JOINT ELECTRICITY REGULATORY COMMISSION
For the State of Goa and Union Territories
Gurgaon

QUORUM

Sh. M. K. Goel (Chairperson)
Smt. Neerja Mathur (Member)

Review Petition No. 256/2018
Date of Hearing: 29th May 2018
Date of Order: 23.08.2018

In the matter of

Petition under Section 74 of JERC (Conduct of Business) Regulations, 2009 seeking review of the Order dated 30th January 2018 of the Commission for approval of True-up of FY 2016-17, Annual Performance Review of FY 2017-18 and Aggregate Revenue Requirements (ARR) and Tariff proposal for the FY 2018-19.

And in the matter of

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

And in the matter of

DNH Power Distribution Corporation Limited .....Respondent 1
1st Floor, VidhyutBhavan, 66 KV Road, Amli,
Opposite Secretariat, Silvassa — 396230.

Federation of Industries Association of DNH .....Respondent 2
Danudyog Industrial Estate,
Silvassa — 396230

Indian Energy Exchange (IEX) .....Respondent 3
Unit No. 3,4,5 & 6,Fourth Floor, TDI Centre,
Plot No. 7, Jasola, New Delhi — 110 025

Present:

For the Petitioner

1. Shri K.J. Mody, Ex-President, APCPI
2. Shri R.N. Purohit, Advocate, APCPI

For the Respondent

1.	Shri C.A. Parmar, Chief Engineer, DNHPDCL	Respondent No.1
2.	Shri R.B. Choubal, Dy. Engineer, DNHPDCL	-Do-
3.	Ms. Rhia Luthra, Adv./Shri Anand K. Ganesan, Advocate for DNH Power	-Do-
4.	Shri Gaurav Lohani,Consultant, DNHPDCL	-Do-
5.	Ms. Savita Sinha, Advocate, Federation of Ind. Assn., Silvassa	Respondent No.2
6.	Ms. Shruti Bhatia, Vice President, Regulatory Affairs (IEX)	Respondent No.3

ORDER

This Review Petition has been filed by the Association of Polyester Continuous Polymerization Industry of D&NH, Silvassa (hereinafter referred to as the "APCPI" or the Petitioner) seeking review of the Commission's Order dated 30th January 2018 on certain issues. The Commission has examined the Petition and a hearing in this matter was held on 29th May 2018. After hearing the parties, the Commission discussed certain issues emanating from the Review Petition which were crucial to bring out the clarity and justification and to understand the gravity of the situation.

Before proceeding to analyse the issues and concerns of the 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 or Civil Procedure,1908 (5 of 1908) in respect of the following matters, namely:*

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

   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

2. Section 74 of the Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009, states the following:

74. Review of the decisions, directions and orders

(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) An application for such review shall be filed in the same manner as a Petition under Chapter II of these regulations."

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.

The Commission also observed that the Federation of Indian Industries (FIA) has filed an appeal before the Hon'ble APTEL vide Appeal No. 48 of 2018 dated 17th February 2018 raising similar issues.

Accordingly, the issues raised by the Petitioner and the Commission's views thereon are analysed as under:

1. Issue 1: Non consideration of Rs. 100.09 Cr. rebate received from NTPC

Petitioner's Submission

The Commission has committed an 'error apparent' by not considering the refund of Rs. 100.09 Crore received from NTPC while approving Power Purchase Cost for the FY 2017-18 as submitted by the DNHPDCL in the Tariff Petition. The amount has been left 'unaccounted' and would lead to escalating gap and hence it is an error apparent.

Respondent's Submission

Respondent 1:

The refund received from NTPC is not a lump sum amount paid in cash, but a refund given in each monthly bill by NTPC and the actual amount is yet to be ascertained. The benefit can be passed on to consumers only after audited accounts and actual power purchase cost are established. Furthermore, the truing up process for the FY 2017-18 is yet to be undertaken based on audited accounts and the actual power purchase cost which takes into account any such amount, would be trued up.

Therefore, since such refunds and arrears shall be factored in at the time of finalization of actual power purchase cost with the audited accounts, there is neither any grievance at this stage nor any error apparent.

Respondent 2:

FIA has already filed similar contention vide Appeal No. 48 of 2018 dated 17thFebruary, 2018 before the Hon'ble APTEL. FIA vide its reply to this specific Review Petition has contended the issue in a similar manner as highlighted by APCPI and mentioned that the same can be covered under the purview of a Review Petition. The Commission has committed an error in this regard while calculating the power purchase cost and resultantly the net gap/surplus for the year. The respondent has submitted that the error must be corrected and tariff be re-determined.

Respondent 3:

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

Commission's Analysis

For estimation of Power Purchase cost for FY 2017-18, the Commission has considered plant wise average per unit variable cost incurred by the Petitioner in the months from September to November 2017 and fixed cost as approved by CERC for FY 2017-18. The Commission has not considered "Other Charges", while re-estimating

the power purchase cost for FY 2017-18. The refund received by DNHPDCL from NTPC is on account of Income Tax refund and is a part of "Other Charges". The Commission has not considered "Other Charges" as the Commission had actual figures only till Nov 2017, and it was not possible for the Commission to estimate "Other Charges" for the Dec 2017 – March 2018 period. While doing Annual Performance Review for FY 2017-18, the Commission has re-estimated the various cost and revenue components, where projection was possible and not considered components which do not have any trend and/or projection is not possible. The Commission has followed same methodology across territories within its jurisdiction, and not considered "Other Charges" anywhere (which includes prior period, supplementary charges etc. in this case refund related to income tax). This will be considered at the time of truing up for FY 2017-18 based on the actual "Other Charges" for full year as per the Audited Accounts. The relevant extract of the Tariff Order is shown below:

"4.8.2 Power Purchase Cost

Variable Charges:

- *The per unit variable costs have been computed by taking the average of the actual per unit variable cost as per bills of September 2017 to November 2017 for all the stations.*
- *For procurement of power from Open Market, the Average Round the Clock (RTC) rate for western region during the calendar year 2017 has been considered.*
- *The cost towards UI Over drawal/ Under drawal has been considered as per actuals incurred by the Petitioner in first 8 months of FY 2017-18.*

Fixed Charges:

- *The Fixed costs have been considered based on the tariff Orders issued by the CERC for respective Central Generating Stations,*
- *For Mauda II, since the tariff Order has not been issued yet, fixed cost as per the latest power purchase bill has been considered.*
- *The Fixed cost has been apportioned on the basis of DNHPDCL's share in each station and average annual plant availability factor achieved during the last five years by the plant.*

Other Charges:

No other charges have been considered for the FY 2017-18."

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 it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

2. Issue 2: Setting aside of Rs. 180 Cr from surplus determined for FY 2016-17

Petitioner's Submission

The Commission has erroneously set aside the sum of Rs. 180.00 Cr. as capital grant citing Government of Dadra & Nagar Haveli (DNH) request, though the Commission or the DNHPDCL have never mentioned the same in any of their Reports / Petitions/ Orders. They also contend that the same has been done 'hastily' without proper verification of accounts.

Respondent's Submission

Respondent 1:

An amount of Rs. 180.00 Crore was granted by Administration of DNH to the DNHPDCL and the same does not form a part of surplus on account of any revenue surplus collected from consumers. Being a Government grant, the decision of usage of the grant also rests with the Govt. Therefore, there is no error in this regard.

Respondent 2:

FIA has already filed similar contentions vide Appeal No. 48 of 2018 dated 17th February, 2018 before the Hon'ble APTEL. FIA vide its reply to this specific Review Petition has contended that the Commission has set this amount aside without any prudence check or availability of submissions from the DNHPDCL highlighting that the amount was given as a capital grant by the Government of DNH.

Respondent 3:

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

Commission's Analysis

As already mentioned in the Tariff Order, during the discussions with the Commission, the Government of DNH requested the Commission not to consider a lump sum amount of Rs 180 Cr. in the surplus considered by the Commission in earlier Order, as this was given to the DNHPDCL as capital grant. The relevant extract from the Tariff Order are given below:

"The Commission, in the APR Order has approved a revenue surplus of Rs. 383.88 Cr. till 31st March 2016. With reference to the above mentioned surplus amount, during the discussions with the Commission, the Government of DNH has requested the Commission not to consider an amount of about Rs 180 Cr. in the surplus considered by the Commission in earlier Order, as this was given to the DNHPDCL as capital grant. However, a written submission to this effect is yet to be received. Based on this request, the Commission has decided to set aside a sum of Rs 180.00 Cr. from revenue surplus considered earlier. The Commission will take cognizance of this matter in the next Tariff Order based on the submissions from the Government of DNH."

Hence, in accordance with the discussion held with the Government of DNH, the Commission has set aside a corpus of Rs 180 Cr. The Commission has assumed this while doing Annual Performance Review (APR) for FY 2017-18 and will take final call on the issue based on the submission of Government of DNH while truing up for the FY 2017-18 in the tariff proceedings of the next year.

As can be seen from above, this was part of the methodology adopted by the Commission. This issue therefore does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

3. Issue 3: Usage of internal accrual for Capex or Revenue Expenses

Petitioner's Submission

The Commission has allowed interest on normative loan as a cost for financing capital expenditure, even though DNHPDCL already has surplus funds with it and has not taken any loans. Further the surplus with the DNHPDCL is a consumer money due to over recovery and it ought to be refunded to the consumers through tariff adjustments. Petitioner has also submitted that DNHPDCL has only partially used this surplus for funding capital and revenue (expenditure) needs, while remaining major portion remains invested in Fixed Deposits in banks.

Respondent's Submission

Respondent 1:

The internal accruals of a corporate entity cannot be claimed as non-retainable consumer surplus funds and cannot be sought as a refund by the consumers. The approach adopted by the Commission in this regard is as per the well settled tariff determination principles and that there is no error.

Respondent 2:

As highlighted by APCPI, while DNHPDCL is investing the surplus earned from consumers in Fixed Deposits, it is also being granted interest at normative rates for the same consumer money.

Similar issue was raised in Appeal No. 48 of 2018 dated 17th February, 2018 filed before the Hon'ble APTEL that carrying cost is being denied to the consumers when there is surplus while it is being allowed when there is a deficit. Argument filed by FIA as a response to this Review Petition seems premised on these submissions made before the Hon'ble APTEL.

Respondent 3:

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

Commission's Analysis

The fund internally accrued to the Petitioner is a regulated profit earned by the DNHPDCL. If DNHPDCL deploys this fund for capex, it will be treated as equity. As per the MYT Regulations 2014, if the equity actually deployed is more than 30% of the capital cost, then equity in excess of 30% would be considered as normative loan. Further, the Commission has considered the actual/ proposed capitalisation of assets for the respective years. Equity in excess of 30% has been considered by the Commission as "Normative Loan". Repayment of Loan / Normative Loan has been considered equivalent to depreciation allowed during the year. This is consistent with the approach followed by the Commission in previous Tariff Orders. The relevant extracts of the MYT Regulations are given below:

MYT Regulations

Regulation 24 of the MYT Regulations, provides the following:

"

(a) *The Distribution Licensee shall provide detailed loan-wise, project-wise and utilization-wise details of all of the pending loans*

(b) *If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan.*

Provided that where equity actually deployed is less than 30% of the capital cost, the actual loan shall be considered for determination of interest on loans.

(c) *Actual loan or normative loan, if any, shall be referred as gross normative loan in this Regulation.*

(d) *The normative loan outstanding as of 1st April of control period shall be computed by deducting the cumulative repayment as approved by the Commission (basis as mentioned below) up to 31st March of current period (a year before control period) from the gross normative loan.*

(e) *The repayment for the control period shall be deemed to be equal to the depreciation allowed for the year.*

(f) *Notwithstanding any moratorium period availed by the Distribution Licensee, the repayment of the loan shall be considered from the first year of the control period as per annual depreciation allowed.*

(g) *The rate of interest shall be the weighted average rate of interest calculated on the basis of actual loan portfolio at the beginning of each year of the control period, in accordance with terms and conditions of relevant loan agreements, or bonds or non-convertible debentures.*

Provided that if no actual loan is outstanding but normative loan is still outstanding, the last available weighted average rate of interest shall be applicable.

Provided further that the interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

Provided also that exception shall be made for the existing loans which may have different terms as per the agreements already executed if the Commission is satisfied that the loan has been contracted for and applied to identifiable and approved projects."

With regards to the carrying cost not granted for the revenue surplus at the end of FY 2016-17, the Commission has purposely left out the carrying cost as the surplus fund had been parked by DNHPDCL in the bank in form of fixed deposits. The interest from fixed deposits has been duly considered in the Non-Tariff Income of FY 2016-17 and has been deducted from the Gross ARR of FY 2016-17. Allowing the carrying cost would have led to double accounting on the surplus approved by the Commission at the end of FY 2016-17.

As can be seen from above, the Commission has followed the approach stipulated in the MYT Regulations 2014, therefore, this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

4. Issue 4: Imposition of Regulatory Surcharge on bills raised from 1stFebruary, 2018

Petitioner's Submission

The imposition of regulatory surcharge on bills raised from 1stFebruary, 2018 amounts to tariff being amended more than once in a given Financial Year, which is against Section 62(4) of Electricity Act, 2003.

Respondent's Submission

Respondent 1:

The imposition of Regulatory Surcharge by the Commission is only to ensure that the substantial revenue gap is accounted for and it has enough cash flows to service its consumers. The imposition of Regulatory Surcharge is not retrospective in nature and the same has been imposed only pursuant to the Annual Performance Review of FY 2017 – 18. Moreover, imposing the Regulatory Surcharge from 1st April 2018 onwards would only increase the burden on the consumers due to additional carrying cost for two months on the revenue gap approved for FY 2017-18.

Respondent 2:

Similar contention has been filed vide Appeal No. 48 of 2018 dated 17th February, 2018 before the Hon'ble APTEL, where it has argued that imposition of Regulatory Surcharge from 01st February, 2018 would imply that the Commission has sought to revise its own tariff order for FY 2017-18 and the same would amount to increase in tariff. The Commission has 'circumvented' tariff procedure established by law as any increase in tariff shall only be done thorough a tariff order.

Respondent 3:

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

Commission's Analysis

The Commission, in the Tariff Order dated 30th January, 2018, trued up for the FY 2016-17, revised estimates of expenses and revenue for FY 2017-18 based on the actual performance till November 2017 and projected expenses for FY 2018-19. The Commission estimated net revenue gap of Rs 224.24 Cr. at the end of FY 2017-18 and projected a gap of Rs 574.99 Cr. at the end of FY 2018-19 at the existing tariff. To allow recovery of the projected revenue gap, the Commission increased the tariff by average 11% across all consumer categories (applicable from 1st April 2018), which was mainly towards recovering standalone gap of FY 2018-19. The approved increase in tariff was not commensurate with the stand alone revenue gap projected by the Commission for FY 2018-19. To cover the revenue gap estimated at the end of FY 2017-18 and remaining revenue gap for FY 2018-19, the Commission has imposed a surcharge of 9.70% on all consumers. Imposition of

Regulatory Surcharge gives the Commission an option to stop levying the same, once recovery of the past gap is completed.

The Commission imposed the regulatory surcharge from the month of January 2018 to ensure an early recovery and minimization of carrying cost burden on the Consumers. It is to clarify that the Commission has merely imposed a Regulatory Surcharge and has not in any way amended the tariff for FY 2017-18.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

5. *Issue 5: Overlooking Merit Order Dispatch while projecting the Power Purchase Quantum and cost for FY 2017-18 and FY 2018-19*

Petitioner's Submission

The Commission has erred in applying the principle of Merit Order Dispatch (MOD). The actual power purchase cost is higher by Rs. 121.05 Cr. as compared to what it should be under the MOD and that the same error has been carried forward in the projections for the FY 2018 – 19.

Respondent's Submission

Respondent 1:

The Petitioner has made vague and unsubstantiated allegations of violation of merit order dispatch principles and has computed an amount of Rs. 121 Cr. for the year 2017-18 as the alleged loss on account of non-adherence to the merit order dispatch principles. The issue raised is completely misconceived and only depicts the basic non-understanding of the manner in which the electricity system functions including declaration of availability, scheduling and dispatch of electricity. The merit order principle is the purchase of the cheaper variable power cost in an ascending manner to fulfill the power requirements, which is followed at the time of scheduling of electricity. The scheduling of electricity is on a day ahead basis and is decided for every 15 minutes time block of the following day. DNHPDCL strictly follows the merit order dispatch principles. The basic non-understanding and misconception on the part of the Petitioner is evident from the fact that the Petitioner has considered the average per unit cost of electricity during the year to allege that merit order has not been followed.

The average of the year, which is available on post facto basis at the end of the year, has no relevance whatsoever to the scheduling of electricity and the application of the merit order principle. As submitted hereinabove, scheduling and merit order is applied on day ahead basis and for every 15 minutes time block. Unless the Petitioner is in a position to show that on a particular day and for particular time blocks, the licensee has purchased higher variable cost power even though lower cost power was available, the question of making such unsubstantiated and bald allegations does not arise.

Respondent 2:

This issue has been raised in a similar manner as done by Respondent 1. Further, the respondent has contended that there is no thrust/ motivation provided for deviating from MOD Principle.

Respondent 3:

IEX has neither submitted any comments nor raised any contentions on this matter.

Commission's Analysis

The power purchase quantum and cost for the FY 2018-19 are projected based on the monthly actual data for 8 months for FY 2017-18, actual data for 12 months for FY 2016-17 and FY 2015-16 and annual data for FY 2014-15, as submitted by the Petitioner. For projecting availability of power, firm allocation from various generating stations has been considered. The availability of power from each plant has been estimated based on the actual PLF of the plant in the last 2-3 years based on its operations. A detailed methodology has been explained in the Tariff Order. Different approaches have been used for different sources of power depending on the availability of the plant in previous years, CoD, PLF etc.

The Power Purchase Cost has been determined as follows:

"

a) Variable Charges:

- *The per unit variable costs have been computed by taking the average of the actual per unit variable cost as per bills of September 2017 to November 2017 for all the stations.*
- *For procurement of power from Open Market, the Average Round the Clock (RTC) rate for western region during the calendar year 2017 has been considered.*
- *No cost has been projected towards UI Over drawal/ Under drawal.*

b) Fixed Charges:

- *The Fixed costs have been considered based on the tariff Orders issued by the CERC for respective Central Generating Stations,*
- *For Mauda II, since the tariff Order has not been issued yet, fixed cost as per the latest power purchase bill has been considered.*
- *The Fixed cost has been apportioned on the basis of DNHPDCL's share in each station and average annual plant availability factor achieved during the last five years by the plant.*

c) Other Charges:

- *No other charges have been considered for the FY 2018-19.*

d) Transmission Charges

The transmission charges have been determined based on the total capacity allocation of the Petitioner of the transmission network. The transmission charges are determined based on the latest quarterly Point of Connection (PoC) rates approved by the Central Electricity Regulatory Commission (CERC) in accordance with Regulation 17(2) of Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010."

DNHPDCL in the FY 2018-19 is in energy deficit situation. The Commission has estimated an energy deficit of 78.01 MU to be procured from the Open Market. The additional power has to be procured over and above the availability from firm sources. The Commission has also directed the Petitioner to identify cheaper sources of power in order to optimize the Power Purchase Cost.

The Petitioner, as per its calculations, has arbitrarily considered normative PLF of 90% while projecting the energy availability from lower variable cost stations. Furthermore, the Petitioner has not considered availability from Gas Power plants such as Kawas (KGPP) and Gandhar (GGPP) having higher variable cost per unit. It is important to mention here that these are peaking plants and power from these plants is used to cater the demand of DNHPDCL during the peak hours. The Commission has assumed the power from these plants based on actual availability trends in the last 4-5 years.

The Commission has computed the power purchase requirements and the cost factoring the existing scenario and historical trends and thereby maintaining optimal balance among the interest of all stakeholders.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

6. *Issue 6: Higher tariff for 66 kV and 220 kV sub category than 11 kV sub category*

Petitioner's Submission

The Commission has erred while setting tariffs for 66kV, 220kV and 11kV sub categories as tariffs being recovered from 66kV / 200kV are higher than those being recovered from 11kV. There is heavy cross subsidization within the category and that this is not allowed as any such subsidy should be given directly by the Government. Further, the subsidization should be only towards Agricultural, BPL consumers etc. only.

Respondent's Submission

Respondent 1:

The contention of the Petitioner is factually incorrect as tariff for 11 kV is Rs. 3.30 per kVAh, 66kV is Rs. 3.25 per kVAh and 220kV is Rs. 3.20 per kVAh and hence there is no cross subsidization as claimed by the Petitioner.

Respondent 2:

The issue of cross subsidy is beyond the purview of a review petition. APCPI's contentions that one industrial category cannot subsidize another, only Government can subsidize industries and subsidy can be only directed towards Agricultural, BPL consumers etc., are not acceptable.

Respondent 3:

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

Commission's Analysis

The Commission has approved the following tariff for HT/ EHT Category.

S. No.	Category	Fixed Charges	Energy Charges
1.	**HT/EHT**		
i	11 kV supply	Up to Contract Demand - Rs.375/kVA/month or part thereof In Excess of Contract Demand – Rs.750/kVA/month or part thereof	3.30 Rs/kVAh
ii	66 kV supply	Up to Contract Demand - Rs.500/kVA/month or part thereof In Excess of Contract Demand – Rs.1000/kVA/month or part thereof	3.25 Rs/kVAh
iii	220 kV supply	Up to Contract Demand - Rs.550/kVA/month or part thereof In Excess of Contract Demand – Rs. 1100/kVA/month or part thereof	3.20 Rs/kVAh

As is apparent from table above that the energy charges for 66 kV and 220 kV sub categories is lower than 11 kV sub category, therefore, the contention of the Petitioner does not hold true.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

7. Issue 7: Error in calculation of revenue from approved retail tariff

Petitioner's Submission

There are arithmetic errors at various stages of calculation in Table 129 of the impugned order.

Respondent's Submission

Respondent 1:

The Petitioner has not specified the errors and there are no errors in computation.

Respondent 2:

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

Respondent 3:

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

Commission's Analysis

While determining the Fixed Charges for HT/EHT category, a billing demand is assumed as 85% of contracted demand as approved in the Tariff Order. Accordingly the Fixed Charges have been determined based on the approved Fixed/ Demand Charge as per tariff schedule and the Billing Demand. The Energy Charges are computed based on the approved Energy Charge for each category and the Energy sales approved. As such no error has been observed in the Order in this regard.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons..

8. Issue 8: Regulatory Surcharge being insufficient for FY 2018-19

Petitioner's Submission

The Regulatory Surcharge of 9.70% levied by the Commission leads to recovery of Rs. 225.13 Cr leaving a deficit of Rs. 82.32 Cr and hence more Regulatory Surcharge is destined to be levied in the future.

Respondent's Submission

Respondent 1:

The Petitioner has not provided any calculations for Rs. 225.13 Cr and any variations shall anyways be trued up.

Respondent 2:

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

Respondent 3:

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

Commission's Analysis

The Commission has imposed a Regulatory Surcharge to recover the past accumulated revenue deficit till FY 2017-18. The same has been discussed in detail in Section 6.4.4 and 6.4.5 of the Tariff Order.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

9. Issue 9: Error in computation of Cross Subsidy and Additional Surcharge

Petitioner's Submission

The Commission has erred by increasing Cross Subsidy Surcharge (CSS) from Rs 0.00/kWh in FY 2017 – 18 to Rs 0.14/kWh in FY 2018 – 19 as this is against the directions under Electricity Act 2003.

Further, the Commission should apply Additional Surcharge on the basis of kW/MW or kVA/ MVA per month instead of kWh as stranded capacity can be only in kW/ MW or kVA/MW.

Respondent's Submission

Respondent 1:

The UT of DNH has a peculiarity that 96% consumers are industrial and Hon'ble APTEL directs in Appeal No. 159 of 2011 dated 28/02/2012 that provisions for reduction of CSS as per National Tariff Policy do not apply to the UT of DNH.

Further Additional Surcharge is to be charged on per kWh basis and therefore it is wrong on the part of the Petitioner to contend that it should be charged on the basis of kW or kVA per month.

Respondent 2:

As the subsidies are well within the norms of +/- 20%, the same are justifiable. Merely because in one year CSS was Zero, it does not mean that in the subsequent year it will not exist. There is no error apparent and increase in CSS is not against the law and hence there is no need for a review.

The methodology used by Commission for Additional Surcharge determination is judicious, transparent and lawful and hence does not warrant a review.

Respondent 3:

Different methodologies adopted by the Commission over the years has led to more than threefold increase in the Additional Surcharge over a period of 2 years. The fact that Zero MUs have been considered under Open Access shows that Additional Surcharge has been determined with sole intention to prevent Open Access in DNH, which is against Electricity Act, 2003. As DISCOM has a deficit of 78 MUs approved by the Commission and zero open access sales, stranded capacity does not arise. Also'energy sales' has been used instead of 'energy purchased' to determine fixed charges thereby re-levying of losses already borne by open access consumers. There is scope for improvement in the methodology and have proposed a new methodology for computation of Additional Surcharge in their submissions.

Commission's Analysis

The Commission for determination of Open Access Charges, has revised the overall methodology as per the Tariff Order. The detailed methodology has been elaborated in Chapter 7 of the Tariff Order. The Commission has determined the Cross Subsidy Surcharge based on the Voltage Wise Cost of Supply as determined after taking suitable assumptions as discussed in Chapter 7 Sub point 7.3 of the Tariff Order. Further, the Commission has also revised the methodology for determination of Additional Surcharge as discussed in Chapter 7 of the Order.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

10. *Issue 10: Implementation of kVAh Tariff and removal of Power Factor incentive*

Petitioner's Submission

The Commission should have reasoned the need for applying the kVAh tariffs. DNHPDCL has nowhere in the Petition sought change in the basis of billing for LT and HT category. Although it is the prerogative of the Commission to decide the basis of billing, but it has to specify the basis of this transformation.

Further, even though the DNHPDCL had petitioned for reduction of Power Factor incentive to 0.5% from 1%, Hon'ble Commission has completely removed the same.

Respondent's Submission

Respondent 1:

The kVAh based tariff is a more scientific way as it factors in both active and reactive energy. Hon'ble APTEL judgement dated 10th April, 2015 in Appeal No. 263 of 2014 has reasoned and concluded that kVAh billing will be in the interest of consumers as it will improve the stability of Grid, increase available transmission and distribution system capacity and reduce expenditure on power purchase. They have also stated that the Commission has the authority to take appropriate steps to regulate tariff.

Respondent 2:

The implementation of kVAh tariff can be reviewed as DNHPDCL didn't ask for the same. They have also said that since complete removal of power factor incentive was not sought by DNHPDCL and only a reduction was sought, the same can be subject to review.

Respondent 3:

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

Commission's Analysis

The Commission, in its efforts towards rationalization of tariffs in the territory, has been guided by various principles for tariff setting as discussed in detail in the Tariff Order (Refer Para 6.4.1Pg 111). The Commission while introducing the kVAh tariff for HT/EHT category has ensured revenue neutrality in the category. The sub-category wise tariff has been determined based on the Average Cost of Supply and the recovery trajectory. Further, the incentive/ penalty is already built-in in the kVAH billing introduced for the category. However, the Commission directs DNHPDCL to ensure that the billing on kVAh basis is done provided that the consumption is recorded in kVAh. In case the meters are not enabled with the feature, DNHPDCL is required to use the actual power factor recorded of the consumer at the time of billing for converting energy units in kWh to kVAh.

Accordingly, the Commission is of the opinion that this issue does not warrant a review as it does not qualify under any of the criteria mentioned for the review, viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

In view of the issues raised by the Petitioner in the forgoing paragraphs, the Commission is of the view that none of the issues warrant a review as none of them qualify under the criteria spelt out in Section 114 and Order 47 of the CPC viz. if there are mistakes or errors apparent on the face of the record, or 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 if there exist other sufficient reasons.

The Petition stands disposed off accordingly.

Sd/-
(NEERJA MATHUR)
MEMBER

Sd/-
(M.K. GOEL)
CHAIRPERSON

Certified Copy

Sd/-
(Rakesh Kumar)
Secretary