

JOINT ELECTRICITY REGULATORY COMMISSION
(FOR THE STATE OF GOA & UNION TERRITORIES)
GURUGRAM

CORAM

Ms. Jyoti Prasad, Member (Law)

Petition no.89/2022 &

& Petition no. 90/2022

Date of Hearing : 12.01.2023

Date of Order: 27/02/2023

In the matter of :

Application for the filing of Petition under Section 61,62 and 64 of the Electricity Act, 2003 read with all the applicable Regulations, under JERC (Generation, Transmission and Distribution Multi Year Tariff) Regulation, 2021 for Determination of ARR for MYT Control Period (FY 2022-23 to FY 2024-25) and Determination of Tariff for FY 2023-24 for the Distribution business of Dadra and Nagar Haveli and Daman and Diu.

AND IN THE MATTER OF:

Petition No. 89/2022

Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited
 (DNHDDPDCL), 1st and 2nd Floor,
 Vidyut Bhawan, Next to Secretariate Building,
 66KV Road,
 Dadra and Nagar Haveli and Daman and Diu-3960230 Petitioner

AND IN THE MATTER OF:

Petition No. 90/2022

Filing of Petition under Section 61, 62 and 64 of the Electricity Act, 2003 read with all the applicable Regulations, under the JERC (Generation, Transmission and Distribution Multi Year Tariff) Regulations, 2021 for Business Plan for MYT Control Period (FY 2022-23 to FY 2024-25) for the Distribution business of Dadra and Nagar Haveli and Daman and Diu. Petitioner

Present:-

For the Petitioner

1. Ms. Deepa Chawan, Advocate, DNDDDPDCL
2. Ms. Reshmarani Nathani, Advocate, DNHDDPDCL
3. Sh. Chetan Bundela, Vice President, DNHDDPDCL
4. Ms. Luna Pal, DNHDDPDCL
5. Sh. Mihir Thakkar, DNHDDPDCL

ORDER

As both the petitions are inter-related, the Commission, having heard both the petitions, passed its judgements through this common order.

The Petitioner has filed both the Petitions which were listed for admission hearing and the learned counsels appearing on behalf of the petitioner advanced arguments at length.

The submissions of the Petitioner in brief are as under:-

- (i) That on 07.02.2022 the Administrator of UT of DNH and DD issued a Letter of Intent (LoI) in favor of the successful bidder, Torrent Power limited for purchase of 51% of shares in DNH and DDPDCL for transfer and reorganization of the business of distribution of electricity in DNH and Daman & Diu.
- (ii) That on 08.03.2022 DNHDDPDCL, a limited liability company was incorporated under the companies Act 2013, being a Special Purpose vehicle (SPV) to undertake the power distribution functions in the UT of DNH & DD.
- (iii) That UT Administration of DNH & DD on 09.03.2022 vide notification under section 108 and 109 of the Electricity Act 2003, issued the Transfer Policy Directions which are binding on all stake holders including the Joint Electricity Regulatory Commission for the state of Goa and UTs (JERC)
- (iv) That Administration of DNH and DD vide notification under section 131,133 and 134 of the Electricity Act 2003 issued Transfer Scheme on 9th march 2022 for providing and giving effect to transfer of the electricity distribution functions together with the assets, liabilities, interests, rights, functions, obligations etc. of electricity department of DD and DNHPDCL to DNHDDPDCL
- (v) That on 11.03.2022 both the Transfer Scheme and the Transfer Policy Directions were published in the Official Gazette.
- (vi) That on 14.03.2022 the UT administration of DNH and DD issued notification that the effective date for the purpose of implementation of the Transfer Scheme is 01.04.2022. The same was published in the Official Gazette on 21.03.2022.
- (vii) That on 25.04.2022 the petitioner informed the Commission that it had taken over the distribution and retail supply functions in the UT of DNH and DD in compliance with clause 4.4 of the Transfer Policy Directions dated 09.03.2022 and was recovering ad-hoc tariff according to the Commission's tariff orders dated 31.03.2022 for DNHPDCL and Electricity Department Daman Diu.

- (viii) That the Tariff Orders dated 31.03.2022 passed by the Commission in petition no.65,66,67 and 68 of 2021 in respect of DNHPDCL and electricity department Daman and Diu which have ceased to be charged with and shall not performed functions and duties with regards to distribution of electricity on and after the effective date i.e. on 01.04.2022
- (ix) That on 30.11.2022 the petitioner has filed a petition for determination of AAR for MYT control period (FY 2022-23 to 2024-25) and determination of tariff for FY 2023-24 along with a petition for Business Plan for the UT of DNH and DD.
- (x) The petitioner has also mentioned about protection of Consumer interest in the said petition.
- (xi) MYT Regulations, 2021 for Generation Transmission and Distribution of Electricity for the control period with effect from 01.04.2022 to 31.03.2025 were notified with effect from 22.03.2021.
- (xii) That the Petitioner has no intention to seek revision of Tariff but to comply with the Policy Directions and the provisions of the Electricity Act, it is required to determine single ARR for the operations so that same can be dealt with during Truing up exercise.
- (xiii) That based on prevailing performance levels of DNHPDCL and ED Daman and Diu and the need for improvement, the Central Government in the RFP for privatization of the UT of DD and DNH has specified performance trajectories over 3 years with effect from 01.04.2022. The same has been notified in the Transfer Scheme.
- (xiv) That in order to achieve these performance trajectories DNHPDCL is required to incur necessary capex and opex for Network improvement, upgradation, modernization and necessary changes in business processes including deployment of Human Resources.
- (xv) That the Petitioner is not seeking any post-facto review of the prevailing Tariff Orders dated 31.03.2022, but only praying to the Commission to approve the ARR for FY 2022-23 to have a reference for Truing Up.
- (xvi) That the Petitioner requested the Hon'ble Commission to allow it to modify, amend and alter the Business Plan appropriately.

Based on the above submissions in both the Petitions, the following issues arise for consideration:

- i) Whether in view of the transfer scheme and policy directions 2022, and the provision of the Electricity Act, Rules and Regulations made thereunder, is the Commission required to determine single ARR for FY 2022-23 of the Petitioner that has commenced business w.e.f. 1/4/2022.
- ii) Whether the MYT petition no. 89/2022 filed for the control period (FY 2022-23 – FY 2024-25) is maintainable under Regulation 9 of the JERC (MYT Regulation) 2021.
- iii) Whether the Business Plan Petition no. 90/2022 filed for the control period (FY 2022-23 – FY 2024-25) by the Petitioner is maintainable under Regulation 8.1 of the JERC (MYT Regulation) 2021.

It is not in dispute that the transfer of business from DD and DNH to the Petitioner has taken place under the transfer schemes as per the legal process w.e.f. from 01/04/2022 on as is where is basis. The Commission is also not disputing that there should be a single APR and ARR as the distribution

business of DD and DNH has been merged. It is also a fact as admitted by the Petitioner that the tariff orders dated 31/3/2022 has been implemented by the Petitioner, and tariff is being recovered accordingly. Further, The Petitioner has also claimed the recovery of FPPCA as per the R-approved computed by the Commission in its Tariff Orders for FY 2022-23. It is also a fact that the performance trajectory has been specified by the Government in the transfer policy/scheme.

The Commission has considered the submissions advanced by the Petitioner. It has also examined entire records placed before it along with specific relevant provisions of the Electricity Act 2003, Rules and Regulations made there under. The relevant provisions of the E.A.2003 and MYT Regulations, 2021 on which the Commission is relying are as under:-

Section 62. Determination of tariff.-(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:- Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

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(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

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(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Section 64 of the Electricity Act 2003 provides as under:-

(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,—

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force. Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

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(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

The Commission notified the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Generation, Transmission and Distribution Multi Year Tariff) Regulations, 2021 on March 22, 2021. These Regulations are applicable in the MYT Control Period comprising of three financial years from FY 2022- 23 to FY 2024-25. These Regulations are applicable to all the generation companies, transmission and distribution licensees in the State of Goa and Union Territories of Andaman & Nicobar Islands, Lakshadweep, Chandigarh, Dadra Nagar Haveli & Daman and Diu and Puducherry for determination of tariff in Control Period. JERC Multi Year Tariff Regulation, 2021 provides as under:-

Clause 1.2- These Regulations shall be applicable for determination of tariff in all matters covered under these Regulations from FY 2022-23 onwards and upto FY 2024-25, i.e., from April 1, 2022 to March 31, 2025, unless otherwise reviewed/modified/extended.

Clause 5. Guiding principles for MYT framework

Clause 5.1- The Commission shall determine the tariff for matters covered under clauses (a), (b), (c) and (d) of Regulation 3.1, under a Multi-Year Tariff framework with effect from April 1, 2022.

Clause 5.2 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;

(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 categorization 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 categorization 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);

Clause 6.2 - The Commission may revisit the performance targets for the Control Period during the Mid-term Review, carried out in accordance with the Regulation 11.

Clause 9 Multi Year Tariff Application

Clause 9.1 The Applicant shall submit the forecast of Aggregate Revenue Requirement for each year of the Control Period and tariff proposal for the first Year of the Control Period, in a manner as provided in these Regulations and in formats specified by the Commission from time to time. The application shall be accompanied by such fee payable, as may be specified by the Commission in the Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009, as amended from time to time, by November 30, 2021:

Provided that the application shall also be accompanied by the true-up Petition based on the latest available audited accounts and the Annual Performance Review for the current Year based on the actual performance during the first six Months of the Year and estimates for the subsequent six Months.

Clause 9.2 The Applicant shall develop the forecast of Aggregate Revenue Requirement using the assumptions relating to the behavior of individual variables that comprise the Aggregate Revenue Requirement during each year of the Control Period, including inter-alia detailed category-wise sales and demand projections, power procurement plan, Capital Investment Plan, trajectories of parameters specified in these Regulations and Business Plan, in accordance with guidelines and formats, as may be specified by the Commission from time to time.

Clause 9.6 On receipt of the application, the Commission shall either:

(a) issue an Order approving the Aggregate Revenue Requirement for the entire Control Period and the tariff for the first Year of the Control Period; or

(b) reject the application for reasons to be recorded in writing, as the Commission may deem appropriate: Provided that the Applicant shall be given a reasonable opportunity of being heard before rejecting its application.

Clause 12 Annual Performance Review, Truing-up and tariff determination during the Control Period.

Clause 12.1 The Generating Company, Transmission Licensee and Distribution Licensee shall be subject to annual performance review and truing up of expenses and revenue during the Control Period in accordance with these Regulations.

Clause 12.2 The Generating Company, Transmission Licensee and Distribution Licensee shall file an application for the annual performance review of the current year, truing up of the previous Year or the Year for which the audited accounts are available and determination of tariff for the ensuing Year on or before 30th November of each Year, in formats specified by the Commission from time to time :

Provided that the Generating Company, Transmission Licensee or Distribution Licensee, as the case may be, shall submit to the Commission information in such form as may be specified by the Commission, together with the audited accounts, extracts of books of account and such other details as the Commission may require to assess the reasons for and extent of any variation in financial performance from the approved forecast of Aggregate Revenue Requirement and Expected Revenue from Tariff and Charges.

Clause 18 Tariff Order

Clause 18.1 The Commission shall, within one hundred and twenty (120) Days from the date of acceptance of the complete Petition, subject to petitioner providing information subsequently sought by the Commission in a timely manner and after considering all suggestions and objections received from the various stakeholders:

(a) issue a Tariff Order; or

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of the Act and Regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an Applicant shall be given a reasonable opportunity of being heard before rejecting its application.

Clause 18.2 The tariff so published shall be in force from the date specified in the said Order and shall, unless amended or revoked, continue to be in force for such period as may be stipulated therein.

Clause 20 Annual determination of tariff

Clause 20.1 The Commission shall determine the tariff of a Generating Company, Transmission Licensee and Distribution Licensee covered under a Multi-Year-Tariff framework for each Year during the Control Period, in accordance with timelines specified in Regulation 18, having regard to the following:

(a) The approved forecast of Aggregate Revenue Requirement and Expected Revenue from Tariff and Charges of the Generating Company, Transmission Licensee and Distribution Licensee for such Financial Year, including modifications approved at the time of Midterm Review, if any; and

(b) Approved gains and losses, including the incentive available, to be passed through in tariff, following the truing up of previous Year.

The Constitutional Bench of the Supreme Court of India in the Matter of PTC Vs CERC in Civil Appeal No. 3902 of 2006 observed that Regulations is not a pre-condition for the Commission to discharge its functions under various provision of the Electricity Act, 2003. But if Regulations have been notified with respect to certain provision of the Act then there should be strict adherence to such Regulations by all the stake holders including the Commission.

Based on the above legal provisions and the relevant regulations, the Commission deals with the issues framed as above:

Issue No. 1 : *Whether in view of the transfer scheme and policy directions 2022, and the provision of the Electricity Act, Rules and Regulations made thereunder is the Commission required to determine single ARR for FY 2022-23 of the Petitioner that has commenced business, w.e.f. 1/4/2022.*

The Policy Direction issued by Government of India includes the following provisions with respect to ARR and Tariff :

- *Definitions-“ARR shall mean the annual revenue requirement to be filed by the Distribution Company before the Commission, in line with the provisions of Electricity act and relevant Commission Regulation as amended from time to time”*
- *4.4 (a) Adhoc Retail Tariff of the Distribution Company : The adhoc retail tariff chargeable by the Distribution Company to its consumers will be as per the applicable Tariff Order issued by the Commission for the distribution business and shall apply till the retail tariff is determined by the Commission.*

From the above, it is crystal clear that the Tariff determined by the Commission for FY 2022-23 will be treated as adhoc retail Tariff for the Petitioner for the distribution business and shall apply till the retail Tariff is determined by the Commission. It is pertinent to mention that the ARR and business plan for the MYT control period from FY 2022-23 and FY 2024-25 based on the approved Business Plan and the retail Tariff for FY 2022-23 has already been determined by the Commission for DD and DNH vide its Orders dated 31st March 2022 respectively.

Further as per Regulation 12.2 of JERC MYT Regulation 2021, the Distribution Licensee has to file an application for the annual performance review of the current year, truing up of the previous Year or the Year for which the audited accounts are available and determination of tariff for the ensuing Year on or before 30th November of each Year.

In view of the above, the Commission is of the considered view that there is no requirement to consider for determination of single ARR for FY 2022-23 as single APR for the said period FY 2022-23 to be filed by the petitioner incorporating approved and revised figures of distribution business of DNH and DD will suffice the requirement.

Issue No. 2: *Whether the MYT petition no. 89/2022 filed for the control period (FY 2022-23 – FY 2024-25) is maintainable under Regulation 9 of the JERC (MYT Regulation) 2021.*

Keeping the clause 4.4 (a) of the policy direction issued by the Govt of India and Regulation 12.2 of JERC MYT Regulation, 2021, the MYT Petition for the control period from FY 2022-23 to FY 24-25 is not maintainable. At the same time the Commission feels that the Petitioner should file a Petition for ARR for FY 2023-24 along with the Petition for Tariff determination for the FY 2023-24, wherein the Petitioner is at liberty to include revised capex of the schemes with respect to network improvement, upgradation, modernization and necessary changes etc., if already got approved by this Commission.

The Commission therefore directs the Petitioner to modify the MYT petition in accordance with Regulation 12.2 of JERC MYT Regulation, 2021.

Issue No. 3 *Whether the Business Plan Petition no. 90/2022 filed for the control period (FY 2022-23 – FY 2024-25) by the Petitioner is maintainable under Regulation 8.1 of the JERC (MYT Regulation) 2021.*


As per Clause 8.1 of the JERC MYT Regulations, 2021, DNHPDCL and EDDD filed the Business Plan Petitions for the three-year Control Period from FY 2022-23 to FY 2024-25 with details for each year of the Control Period. The Commission has issued the orders on March 31, 2022 on Business Plan Petitions filed by DNHDCL and EDDD within the stipulated timeline of the Tariff Regulations, wherein the Commission has approved capex and capitalization for the various schemes for the FY 2022-23 to FY 24-25. As per provisions of JERC MYT Regulations, 2021, the Business Plan Petition is to be filed before the commencement of Control Period and there is no provision in Regulations for filing any revised Business Plan.

Hence, the Commission finds no merit in admitting the Business Plan Petition filed by the Petitioner for the Control Period from FY 2022-23 to FY 2024-25.

Ordered Accordingly.

Sd-
(Jyoti Prasad)
Member (Law)

Certified Copy



(S.D. Sharma)
Secretary, (I/c), JERC