of Tariff Order for a particular FY has been followed by DTL for several years for which DTL had also raised the bills from April, 2013 to July, 2013 as per ARR of Rs. 639.40 Crores and further after revision of ARR to Rs. 500 Crores, DTL had issued the credit bills to all the Distribution Licensee for the aforesaid period which was also accepted by the Petitioner. A similar treatment has been done by DTL for the current ARR in consonance with the earlier practice followed by DTL and as have been accepted by the Petitioner. At that time, no objections were raised by the Petitioner when credit bill was raised to them following the same principles. Therefore, this time when the recovery of wheeling charges for the period prior to the date of issuing Tariff Order came up, the Petitioner cannot be permitted to approbate on the same principle/analogy.

Commission Analysis

7. The case set up by the Petitioner is that the Commission has made the Tariff Order dated 29.09.2015 for DTL (FY 2015-16) effective only from 01.10.2015 and

therefore, DTL cannot raise the invoice dated 09.10.2015 claiming the monthly wheeling charges for the period 01.04.2015 to 31.08.2015 on the Petitioner. Since, the Order dated 29.09.2015 is only applicable prospectively.

8. Now, after considering the submissions made by the petitioner and the arguments of the Respondent it is clarified that the Tariff Regulations, 2011 allows the Respondent to compute the costs of the transmission system on annual basis and thereafter recover it on monthly basis. Regulation 6.6 of the Tariff Regulations, 2011 reads as under:

"6.6 The fixed cost of the transmission system shall be computed on annual basis, in accordance with norms contained in these regulations, aggregated as appropriate, and recovered on monthly basis as transmission charges from the users."

9. However, it is also a settled law that the Tariff revision cannot be given retrospective effect and has to be applied prospectively. The Hon'ble APTEL in SEIL India, New Delhi V/s PSERC, reported in 2007 (APTEL) 931 has observed that in the event of a tariff order being delayed, it can be made effective from the date tariff order commences or by annualisation of the tariff so that deficit is made good for the remaining part of the year or it can be recovered after truing up exercise by loading it in the tariff of the next year. Therefore, the recovery on monthly basis as mentioned in Regulation 6.6 above is for recovery of annual transmission charges on the monthly basis by pro-rating it for the recovery during the remaining months of the year.
10. In view of the above, it had been prudent on part of DTL to recover balance of ARR i.e. the difference of total approved ARR for the FY 2015-16 and ARR recovered/billed till 31.08.2015 on equated monthly basis in the balance recovery period of 7 months i.e. from 01.09.2015 to 31.03.2016 for FY 2015-16.
11. Accordingly, DTL is directed to rectify the impugned arrear bill and recover the annual transmission charges in the manner as indicated above.
12. With the above directions, the matter is disposed of.

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