

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

CORAM

Alok Tandon, Chairperson
Jyoti Prasad, Member (Law)

Petition No. 108/2023

Date of Hearing: 31.01.2024

Date of Order: 26.04.2024

In the matter of:

Review Petition for reviewing the Tariff Order dated 01.08.2023 passed by the Commission in Petition No. 89 of 2022.

And in the matter of:

DNHDDPDCL

... Review Petitioner

Present for the Review Petitioner

1. Ms. Deepa Chawan, Counsel of the Review Petitioner
2. Ms. Ruchi Patil, Counsel of the Review Petitioner
3. Sh. Chetan Bundela, Vice President, DNHDDPDCL.
4. Ms. Luna Pal, GM, DNHDDPDCL
5. Sh. Mihir Thakkar, AGM, DNHDDPDCL
6. Sh. Tapan Kumar, Consultant, ABPS
7. Sh. Prakhar Kulshreshtha, Consultant, ABPS

ORDER

1. The review petitioner has filed a review petition against the Commission's tariff order dated 01.08.2023 in petition No 89/2023
2. The Commission heard the Review Petitioner at length.
3. The Submissions of the Review Petitioner in brief are as under: -
 - I. That in accordance with the earlier Orders dated 31.03.2022 in Petition No. 66 of 2021 and 68 of 2021 passed by this Commission the Review Petitioner considered the Power Purchase Cost for F.Y. 2022-23 along with incremental requirements to be procured from exchange as per the rate approved in the said Orders. While doing so it also considered the revenue as per the Order dated 31.03.2022. Accordingly, variation in cost of power purchase has been separately dealt with in the FPPCA since the same is a pass through for DISCOMS and does not warrant permanent tariff increase.
 - II. That the Commission in impugned Order dated 01.08.2023 has estimated the Power Purchase Cost for FY 2022-23 based on actual power purchase data for the period April 2022 to December 2022 and to estimate for Q4 of FY 2022-23.
 - III. That it has submitted month wise Power Purchase Cost for the period April 2022 to December 2022 and as per this data the actual Power Purchase Cost for this period works out to be Rs. 5.70 per kWh. However, in the impugned Order dated 01.08.2023, the average PPC estimated for the entire F.Y. 2022-23 is Rs. 5.17 per kWh. Accordingly, considering revised estimation of power purchase cost of Rs. 5.17 per kWh and transmission and distribution losses, Rapp for FY 22-23 works out to be about Rs. 5.50 per kWh as against approved base Rapp of Rs. 4.96 per kWh.
 - IV. That based on revised estimation of Rs. 5.50 per kWh, derived FPPCA works out to Rs. 0.54 per kWh for FY 22-23 (i.e. Rs. 5.50 per kWh- Rs. 4.96 per kWh). As such any variation in the Power Purchase Cost (PPC) is reflected in quarterly FPPCA working and in turn such derived FPPCA gets recovered

through quarterly FPPCA charges. However, the Commission has inadvertently considered revenue for FY 22-23 of FPPCA @ Rs. 1.00 per kWh on account of revenue from FPPCA instead of Rs. 0.54 per kWh corresponding to approved revised estimates of Power Purchase Cost of FY 2022-23. In other words there is inadvertent estimation of higher revenue by Rs. 445 Cr [= (Rs. 1.00-Rs.0.54) x approved Sales of 9680 MU]. A bare perusal of the above reveals the error apparent in the computation of the estimation of power purchase cost of FY 2022-23 and corresponding revenue from FPPCA for FY 2022-23 and in turn, resulting into higher revenue. Accordingly, there is an error apparent on the face on account of incremental Power Purchase Cost via-a-vis Revenue Recovery from FPPCA charges for FY 2022-23 which needs to be addressed.

- V. That in the impugned order dated 01.08.2023, the Commission has further revised PPC for FY 2023-24 (considering revised approved PPC of FY 2022-23) of Rs. 5.544.84 Cr for procurement of 10,753 Mus. The same has culminated in per unit landed cost of Power Purchase (Rapp.) for FY 23-24 @ Rs. 5.57 per kWh.
- VI. That it may be noted that Average Billing Rate approved by the Commission is Rs. 5.20 per kWh as against Rapp of Rs. 5.57 per kWh. Further, as explained hereinabove, since there is an inadvertent error in considering revenue for FY 2022-23 higher by Rs. 445 Cr, there is no reason for setting of higher PPC than ABR else same will result in substantial under recovery during FY 2023-24.
- VII. That it is indicated in the impugned order that the Commission will consider actuals of the O&M Expenses at the time of True-up of FY 2022-23.
- VIII. That the impugned Order has inadvertently considered the additional expenses at Rs. 4.97 Cr for employees recruited by DNHDDPDCL instead of Rs. 14.61 Cr for FY 22-23. The above error has resulted to the impact of Rs. 9.07 Cr. and 9.61Cr. for FY 22-23 & FY 23-24 respectively.

- IX. That from the perusal of impugned order it appears that the Commission has inadvertently considered the actual A&G Expense for 9 Months instead of normalizing it for 12 months for FY 2022-23. The resultant adverse impact is of Rs. 6.33 Cr and Rs.6.70 Cr for FY 2022-23 & FY 2023-24 respectively.
- X. That the Review Petitioner had proposed TOD Tariff in respect of HT/EHT consumers as DNH does not have TOD Tariff for LT Industrial consumers. In doing so Review Petitioner ensured that requisite time would be available to replace the meters before implementing the TOD Tariff for other categories. Accordingly, it had proposed as under:

For the purpose of TOD Tariff, the peak/off-peak/normal hours and charges in respect of HT/EHT consumers for the corresponding period provided in the table as follows:

| Time of Use | Demand Charges | Energy Charges |
|---|-----------------------|--|
| <i>Normal period (6:00 AM to 6:00 PM)</i> | <i>Normal Rate</i> | <i>Normal rate of energy charges</i> |
| <i>Evening peak load period (6:00 PM to 10:00 PM)</i> | <i>Normal Rate</i> | <i>120% of normal rate of energy charges</i> |
| <i>Off-peak load period (10:0 PM to 6:00 AM)</i> | <i>Normal Rate</i> | <i>90% of normal rate of energy charges</i> |

.....
The Commission had approved the TOD Tariff as under:

“For the purpose of TOD Tariff, the peak-off-peak normal hours and charges for the corresponding period provided in the table as follows:

| <i>Time of Use</i> | <i>Demand Charges</i> | <i>Energy Charges</i> |
|---|------------------------------|--|
| <i>Normal period (6:00 AM to 6:00 PM)</i> | <i>Normal Rate</i> | <i>Normal rate of energy charges</i> |
| <i>Evening peak load period (6:00 PM to 10:00 PM)</i> | <i>Normal Rate</i> | <i>120% of normal rate of energy charges</i> |
| <i>Off-peak load period (10:00 PM to 6:00 AM)</i> | <i>Normal Rate</i> | <i>90% of normal rate of energy charges</i> |

- XI. That while approving the TOD tariff in the impugned order, the Commission has not mentioned the applicability of TOD Tariff only for HT/EHT consumers. TOD Tariff was applicable for categories of HT/EHT & LT Industrial in Daman and Diu and accordingly, TOD Meters/features are already in place for these categories in Daman and Diu. However, in DNH there are TOD Meters/Features are available only in HT/EHT Category consumers as TOD Tariff was not applicable to LT Industrial Consumers. Accordingly, the Review Petitioner requested the Commission to take note that the Review Petitioner will replace the existing meters with TOD meters/features in LT Industries during FY 23-24. Accordingly, it will implement TOD Tariff for all HT/EHT consumers and LT Industrial consumers; where TOD Meters are already installed. Thus, TOD tariff facility shall be extended to remaining consumers of LT Industries during FY 23-24 in phased manner upon replacement / installation of existing meters with TOD features. Thus, the Review Petitioner seeks limited review in terms of relief for transitory period only to the extent of operational aspect of fixing the TOD meters.
- XII. That in the tariff petition it was proposed that HT/EHT Tariff shall be applicable to all consumers having Contract Demand above 100 kVA and not included in any other Tariff Category.

XIII. That In turn, the Commission in its impugned order dated 1st August, 2023 approved the rate for HT/EHT category. Relevant extract is as under:

Tariff Schedule for: FY 2023-24.

| S.No. | Category | Fixed Charges | Energy Charges |
|-------|-------------------|---------------|----------------|
| 4. | HT/EHT INDUSTRIAL | | |
| (i) | 11 kV Supply | | |
| (ii) | 66 kV Supply | | |
| (iii) | 220 kV Supply | | |

XIV. That in this regard it may kindly be noted that in erstwhile Utility of DNH i.e. DNHPDCL, there was only one category named "HT/EHT Industrial" wherein all the consumers of Industries, Hotels, Government etc. having demand greater than 100 kVA were billed. However, in erstwhile Utility of ED-DD, there was separate category named "HT Commercial" with only six consumers. Hence, while implementing uniform tariff, the Review Petitioner has also proposed only one category named "HT/EHT" in line with tariff of DNH PDCL for all the HT/EHT Consumers with demand greater than 100 kVA. However, from bare perusal of order, it seems that "HT/EHT Industrial" is mentioned in the Tariff Schedule inadvertently in place of "HT/EHT." In this background, the petitioner requested the Commission to kindly clarify that HT/EHT Tariff is applicable to all the consumers having Contract Demand above 100 kVA. Thus, the Review Petitioner seeks limited review/clarifications only in respect of operational aspects.

4. Commission's analysis and findings:

A. The Commission has considered the submissions advanced by the Review Petitioner. It has also examined the records placed before it along with relevant provisions of the Electricity Act, 2003 and Rules & MYT Regulations, 2021 made thereunder.

- B. The Commission's power to review its own Orders flow from Section 94 (1) (f) of the Electricity Act, 2003, and are the same as are conferred on a Civil Court by the Code of Civil Procedure (CPC). These have been spelt out in Section 114, read with Order 47 Rule 1 of the CPC.
- C. The Commission is relying on section 94, section 62 of Electricity Act 2003, order 47 rule 1 of the CPC, the order of the Hon'ble Supreme Court in the case of Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma (AIR 1979 SC 1047) and Regulation 5.2 of the MYT Regulations 2021.

Section 94 of the Electricity Act, 2003 provides as under:

"(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:-

(f) reviewing its decisions, directions and orders.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate...."

Section 62 of Electricity Act, 2003 provides as under:

"(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for -

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity,

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity."

The instant review petition, filed before the Commission, for the review of its decision, directions and Orders, therefore, derives its scope and authority from the aforesaid section of the Electricity Act, 2003 read with Order 47, Rule 1 of the Code of Civil Procedure (CPC).

As per order 47 Rule 1 of CPC, a Court of review may allow a review only on three specific grounds which are as under: -

- i. Discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
- ii. Mistake or errors apparent on the face of the record; or
- iii. For any other sufficient reasons which is analogous to the above two grounds

On the question of scope of review the Supreme Court in the case of *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma (AIR 1979 SC 1047)* held that-

"It may be exercised where some mistake or an error apparent on the face of the record is found. It may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all errors committed by the Subordinate Court. "The Supreme Court while discussing the scope and jurisdiction of mistake apparent on the face of the record has held that:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of CPC. The review petition has to be entertained only on the ground of an error apparent on the face of the record and not on any other ground. An error apparent on the

face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1 of CPC is available to the High Court while seeking review of the order under Article 226." similar to the jurisdiction available to the High Court while seeking review of the order under Article 226."

D. The Review Petitioner has urged that the Commission has committed mistakes in the impugned order on the following issues:

1. Inadvertent error in computation of the power purchase cost (PPC) and FPPCA revenue for FY 2022-23.
2. Revision of Rapp for FY 2023-24.
3. Inadvertent error in computation of O&M expenses.
4. Time of Day (TOD) tariff.
5. HT/EHT Tariff

The Review Petitioner has further alleged that the mistakes committed by the Commission are simply errors apparent on the face of record and justify the review of the said impugned order.

5. The Commission has examined all the issues raised by the Review Petitioner and also revisited the said impugned order. The Commission has noted that it has determined the tariff in the said impugned order as per the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Generation, Transmission and Distribution Multi Year Tariff) Regulations 2021 and these regulations shall be applicable for determination of Multi Year Tariff in all matters covered under these Regulations from FY 2022-23 onwards upto FY 2024-25 unless otherwise reviewed/modified/extended:

6. The regulation 5.2 provides as under:

The Multi Year Tariff framework for determination of Aggregate Revenue Requirement and Expected Revenue from Tariff and Charges for Generating

Company, Transmission Licensee, Distribution Wires Business and Retail Supply Business shall include the following:

- a) Business Plan for the Licensee, for the entire Control Period as submitted to the Commission for approval, prior to the start of the Control Period;
- b) A detailed Multi Year tariff application comprising of the year-wise forecast of Aggregate Revenue Requirement for the entire Control Period and determination of Expected Revenue from Tariff and Charges for the first Year of the Control Period submitted by the Applicant, in formats specified by the Commission from time to time: Provided that the performance parameters, whose trajectories have been specified in these Regulations or the Business Plan or the Multi Year Tariff Order approved by the Commission, shall form the basis for projection of these performance parameters in the Aggregate Revenue Requirement for the entire Control Period;
- c) Determination of year-wise Aggregate Revenue Requirement by the Commission for the entire Control Period and the tariff for the first Year of the Control Period for the Generating Company, Transmission Licensee, Distribution Wires Business and Retail Supply Business;
- d) Annual review of performance which shall be conducted vis-à-vis the approved forecast and categorisation of variations in performance into controllable and uncontrollable factors;
- e) Annual determination of tariff for the Generating Company, Transmission Licensee, Distribution Wires Business and Retail Supply Business, for each Financial Year within the Control Period, based on the approved forecast, the annual performance review, Mid-term Review and truing up exercise;
- f) Truing up of previous Year/(s) expenses and revenue by the Commission based on audited accounts vis-à-vis the approved forecast and categorisation of variation in performance as those

caused by factors within the control of the Applicant (controllable factors) and those caused by factors beyond the control of the Applicant (uncontrollable factors);

- g) The mechanism for pass-through of approved gains or losses on account of uncontrollable factors as specified by the Commission in these Regulations;
- h) The mechanism for sharing of approved gains or losses on account of controllable factors as specified by the Commission in these Regulations

7. The Commission has further noted that the applicant (DISCOM) shall submit the forecast of Aggregate Revenue Requirement (ARR) for each year of the control period and tariff proposal for the first year of control period.

Provided that the application shall also be accompanied with the True up Petition based on the latest available audited accounts and Annual Performance Review for the current year.

The applicant shall develop the forecast of Aggregate Revenue Requirements using the assumptions relating to the behaviour of individual variables that comprise ARR during each year of control period including inter-alia detailed category wise sales and demand projections, Power procurement plans, Capital investment plan, trajectories of parameters specified in these regulations and business plan.

Based on the forecast of Aggregate revenue Requirement and Expected Revenue from the tariff and Charges for the first Year of the Control Period, the Distribution Licensee for the Distribution Wires Business and Retail Supply Business, shall propose the tariff for the first Year of Control Period.

The Distribution licensee shall file an application for the Annual Performance Review of the current year, truing up of the previous year and determination of tariff for ensuing year.

8. From the above it is crystal clear that the Distribution licensee shall file a petition for Annual Performance Review of the current year, truing up of previous year,

and determination of tariff for the ensuing year. Further, the tariff determined for the ensuing year i.e. 2023-24 is based on assumptions and the said impugned tariff order shall attain finality next year i.e.2024-25 after truing up of expenses and revenue by the Commission based on the audited accounts vis-à-vis the approved forecast and categorisation of variation in performance as those caused by factors within the control of the Applicant (controllable factors) and those caused by factors beyond the control of the Applicant (uncontrollable factors). In view of the above with respect to the issues 1, 2,3 and 4 raised by the Review Petitioner, there is no mistake or an error that is self-evident and can be said to be an error apparent on the face of the record. The Commission has determined the impugned tariff order in accordance with Multi Year Tariff Regulations, 2021. In accordance with Regulation 5.2(f) of JERC for the state of Goa & UT's (Generation, Transmission & Distribution multi Year Tariff) Regulation 2021, the actual expenses and revenue of FY 2022-23 are to be considered when audited accounts are filed while determination of ARR & Tariff for the year 2024-25.

Further, the Hon'ble Supreme Court's order in the case of Aribam Tuleshwar Sharma Versus Aribam Pishak Sharma (AIR 1979 SC 1047) has supported the Commission's view on issue No 1,2 and 3. The court has held that

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of CPC. The review petition has to be entertained only on the ground of an error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1 of CPC is available to the High Court while seeking review of the order under Article 226." similar to

the jurisdiction available to the High Court while seeking review of the order under Article 226."

9. As regards to the issue no. (5), i.e. inadvertent error in applicability of HT/ EHT tariff, the Commission finds that DNHDDPDCL had proposed HT/ EHT tariff for all consumers having contract demand above 100 kVA and not limited to HT/ EHT industrial consumers only which has been inadvertently written in the impugned tariff order. The word "Industrial" shall be deleted making it applicable to all consumers.

In view of the above the said Review Petition is partly dismissed on issue No 1,2,3 and 4 and is allowed on issue No 5,

Ordered accordingly.

Sd/-

(Jyoti Prasad)
Member (Law)

Sd/-

(Alok Tandon)
Chairperson