

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

CORAM

Sh. Alok Tandon, Chairperson
Ms. Jyoti Prasad, Member (Law)

Review Petition No. 127/2024

Date of Hearing: 13.11.2024

Date of Order: 10.12.2024

In the matter of

Review Petition under section 94 (1) (1) of the electricity act, 2003 seeking review of the order dated 11/06/2024 of truing up for the financial year 2022-23, conducting annual performance review for the year 2023-24 and approving the annual revenue requirement and transmission tariff for the year 2024-25.

And in the matter of

DNH and DD Power Corporation Limited (DNHDDPCL)

Review Petitioner

Present of the Petitioner:

1. Sh. Hemant Shah, CFO, DNHDDPCL
2. Sh. Anand K Ganesan, Advocate, DNHDDPCL
3. Sh. Gaurav Lohani, Consultant, DNHDDPCL

ORDER

Shri Anand K. Ganesan Ld. Counsel for the review petitioner sought the review of the impugned tariff order dated 11.06.2024 on the following issues:

- a) Approve Rs. 7.26 Crore be considered as the Non-Tariff Income for the Financial Year 2022-23.
- b) Reassess the effective tax rate for FY 2022-23 to 25.17% as per the actual tax paid, and accordingly approve the Return on Equity for FY 2022-23 as Rs. 14.71 Crores.
- c) Approve the Interest on Working Capital Loans for FY 2022-23 to Rs. 0.94 Crore.



- d) Include the revenue gap of Rs. 56.64 Crore in the computation of cumulative revenue gap for FY 2024-25.
- e) Approve the Annual Revenue Requirements for FY 2022-23 of Rs. 40.22 Crore, FY 2023-24 of Rs. 82.22 Crore and FY 2024-25 of Rs. 61.34 Crore;
- f) Approve the Transmission Tariff for the FY 2024-25 of Rs. 78.82 Crore;
- g) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case.

Submissions of the Review Petitioner:

- I. That there are errors apparent on the face of the record in the order dated 11.06.2024 on account of which the review petitioner is filing the present review petition invoking the jurisdiction of Hon'ble Commission.
- II. That the Commission has approved the Non-Tariff income for FY 2022-23 as Rs 34.12 Crore, including the interest income of Rs 26.85 Crore which was excluded by the review petitioner in its True Up Petition.
- III. That in the True Up petition for FY 2022-23, Review Petitioner had submitted Rs. 8.73 Crores as Non-Tariff Income (NTI) which excluded interest income of Rs. 26.85 Crore earned from Return on Equity (RoE). The same was not included in the NTI on account of Regulation 44.2 of the MYT Regulations 2021, which explicitly states the following:
"Provided that the interest/dividend earned from investments made out of Return on Equity corresponding to the Licensed Business of the Transmission Licensee shall not be included in Non-Tariff Income."
- IV. That the return on equity provided for in terms of the Regulations is to the licensee to service the equity capital of the company. The deployment or use of the amount earned as return on equity is the decision of the Review Petitioner, whether to invest the amounts in interest bearing security, to declare dividend to the share-holders, invest in other avenues etc. Such deployment or use of the amount earned as return on equity cannot thereafter be brought back to the income of the Review Petitioner for the purposes of tariff determination.
- V. That as per the express provision of Regulation 44.2, the Review Petitioner respectfully submits that the interest income has been earned from investments made out of Return on Equity (ROE) sanctioned by the Hon'ble Commission in previous tariff petitions. This



established methodology, grounded in regulatory consistency and statutory provisions, has been adhered to by the Hon'ble Commission in all prior years.

- VI. That the sudden deviation from this established practice to classify the interest Income as Non-Tariff Income (NTI) is contrary to the Regulations of the Hon'ble Commission and is an error apparent on the face of the record.
- VII. That the sudden deviation in the current methodology to include the interest income as NTI, has created ambiguity and is contravening the principle of regulatory consistency which is adversely impacting the financial stability of the Review Petitioner.
- VIII. That such revision also severely impairs the financial planning and funding mechanisms of the Review Petitioner. The Corporation necessitates substantial capital expenditure to sustain and augment its infrastructure, requiring comprehensive funding at the time of capitalization while expenses are amortizing as depreciation over the asset's useful life. The inclusion of interest income as NTI disrupts the established financial framework, potentially leading to a funding deficit. This misclassification of income will exhaust the cash reserves of Review Petitioner which is crucial for CAPEX and essential infrastructure projects.
- IX. That the exclusion of interest income from NTI was extensively deliberated in the Technical Validation Committee (TVC) of Hon'ble Commission. Subsequent to the filing of the tariff petition, this issue was also submitted as written submission to Hon'ble Commission. However, the Hon'ble Commission has not considered the exclusion of interest income while determining the tariff in line with the established practice and the Regulations of the Hon'ble Commission.
- X. Return on Equity (True-Up FY 2022-23)

That the return on Equity Trued-Up by the Commission for Fy 2022-23 is shown as under:

Particulars	Approved in APR Order	Petitioner's Submission	Trued-up by Commission
Return on Equity	14.79	11.01	13.24

The Commission has approved ROE as per Regulation 31 of the CERC Tariff Regulation 2019. The base return of Equity has been grossed up with the effective Tax Rate of the respective financial year based on the actual Tax paid. The Commission has considered the effective Tax rate as 16.88%. However, the actual Tax rates as per the Review Petitioners Income Tax computation for FY 2022-23 stands at 25.17%, as evidenced by the enclosed ITR computation,



101C form for following the section of 115BAA of Income Tax Act and assessment order for FY 2022-23. The correct computation of the RoE reflecting the actual Tax rate should be Rs 14.71 Crore instead of Rs 13.24 Crore.

- XI. That the below table demonstrate correctly computed the Return on Equity based on the effective tax rate of 25.17%.

Computation of RoE for FY 2022-23

Particulars	Amount (In Rs Crore)
Opening Equity	69.26
Additions on Account of new Capitalisation	3.53
Closing Equity	72.79
Average Equity	71.03
Return on Equity (%)	15.50%
Effective Rate of Corporate Tax (%)	25.17%
Effective Return on Equity (%)	20.71%
Return on Equity	14.71

As seen from the above table, after accounting for the effective tax rate, the effective return on equity is 20.71%, leading to a trued-up ROE of Rs. 14.71 Crores.

That the Review Petitioner most respectfully prays that this Hon'ble Commission may kindly review and reassess the effective tax rate for FY 2022-23 to 25.17% as per the actual tax paid, and accordingly approve the Return on Equity for FY 2022-23 as Rs. 14.71 Crores. The Review Petitioner seeks such further relief as this Hon'ble Commission may deem just and proper in the circumstances of the case.

INTEREST ON WORKING CAPITAL LOANS (TRUE- UP FY 2022-23)

That the Review Petitioner while placing the matter of Return on Equity trued-up by the Commission for FY 2022-23 has sought for the approval of the Return on Equity for FY 2022-23 as Rs. 14.71 Crores. Consequently, the Interest on Working Capital Loans (True-Up FY 2022-23) shall correspondingly come to Rs. 0.94 Crores.

The Review Petitioner urges the Commission to approve the Interest on Working Capital Loans be revised correspondingly to Rs. 0.94 Crore, reflecting the revised Return on Equity data to maintain accuracy and fairness of the calculations of entire tariff as under:



Particulars	Amount (In Rs Crores)
Receivables equivalent to 45 days of fixed cost	5.83
Maintenance spares at 15% of Operation and Maintenance expenses	2.97
Operation and maintenance expense for one month	1.65
Total	10.45
Interest on Working Capital	0.94

The above is a consequential revision and ought to be considered as per the submissions hereinabove.

XII. TOTAL IMPACT OF THE ERRORS ON THE ARR AND REVENUE GAP OF FY 2024-25

That the Review Petitioner while placing the matter of

- A. Non-Tariff Income (True-Up FY 2022-23),
- B. Return on Equity (True-Up FY 2022-23),
- C. Interest on Working Capital Loans (True-Up FY 2022-23) before this Hon'ble Commission, respectfully prays for reflecting the revised ARR data to maintain accuracy and fairness of the calculations of entire tariff as under.

Proposed ARR for FY 2022-23, FY 2023-24 and FY 2024-25

(Rs Crores)

Particulars	FY 2022-23	FY 2023-24	FY 2024-25
O&M Expense	19.77	22.72	24.06
Depreciation	10.70	18.65	19.68
Interest Cost on Long-Term Capital Loans	1.19	0.79	0.26
Interest on Capital Loans	0.94	1.32	1.39
Return on Equity	14.71	15.51	16.73
Past period Adjustments		23.93	
Incentive on Transmission System Availability	0.17		
Total	47.48	82.92	62.12
Less Non-Tariff Income	7.26	0.70	0.78
Total Annual Revenue Requirement Proposed	40.22	80.22	61.34

XIII. REVENUE GAP AT THE END OF FY 2021-22

That the Review Petitioner submits that the Hon'ble Commission erroneously fails to consider and carry forward the cumulative revenue gap of Rs. 56.64 Crore from FY 2021-22, which was to be amortized in the current petition. This omission significantly alters the financial calculations and does not reflect the true financial position of the Corporation. Regulation 12.5 of the MYT Regulations, 2021, mandates that the gap/surplus of the trued-up year be



carried forward into the tariff determination for the subsequent year. Further, Regulation 14 of the MYT Regulations, 2021, also mandates that Approved aggregate gain or loss to the Transmission Licensee or Distribution Licensee on account of uncontrollable factors shall be pass-through as an adjustment in the tariff of the Transmission Licensee or Distribution Licensee over such period as may be specified in the Order of the Commission passed under these Regulations. It is respectfully submitted that the cumulative revenue gap of Rs. 56.64 Crore, being an uncontrollable factor, should have been included in the calculation of cumulative revenue gap, as initially approved in the true-up for the FY 2021-22 by the Hon'ble Commission for amortization. It is submitted that the revenue gap is as determined by the Hon'ble Commission due the non-consideration of the same for recovery is an error apparent on the face of the record.

- XIV. That the correct presentation of Cumulative Revenue (Gap) / Surplus table is as under:
Cumulative Revenue (Gap)/Surplus at the end of FY 2024-25 (Rs Crores)

Particulars	FY 2022-23	FY 2023-24	FY 2024-25
Annual Revenue Requirement	40.22	82.22	61.34
Revenue from sale of Power	63.02	108.18	
Revenue (Gap)/Surplus	22.80	25.96	(61.34)
Previous Years (Gap)/Surplus carried Over	0.00	(56.64)	(11.12)
Holding Cost/Carrying Cost	0.91	(4.15)	(6.36)
Net Revenue (Gap)/Surplus	23.71	(34.83)	(78.82)

- XV. That the above issues may be considered by the Hon'ble Commission in the review petition as there are errors apparent on the face of the record.

Commissions Analysis

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

The application and the scope of the review of an Order are circumscribed under Order 47 Rule 1 of the Code of the Civil Procedure. The power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by Law expressly or by necessary implications. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with powers for reviewing its decisions, directions and orders under Section 94 (1) (f) of the said Act. The present Petition, made before the Commission for the review of its Order, 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.

Section 94 (1) (f) 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."

Under Order 47, Rule1, CPC, Order/Judgment may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of record, an error, which is not self- evident, has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provision.

On the question of scope of review the Supreme Court in the case of *Aribam Tuleshwar 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."

Rectification of Non-Tariff Income in True-Up of FY 2022-23

In the impugned tariff Order dated 11/06/2024, the Commission included Rs. 26.85 Crore of interest income as part of the NTI for FY 2022-23 as inadvertently the Commission did not consider the submissions of the review petitioner forwarded vide email dated 13.02.2024 wherein it was clearly stated that the interest income has been derived from the investment of



the ROE and there are no other sources of income for the Review Petitioner. This has resulted in wrong calculation of ARR for the FY 2022-23 as this interest income has been included in NTI which should not have been considered in NTI. At the same time the Commission relied on proviso of Regulation 44.2 of the MYT Regulations, 2021, which explicitly states that interest/dividend income earned from investments made out of ROE corresponding to the Licensed Business of the Transmission Licensee should not be included in NTI.

The Review Petitioner has provided sufficient documentary evidence, including written responses and detailed supporting data, to validate that the said interest income was earned from ROE investments.

In light of the evidence and in accordance with the regulatory framework, the Commission infers that including the interest income of RS. 26.85 Crore as part of NTI was an error on the part of Commission. Therefore, the Commission rectifies the same by excluding the interest income from NTI for FY 2022-23.

Erroneous Computation of Return on Equity in True-Up of FY 2022-23

The effective tax rate applied in the original truing up for FY 2022-23 was not aligned with the actual Tax liabilities. The Commission in the impugned Tariff Order dated 11/06/2024 considered a tax rate of 16.88%, which resulted as ROE of Rs. 13.24 Crores. However, the Review Petitioner has provided substantial evidence, including its Income Tax Computation, 10 IC Form, and assessment letter indicating that the actual effective tax rate was 25.17%.

The Commission observes that Regulation 31 of the CERC Tariff Regulations, 2019, provides grossing up the base ROE with the effective tax rate applicable to the relevant financial year. The Review Petitioner's detailed submissions and supporting documents confirm that the statutory effective tax rate for FY 2022-23 was 25.17%. This rate should have been applied for an accurate computation of the ROE. Upon consideration of the provided documentation and in alignment with statutory tax provisions, the Commission finds that applying the correct effective tax rate would result in a revised trued-up ROE of Rs. 14.71 Crores, the computation of the same is shown in the table below:



Revised computation of ROE for FY 2022-23**(Rs Crore)**

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Opening Equity	69.26	69.26
Equity Addition	3.53	3.53
Closing Equity	72.79	72.79
Average Equity	71.02	71.02
Rate of Return	15.50%	15.50%
Effective Tax Rate	16.88%	25.17%
Rate of Return after tax	18.65%	20.71%
Total Return on Equity	13.24	14.71

This rectification ensures compliance with both regulatory standards and actual financial obligations, thereby rectifying the identified error.

Accordingly, the Commission revises ROE of Rs. 14.71 Crores for FY 2022-23, amending the impugned Tariff Order dated 11/06/2024 to reflect the correct tax rate and true-up amount.

Revised Interest on Working Capital of True-Up for FY 2022-23

Upon revision of the Return on Equity (ROE) as detailed above, it follows that the interest on working capital for FY 2022-23 ought to be updated to reflect these changes accurately. Hence, the Commission has computed the revised interest on working capital.

The table is provided below for reference:

Revised computation of Interest on Working Capital for FY 2022-23**(Rs Crore)**

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Receivables equivalent to 45 days of Annual Fixed Cost	5.67	5.90
Maintenance spares @15% of Operation and Maintenance expenses	2.97	2.97
Operation and maintenance expense for one month	1.65	1.65
Total Working Capital	10.29	10.52
Interest rate	9.00%	9.00%
Interest on Working Capital	0.93	0.95

Accordingly, the Commission revises Interest on Working Capital of Rs. 0.95 Crores for FY 2022-23, by amending the impugned Tariff Order dated 11/06/2024.



Re-computation of ARR and Revenue Gap from FY 2022-23

Following the revision in the above mentioned ARR components, the Aggregate Revenue Requirement (ARR) and the revenue gap for FY 2022-23 has been revised and provided in the table below:

Revised ARR for FY 2022-23 (Rs Crore)

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Operation & Maintenance Expenses	19.77	19.77
Depreciation	10.70	10.70
Interest on Long Term Loans	1.19	1.19
Interest on Working Capital	0.93	0.95
Return on Equity	13.24	14.71
Power Cost Expenses		
Incentive for achieving higher transmission availability	0.17	0.57
Total	46.00	47.89
Less Non-Tariff Income	34.12	7.26
Net ARR	11.88	40.63

Non Consideration of Revenue Gap of FY 2021-22

The cumulative revenue gap of Rs. 56.64 Crore for FY 2021-22 was inadvertently excluded from the tariff determination for the current petition. Regulation 12.5 of the MYT Regulations, 2021, explicitly requires the inclusion of the gap or surplus from the trued-up year into the subsequent tariff determination. Furthermore, Regulation 14 of the MYT Regulations, 2021, supports the pass-through of such uncontrollable factors as adjustments in tariff calculations.

The cumulative revenue gap of Rs. 56.64 Crore was approved by the Commission during the true-up for FY 2021-22 and was intended for amortization in subsequent years. The omission of this amount from the ARR for FY 2023-24 was an error on the part of the Commission.

Upon reviewing the evidence and regulatory provisions, the Commission directs that the cumulative revenue gap of Rs. 56.64 Crore be incorporated into the cumulative revenue gap for FY 2023-24. This adjustment will be carried forward for recovery in accordance with the applicable Regulations. The revised computation of the revenue gap from FY 2022-23 to FY 2024-25 are shown below:



Revised Net Revenue for FY 2022-23 (Rs Crore)

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Aggregate Revenue Requirement	11.88	40.63
Revenue from transmission of power	63.02	63.02
Revenue Gap/ (Surplus)	(51.14)	(22.39)
Previous year's Gap/(Surplus) carried over	-	-
Holding Cost		
Net Revenue Gap/ (Surplus)	(51.14)	(22.39)

Revised Net Revenue for FY 2023-24 (Rs Crore)

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Aggregate Revenue Requirement	82.21	82.21
Revenue from transmission of power	108.18	108.18
Revenue Gap/ (Surplus)	(25.97)	(25.97)
Previous year's Gap/(Surplus) carried over		56.64
Holding Cost		
Net Revenue Gap/ (Surplus)	(25.97)	30.67

Revised Net Revenue for FY 2024-25 (Rs Crore)

Particulars	Approved in Order dated 11.06.2024	Revised Computation
Aggregate Revenue Requirement	61.34	61.34
Revenue from transmission of power	-	-
Revenue Gap/ (Surplus)	61.34	61.34
Previous year's Gap/(Surplus) carried over	(51.14)	(22.39)
Total Gap/(Surplus)	10.19	38.94
Holding Cost	(9.72)	(4.25)
Net Revenue Gap/ (Surplus)	0.48	34.69



Transmission Tariff for FY 2024-25

Transmission Capacity of System

The transmission system capacity is the contracted capacity made available to the beneficiary during the given period. The present capacity of 14 no. 66/11 kV substations is 797 MVA. The approved contracted transmission capacity of the system is as under:

TRANSMISSION CAPACITY OF THE TRANSMISSION SYSTEM

Tariff Determination	FY 23-24	FY 24-25
Transmission Capacity (MW)	789.03	789.03

Normative Availability

Regulation 45.1 of MYT Regulations, 2021 stipulates as follows:

"45.1 The norms of operations for a Transmission Licensee shall be applicable as specified in the prevalent CERC Tariff Regulations"

Regulation 51 of the CERC Tariff Regulations, 2019 stipulates as under:

"51. Normative Annual Transmission System Availability Factor (NATAF):

- (a) For recovery of Annual Fixed Cost, NATAF shall be as under:
(1) AC system: 98.00%;

Accordingly, the Commission approves the Normative Annual Transmission System Availability Factor (NATAF) for recovery of full Annual Fixed Cost as 98%. Further, the Commission directs the Petitioner to submit the Transmission Availability Report for Residual Transmission Entity of DNDDDPCL on Monthly Basis to the Commission starting from the month of April 2024.

TRANSMISSION TARIFF APPROVED BY COMMISSION FOR FY 2024-25

Tariff determination	Approved by the Commission vide Order Dt 11.06.2024	Approved Now
Aggregate Revenue Requirement (Rs Crore) (A)	0.48	34.69
Transmission capacity (MW) (B)	789.03	789.03
Energy Required at Periphery (MU's) (C)	9,953.68	9,953.68
Long / Medium Term Transmission Charges (Rs /MW/Month) (D)	504	36,634
Short term Open Access Transmission Charges (Rs/MW/Day) (E)	17	1,204.53
Transmission Charges (Rs/kWh) (F=A/C*10)	0.00	0.03



The short-term open access consumers shall pay the charges in accordance with the charges determined above and Regulation 4.1 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017.

The accrued arrears of Rs. 34.21 Crores on the revision in ARR for FY 2024-25 shall be recovered in 03 equated monthly instalments accordingly.

On the basis of the records placed before the Commission in the present Review Petition and the averments made before the Commission the Review Petitioner has been able to make out a case which would endorse a case for Review of the Commission's impugned order date 11.06.2024. Further, the Review Petitioner has succeeded to show that there are errors apparent on the face of the record which would justify the review. The Commission has erred in the impugned Tariff Order and accordingly, revised the calculations on all the issues raised in the said Review Petition. The said issues were resolved by the Commission according to the provisions of the Electricity Act 2003 and the relevant Rules & Regulations made thereunder.

In such circumstances, the Review Petitioner succeeds on the issues as above. The Commission allows the Review Petition.

Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Sd/-
(Alok Tandon)
Chairperson

Certified Copy



(S.D. Sharma)

Secretary (I/c), JERC

एस.डी. शर्मा / S.D. SHARMA
सचिव (प्रभारी) / Secretary I/c
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