Before the

Joint Electricity Regulatory Commission

For the State of Goa and Union Territories, Gurugram

QUORUM

Sh. M. K. Goel (Chairperson)

Smt. Neerja Mathur (Member)

Review Petition No. 275/2019
Date of Hearing: 19th August 2019
Date of Order: 24thSeptember 2019

In the matter of

Petition under Section 74 of JERC (Conduct of Business) Regulation 2009 seeking review of the Order dated 20thMay 2019 of the Commission for approval of True-up of FY 2017-18, Annual Performance Review of FY 2018-19,Aggregate Revenue Requirements (ARR) for 2nd MYT Control Period(FY 2019-20 to FY 2021-22)and determination of Retail Tariff for FY 2019-20.

And in the matter of

DNH Power Distribution Corporation Limited...Review Petitioner
1st Floor, Vidhyut Bhavan, 66 KV Road,Amli,
Opposite Secretariat,Silvassa — 396230

And in the matter of

Association of Polyester Continuous Polymerization Industry of D&NH (APCPI)...........................Respondent 1
7/8, Utkarsh Hotel, Silvassa Naroli Road,
Athal, UT Dadra & Nagar Haveli —396235

Present:

For the Review Petitioner

1. Sh. CA Parmar, Chief Engineer, DNHPDCL
2. Sh. Pawan Mishra, Chief Finance Officer, DNHPDCL
3. Sh. R.B. Chaubal, Assistant Engineer, DNHPDCL
4. Sh. S.S. Mehta, Consultant, DNHPDCL
5. Sh. Gaurav Lohani, Consultant, DNHPDCL

For the Respondent

1. Sh. RN Purohit, Advocate, APCPI
2. Sh. H.B. Pandal, Reliance Industries Limited, Silvassa

ORDER

This Review Petition has been filed by DNH Power Distribution Corporation Limited (hereinafter referred to as the "DNHPDCL" or the Review Petitioner) seeking review of the Commission's Order dated20th May 2019 on certain issues. The Commission has examined the Petition and a hearing in this matter was held on 19th August 2019.

Before proceeding to analyze the issues and concerns of the Review Petitioner, it is imperative to understand the powers of the Commission to review its own Order and the scope of review.

The Commission's Power to Review:

1. The Commission's power to review its own Order flows from Section 94(1)(f) of the Electricity Act, 2003 ("the Act") which provides that:

   ... *"The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure,1908 (5 of 1908) in respect of the following matters, namely:*

   (f) reviewing its decisions, directions and orders;"

2. These powers to review u/s 94(1)(f) of the Act are the same as conferred on a Civil Court by the Code of Civil Procedure (CPC). These have been spelt out in Section 114, read with Order 47, of the CPC.

   a) As per the said provisions, the specific grounds on which an Order already passed can be reviewed are:

      a. if there are mistakes or errors apparent on the face of the record, or

      b. on discovery of new and important matter or evidence which, after due diligence, was not within the knowledge or could not be produced at the time of making the order, or

      c. if there exist other sufficient reasons.

   b) The power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one merely by looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. But simultaneously, the materials on record, which on proper consideration may justify the claim, cannot be ignored.

   c) Clerical or arithmetical mistakes in Judgments or Orders, or errors arising therein from any accidental slip or omission may at any stage be corrected by the Commission under Section 152 of the CPC, either of its own motion or on the application of any of the parties. The use of the word "may" shows that no party has a right to have a clerical or arithmetical mistake corrected. The matter is left to the discretion of the Court. Such discretion is required to be exercised judiciously to make corrections necessary to meet the ends of justice. The word "accidental" qualifies the slip/ omission. Therefore, this provision cannot be invoked to correct an omission which is intentional, however erroneous. Because Section 152 does not countenance a re-argument on the merits off acts or law, the Commission has the limited powers to correct any clerical or arithmetical mistakes in Judgments or Orders, or errors arising therein from any accidental slip or omission

Therefore, the instant review application has to necessarily meet the requirements of Section 114 and Order 47 of the CPC to be eligible for review.

Accordingly, the issues raised by the Review Petitioner and Respondent and the Commission's views thereonare analyzed as under:

1. Issue 1: Applicability of the Tariff order from 1st June 2019

Review Petitioner's Submission

The Review Petitioner has contended that the Hon'ble Commission has approved the Tariff order applicable from 1st June 2019 while projecting the ARR on the basis of the sales projection of Apr 2019 - Mar 2020 at the approved tariff, thereby not allowing the Review Petitioner to bill the revenue for first two months at the approved Tariff. The Review Petitioner has calculated the impact of around INR 39.00 crore for the first month due to billing at the existing tariff. Thus, the Review Petitioner has prayed to the Hon'ble Commission to extend the applicability of Regulatory surcharge for first two months of FY 2019- 20.

APCPI's Submission

APCPI has stated that the Commission has already issued Notification to extend the existing Tariff including regulatory surcharge for FY 2018-19 till 31st May 2019.

Commission's Analysis

The Commission has already taken the cognizance of the issue raised by the Review Petitioner and has addressed the loss of revenue vide Commission's Letter No. 14/78/2018-JERC/407-413 dated 3rd July 2019. Hence, the issue stands resolved.

2. Issue 2: Less Revenue on account of Wrong Projection

Review Petitioner's Submission

The Review Petitioner has contended that the Hon'ble Commission has committed an 'error apparent' by considering the power factor of 0.89 instead of 0.98 while determining the revenue for FY 2018-19 and FY 2019-20 for 11 kV HT Industrial Consumers, thus overstating the approved revenue for FY 2018-19 by INR 86.06 crore and for FY 2019-20 by INR 96.29 crore aggregating to overstating of revenue by INR 182.35 crore. The Review Petitioner has prayed to the Hon'ble Commission to revise the approved revenue figures based on the correct power factor of 0.98.

APCPI's Submission

APCPI has done the revenue projections for FY 2018-19 as per actual accounts and has estimated the demand charges recovery of 87.5% for FY 2018-19 as against the minimum allowed demand charges of 85%. Additionally, the DNHPDCL has collected fixed charges of INR 16,800.00 in Agricultural category for FY 2018-19 as against the approved Tariff of NIL, thus resulting in the revenue shortage of INR 53.53 crores. Similarly, APCPI has calculated the net revenue shortage of around INR 17 crores after consideration of higher recovery in demand charges, FPPCA collection of first 3 months of FY 2019-20, Regulatory surcharge collection for April & May 2019 and revenue shortfall due to applicability of Tariff Order from 1st June 2019.

Commission's Analysis

The Commission has noted that the power factor considered for 11 kV industrial consumers in the Impugned Order is 0.89 whereas the same should have been 0.98 as has been done for other two HT & EHT categories (66 kV and 220 kV).Accordingly, the Commission is inclined to accept the contention of the Review Petitioner and has revised the revenue based on the corrected power factor for FY 2018-19 and FY 2019-20.

The following table provides the revenue for FY 2018-19atexisting tariff for various HT/EHT Industrial sub-categories as approved in Tariff Order for FY 2019-20dated 20th May 2019 and as approved now:

Table 1: Revenue at existing tariff computed by Commission for FY 2018-19(INR Crs)

S. No.	Particulars	Sales in MkWh (MU)	Approved in Tariff Order for FY 2019-20 dated 20th May 2019			Now Approved		
			Power Factor	Sales in MkVAh	Revenue (INR Crs)	Power Factor	Sales in MkVAh	Revenue (INR Crs)
1.	11 kV	2475.73	0.89	2796.73	1,159.75	0.98	2526.25	1,070.49
2.	66 kV	1998.32	0.98	2,039.10	842.92	0.98	2,039.10	842.92
3.	220 kV	1155.47	0.98	1,179.06	486.77	0.98	1,179.06	486.77
4.	**Total**	**5629.52**	**0.94**	**6,014.89**	**2,489.44**	**0.98**	**5,744.41**	**2,400.18**

Similarly, the following table provides the revenue for FY 2019-20 at existing tariff for various HT/EHT Industrial sub-categories as approved in Tariff Order for FY 2019-20 dated 20th May 2019 and as approved now:

Table 2: Revenue at existing tariff computed by Commission (INR Crore) for FY 2019-20*

S. No.	Particulars	Sales in MkWh (MU)	Approved in Tariff Order for FY 2019-20 dated 20th May 2019			Now Approved		
			Power Factor	Sales in MkVAh	Revenue (INR Crs)	Power Factor	Sales in MkVAh	Revenue (INR Crs)
1.	11 kV	2587.03	0.89	2922.47	1,205.29	0.98	2639.83	1,112.02
2.	66 kV	2088.16	0.98	2,130.77	875.80	0.98	2,130.77	875.80
3.	220 kV	1207.42	0.98	1,232.06	505.61	0.98	1,232.06	505.61
4.	**Total**	**5882.61**	**0.94**	**6,285.31**	**2,586.69**	**0.98**	**6,002.67**	**2,493.42**

** Existing Tariff means Tariff applicable vide DNHPDCL Tariff order dated 30th January,2018*

The updated revenue estimates for FY 2018-19 and FY 2019-20 has resulted in a change in the standalone revenue gap/(surplus) for FY 2018-19 and FY 2019-20. The following table provides annual revenue requirements for FY 2018-19 as approved in Tariff Order dated 20th May 2019,the revenue for FY 2018-19 as approved now andthe standalone revenue gap/(surplus):

Table 3: Standalone Revenue Gap/ (Surplus) at existing tariff for FY 2018-19 (INR Crore)

S. No	Particulars	Review Petitioners submission	Approved in Tariff Order for FY 2019-20 dated 20th May 2019	Now Approved
1	Annual Revenue Requirement	2,942.09	2,928.88	2,928.88
2	Revenue from sale of power	2,541.89	2,620.32	2531.07
3	FPPCA	103.11	103.11	103.11
4	Regulatory Surcharge	246.54	254.17	245.51
5	Total Revenue	2,892.06	2,977.60	2879.69
6	**Revenue Gap/(Surplus)**	**50.04**	**(48.72)**	**49.19**

Similarly, the following table provides the annual revenue requirements for FY 2019-20 as approved in Tariff Order dated 20th May 2019, the revenue for FY 2019-20 as approved now and the standalone revenue gap/(surplus):

*Table 4: Standalone Revenue Gap/ (Surplus)determined at existing tariff*for FY 2019-20 (INR Crore)*

S. No	Particulars	Review Petitioners submission	Approved in Tariff Order for FY 2019-20 dated 20th May 2019	Now Approved
1	Annual Revenue Requirement	3,037.65	3,105.86	3,105.86
2	Revenue from sale of power @Existing tariff	2,625.15	2,721.44	2,628.09
3	Revenue from sale of surplus power	0.23	0.00	0.00
4	Regulatory Surcharge	0.00	0.00	0.00
5	**Revenue Gap/(Surplus)**	**412.27**	**384.42**	**477.77**

** Existing Tariff means Tariff applicable vide DNHPDCL Tariff order dated 30th January,2018*

The Review Petitioner has prayed that the stated additional revenue gap of INR 182.53 crore shall hamper its ability to operate efficiently due to unavailability of the short-term credit tie-ups with the DNHPDCL. The Commission has noted that the Regulatory Surcharge of 9.70%, which was paid by all the consumers was withdrawn in the impugned Tariff Order. In order to avoid tariff shock to consumers, the Commission has decided to address the issue regarding higher revenue gaps of FY 2018-19 and FY 2019-20 partially through tariff hike while the balance revenue gap shall be considered during Tariff determination for FY 2020-21. Therefore, the Commission has decided to raise the Average Billing Rate from Rs 4.24(without regulatory surcharge) to Rs 4.80 for Industrial consumers. Although the rise in Industrial Tariff seems to be13.24% but with the withdrawal of Regulatory surcharge of 9.7% the effective rise of Tariff is only 3.54% (13.24% - 9.7%) for HT/EHT Industrial consumers. The revised Tariff structure HT/EHT Industrial categories is as under:

Table 5: Approved Tariff for HT/EHT Industrial sub-categories for FY 2019-20

S.No.	Category	Approved in Tariff Order for FY 2019-20 dated 20th May 2019		Now Approved	
		Fixed Charges	Energy Charges	Fixed Charges	Energy Charges
1	HT/EHT INDUSTRIAL				
(i)	11 kV	375.00 INR/kVA/month	3.65INR/kVAh	375.00 INR/kVA/month	3.85 Rs/kVAh
(ii)	66 kV	500.00 INR/kVA/month	3.60 INR/kVAh	500.00 INR/kVA/month	3.80 Rs/kVAh
(iii)	220 kV	550.00 INR/kVA/month	3.55INR/kVAh	550.00 INR/kVA/month	3.75 Rs/kVAh

Subsequently, the Commission has computed the revenue at approved tariff for various categories and sub-categories for FY 2019-20 along with the determination of k-factor as shown in following table:

Table 6: Revenue from Approved Retail Tariff for FY 2019-20

S.No.	Category	Fixed Charges (INR Crore)	Energy charges (INR Crore)	Total (INR Crore)	ABR (INR/unit)	k-factor
1	**DOMESTIC**	**0.29**	**30.90**	**31.37**	**2.31**	**0.49**
(i)	0-50 units	0.07	0.25	0.32	1.65	0.35
(ii)	51-200 units	0.13	5.56	5.69	1.76	0.37
(iii)	201-400 units	0.06	6.67	6.73	2.04	0.43

S.No.	Category	Fixed Charges (INR Crore)	Energy charges (INR Crore)	Total (INR Crore)	ABR (INR/unit)	k-factor
(iv)	401 and above	0.04	18.42	18.45	2.69	0.57
(v)	Low Income Group	0.18	-	0.18	0.00	0.00
2	**COMMERCIAL**	**0.10**	**13.14**	**13.24**	**3.74**	**0.79**
(i)	0-100 units	0.05	0.34	0.39	3.20	0.68
(ii)	101 Units and Above	0.05	12.80	12.85	3.76	0.80
3	**LT INDUSTRIAL**	**4.46**	**91.75**	**96.21**	**4.30**	**0.91**
(i)	LTP Motive Power (For All Units)	4.37	88.43	92.80	4.30	0.91
	Up to 20 HP	0.04	2.35	2.39	4.02	0.85
	Above 20 HP	4.33	86.08	90.41	4.31	0.91
(ii)	LT Public Water Works (For all units)	0.09	3.32	3.41	4.41	0.93
	Up to 20 HP	0.07	2.76	2.83	4.40	0.93
	Above 20 HP	0.02	0.56	0.58	4.45	0.94
4	**HT/EHT INDUSTRIAL**	**535.52**	**2288.05**	**2823.57**	**4.80**	**1.02**
(i)	11 kV	240.88	1016.33	1257.21	4.86	1.03
(ii)	66 kV	183.30	809.69	992.99	4.76	1.01
(iii)	220 kV	111.34	462.02	573.37	4.75	1.01
5	**AGRICULTURE AND POULTRY**	**0.00**	**0.54**	**0.54**	**0.74**	**0.16**
(i)	For sanctioned load upto 10 HP	0.00	0.44	0.44	0.70	0.15
(ii)	Beyond 10 HP	0.00	0.10	0.10	1.00	0.21
6	**PUBLIC LIGHTING**	**0.00**	**3.24**	**3.24**	**3.80**	**0.81**
(i)	For all units	0.00	3.24	3.24	3.80	0.81
7	**HOARDINGS/SIGNBOARDS**	**0.00**	**0.00**	**0.00**	**0.00**	**1.00**
(i)	For all units	0.00	0.00	0.00	0.00	1.00
8	**TEMPRORARY**	**0.00**	**2.40**	**2.40**	**7.08**	*
(i)	For all units	0.00	2.40	2.40	7.08	*
9	**ELECTRIC VEHICLE CHARGING STATION**	**0.00**	**0.00**	**0.00**	**0.00**	**1.00**
	Total	**540.37**	**2430.01**	**2970.56**	**4.72**	-

**1.50 times the k factor of the relevant category in which the connection falls*

Based on the change in tariff structure and the approved revenue for FY 2018-19 and FY 2019-20, the Commission has determined and approved the revenue gap/(surplus) at the end of FY 2019-20 as shown in the following table:

Table 7: Cumulative revenue Gap/ (Surplus) at approved Tariff for FY 2019-20 (INR Crore)

S.No.	Particulars	FY 2017-18	FY 2018-19	FY 2019-20
1	**Net Revenue Requirement**	2,232.58	2,928.88	3,105.86
2	Revenue from Retail Sales at Proposed Tariff	2,224.80	2,531.07	2,970.56
3	Revenue from Open Access Charges	-	-	-
4	Revenue from Regulatory Surcharge	-	245.51	-
5	Revenue from FPPCA Charges		103.11	-
6	**Total Revenue**	**2,224.80**	**2,879.69**	**2,970.56**
7	**Standalone Gap/ (Surplus) for the year**	**7.78**	**49.19**	**135.30**
8	Opening Gap/ (Surplus)	(97.09)	(96.77)	(53.36)
9	Addition Gap/ (Surplus) due to standalone year	7.78	49.19	135.30
10	**Closing Gap/ (Surplus)**	**(89.31)**	**(47.58)**	**81.94**
11	Average Gap/ (Surplus)	(93.20)	(72.18)	14.29
12	Rate of Interest	8.00%	8.00%	9.55%
13	Carrying cost	(7.46)	(5.77)	1.36
14	**Closing Gap/ (Surplus)**	**(96.77)**	**(53.36)**	**83.31**

The above tariff structure shall be applicable from 1st June 2019. The Commission also directs the Review Petitioner to recover the arrears without any interestfor June 2019 - August 2019 in three equal installments along with monthly billing of October 2019 – December 2019 to reduce the overall burden on the consumers.

3. Issue 3: Repair & Maintenance expenses for FY 2017-18

Review Petitioner's Submission

The Review Petitioner has contended that the Hon'ble Commission has committed an 'error apparent' by disallowing the JERC License fee as amended to 0.1% of the revenue (excluding taxes and duties) with the fourth amendment to Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009. The Review Petitioner has requested the Commission to allow the whole 0.10% JERC license fee as it is the uncontrollable factor.

APCPI's Submission

APCPI has neither issued any comments nor raised any contentions on this matter.

Commission's Analysis

The Commission had sought further details from the Review Petitioner in response to Review Petitioner's submission that the R&M expenses have increased due to higher license fee paid to JERC. The Review Petitioner submitted the details of the fee paid in FY 2017-18, corresponding to FY 2016-17 and FY 2017-18. At the time of approving the MYT Order for 2016-19, the JERC License Fee was computed at 0.05% of the revenue (excluding taxes and duties) from the sale of electricity. With the Fourth Amendment to Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 dated February 11, 2015, the JERC License Fee was revised to 0.10% of the revenue (excluding taxes and duties) from the sale of electricity. Accordingly, the Commission had approved 50% of the licensee fee paid to the Commission (as an additional expense due to amendment in Regulations) amounting to INR 2.05 Cr. The Commission has allowed the JERC license fee to the tune of INR 2.05 crore i.e. differential amount due to change in the underlying Regulations as approving the whole amount of INR 4.10 crore would have led to dual allowance for initial amount of INR 2.05 crore.

As can be seen from preceding paragraph, the Review Petitioner has failed to understand that Commission has already allowed initial JERC license fee @0.05% of the revenue while setting the MYT trajectory for control period 2016-19 and the Commission has allowed the additional burden of JERC license fee due to change in JERC (Conduct of Business) Regulations in the true-up of FY 2017-18.The Commission is of the opinion that this issue does not warrant a review as there is no error in the impugned order.

4. Issue 4: Less allowances of Return on Equity

Review Petitioner's Submission

The Review Petitioner has contended that the Hon'ble Commission has committed an 'error apparent' by considering the opening equity as INR 90.17 crore as against the equity opening balance of INR 125.80 crore calculated as 30% of the opening GFA. The Commission has considered the equity addition as 30% of the capitalization for FY 18 and accordingly has allowed the return on equity as INR 14.75 crore as against INR 20.45 crore submitted by the Review Petitioner. The Commission has followed the similar approach for FY 19 and FY 20 while allowing the return on equity, thus overall impacting ARR by INR 18.40 crore.

APCPI's Submission

APCPI has neither issued any comments nor raised any contentions on this matter.

Commission's Analysis

The Review Petitioner's contention is about difference in opening equity base upon which return on equity is allowed. The opening value of equity base for FY 2017-18 is the same as the approved closing value of equity for FY 2016-17. The Review Petitioner did not file any Review Petition on the True-up order for FY 2016-17 regarding the closing equity value of FY 2016-17. There is no merit in changing the opening value of equity for FY 2017-18 as per 30% of opening value of GFA. The Commission has considered the equity addition @30% for the approved capitalization for FY 2017-18 which is in line with the extant MYT Regulations.

As can be seen above, due to the Review Petitioner's inability to submit the project wise equity infusion details, the Commission was forced to consider opening equity value for FY2017-18 equal to approved closing value of equity for FY 2016-17 as the part of methodology being followed.The Commission is of the opinion that this issue does not warrant a review as there is no error in the impugned order.

5. Issue 5: Excess consideration for Non-Tariff Income for FY 2019-20

Review Petitioner's Submission

The Review Petitioner has contended that the Hon'ble Commission has committed an 'error apparent' by allowing the Non-Tariff Income as INR 44.99 crore as against the Review Petitioner's submission of INR 12.07 crore. The Review Petitioner has contended that the Commission has failed to exclude the interest earned on investments and delayed payment surcharge as per the new MYT Regulations 2018. Accordingly, the Review Petitioner has requested the Commission to revise the Non-Tariff Income to INR 12.07 crore for FY 2019-20.

APCPI's Submission

APCPI has suggested that Non-Tariff Income shall increase in future from application charges of new solar connection as mentioned in JERC Solar Regulations. Moreover, APCPI has stated that historically DNHPDCL's Non-Tariff Income consistently remains on higher side.

Commission's Analysis

The Commission has approved the Non-Tariff Income for FY 2019-20 by escalating the Non-Tariff of FY 2018-19 and the same shall be trued-up based on actuals at the time of true-up. The Commission has taken a conscious decision to approve the Non-Tariff Income with the 5% escalation on the approved Non-Tariff Income of FY 2018-19 as no standard methodology is there for projecting the Non-Tariff income and from past

Tariff orders as well the y-o-y non-tariff income has been consistently higher than the approved value. Additionally, Commission could not include new future revenue avenues as the part of Non-Tariff Income as projecting new consumer addition cannot be projected efficiently. Further, it being an uncontrollable parameter any difference shall be considered during the Tariff determination for FY 2020-21.

***As can be seen from above, this was part of the methodology adopted by the Commission.* The Commission is of the opinion that this issue does not warrant a review as there is no error in the impugned order.**

In view of the issues raised by the Review Petitioner in the forgoing paragraphs, the Commission is of the considered view that Issue 3, 4 and 5doesn't warrant a review as there is no error in the impugned order. The Commission has considered Issue 1 and accordingly, has issued Commission's Letter No. 14/78/2018-JERC/407-413 dated 3rd July 2019. Similarly, for Issue 2, the Commission has accepted the submission of the Review Petitioner and the error has been corrected as detailed in the relevant section above.

Ordered Accordingly.

Sd/-	Sd/-
Neerja Mathur	**M.K. Goel**
(Member)	**(Chairperson)**

Place: Gurugram
Date: 24^{th} September 2019

Certified Copy

Rkumar
24/9/2019
(Rakesh Kumar)
Secretary