

Impact for Prior Period Issues decided in favour of the Petitioner by the Hon'ble APTEL not considered by the Hon'ble Commission:

There were certain issues which are squarely covered vide the Hon'ble APTEL judgments for past years, Hon'ble Commission's own orders as well have not been implemented by the Hon'ble Commission while passing the tariff order on various pretexts, reasons. Vide the present Petition, the petitioner seeks to re-claim the pending issues which remain unimplemented, partially implemented by the Hon'ble Commission, which are enumerated in below table:

Prior Period Issue	Impact (Principal) (Rs Crs)	Appeal Reference
Re-determination of AT&C Losses	171.15	Appeal No. 246 of 2020
Non-consideration of impact of increase in rate of Service Tax & Impact of service tax under Reverse Charge Mechanism	30.65	Appeal No. 213 of 2018
Disallowance of Other Expenses	1.83	Appeal No. 213 of 2018
Merit Order Dispatch Disallowance	24.50	Petition No. 10 of 2014 & Appeal No. 213 of 2018
Street Light Material Petition No. 4/ 2014	1.97	Petition No. 4/ 2014
Rithala Impact	394.86	Rithala Petition 51 of 2017
Rithala Refinance incentive	0.62	Rithala Petition 51 of 2017
Reversal of Efficiency Factor FY 15-16	19.69	Review Petition 30 of 2018 (BRPL)
Wrong reversal of material cost incurred towards maintenance of street light for the Years 2010-2011 and 2011-12	7.48	Appeal No. 301 of 2015
Wrongful deduction of Equity Capital related to Working Capital in relation to 2007-08 to 2011-12	1.91	Appeal No. 246 of 2014

The Petitioner is re-submitting its prior period claims as follows:

Re-determination of AT&C Losses

The Hon'ble Commission was bound in terms of its Compliance order dated 04.02.2021 rendered in Appeal 213/2018 proceedings at Hon'ble APTEL to give effect to revision of AT&C loss trajectory for the years 2012-13 to 2016-17. While the Petitioner was awaiting the implementation of the said revision in the tariff order for FY 2021-22 and True up for FY 2019-20, the Hon'ble Commission in violation of its own compliance order, undertaking furnished to Hon'ble APTEL (in Appeal 213/2028 proceedings) unilaterally, arbitrarily reduced the AT&C incentives and also revised the O&M expenses of the Petitioner for the years 2012-13 to 2016-2017 on flawed approach, reasoning. The Hon'ble Commission passed an order dated 29.09.2021 modifying its earlier compliance order dated 04.02.2021 on the said compliance of issues. The relevant extracts of the Hon'ble Commission from tariff order dated 30.09.2021 for FY 2021-22 are –

"3.17 Hon'ble APTEL issued its Judgement in EP 5 of 2021 on 26.07.2021 directing the Commission to consider the issues favoring the Petitioner in its judgment in Appeal 246 of 2014 by way of Execution Petition 5 of 2021 since the issues held in favour of the Petitioner have not been modified or stayed by the Hon'ble Supreme Court in spite of Civil Appeal being filed by the Commission.

3.18 The Commission modified its Compliance order dated 4/02/2021 by way of an Order dated

29.09.2021 and revised the reduction in AT&C Loss trajectory by 0.87% instead of 0.50% with reasons detailed in the said Order.

3.19 Accordingly, the Commission has revised the AT&C Loss trajectory as follows:"

FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
15.325%	14.46%	13.60%	12.73%	11.87%	11.00%

Following is the summary of AT&C amount claimed by the Petitioner and allowed by Hon'ble Commission (Rs. Cr.)

Particulars	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Amount Sought by the Petitioner in true-up FY 19-20	50.62	31.83	33.18	35.68	36.81
Amount Allowed by Commission in Sep'21 Tariff Order	24.67	4.30	3.64	-2.88	-12.76
Differential amount sought now	25.95	27.53	29.54	38.56	49.57

On the contrary, instead of allowing rightful claim of AT&C Incentive, Hon'ble Commission revised the O&M expenses for the years 2012-13 to 2016-17. The relevant extracts of the Hon'ble Commission from tariff order dated 30.09.2021 for FY 2021-22 are

"3.22 In view of implementation of the Judgment in Appeal no. 246 of 2014, the Commission has also revisited the O&M expenses as earlier re-determined by the Commission in view of the judgment in Appeal no. 171 of 2012 in its tariff order dated 29.09.2015 to bring them to normative basis in accordance with the directions of Hon'ble APTEL.

3.23 Accordingly, the Commission has revised the O&M expenses for FY 2012-13 to FY 2016-17 with the norms as applied in the first MYT Control period considering the escalation in Employee and A&G Expenses at 8% per annum and the k factor at 2.81% for the purpose of computation of the R&M expenses, as follows:

Table 3. 5: Revised the O&M expenses for FY 2012-13 to FY 2016-17

Particulars	FY 2011-12 (Base Year)	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Employee Expenses (Net of Capitalisation)	189.40	204.55	220.92	238.59	257.68	278.29
A&G Expenses	39.57	42.74	46.15	49.85	53.83	58.14
R&M Expenses	84.40	92.92	97.36	102.21	110.64	120.00

<i>Total O&M Expenses now</i>	<i>313.37</i>	<i>340.21</i>	<i>364.43</i>	<i>390.65</i>	<i>422.15</i>	<i>456.43</i>
<i>Approved</i>						
<i>O&M Already approved in Tariff orders</i>		<i>392.67</i>	<i>415.05</i>	<i>440.41</i>	<i>475.61</i>	<i>534.95</i>
<i>To be allowed/(recovered)</i>		<i>52.46</i>	<i>50.62</i>	<i>49.76</i>	<i>53.46</i>	<i>78.52</i>

The Petitioner is of the considered view that the Hon'ble Commission's said findings in the order dated 29.09.2021 modification order and the Tariff Order dated 30.09.2021 are illegal and likely to be interfered in the Appeal preferred by Petitioner under section 111 of the Electricity Act,2003 before the Hon'ble APTEL against the Tariff order dated 30.09.2021 and order dated 29.09.2021.

In terms of the findings of the Hon'ble Commission as indicated above revising the O&M expenses for the period 2012-13 to 2016-17, the Petitioner seeks the Hon'ble Commission to revisit its findings and give sanctity to the issue in line with its undertaking, compliance order furnished to Hon'ble APTEL in Appeal 213/2018. In the event the Hon'ble Commission implements the issue on aforesaid O&M expenses revision (as per claims of Petitioner), in spirit of its Compliance order dated 4.2.2021, it will reduce the pendency of disputes in Hon'ble APTEL. The Hon'ble Commission is well aware that such re-opening of past settled issues like O&M expenses is not permissible in perpetuity, future True up exercises and that too while considering implementation of the Hon'ble APTEL judgments, where the powers of the Hon'ble Commission are limited to the issue in question to be implemented.

The Hon'ble Commission is humbly submitted and bound to consider and implement the said issues in the upcoming tariff order for FY 2022-23 and True up for FY 2020-21.

Disallowance of Other Expenses (LC Charges, Cost of Auditor Certificate, Credit Ratings and Increase in rate of Service Tax)

While truing up for FY 2012-13 in the Tariff Order dated 23.07.2014, the Hon'ble Commission has not considered legitimate claims as per table below of the Petitioner. This unfair disallowance was challenged before the Hon'ble APTEL in Appeal 246 of 2014. It is worth to mention that these expenses are uncontrollable in the hands of Petitioner and are done in the interest of the consumers. The same did not form part of and were not considered while preparing the estimates of the normative expenses. Hence, the Petitioner had sought for impact of these expenses over and above the normative expenses.

Considering the submission made by the Petitioner before the Hon'ble APTEL, the Hon'ble APTEL agreed with TPDDL contentions and decided the said issues in favour of TPDDL. by Judgment dated 30.09.2019 in Appeal No. 246 of 2014 titled "*TPDDL vs. DERC*". Relevant extracts of the Judgment are given below:

*" 16.3.1 Learned counsel for the Appellant submitted that the Respondent Commission had disallowed various uncontrollable expenses while truing up for FY 2012-13 despite the fact that these expenses were related to change in law and change in charges levied by the bank / financial institutions. **These uncontrollable expenses broadly include change in service tax rate, service tax under reverse charge mechanism, financing charges, increase in LC charges, cost of auditor certificate, credit rating fees, etc.***

....

16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality. This

Tribunal in its judgment dated 10.2.2015 in Appeal no. 171 of 2012 has held that enhancement in expenses due to reasons beyond the control of the utility, such as statutory obligations are uncontrollable in nature and, therefore, ought to be allowed.

...

16.4.3 It is relevant to note that change in law relating to statutory levies cannot be envisaged by the Licensee or the Respondent Commission at the time of the MYT Order and, thus, cannot be considered as part of the normative increase in expenses by the Respondent Commission. It is also noticed that apart from expenses incurred due to change in law, there are certain other expenses which have been incurred for the reasons not attributable to the Appellant but in the interest of consumers (such as credit rating fee) and if such expenses were not incurred by the Appellant, it would have burdened the consumers with higher interest, consequential higher tariff, carrying cost etc. As the judgment of this Tribunal dated 10.02.2015 has been challenged by the Respondent Commission before the Hon'ble Apex Court and no stay has been granted against the operation of the said judgment, we are of the considered view that pending decision of the Hon'ble Apex Court the various claims of the Appellant regarding statutory fee/charges should be looked into by the Respondent Commission afresh duly considering some of them as controllable and others as uncontrollable in the interest of justice and equity. Accordingly, we decide this issue in favour of the Appellant."

The Issues were also challenged by the Appellant in Appeal No. 213 of 2018 filed against the Tariff Order dated 28.03.2018 (Issue Nos. 1 and 9 in that Appeal) in respect of FY 2016-17 (i.e., the Financial year for which True Up is under challenge) whereby by Order dated 11.03.2020, the Hon'ble APTEL had directed this Hon'ble Commission to allow the impact of the aforesaid issues in the Tariff Proceedings for the current year. The same was not done and therefore, the Hon'ble APTEL again by Order dated 26.11.2020 has directed this Hon'ble Commission to comply with the directions of the Hon'ble APTEL.

Thus, in line with the Hon'ble APTEL Judgment dated 30.09.2019 in Appeal No. 246 of 2014 and Order dated 11.03.2020 and 26.11.2020 passed in Appeal No. 213 of 2018, the Petitioner seeks the following claims for entire 2nd MYT Control period along with carrying costs.

Additional O&M Expenses

Particulars	FY 13	FY 14	FY 15	FY 16	*FY 17
Change in Service Tax Rate	1.96	2.67	3.03	5.45	7.18
Service Tax under Reverse charge mechanism	0.31	1.50	0.67	3.44	4.44
Cost of Auditor Certificate	0.07	0.09			
Increase in LC charges	0.73	0.59			
Credit rating fees	0.13	0.22			
Total – Rs Cr.	3.20	5.07	3.70	8.89	11.62

**issues decided in favour of the Petitioner (refer Issue no 1 & 9 of Appeal no 213 of 2018)*

The Relevant Extracts of the Tariff Orders passed for each Financial Year are extracted herein below where the Hon'ble Commission has not allowed the aforesaid expenses.

For FY 2012-13 (Extract of the Tariff Order for FY 2014-15)

Table 3.56: Other expenses approved in the Truing up for FY 2012-13 (Rs. Crore)

Sl. No.	Particulars	Petitioner's Submission	Now approved	Remarks
1	License Fees on Energy Billed	0.21	0.21	Para 3.204 a
2	Change in Service Tax Rate	1.96	--	
3	Service Tax under Reverse charge mechanism	0.31	--	
4	Registration fees for execution of mortgage deeds for borrowings	1.65	--	
5	Cost of Auditor Certificate	0.07	--	
6	Loss on redemption of Contingency Reserve Investments – GOI Securities	0.20	0.20	Para 3.204 d
7	Financing charges	0.40	--	
8	Increase in LC charges	0.73	--	
9	Credit rating fees	0.13	--	
10	Total	5.66	0.41	

For FY 2013-14 (Extract of the Tariff Order for FY 2015-16)

Table 3.96: Other expenses approved in the Truing up for FY 2013-14 (Rs. Crore)

Sl. No.	Particulars	Petitioner's Submission	Now approved
1	License Fees	0.82	0.82
2	Change in Service Tax Rate	2.67	-
3	Service Tax under Reverse charge mechanism	1.50	-
4	Registration charges as per Gol notification	0.58	-
6	Increase in LC charges	0.59	-
7	Cost of Auditor Certificate	0.09	-
8	Credit rating fees	0.22	-
9	Other finance charges	1.04	-
10	Financing cost of Power Banking	5.49	-
11	Total	13.01	0.82



For FY 2014-15 & FY 2015-16 (Extract of the Tariff Order for FY 2017-18)

Table 174: Other Expenses Truing up for FY 2014-15 and FY 2015-16 (Rs. Crore)

Particulars	Petitioner's Submission		Commission's Approved	
	FY 2014-15	FY 2015-16	FY 2014-15	FY 2015-16
Incremental Licence Fees paid to DERC	1.00	1.29	1.00	1.29
Land License Fees paid towards grid	2.24	1.70	2.24	1.70
CSR Expenses	8.11	8.55		
Amendment in Service Tax	3.03	5.45		
Reverse Charge Mechanism	0.67	3.44		
Registration fees for registration act	0.32	-	0.32	
Cost Auditor Certificate Expense	0.03	-	0.03	



For FY 2016-17 (Extract of the Tariff Order for FY 2018-19)

Table 41: Commission Approved - Summary of New initiative/Additional Expenses FY 2016-17 (Rs Cr)

Sl. No.	Nature	Petitioner's Submission	Approved
Statutory Levys, Taxes etc.			
A	License Fee	1.19	1.19
B	Change in Service Tax	7.18	0.00
C	Reverse Charge Mechanism	4.44	0.00
D	Land Licensee Fees	4.42	4.42
E	CSR Expenses	8.12	0.00
Additional Expenses/ Other Expenses – in line with APTEL Judgment			
G	Other Financing charges	0.21	0.00
H	SMS Charges	0.35	0.35
I	Property Tax	0.68	0.68
J	Water Charges	1.6	0.00
Demand Side Management			
K	DSM Fund	6.16	6.16
	Total	34.35	12.80

It is requested to the Hon'ble Commission to allow the impact of the aforesaid issues along with carrying cost as held by Hon'ble APTEL in Appeal No. 246 of 2014.

Further with respect to the judgement dated 29.07.2016 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 2203 of 2012 in the matter of TPDDL vs. DERC, relevant extract reproduced below:

"20. Paragraph 5.3(h)(4) of NTP, 2006 specifically requires the uncontrollable cost to be recovered and not accumulated so as to burden future consumers. A plain reading of the impugned Regulations also indicate that they do not permit carry forward of O&M expenses or recovery of the same in the future years; all O&M expenses which may remain unrecovered are to the account of the licensee. Although O&M cost are deemed to be controllable, nonetheless, the impugned Regulations do provide for a normative increase in such costs based on a specified formula. Clearly, the intention of the Commission is to ensure that such costs are passed through but instead of bisecting the expenses head into various cost elements and providing for truing up of the actual variation in each year, the Commission in its wisdom has framed a formula for absorbing the increased costs in the tariff on a normative basis. This is clearly to insulate the consumers from wide variation and provide for an overall

uniform increase based on an inflation factor. Indisputably, the O&M expenses include both elements which are controllable as well as uncontrollable, thus admittedly, it would also not be apposite to treat all O&M expenses as uncontrollable. The Commission has adopted a broad approach and whilst all O&M expenses are treated as controllable under the impugned Regulations, it also provides for an increase in such expenses based on inflation factor. This is merely an alternate method for the pass through of increase in expenses and absorbing the effect of inflation in the tariff.” (Emphasis supplied)

It is clearly evident that the Hon’ble High Court has also upheld that O&M expenses include both controllable and uncontrollable expenses. Though there is a mechanism to take care of increase in these expenses, but at times the inflation/escalation factor allowed is not sufficient to meet the increase in uncontrollable factors. The amount sought by the Petitioner is mainly on account of sharp increase in statutory levies which is uncontrollable in hands of the Petitioner.

Thus once again, it is requested to the Hon’ble Commission to allow the impact of the aforesaid issues along with carrying cost.

Merit Order Dispatch impact for FY 13-14, FY 14-15 and FY 16-17

(Impact on account of Judgement pronounced by the Hon’ble Commission in Petition no 10/2014)

This Hon’ble Commission by its Tariff Order dated 29.09.2015 while Truing Up the power purchase costs for FY 2013-14 had disallowed Rs. 49.11 crores alleging that scheduling of power was done by the Appellant without considering the Merit Order Dispatch, as under:-

"3.259 Therefore, avoided Power Purchase Cost due to scheduling of Power without considering Merit Order Dispatch Principle by the Petitioner is Rs. 49.11 Crore which has been computed based on slot wise and plant wise energy details received from SLDC and considering the actual station wise average Variable rates for FY 2013-14. The said amount has not been considered in the Power Purchase Cost of FY 2013-14."

Thereafter in the Tariff Order dated 28.03.2018 (At Para 3.15), this Hon'ble Commission has revised the disallowance of Rs. 49.11 crores and has reduced the same to Rs. 45.80 crore, thereby allowing Rs. 3.31 crores to the Petitioner for FY 2013-14. Year wise breakup of the amount disallowed is given below:

Allowance of disallowed amount of Merit Order Scheduling		(Rs Cr.)			
Sl. No.	Particulars	*FY 14	FY 15	FY 16	FY 17
1	Amount Disallowed	49.11	0.04	0.00	1.56
2	Less- Already Allowed	3.31*	-	-	-
3	Differential amount now sought	45.80	0.04	0.00	1.56
4	Less allowed in TO FY 2020-21	22.90			
5	Total amount required	22.90	0.04		1.56

* An amount of Rs. 3.31 Crores was allowed for FY 2013-14 in Tariff order dated 28th March 2018.

The Petitioner in its a Petition No. 10 of 2014 pending before this Hon'ble Commission had sought permission from the Hon'ble Commission to produce relevant evidence of SLDC, so that it can state that there is no default at the Petitioner side to comply with the merit order dispatch principle.

Based on the evidence provided, this Hon'ble Commission by Order dated 06.12.2019 in Petition No. 10 of 2014 had stated that the claim of the Petitioner regarding disallowance of power purchase account for those plants whose energy has been forcefully scheduled to TPDDL shall be considered in the next ARR exercise.

Relevant extract of the Order dated 06.12.2019 are reproduced below:

"c) Payments towards the excess energy forcefully scheduled by SLDC to TPDDL in deviation to the scheduling requirements of TPDDL

The Petitioner had provided a list of instances of forced scheduling of power for financial year 2016 and 2017 to SLDC, which was analyzed by the SLDC and it was confirmed that the instances of such forced scheduling was done on account of technical/transmission constraints. Regarding the request of the Petitioner that it should not be subjected to adverse impact DSM penalty and merit order violation penalty due to forced scheduling of power by Delhi SLDC which is attributable to technical

constraints, **the claim of the Petitioner regarding disallowance/penalty on account of violation of merit order dispatch shall be considered during the next ARR exercise.**

Based on above, the Petitioner in its Tariff Petition for FY 2019-20 had requested to the Hon'ble Commission to allow Rs 47.40 Cr as stated in the table above along with the carrying cost.

This issue was also challenged by the Petitioner in Appeal No. 213 of 2018 whereby the Hon'ble APTEL by Order dated 22.09.2020 had directed as under:

"... DERC, by order dated 06.12.2019 had expressed that the subject matter of merit order despatch i.e. issues 15 & 25 in the above appeal would also be considered during tariff proceedings for 2020-21.

We seek clarification even on this issue from the Respondent Commission by next date of hearing."

However, this Hon'ble Commission in its Tariff Order dated 28.08.2020 has provisionally allowed only 50% of the total amount of Rs 45.80 Cr. for FY 13-14 only (i.e. Rs 22.90 Cr).

Sl. No.	Particulars	*FY 14	FY 15	FY 16	FY 17
1	Amount Disallowed	49.11	0.04	0.00	1.56
2	Less- Already Allowed	3.31*	-	-	-
3	Differential amount now sought	45.80	0.04	0.000	1.56
4	Less allowed in TO FY 2020-21	22.90			
5	Total amount required	22.90	0.04		1.56

Thereafter, the Hon'ble APTEL in its Order dated 26.11.2020 passed in Appeal No. 213 of 2018 has directed that:

".....It is stated by the Respondent's counsel that the Appeals are pending before the Hon'ble Supreme Court against the same issues. However, there is no stay granted till now.

In that view of the matter, *the Respondent is directed to comply with the directions granted by us. In case the Hon'ble Supreme Court holds the Appeals in favour of the Respondent herein, at that time, the Respondent is at liberty to comply with the directions of the Hon'ble Supreme Court.*

In view of the above, it is again requested to the Hon'ble Commission to allow balance amount of Rs 24.50 Cr along with carrying cost.

Street Light Material Impact of Judgement in Petition no 04/2014

The Hon'ble Commission in its Order dated 4th Dec 2019 in Petition no 04/2014 has agreed to allow impact of Rs 1.97 Cr. for FY 09-10 in the next tariff order as uner:

ISSUE NO.3:

Rs. 1.97 Cr. Additional street light material billing inadvertently offered for ARR without claiming corresponding expenses on material cost of street lighting.

*24. As much it is related to the claim of the petitioner that Rs.1.97 crore towards additional street light material inadvertently included for ARR without claiming corresponding expenses on material cost of street light, the same was not allowed as the audited account submitted by the Petitioner has entries grouping various expenses and as such Rs.1.97 crore towards additional street light material could not be verified. If the Petitioner has made an inadvertent error as claimed, it may be allowed to be rectified subject to prudence check. The Petitioner is directed to get the entry regarding Rs.1.97 Cr. reconciled and verified within one month from the issue of this Order. **The impact of the claim of the Petitioner on being admissible may be considered in the subsequent Tariff Order.***

Based on the above judgement, it is requested to the Hon'ble Commission to allow the impact of Rs 1.97 Cr along with carrying cost in the upcoming tariff order.

Impact of Rithala Tariff Order dated 11th Nov, 2019 issued by the Hon'ble Commission

The Hon'ble Commission has issued trued up tariff order for Rithala on dated 11th Nov, 2019. In the said Tariff Order, the Hon'ble Commission has approved recovery of fixed charges & variable charges from FY 2010-11 to FY 2017-18 as given below:

Summary of the Y-O-Y approved Fixed Charges & Variable Charges

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Fixed Charges*	5.03	46.08	57.29	56.84	49.54	50.47	50.17	45.05
Fuel Cost^	14.52	89.77	51.97	0.08				
Total	19.55	135.85	109.26	56.92	49.54	50.47	50.17	45.05

*Refer para no 4.10 on Page no 6 of 22 for FY 10-11 & FY 11-12 & Refer para no 5.5.4 on Page no 13 of 22 from FY 12-13 onwards

^ Refer para no 5.5.4 on Page no 13 of 22

Against the above approved amount, the Hon'ble Commission has provisionally allowed an amount of Rs 121 Cr in tariff Order July 2012 para 3.92, July 2013 para 3.75 and July 2014 para 3.81. Break-up of the same is given in table below:

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Total	10.82	70.63	40.50	0	0	0	0	0

Based on above tables, it is requested to the Hon'ble Commission to allow the year on year differential amount as computed in table below.

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Total as per Table	19.55	135.85	109.26	56.92	49.54	50.47	50.17	45.05
Provisionally approved as per table	10.82	70.63	40.5	0	0	0	0	0
Differential amount*	8.73	65.22	68.76	56.92	49.54	50.47	50.17	45.05

*Without carrying cost

It is submitted that the Petitioner is seeking implementation of trued up tariff order for Rithala dated 11th Nov, 2019 issued by the Hon'ble Commission itself. In the tariff order dated 28th August 2020, the Hon'ble Commission has not implemented its own order to allow tariff up to 31st March, 2018 on the ground that an appeal in this respect is already pending before the Hon'ble APTEL. In this respect it is clarified that:

- (a) There is no stay on the implementation of Order of the Hon'ble Commission by the Hon'ble APTEL.
- (b) The Hon'ble Commission has unjustified linked allowance of Rithala tariff with the appeal pending before the Hon'ble APTEL as the appeal in the APTEL is not on the issue of allowance of tariff till 31st March 2018 but the appeal in APTEL is of allowance of Rithala capital cost and associated RoCE, Depreciation, O&M etc for entire life of 15 years. Therefore, the Hon'ble Commission should not link the issue of allowance of Rithala tariff up to 31st March 2018 which has already been allowed by the Hon'ble Commission with the issue of allowance of Rithala tariff beyond 31st March 2018.

Further as per order dated 11th Nov, 2019 the Petitioner is entitled to recover the cost of the Rithala Plant in 15 years along with the normal true up of ARR for the respective year. It is clarified that Petitioner without prejudice to its outcome of Appeal 33 of 2020 pending against Order dated 11th Nov 2019, is seeking mechanism for recovery of balance unrecovered portion of plant i.e. Rs. 94.31 Cr.

Reversal of Efficiency factor on O&M expenses for FY 15-16

In order to comply with the Hon'ble APTEL Judgment dated 10th February, 2015, the Hon'ble Commission has reversed efficiency factor for FY 2011-12 to FY 2014-15 in its Tariff Order for FY 2018-19.

However, while reversing the efficiency factor, the Hon'ble Commission has not given impact for reversal of efficiency factor for FY 15-16.

Against the Tariff Order for FY 2018-19, on the same issue, BRPL has prayed to the Hon'ble Commission for review through its Review Petition 30 of 2018.

Against the Review Petition, the Hon'ble Commission has pronounced its Judgment on dated 13.12.2019 and decided to allow it on provisional basis.

Relevant extract of the Review Order dated 13th December, 2019 is reproduce below:

"3.8.2 Keeping in view the fact that the issue relating to computation of efficiency factor is currently sub-judice before Hon'ble Supreme Court, the effect of efficiency factor for FY 2015-16 is thus provisionally allowed subject to the outcome of the Civil Appeals Nos. 8660-61 of 2015 pending in the Apex Court."

Thus, based on above submission, it is requested to the Hon'ble Commission to reverse Rs. 19.69 Cr for efficiency factor of FY 15-16.

Wrong reversal of material cost of Rs 3.36 Cr & Rs 4.12 Cr incurred towards maintenance of streetlight for the year FY 10-11 & FY 11-12 respectively (Issue no 43 of Appeal 301 of 2015)

Extracts from Tariff Order July 2012, where the Hon'ble Commission has allowed the material cost expenses for FY 10-11 is as following:

3.171 Hence, the Commission has approved the amount of Non Tariff Income as summarised below.

Table 37: Trued-up Non Tariff Income approved by Commission (Rs. Cr)

Particulars	Petitioner's Submission
Non Tariff Income as per audited accounts	134.82
<i>Less:</i>	
Transfer from capital grants	0.38
Transfer from consumer contribution for capital works	12.01
Provision for doubtful debts / advances	16.18
Interest/Short term capital gain	1.58
Service Line Charges to be deferred in future years	3.77
Income from Other Business	0.40
Financing Cost of LPSC	9.20
Material Component of Street Light Maintenance Charges	3.36
<i>Add:</i>	
Interest on Consumer Security Deposit	9.79
Total Non Tariff Income	97.73

Annual Revenue Requirement for FY 2010-11

Extracts from Tariff Order July 2013, where the Hon'ble Commission has allowed the material cost expenses for FY 11-12 is as following:

3.122 Hence, the Commission has approved the amount of Non Tariff Income as summarised below:

Table 25: Trued-up Non Tariff Income approved by Commission (Rs. crore)

Sl. No	Particulars	Amount
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Sl. No	Particulars	Amount
a	Other Operating Income	139.41
b	Other Income	21.49
1	Non Tariff Income as per Audited Accounts	160.90
	Less: Income Included in above, not passes for Tariff determination	
a	Transfer From Capital grants	0.40
b	Transfer from consumer contribution for capital works	14.05
c	Interest / short term capital gain	11.41
d	Service Line Charges to be deferred in future years	4.43
e	Income from Other Business	0.86
f	Financing of LPSC Charges	13.42
g	Rebate of Power Purchase	29.36
h	Normative Interest on CSD	(13.71)
l	Maintenance charges towards recovery of material cost	4.12
J	Income pertaining to generation division	0.10
2	Total (a to j)	64.44
	Total : Non Tariff Income (1-2)	96.46

Thus from above extracts it is evident that Maintenance charges towards recovery of material cost was allowed by the Hon'ble Commission in FY 10-11 & FY 11-12.

Further in September'15 Tariff Order, the Hon'ble Commission has reversed the material cost on the pretext that it is allowed in normative O&M Expenses. Extract below:

Recovery of Material cost towards street lights

Commission's Analysis

3.76 The Petitioner is allowed normative O&M costs without excluding the material cost utilised towards maintenance of the street lights. Therefore the Commission has decided to include the recovery on material cost under maintenance charges of street light under non tariff income. Accordingly, the amount of Rs. 3.36 Crore and Rs. 4.12 Crore recovered towards material cost under maintenance charges has been included in non tariff income for FY 2010-11 and FY 2011-12 respectively.

It is submitted that TPDDL in its True up Petition for FY 2010-11 had already mentioned that the cost of material issued towards street light maintenance was not part of base cost of FY 2006-07. Relevant extract of the said petition (page no 57) is reproduced below:

Cost of Material Issued for Street Light Maintenance

The Hon'ble Commission in its order 22.09.09 has revised the maintenance charges from Rs. 73/unit to Rs. 103/unit so as to recover Rs7/unit towards painting/ numbering of poles and rs. 19/unit towards the material cost issued for maintenance of street lights. TPDDL has billed Rs. 3.36 Cr on account of above during FY 10-11 which is included in maintenance charges. As TPDDL has incurred the cost towards light material; hence the billing amount towards street light material is not offered as Non Tariff Income.

Therefore based on the above submissions, it is once again clarified that while street light material cost was never a part of O&M expenses in base year i.e. 2006-07, therefore, O&M expenses allowed for first MYT period also never included normative street light material expenses, however it is noted that revenue billed corresponding to the street light material was taken by the Hon'ble Commission as non tariff income for the purpose of tariff determination, therefore, against the natural justice on one side the Hon'ble Commission has considered income towards street light material cost as non tariff income and on the other side has not allowed corresponding street light material expenses.

Wrongful deduction of Equity Capital related to Working Capital in relation to 2007-08 to 2011-12

The issue with respect to deduction of Equity Capital related to Working Capital in relation to FY 07-08 to FY 11-12 has not been suitably addressed in September'15 Tariff Order.

Below Table in the Tariff Order of July 2013 clearly depicts the year on year addition in equity component pertaining to Working Capital from FY 07-08 to FY 11-12 totaling to Rs.54.42 Crores. Before FY 07-08, the working capital has never been allowed through equity.

Commission's Analysis

3.160 The Commission has considered the Average Equity and average Debt taking into consideration the funding of capitalization during the control period and the funding of Working Capital in compliance of the directions of Hon'ble APTEL observations. The approved equity and debt are given in the Table below:

Table 48: Equity and Debt approved for the Control Period for FY 2007-08 to FY 2011-12 (Rs. Crore)

S.No.	Particulars	FY 2007-08	FY 2008-09	FY2009-10	FY 2010-11	FY 2011-12
Equity during the Control period						
1	Opening Equity	609.42	576.12	651.36	698.70	806.72
2	Addition during the year	-33.30	75.24	47.33	108.03	63.16
3	Add: Working capital	51.90	5.26	-0.99	-2.80	1.05
4	Closing Balance	576.12	651.36	698.70	806.72	869.88
5	Average Equity	592.77	613.74	675.03	752.71	838.30
Debt during the control period						
6	Opening loan	1133.22	1176.62	1364.47	1472.61	1718.14
7	Add: Capex loan	-77.70	175.57	110.45	252.06	147.37
8	Working Capital loan	121.10	12.28	-2.30	-6.53	2.44
9	Closing Loan	1176.62	1364.47	1472.61	1718.14	1867.96
10	Average Loan	1154.92	1270.54	1418.54	1595.38	1793.05

Further in Tariff Order July 2014, the Hon'ble Commission rectifies the error and adjusts the equity to arrive at the closing equity balance for FY 2011-12. Extract below for reference:

Debt and Equity

3.250 The Commission in its tariff order dated July 31, 2013, has observed omissions in computation of equity and debt for the control period FY 2007-08 to FY 2011-12 in respect of 30% of the working capital in equity. The Commission now rectifies the error and adjusts the equity to arrive at the closing equity balance for FY 2011-12 as given below:

Table 3.79: Revised Debt and Equity for FY 2011-12 (Rs. Crore)

Sl. No	Particulars	Equity	Debt	Remarks
A	As on 31.03.2012	869.88	1867.96	Tariff Order dated 31.07.2013
B	Adjustment due to omission in computation of equity	54.42		
C	Rectified Debt & equity closing balance as on 31.03.2012	924.30	1867.96	A+B
D	Change in opening balance of equity due to change in MYT Regulation, 2011 for the purpose of computation of WACC and ROCE.	(70.37)	70.37	Being reduced by the amount of working capital funded by equity during 1 st MYT control period) 234.57*30%=70.37
E	Opening balance of equity as per MYT Regulation, 2011 as on 1 st April 2012	853.93	1938.33	C+D

It is submitted that the Hon'ble Commission has allowed only Rs. 54.42 Crores as equity component for financing of the working capital upto the end of the first control period. Therefore, the Hon'ble Commission should have restricted re-computation of the equity component of working capital for beginning of the second control period by deducting Rs 54.42 Crores only and not Rs 70.37 Crores from the equity of TPDDL for the purpose of computation WACC and ROCE when the same has not been allowed as equity in earlier years.

Based on all above submission, the issue wise and year wise impact along with carrying cost is computed as below:

Rs Cr.

Particulars	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Re-determination of AT&C Losses (Differential)				25.95	27.53	29.54	38.56	49.57			
Non-consideration of impact of increase in rate of Service Tax				2.27	4.17	3.70	8.89	11.62			
Other Expenses				0.93	0.90	-	-	-			
Merit Order Dispatch Disallowance					22.90	0.04		1.56			
Street Light Material Petition No. 10/ 2014	1.97										
Rithala Impact		8.73	65.22	68.76	56.92	49.54	50.47	50.17	45.05		
Rithala Impact- incentive									0.62		
Efficiency Factor FY 15-16							19.69				
Wrong reversal of material cost incurred towards maintenance of street light for the Years 2010-2011 and 2011-12		3.36	4.12								
Wrongful deduction of Equity Capital related to Working Capital in relation to 2007-08 to 2011-12 (Impact Required)				1.91							
Total Addition	1.97	12.09	69.34	99.82	112.42	82.82	117.61	112.92	45.67	-	-
Carrying cost rate	10.17%	10.41%	12.20%	11.78%	11.88%	11.98%	12.08%	12.08%	10.33%	10.13%	10.21%
Opening Balance	-	2.07	15.00	90.41	206.75	350.41	480.18	662.89	862.71	999.86	1,101.14
Addition	1.97	12.09	69.34	99.82	112.42	82.82	117.61	112.92	45.67	-	-
Carrying Cost Amount	0.10	0.84	6.06	16.53	31.24	46.94	65.11	86.90	91.48	101.29	112.43
Closing Balance	2.07	15.00	90.41	206.75	350.41	480.18	662.89	862.71	999.86	1,101.14	1,213.57



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