

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Smt. Neerja Mathur, Member
Petition No. 176/2015
Date of Order: 20.10.2015

In the matter of

Petition under Section 94 (1) (f) of the Electricity Act, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 for review of the order dated 01.04.2015 passed by Joint Electricity Regulatory Commission for the State of Goa & Union Territories in Petitions no. 151/2015 and 154/2015 for approval of Annual Revenue Requirement (ARR) and Determination of Tariff for the year 2015-16, review of the Annual Revenue Requirement for the year 2014-15 and True-up of Annual Revenue Requirement for the year 2013-14 of DNH Power Distribution Corporation Limited.

And in the matter of

DNH Power Distribution Corporation Ltd.

.....Petitioner

ORDER

The Petitioner-DNH Power Distribution Corporation Ltd. has filed the present Petition under Section 94 (1) (f) of the Electricity Act, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 for review of the order dated 01.04.2015 passed by Joint Electricity Regulatory Commission for the State of Goa & Union Territories in Petitions no. 151/2015 and 154/2015 for approval of Annual Revenue Requirement (ARR) and Determination of Tariff for the year 2015-16, review of the Annual Revenue Requirement for the year 2014-15 and True-up of Annual Revenue Requirement for the year 2013-14 of DNH Power Distribution Corporation Limited on following issues:-

QUOTE

- “3. (a) *Actual Income tax paid by the DNHPDCL for the FY 2013-14.*
(b) *Power factor incentive @ 1% on demand and energy charges.*
(c) *Lower tariff approved for the HTC General Category getting supply above 66 KV than consumers getting supply up to 66 KV.*
4. *The contentions and submission of the Petitioner on the above mentioned issues are as under:-*
- (a) *Actual Income tax paid by the DNHPDCL for the FY 2013-14.*

5. *The DNHPDCL had submitted income Tax amounting to Rs 49.17 crore as part of the truing up for the FY 2013-14. However, the Commission has limited the income tax to the tax on return on capital base. The DNHPDCL has actually paid income tax of Rs 49.17 crore as per the Income Tax Act on the income earned by DNHPDCL of Rs 154 crore and the same is as per the audited financial statements of the FY 2013-14.*
6. *It is respectfully submitted that the Hon'ble Commission should allow the income tax amounting to Rs 49.17 crore as part of the truing up for the FY 2013-14.*

(b) Power Factor incentive @ 1% on demand and energy charges.

7. *In case the monthly average power factor of the consumer is more than 95% (-.95 lagging), a power factor incentive @ 1% on demand and energy charge shall be given for each increase of 0.01 in power factor above 0.95 (lagging).*
8. *Paying power factor incentive @ 1% to the consumers will put additional burden on the DNHPDCL. The DNHPDCL approximately paid Rs 42.00 crores to the consumers as power factor incentive during the FY 2013-14 when the power factor incentive rate was 0.5%. The same will double to approximately Rs 84.00 crore as year if the power factor incentive rate if doubled to 1%.*

It is pertinent to mentioned here that almost 95% of the HT/EHT consumers are already maintaining their average power factor equal to or greater than 0.95%. Therefore, increase in the rate of incentive will not yield any further improvement in the system or revenue.

The new rate will put additional burden on the finances of the DNHPDCL and may even lead to a situation of financial crunch.

9. *It is respectfully submitted that the Hon'ble Commission may retain the power factor incentive @ 0.5%.*

**(c) Lower tariff approved for the HTC General Category getting supply above 66 KV
Than consumers getting supply up to 66 KV.**

10. *The DNHPDCL had submitted that a single tariff be approved for the HTC General Category. However, the Hon'ble Commission has approved a tariff of Rs 4.10 per unit for the consumers getting supply above 66 KV and Rs 4.20 per unit for consumers getting supply up to 66 KV.*
11. *It is also an accepted fact that there should not be any additional burden placed on the domestic and agricultural consumers in the Union Territory. Subject to the above, even if there is to be any reduction in tariff for the consumers getting supply above 66 KV, the same would be cast upon the other industrial consumers in the Union Territory. While the Hon'ble Commission may take a view of the same, it is submitted that considering the nature of consumption in the Union Territory it may not be appropriate to introduce a separate tariff for supply being taken above 66 KV."*

UNQUOTE

The Petition was received in the Commission on 14.07.2015. The Commission found that the review Petition was not filed within the period of limitation of forty five days. Therefore, the Commission on 23.07.2015 wrote a letter to the Petitioner for filing a Petition for condonation of delay. The Petitioner submitted an interim Petition for condonation of delay in filing the review Petition on 31.07.2015. The Commission considered the prayer of the Petitioner for condonation of delay in filing the review Petition on 04.08.2015 and allowed the Petition for condonation of delay.

The Commission found the Petition for review generally in line with the Electricity Act and JERC (Conduct of Business) Regulations, 2009, admitted the same on 04.08.2015 and numbered it as Petition No. 176/2015. The Commission sent hearing notice to the Petitioner for 01.09.2015. The Commission heard the representatives for the Petitioner on 01.09.2015 in Court Room of the Commission and on request of the representatives for the Petitioner directed the Petitioner to submit additional information on or before 11.09.2015.

The Petitioner submitted additional information vide affidavit dated 29.09.2015 received in the Commission on 30.09.2015 which runs as under:-

QUOTE

- “ 2. *I say that I am filing the present affidavit pursuant to the last date of hearing before the Hon'ble Commission and to clarify the grant given by the Government of India to the Petitioner, on which the Petitioner has paid a tax of Rs 49.17 crores for the year 2014-14.*
3. *I say that the Government of India had given a grant in aid to the Petitioner to meet its preliminary and operational expenditure to the extent of Rs 120 crores. This amount was given in the form of Grant in Aid to meet the preliminary and operational expenditure, which were revenue expenditure.*
4. *The grant in aid was not given for any capital expenditure purposes, but to meet the expenses of the newly created entity. Copies of the Order issued by the Administration, UT of Dadra & Nagar Haveli dated 30.06.2012 and 20.06.2013 are attached hereto and marked collectively as Annexure A.*
5. *I say that the grant being in the form of grant in aid and not for capital purposes is the reason why the same has been made taxable and income tax of Rs 49.17 crores has been paid by the Petition.*
6. *I say that when the entire grant in aid has gone to the benefit of the consumers in the Union Territory, who in the absence of the grant would have paid for the expenses of the Petitioner in the form of Annual Revenue Requirements, the tax paid on such grant is a legitimate expense in the hands of the Petitioner and ought to be considered and allowed in the Annual Revenue Requirements.*

- 7 *I say that the grant of Rs 120 crores itself gets reduced by the quantum of the income tax paid. In the circumstances, either the quantum to be considered in the hands of the Petitioner for the purposes of its Revenue Requirements ought to be the net amount after payment of tax ought to be allowed as an expense in the hands of the Petitioner."*

UNQUOTE

The Commission has heard representatives for the Petitioner at length and has gone through the original Petitions no. 151/2015 and 154/2015, Review Petition, additional information and accompanying documents carefully and thoroughly.

The Petitioner has filed the present Petition under Section 94 (1) (f) of the Electricity Act, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009. Before proceeding further, it is worthwhile to reproduce provisions of Section 94 (1) (f) of the Electricity Act, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 which run as under:-

Section 94 of the Electricity Act runs as under:-

Powers of Appropriate Commission

1. 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:-
 - a. -----
 - b. -----
 - c. -----
 - d. -----
 - e. -----
 - f. reviewing its decisions, directions and orders;
 - g. -----

Regulation – 74 the JERC (Conduct of Business) Regulations, 2009 runs as under:-

Review of the decisions, directions and order

- a. The Commission may at any time on its own motion or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit:

Provided that power of review by the Commission on its own motion shall be exercised limited to correction of clerical or typographical errors.

- b. -----

From reading of the provisions of Section 94 (1) (f) of the Electricity Act, 2003 and Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 , it is clear that the Commission has power to review its own orders or decisions as a Civil Court under the Civil Procedure Code. The same powers are vested in this Commission and same provisions of Order 47 Rule 1 of the CPC shall apply. Order 47 Rule 1 of CPC reads as under:-

**Order 47 Rules (1) and (2) of the Civil Procedure Code reads as under:-
Order 47 Rules and 2 CPC**

Application for review of judgment:-

(1) Any person considering himself aggrieved –

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- b. by a decree or order from which no appeal is allowed, or
- c. by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

From reading of provisions of Order 47 Rules 1 and 2 of the CPC it is clear that the Commission can review its own orders only on the following grounds:-

- a. Discovery of a new and important matter of evidence which even after exercise of due diligence was not within the knowledge of the Petitioner
- b. Discovery of new and important matter of evidence which even after exercise of due diligence could not be produced by the Petitioner during the original proceedings which culminated in the final order passed;
- c. Order made on account of some mistake or error apparent on the face of the record or any other sufficient reasons.

The Petitioner is to make out a case that there is a mistake or error apparent on the face of the record, or that there is any other sufficient ground for review of its own order by the Commission or there is discovery of new and important matter of evidence which even after exercise of due diligence could not be produced or was not within the knowledge of the Petitioner in the original proceedings.

ISSUE WISE FINDINGS OF THE COMMISSION

(a) Actual Income tax paid by the DNHPDCL for the FY 2013-14.

The Petitioner has now clarified that the Government of India had given grant in aid of Rs. 120 crore to meet the revenue expenditure. The petitioner has also submitted that the Commission may consider this revenue grant after deducting the income-tax payment disallowed by the Commission in the trued up ARR for the FY 2013-14.

In view of the clarification and submission from the petitioner, the Commission decides to revise the trued up surplus for the FY 2013-14 for the petitioner from Rs. 79.40 crore as approved in the Order dated 01.04.2015 to corrected figure of Rs. 152.89 crore for FY 2013-14. The petitioner is directed to consider the surplus of Rs. 152.89 crore of the FY 2013-14 in next tariff filing.

(b) Power factor incentive @ 1% on demand and energy charges.

For the issue regarding power factor incentive, Commission decides that it is not appropriate to revise the same at this point of time without getting comments and suggestions from stakeholders. Hence, the petitioner is advised to propose the change in power factor penalty/incentive in next tariff proposal with detailed justifications. An appropriate decision will be taken only after getting the views/comments from all the stakeholders.

(c) Lower tariff approved for the HTC General Category getting supply above 66 KV than consumers getting supply up to 66 KV.

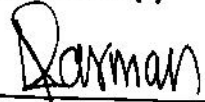
This issue of lower tariff for EHT Consumers getting supply above 66 KV is pending adjudication before Hon'ble APTEL in Appeals nos. 228/2014 Titled M/s Silvassa Industries Association & Ors and 290/2014 Titled M/s Elegant Casting Pvt. Ltd. & Ors. Therefore, this issue will be decided after decision of the Hon'ble APTEL in Appeals nos. 228/2014 Titled M/s Silvassa Industries Association & ors and 290/2014 Titled M/s Elegant Casting Pvt. Ltd. & Ors. .

In the light of above findings and observations, the review Petition stands disposed off.

Sd/-
(NEERJA MATHUR)
MEMBER

Sd/-
(S.K.CHATURVEDI)
CHAIRPERSON

Certified Copy



(D.R.PARMAR)
DIRECTOR (ENGG.)