

# TARIFF FIXATION IN INDIA: A CASE STUDY OF NCT OF DELHI

The issue of the lack of transparency in the working of the DERC as well as DISCOMS is a key issue that has created an atmosphere of mistrust, and the consumers, for various reasons, feel cheated



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**I**N India Power Generation, transmission and Distribution has made significant progress after Independence. In 1947 Power generation capacity was 1,362 MW only and that also primarily by hydro power and thermal power generation plants. Few private utilities were involved in generation and distribution of electrical power. After 1947, all power generation, transmission and distribution were taken over and controlled by State and Central government agencies. As such State Electricity Boards (SEB) came into existence.

2. India's power sector was regulated and dominated by SEBs until economic reforms began in 1991. The SEBs controlled the entire electricity supply chain from generation, trans-



mission to distribution within a state. The unviable tariff structure, lack of political will and vote bank considerations resulted into high transmission & commercial losses that lead to almost bankrupt SEBs and erratic, poor quality power and the last but not the least insufficient power supply.

3. The power generation could not keep pace with the overall development taking place due to bureaucratic tangles and involvement of multiple agencies both at the State as well as Central Government coupled with the demon of corruption.

4. Originally the Electricity Supply Industry in India was governed by the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions



Act, 1998. The Indian Electricity Act, 1910 created the basic framework for electric supply industry in India and provided for licensees who could supply electricity in a specified area. The Electricity (Supply) Act, 1948 mandated the creation of State Electricity Boards who have been arranging the supply of electricity in the State. Over a period of time, the performance of State Electricity Boards had deteriorated on account of various factors one of them being that they were generally unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice was being done by the State Governments. To address this issue the Electricity Regulatory Commissions Act was enacted in 1998 which created

the Central Electricity Commission and had an enabling provision through which State Governments could create a State Electricity Regulatory Commission.

5. In the early 1990's few State Governments enacting legislations to reform and restructure integrated State Electricity Boards (SEBs). 3. The first state to restructure its SEB was Orissa in 1995. Thereafter, Haryana, Andhra Pradesh, Rajasthan, Uttar Pradesh, Karnataka, Delhi and Madhya Pradesh restructured the SEBS.

6. The most important change was the promulgation of Central Electricity Act, 2003. This Act superseded all the previous electricity Acts, Rules, mandatorily requiring restructuring of SEBs and separation of trading func-

tion from transmission and system operation. The intent and purpose was to create an open and transparent environment for attracting investment in the sector and promotion of competition.

7. Orissa was the first state to introduce reforms that failed. The GNCT of Delhi also followed the suit by introducing private players i.e., BSES and Tata Power.

8. In spite of all the reforms, the sector did not show a healthy picture. I had the benefit of reading the Performance Report of Power Sector for the year period released by Power Finance Corporation on 11-09-2013. The report presents a dismal picture of entire power sector. The some of the shocking revelations are reproduced here

under:-

(a) The total income excluding subsidy for utilities selling directly to consumers increased from Rs.2,28,731 Crs. in 2010-11 to Rs.2,68,447 Crs. in 2011-12 reflecting growth 17.36% in the year 2011-12.

(b) The total energy sold by these utilities increased from 5,78,698 Mkw in 2010-11 to 6,22,504 Mkw in the year 2011-12 registering a growth of 7.57% in the year 2011-12.

(c) The total subsidy booked by utilities selling directly to consumers increased to Rs.30,242 Crs. in the year 2011-12 from Rs. 22,666 Crs. in the previous year. Subsidy booked as a percentage of revenue from sale of power increased from 10.93% in the year 2010-11 to 12.49% in the year 2011-12.

(d) The subsidy released by the State Govts has been about 85% of the subsidy booked by the utilities. All State Govts except Assam, Andhra Pradesh, Karnataka and Haryana have released the entire subsidy booked by their respective distribution utilities.

(e) The aggregate book losses (on accrual basis) of all the utilities increased from Rs.30,430 Crs. in 2009-10 to Rs. 51,602 Crs. in the year 2010-11 and to Rs. 62,581 Crs. in 2011-12.

(f) The aggregate losses (without accounting for subsidy) for all the utilities increased from Rs. 64,463 Crs. in 2009-10 to Rs. 74,291 Crs. in 2010-11 and to Rs. 92,845 Crs. in 2011-12.

(g) The losses despite accounting for subsidy on realizable basis for all utilities increased from Rs. 45,382 Crs. in 2009-10 to Rs. 53,986 Crs. in 2010-11 and to Rs. 67,006 Crs. in 2011-12.

(h) The aggregate book losses for all the utilities in the states as well as UT of Puducherry as a ratio of aggregate revenue (excluding subsidy) increased from 22.56% in 2010-11 to 23.31% in the year 2011-12. Similarly, the aggregate losses on subsidy received basis increased from 23.60% in the year 2010-11 to 24.96% in 2011-12.

(i) On an aggregate basis utilities in 19 States and the UT of Puducherry have shown deterioration in book profits/increase in book losses during the year 2011-12 over the previous year 2010-11 amounting to Rs.16,035 Crs

(j) The net worth decreased from Rs.14,973 Crs. as on 31st March 2010 to Rs.5,314 Crs. as on 31st March 2011. The net worth turned negative to Rs. 31,812 Crs. as on 31st March 2012.

9. The aforesaid summary indicates that the situation is alarming. Despite incentives offered by the Central Government, the fixation of remunerative price by the CERC to Generators, the manifold increase in the power tariffs payable by the consumers, still the sector is sinking. The huge money pumped in the sectors seems to have just disappeared. Hence there is something radically wrong either with the system or working. Therefore one can draw the following inferences:-

(i) the investment worth thousands crores of rupees seems to have gone down the drain;

(ii) The investment claimed to have been invested has failed to achieve the targeted results because the investment was made only on paper.

(iii) the policies initiatives lacked the system of checks or balances;

(iv) the PSU's related to Power sector have earned profit at the cost of the sector;

(v) The Regulators were/are incompetent to assess the financial aspects of the Revenue Requirement and technical issues.

10. This is the situation despite creation of three Public Sector Undertakings to serve the sector – Power Grid Corporation, Power Finance Corporation and Power Trading Corporation. The intent and purpose of creation of all the three was to facilitate the Power sector and ensure its growth. The Mission Statement of each of the aforesaid PSU is as follows:

#### **(i) Power Finance Corporation**

(a) PFC would be the most preferred Financial Institution; providing affordable and competitive products and services with efficient and internationally integrated sourcing and servicing, partnering the reforms in the Indian Power Sector and enhancing value to its stakeholders; by promoting efficient investments in the power and allied sectors in India and abroad.

(b) We will achieve this being a dynamic, flexible, forward looking, trustworthy, socially responsible organization, sensitive to our stakeholders' interests, profitable and sustainable at all times, with transparency and integrity in operations.

(c) To be the leading institutional partner for the power and allied infrastructure sectors in India and overseas across the value chain.

#### **(ii) Power Grid Corporation**

(a) In 1980, the Rajadhyaksha Committee on Power Sector Reforms submitted its report to the Government of India suggesting that extensive reforms were needed in the Indian power sector. In 1981, the Government of India took a policy decision to form a National Power Grid, which would pave the way for the integrated operation of the central and regional transmission systems.

(b) In October 23, 1989 under the Companies Act, 1956, the National Power Transmission Corporation Limited was formed, and assigned the responsibility of planning, executing, owning, operating and maintaining the high voltage transmission systems in the country. In October 1992, the National Power Transmission Corporation name was changed to Power Grid Corporation of India Limited, as we know of it today.

#### **(iii) Power Trading Corporation**

PTC was established in the year 1999 as a Government of India initiated Public-Private Partnership, whose pri-

mary focus is to develop a commercially vibrant power market in the country.

PTC is the pioneer in implementing the power trading concept in India and has successfully demonstrated its efficacy in optimally utilizing the existing infrastructure within the country to the benefit of all.

(c) PTC has maintained No. 1 position in electricity trading since sustained trading began in 2000-01. It seeks to provide holistic services in the power trading market, including intermediation for long-term supply of power from identified domestic IPPs and cross-border power projects, financial services like providing equity and debt support to projects in the energy value chain through its subsidiary PTC India Financial Services ([www.ptcfinancial.com](http://www.ptcfinancial.com)), fuel intermediation/ aggregation for cross-border power plants through PTC Energy Ltd. and advisory services among others.

(d) PTC today is not just the leading power trader in the country, but also the co-promoter of 1st National Power Exchange in the country besides diversifying into the unique role of a Complete Energy Solutions Provider.

11. As per Balance sheet available on the websites of all the three PSUs, now all these three PSU's are profit making concerns as is evident from **Table1**.

12. The collective losses suffered by the entire sector are summed up in **Table2**.

13. Therefore, it is obvious that the PSU created out of tax payer's money to sub serve the purposes of the development of the Power Sector have become separate profit making entities. Therefore, the profit earned by these PSU's is part of the loss suffered by the sector. Therefore, it is important today to take a holistic view whether these PSU's are to enrich themselves at the cost of the Consumer who bears the brunt of contributory cascading cost of power.

Table1 (Rs. in Crore)							
Year	PGC		PFC		PTC		Total
2012-13	4234.5	30.09%	4420	45.80%	128.75	7%	8783.25
2011-12	3254.95	20.69%	3032	15.72%	120.37	-13.10%	6407.32
2010-11	2696.89	32.13%	2620	11.15%	138.52	47.20%	5455.41
2009-10	2040.94	20.72%	2357	19.65%	94.1	3.60%	4492.04

Table2 (Rs. in Crore)	
Year	Loss- State utilities (after subsidy)
2012-13	NA
2011-12	45382
2010-11	53986
2009-10	67006

### Regulatory Mechanism

14. Most of the State Governments have constituted the State Electricity Regulatory Commissions. In case of the Union Territories Joint Commission has been appointed. The Forum of Regulators has also been appointed under section 166(2) of the Electricity Act, 2003. The Forum consists of Chairperson of Central Electricity Regulatory Commission (CERC) and Chairpersons of State Electricity Regulatory Commissions (SERCs). The Chairperson of CERC is the Chairperson of the Forum. The Business is conducted under Forum of Regulators (Procedure for Transaction of Business) Rules, 2009. Despite all this the public confidence in regulatory mechanism has been completely eroded due to opaque and non transparent tariff fixation. In this regard I would like to refer to the Regulatory process followed in the Capital City of Delhi which could be an eye opener for all.

### Delhi Electricity Regulatory Commission

15. As envisaged under the Electricity Regulatory Commissions Act, 1998 the legislative assembly of the National Capital Territory of Delhi enacted the Delhi Electricity Reforms Act, 2000

(hereinafter referred to as "DERA") which provided for the constitution of an Electricity Commission, restructuring of the electricity industry (rationalization of generation, transmission, distribution and supply of electricity), increasing avenues for participation of private sector in the electricity industry and generally for taking measures conducive to the development and management of the electricity industry in an efficient, commercial, economic and competitive manner in the National Capital Territory of Delhi.

16. Section 3 of the DERA provided for the establishment and constitution of the Electricity Regulatory Commission for the National Capital Territory of Delhi to be known as "the Delhi Electricity Regulatory Commission". Under the said provision, on 3rd March, 1999, the Government of NCT of Delhi constituted the Delhi Electricity Regulatory Commission it became operational from December 1999.

17. Section 11 of the DERA laid down the following functions of DERC –

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be;

(b) to determine the tariff payable for the use of the transmission facilities;

(c) to regulate power purchase and procurement process of the licensees and transmission utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution and supply in the National Capital Territory of Delhi;



(d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act;

(e) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the National Capital Territory of Delhi and also to ensure a fair deal to the customers.

18. The provisions of the Electricity Act, 2003 relevant for tariff setting are mentioned below:-

(i) Under section 61, the Appropriate Commission is to specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi-year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission;

(h) Fix trading margins and monitoring closely so as to ensure that the traders do not indulge in profiteering in case of scarcity;

(i) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy.

(ii) Section 64 prescribes for procedure

for tariff order i.e. making of an application, its publication, considering all suggestions and objections received from the public and issue of a tariff order or rejecting of the application if it is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

(iii) Section 86 prescribes the functions of the State Commission such as –

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

(iv) Section 87 provides for the establishing of State Advisory Committee comprising of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organizations and academic and research bodies in the electricity sector.

(v) Section 88 provides that the State Advisory Committee shall advise the Commission on –

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by licensees with the conditions and requirements of their licence;

(iv) protection of consumer interest; and

(v) electricity supply and overall standards of performance by utilities.

(vi) Section 180 provides the State Government to make rules for carrying out the provisions of the said Act.

(vii). Section 181 empowers the State Commission to make regulations con-

sistent with the said Act and the rules to carry out the provisions of the said Act and provide for the following matters:

“(zd) the terms and conditions for determination of tariff under Section 61;

(ze) details to be furnished by licensee or generating company under sub-section (2) of Section 62;

(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of Section 62.”

(viii). Under Section 185, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) have been repealed and Section 185(3) stipulates that the provisions of the enactments specified in the Schedule to the Act not inconsistent with the provisions of the Act shall apply to the States in which such enactments are applicable. DERA being one of the enactments mentioned in the Schedule, its provisions to the extent not inconsistent with the provisions of the Electricity Act, 2003 are applicable in the National Capital Territory of Delhi.

(ix) DERC, in exercise of powers vested in it under sub-sections (zd), (ze) and (zf) of Section 181(2) read with Sections 61, 62 and 86 of the Electricity Act, 2003 has now formulated the following Regulations effective from 1st April 2012 for a period of three years unless reviewed earlier covering:-

(A) Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011:-

The Commission shall set targets for the items or parameters that are deemed to be “controllable” and which include:

i. Availability of the Transmission System;

ii. Operation and Maintenance Ex-

penditure which includes employee expenses, repairs and maintenance expenses, administration and general expenses and other miscellaneous expenses viz. audit fees, rents, legal fees etc;

iii. Return on Capital Employed; and

iv. Depreciation.

### Truing Up

b. For controllable parameters,

i. Any surplus or deficit on account of Operation and Maintenance (O&M) expenses shall be to the account of the Licensee and shall not be trued up in ARR; and

ii. Depreciation and Return on Capital Employed shall be trued up every year based on the actual capital expenditure and actual capitalisation vis-à-vis capital investment plan (capital expenditure and capitalisation) approved by the Commission:

Provided that any surplus or deficit in Working Capital shall be to the account of the Licensee and shall not be trued up in ARR:

Provided further that the Commission shall not true up the interest rate, if variation in State Bank of India Base Rate as on April 1, 2012, is within +/- 1% during the Control Period. Any increase / decrease in State Bank of India Base Rate beyond +/- 1% only shall be trued up.

(B) Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2011:-

The Commission in specifying these Regulations shall be guided by the principles contained in Sections 61 and 62 of the Act to encourage competition, efficiency, economical use of resources, good performance and optimum investments.

a. The Commission shall adopt Multi Year Tariff Framework for determination of tariff for each year of the Control Period.

b. The Multi Year Tariff framework shall be based on the following:

i. Business Plan of the generating company (plant wise separately) for the entire Control Period to be submitted to the Commission for approval, prior to the start of the Control Period;

ii. Applicants' forecast of expected tariff for sale of power for each year of the Control Period, based on reasonable assumptions of the underlying financial and operational parameters, as submitted in the Business Plan;

iii. Trajectory for specific parameters shall be stipulated by the Commission, where the performance of the Applicant is sought to be improved through incentives and disincentives;

iv. Annual review of performance shall be conducted vis-à-vis the approved forecast.

(C) Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 considering the following:-

(a) The Commission shall set targets for each year of the Control Period for the items or parameters that are deemed to be "controllable" and which include:

(b) AT&C Loss, which shall be measured as the difference between the units input into the distribution system for sale to all its consumer and the units realised wherein the units realised shall be equal to the product of units billed and collection efficiency;

Provided that units billed shall include the units realised on account of theft measured on actual basis i.e. number of units against which payment of theft billing has been realised;

(c) Distribution losses, which shall be measured as the difference between the net units input into the distribution system for sale to all its consumer and sum of the total energy billed in its Licence area in the same year;

(d) Collection efficiency, which shall be measured as ratio of total revenue realised to the total revenue billed in the same year:

Provided that revenue realisation

from electricity duty and late payment surcharge shall not be included for computation of collection efficiency;

(e) Operation and Maintenance Expenditure which includes employee expenses, repairs and maintenance expenses, administration and general expenses and other miscellaneous expenses viz. audit fees, rents, legal fees etc;

(f) Return on Capital Employed;

(g) Depreciation; and

(h) Quality of Supply.

### (i) True Up

The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:

(a) Variation in revenue/expenditure on account of uncontrollable sales/power purchase respectively shall be trued up every year;

(b) For controllable parameters,

(i) Any surplus or deficit on account of Operation and Maintenance (O&M) expenses shall be to the account of the Licensee and shall not be trued up in ARR; and

(ii) Depreciation and Return on Capital Employed shall be trued up every year based on the actual capital expenditure and actual capitalisation vis-à-vis capital investment plan (capital expenditure and capitalisation) approved by the Commission:

Provided that any surplus or deficit in Working Capital shall be to the account of the Licensee and shall not be trued up in.

### ARR

Provided further that the Commission shall not true up the interest rate, if variation in State Bank of India Base Rate as on April 1, 2012, is within +/- 1% during the Control Period. Any increase / decrease in State Bank of India Base Rate beyond +/- 1% only shall be trued up.

19. It may be seen here that Regulations except in case of Generation are

silent on competition in case of Generation. The Regulations also provides for True Up and Prudence Check. The fact remains that DERC has admitted that it has not Trued Up the capitalization for previous MYT. DERC has rendered findings in each Tariff Determination order passed by it that it has carried out Prudence Check, but fact remains that the Prudence Check has not been carried out till date.

### Ground realities

20. I had been participating in all the proceedings of Delhi Electricity Commission since its inception. The first order passed by the Commission on 16-01-2001 had accepted all our suggestions and had issued directives. Thereafter in 2009 I was inducted as Member of State Advisory Committee to represent Consumers. I am sharing my experience with you all that are not only shocking but also demonstrate the sad state of affairs.

21. Once I joined the State Advisory Committee to represent Consumers, the first rude shock I received was that the Commission had to accept that it does not know how to reconcile the Financial and regulatory accounts. Therefore, after much of persuasion the Commission agreed to appoint Institute of Chartered Accountants of India (ICAI) to help the Commission in developing the suitable mechanism. However, due to lack of interest both from the Commission and ICAI, somehow, this initiative failed. Now for the first time the DERC has come out with Draft DERC (Power Regulatory Accounting) Regulations, 2013. My endeavour to find out whether any other Regulator has introduced such Regulations or not did not yield any results.

22. The other rude shock in store was that once the DERC is incapable of reconciling the Regulatory accounts with financial accounts, then who was drafting orders on behalf of Commission? How did the Commission arrive

at Tariff Determination?

23. Therefore, after exercising the RTI, I came to know that DERC on 15th December, 2011 appointed a Consultant to carry out Prudence Check of true up petitions for the Financial Year 2010-11 of all the four DISCOMS and its tariff adjustments in accordance with the provisions of the existing MYT Regulations for the Financial Year 2007-12. However, the Consultant never disclosed the conflict of Interest as it was statutory auditor for parent company of two DISCOMS.

### Prudence Check

24. Though in every Tariff Determination Order passed by the DERC, there exists a specific table indicating the steps taken for prudence check. Unfortunately, once my colleague obtained copies of internal notes under RTI and perusal of said notes starting from 18th April 2012 to 27th July 2012, it emerged that the said Consultant did not:-

(i) Submit a comprehensive report highlighting the major anomalies by it during the course of Prudence Check;

(ii) have the information related to prudence check in documentary form;

(iii) keep the record of Prudence Check observations, as it is not part of deliverables by the Consultant. The consultant maintained that they have been associated with the issuance of the Tariff order for DERC for 4 times now and this has never been the practice followed in the assignment execution in the past and that they have been completed 70% of the Prudence Check without keeping any record of the observations and as such submission of such report by them was not possible and that they had been told that the report of Prudence Check will be done by the staff of the Commission;

25. That while the blame game was going on and time had come to pronounce the Tariff Determination Or-

der that was pronounced, the Commission was still struggling with the appointment of a capable Consultant who could understand both technical as well as accounting issues.

26. Unfortunately DERC is unmindful of the observations by Hon'ble High Court of Delhi in Para 72 of the order dated 23rd May 2011 in W.P.(C) No. 4821/2010, between Nand Kishore Garg vs. Govt. of NCT of Delhi and Ors., relevant text of which is reproduced as under:-

We have reproduced paragraphs from the aforesaid decision in extenso only to highlight the role ascribed to the Commission under the act and the interpretation place by their Lordship of the Apex Court on various provisions. Keeping the statutory role ascribed to it and the jurisdiction determined by the Apex Court, the Commission has to function with responsibility, intellectual integrity, consistent objectivity and transparent functionalism appreciating the essential nature of the regulatory body. We emphasize on intellectual integrity and transparent functioning as we totally dissatisfied with the way the Commission has proceed with the manner of determination. We may also note here that if a state chaos and anarchy has ushered-in in the Commission the State Government is also responsible by unjustifiably intruding and encroaching on the functions of the Commission by interdicting. We have already held that the State Government has no power to restrain the Commission in the manner it has done. This is not in the fitness of things. This Court hopes and trusts that the Commission and the State shall remain within their boundaries and function within the statutory parameters.

27. Even the Appellate Tribunal for Electricity while passing order in Appeal number 184 of 2011 on 27th February 2013 between Delhi Transco Ltd., vs. DERC and Others, in Paras 39 to 42 had castigated the DERC.

The relevant text of aforesaid Paras is as under:-

39. *The principle of judicial discipline requires that the orders of the Appellate authorities should be followed scrupulously by its subordinate authorities. If the Subordinate authority refuses to carry out the directions or to follow the dictums given by the superior Tribunal in exercise of Appellate powers, the result would be chaos in the administration of the justice. In fact, it will be destructive of one of the basic principles of the administration of justice.*

40. *If the State Commission develops such a mindset that they cannot be questioned by the Appellate Authority at any cost, then there would be serious havoc.*

41. *As a quasi judicial authority, the State Commission is expected to know the law prescribed under the Act and the legal procedures laid down by this Tribunal and Hon'ble Supreme Court.*

42. *In this case, with great restraint, we are constrained to observe the conduct of the State Commission who has not cared to follow our directions, would reflect lack of judicial approach, lack of judicial knowledge and lack of judicial ethics. We do not want to say more than this.*

### **True up of Capitalization**

28. The DERC while passing Tariff Determination order for the year 2013-14 has admitted the fact that in absence of DATA from the DISCOMS, it has allowed provisional True up on account of Capitalization. The moot question arises that when there is no provision for provisional true up, how DERC has provisionally tried up the capitalization in view of the following facts:-

(i) Report submitted by Administrative Staff College of India, Hyderabad, had serious apprehensions on the asset registers of fixed assets maintained by two DISCOMS that should have included the assets transferred by erstwhile Delhi Vidyut Board and also the assets acquired by both of them after unbundling of DVB;

(ii) DERC wanted ICAI to assist it in conducted physical verification of the assets held by the DISCOMS for the following period

- (a) Assets transferred by erstwhile DVB as on 01-04 -2002 to the DISCOMS;
- (b) Assets acquired by DISCOMS from 01-04-2002 to 31-03-2007;
- (c) Assets acquired by the DISCOMS from 01-04-2007 till 31-03-2011 – 1st MYT period.

### **Revenue Gap**

29. The DERC, on its own without even discussing in the State Advisory Committee has forwarded a Statutory Advice under section 86(2) of the EA amongst other recommendations, recommended:-

- (i) Bailout package to DISCOMS;
- (ii) Allocation of coal to power stations supplying power from the mines with shortest distance or allocate additional power from pit-head stations of NTPC from Northern and Western regions;

30. The question arises, the DERC has worked out revenue gap as claimed by the DISCOMS, is it not mandatory for the DERC to:-

- (a) Work out the amounts due to/recoverable from the DISCOMS on account of prudence check;
- (b) Work out the amounts due to / recoverable from the DISCOMS on account of True up of Capitalization.

### **State Advisory Committee**

31. The DERC despite having been advised both by the Hon'ble High Court of Delhi and Appellate Tribunal for Electricity refuses to mend its ways and continues to work in isolation without discussing the Important Policy matters in the State Advisory Committee. The DERC it seems entertains a view that it is Supreme and discussions within SAC are merely a formality. The Commission till date has not been in a position to:-

- (a) Enforce the DERC (Supply Code & Performance Standards) Regula-

tions, 2007;

- (b) Finalize the Draft DERC (Supply Code & Performance Standards) Regulations, 2012;

In both the aforesaid Supply Code the entire burden of compliance has been shifted on the Consumers and not even a word has been mentioned about Supply Code or Quality of Supply

- (c) Address the issue of Residual back flow leading to inflated bills of the consumers;

### **Experience**

32. From my experience with Regulatory mechanism, I feel that the time is ripe to take a relook at the Regulatory Mechanism and revamp the whole set up by infusing young professionally qualified professionals in the Regulatory Mechanism instead of making the set up as retirement berths for the retired Bureaucrats. I do not see any reason when the CERC fixes up rates for sale of power by the Generating Units, how and why the Generators are suffering?

33. Equally strange is the fact that despite collecting amounts from Consumers, why the DISCOMS are in loss? Why the DISCOMS are failing to provide DATA for Capitalization True Up or for Prudence Check?

### **Consumer's Prospective**

Power Corrupts and Absolute Power Corrupts Absolutely. When it comes to POWER as in Energy, it is Corrupted Totally even before it is conceived or when it's still in the womb, we all know most of the Coal Blocks were allocated for setting up Power Plants and what came off it.

34. Cheap power: At the time of privatization, keeping in view Chile experience a promise was held out that by curbing Theft and ushering Efficiency that would result in huge savings that would be passed on to consumers and tariffs would reduce after five years. The opposite happened



power that was Rs. 2.50/- has ended up at Rs. 8/- and the theft brought down to 15% from around 60% with no corresponding benefit to consumers, it's calculated that every 1% drop saves 90 crores. Instead we have had a 300% jump in tariffs. The alibi given is that Power Purchase cost has gone up, that has substantially come down over the years. Even power purchase during emergency has also come down.

35. On one hand PFC comes out with a report that all the three DISCOMS in Delhi are in profit. I fail to understand that how come as per Regulatory Accounts there are huge losses. At times I pose a question to myself that is it a case where two balance sheets are prepared one for Income Tax and one for DERC or is it a case of Regulator's incompetence to reconcile regulatory accounts with financial accounts. To top it all they have not been paying their dues to the Power Producers, Banks or the Government, so where is all the money collected from consumers going.

36. Stable power: Performance Standards for delivery of services were meant to have been framed by 2005 and have yet to be notified, giving DISCOMS an escape route for deficient service. Inflated billing is due to Residual Back Flow in Neutral is a direct result of Performance Standards not being in place.

37. Absolute earth potential: Consumers have been demanding strict Compliance in the Matching of Neutral to the Absolute Earth Potential as per relevant Act/Code. This alone is the main cause of Fluctuations and Spikes, resulting in damaging expensive household appliances like TV, Fridge, AC etc and unnecessary expenditure on Voltage Stabilizers. Performance Standards pertaining to Stable and uninterrupted 24X7 Power was one of the reason why Privatization was done. Consumers should be compensated for the losses due to Fluctuations and Spikes and be a part of Schedule I of

Guaranteed Performance Standards. In the absence of any punitive provisions DISCOMS do not find it important to invest in such infrastructure.

38. 24X7 power supply: Uninterrupted 24X7 Power Supply has remained a dream that was sold to bring in Private Players. Rampant power cuts are keeping the Inverter Industry alive and the consumer foots the bill for charging and maintaining inverters amounting to average Rs. 1200/- per month. Are these the Performance Standards that were envisaged in the Act to be in place on or before 2007? DISCOMS cannot be allowed to Charge Five Star and Serve Dhaba.

39. End Monopoly: Open Access was to have been in place by the year 2009, it has remained a Pipe Dream even in Delhi, with Regulators and Government playing in the hands of Private Players.

What's more the DERC is making some DISCOMS permanent fixtures by investing in expensive exercise of Time of Day Metering System and asking these very Private Players to invest and put up equipment to measure Usage Patterns. Once such huge investments are made how will DERC ask them to make way for Open Access Policy?

40. Fuel Charge Adjustment: This is another head in which Lack of Transparency is working against the Consumers. What is the total component of Fuel Cost in the Production of Power? We believe it is not more than 15%, a little higher in case of inefficient Plants. How can DERC allow 2%, 5% and 7% as Fuel Charge Adjustment ..... we know now for a Fact that our Central Government Gifted Coal Blocks for free, we also know that DISCOMS have not been paying their Dues to NTPC and others for the power Purchased (the Govt. had to bail them out with our Rs. 500cr package), so where is the question of Fuel Cost Adjustment. In a CERC meeting it was brought to light that NTPC has

no scientific system of calculating fuel cost and the Power Producer ie NTPC itself decides how much should be the increased charge ARBITRARY and protested by all DISCOMS.

41. Conduct Energy Audit: Like Air and Water, Power too is essential for existence. This is not a luxury anymore and high use domestic consumers are already paying higher slab rates. Today citizens have to use power for basic living and also for Government's inefficiency. From motors to draw water to water purifiers, from inverters to voltage stabilizers and last but not the least Mosquito repellents all point to unnecessary power consumption due to Govt. Apathy. Computers, Refrigerators, Televisions are as much a part of daily life as Air and Water and cannot be treated as luxuries.

The energy Audit should Revisit Public Service Entitlement Code, bureaucrats who are on an overdrive installing AC's in Govt. offices throwing the rule book on entitlement to the wind. Gone are the days when Rs. 20,000/- AC's were needed to protect Rs. 5 lac PC's. Today PC's are more robust and very cheap and do not require Air Conditioning to operate. Remove AC's from offices of those not entitled for the same. Why should consumers subsidize government officials' fancy life style? Who decides how much power is needed to keep the Govt. cold to people's miseries?

The Energy Audit should also look into the Energy Guzzlers in Industry, Commercial Establishment, Street Lighting, Neon Signs, Hoardings etc. The industry and Commercial establishments recover the Energy Component from the consumer in the form of the Final Product Cost.

We see no reason that Energy Guzzlers like Government Departments, Hospitals (Private), Private Schools, Corporate Offices, Shopping Malls, Banquets, Farm Houses etc. be allowed

to burden the Domestic Consumer by way of eating up the Cheap Power Quota available from NTPC, SEBs etc.

Delink Power consumed by Domestic consumers and let Power Guzzlers buy power from open Market, right now there is no incentive for them to conserve energy as they recover their life style from the cost of their Product or Service.

42. Change of city skyline: Prudence Checks are mandatory to ensure that Capital invested has actually happened and not on paper alone. Overhead Wires dot the cityscape and Crumbling Transformers that breakdown due to local faults leading to long power cuts. DISCOMS have been given windfall guaranteed ROI of 16% of capital invested and there is no check as to where the capital was invested, which leads to the Citizens call for Regulating the Regulator.

### Way forward

43. Once we look at the Tariff Determination Orders and other orders passed by the DERC, it emerges that the orders are dealing with financial viability of the DISCOMS and the technical issues like integration of old system with new metering, stabilization, ungradation of infrastructure, assessment of voltage wise loss levels and the cost thereof and balancing of supply at transformers and supply of quality power have not been addressed.

44. The issue of lack of transparent working of the DERC as well as DISCOMS is another key issue that has created an atmosphere of mistrust and the consumers for various reasons feel cheated.

45. Lack of Government's initiative to ensure fulfillment of the objectives of the EA, NEP and NTP is another area of concern.

46. The PSU'S have become money spinning machine instead of facilitator for the Sector. Despite several initiatives claimed to have been undertaken to save the sector, still the sector is

## THE PSU'S HAVE BECOME MONEY-SPINNING MACHINES INSTEAD OF FACILITATING THE SECTOR. DESPITE SEVERAL INITIATIVES TO SAVE THE SECTOR, THE SECTOR IS SINKING

sinking. There is a need to revisit the Policies and actions taken in this regard so as to take corrective steps without losing time. The issue is not Delhi centric but is a national issue. Delhi is just an example.

47. Unfortunately the sector is suffering due to built-in inefficiencies of Generation i.e. High Cost of generation and distribution – high transmission and distribution losses. Though the EA provides for encouragement of Competition in an area but somehow on ground instead of creating competition cartelization has actually taken place. The basin intent and purpose was to have more than one licensee in an area, which has not happened.

48. The DISCOMS are not in a position to invest in the infrastructure due to cost factors. Therefore, there is an urgent need to have a relook at the entire step of the sector. May be the gen-

eration and retail distribution be made more competitive and the transmission and distribution be retained with the State Governments. This would lead to healthy competition among generators necessitating elimination of avoidable overheads. While retail distribution can be made competitive by incentivizing the control and curb on theft, which has actually not taken place as of now. Introduction of multiple licensees in an area would give rise to competition 49. The next important factor is the fixation of cost reflective tariff. Today in many States provide either free or subsidised power to agriculture sector. Therefore, this cost is factored in the tariff for other consumers. Very often the tariff for domestic consumers upto about 400 units is fixed on socio economic considerations, thus this also leads to cross subsidization. Another factor that leads to distortion in tariffs is purchase of costly power for high end consumers. Even that cost is factored while fixing tariffs for all consumers that includes domestic too. Therefore, there is a need to segregate the high end consumers and domestic consumers. This would also benefit the high end consumers because they can opt for purchase of power from more competitive source once there is a competition.

50. As on date, authentic DATA on actual voltage wise transmissions losses or Distribution Line losses is not available. Therefore, it is not possible to correctly estimate cost to be factored while fixing tariffs.

51. Therefore, this necessitates introduction of system of voltage wise fixation of tariffs instead of category wise for which the State Regulator shall have to take initiative.

52. Hence in larger interest it is important to review the entire situation in a holistic manner and take necessary steps for overall development. **MA**

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