**Appellate Tribunal for Electricity**
**(Appellate Jurisdiction)**

**Appeal No. 289 of 2013**

**Dated: 16th December, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member**
**Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of:**

**Tata Power Delhi Distribution Ltd. … Appellant (s)**
**NDPL House**
**Hudson Lines, Kingsway Camp**
**Delhi – 110 009**

**Versus**

**Delhi Electricity Regulatory Commission …Respondent(s)**
**Viniyamak Bhawan, C- Block**
**Shivalik, Malviya Nagar**
**New Delhi Delhl – 110 017**

**Counsel for the Appellant (s) : Mr. Sitesh Mukherjee**
**Mr. Anand Kr. Srivastava**
**Mr. Shantnu singh**

**Counsel for the Respondent(s): Mr. Manu Seshadri**

## JUDGMENT

**RAKESH NATH, TECHNICAL MEMBER**

This appeal has been filed by Tata Power Delhi Distribution Ltd. against the order of the Delhi Electricity Regulatory

Commission ("State Commission") dated 21.06.2013 dismissing the petition of the appellant seeking modification in the figure of carrying cost as decided by the State Commission vide its order dated 22.09.2009. The appellant is aggrieved by the methodology of computation of carrying cost adopted by the State Commission.

2. The appellant is a Distribution Licensee. The State Commission is the respondent no.1.

3. The brief facts of the case are as under:

3.1 The State Commission decided the Annual Revenue Requirement of the appellant by the MYT order dated 23.02.2008 for control period 2007-08 to 2010-11. In this order the State Commission allowed a revenue gap of Rs.138.94 crores and an amount of Rs. 32.18 croes as carrying cost. The appellant filed Review Petition against this order dated 23.02.2008 pointing out some errors in the true-up for FYs 2003-04 and 2007-08. The appellant also raised the issue of computation of carrying cost for truing up for the past period.

3.2 On 22.09.2009 Review Petition was disposed of by the State Commission allowing some additional amount and correcting the applicable true-up figures for the period FY 2002-03 to 2006-07. Accordingly, the interest amount allowable on such revised revenue gap amounts was also reworked.

3.3 On 17.12.2009, the appellant sought clarification from the State Commission on computation of carrying cost of Rs. 32.22 crores by the Commission and submitted that the carrying cost should have been Rs. 38.76 crores as per the practice followed by the State Commission. This was followed by another letter dated 12.03.2010 to the State Commission. On 24.05.2010, the State Commission asked the appellant through a letter to file a petition for consideration of the matter regarding difference in computation of carrying cost.

3.4 On 26.07.2010, the appellant filed Petition no. 230 of 2010 seeking modification/correction of the amount of carrying cost. On 21.06.2013, the State Commission passed the impugned order dismissing the Petition.

4. Aggrieved by the dismissal of the Petition, the appellant has filed this appeal.

5. According to the appellant, the State Commission has allowed carrying cost on the revenue gap for the period 2002-03 to 2006-07 on the basis of interest allowed on the opening balance of revenue gap for the concerned financial year. However, for the subsequent period from 2007-08, the State Commission has changed the methodology for allowing the carrying cost on revenue gap on the average of opening and the closing balance. As a result of such a

change in the methodology, the appellant was ending up with a loss. Under the new methodology, carrying cost is allowed on the average of opening and closing balance i.e. allowed for the half year whereas the carrying cost should have been allowed on the opening balance of FY 2007-08, i.e. closing balance of 2006-07, for the complete year. This results in a gap in recovery of the carrying cost.

6. The contention of the appellant is that it has not challenged the methodology adopted by the State Commission to compute the carrying cost. The only submission of the appellant is for restitution of the financial loss which the appellant has suffered due to change in methodology of computation of carrying cost by the State Commission w.e.f. FY 2007-08. The appellant has given detailed computation of carrying cost for the period 2002-03 to 2007-08 based on two methods adopted by the State Commission i.e. on the basis of average of opening and closing balance of revenue gap adopted from 2007-08

onwards and on the basis of opening balance of revenue gap of a financial year as adopted prior to 2007-08, to show the loss incurred by them due to change in methodology.

**7. The only issue that arises for our consideration is whether the appellant has suffered financial loss on account of change in methodology by the State Commission from FY 2007-08 for which the appellant is required to be compensated?**

8. We have heard Shri Sitesh Mukherjee, Learned Counsel for the appellant and Shri Manu Seshadri, Learned Counsel for the State Commission.

9. Shri Sitesh Mukherjee explained the computation of carrying cost by two methods adopted by the State Commission to establish his point that the appellant had incurred a loss of around Rs. 7.78 crores on account of

change in methodology by the State Commission from FY 2007-08.

10. Shri Manu Seshadri, Learned Counsel for the State Commission submitted that there was a change in methodology adopted by the Commission in calculating carrying cost in the MYT order of 23.02.2008 for the control period 2007-08 to 2010-11. This was pursuant to the coming into force of the MYT Regulations on 30.05.2007 upon conclusion of the Policy Direction Period. Under the MYT Regulations, there was a change in methodology. Certain principles such as weighted average cost of capital, return on capital employed to be on weighted average basis were implemented. Therefore, the carrying cost which was earlier determined on the basis of the opening balance was changed to the weighted average basis. As per the new methodology the carrying cost is to be determined on average of opening and closing balance.

11. Mr. Manu Seshadari also raised the issue of maintainability of the appeal as no Review of Review order is permissible. It was explained by him that against the MYT order of 23.02.2008 the appellant preferred a Review Petition being R.P. no. 28 of 2008 in which the Review order dated 22.09.2009 was passed. It is not a case of the appellant that they had sought for Review of the change of methodology of carrying cost from opening balance basis to average of opening and closing balance. Against the Review order dated 22.09.2009 a written clarification dated 17.12.2009 was sought from the State Commission for providing the working of computation of carrying cost allowed in the Review order. The State Commission directed the appellant to file a Regular Petition. Thereafter, the appellant filed Petition no. 30 of 2010 for modification of the figure of carrying cost awarded in the Review order dated 22.09.2009. Thus, the Petition has been filed seeking Review of the Review order.

12. On the merits, the Learned Counsel for the State Commission submitted that there has been no loss to the appellant and on the contrary there has been benefit from the change in methodology.

13. We find that the appellant has not challenged the methodology adopted from FY 2007-08 on the basis of average of opening and closing balance. However, the appellant is only aggrieved by financial loss due to change in methodology adopted from FY 2007-08. The methodology used from 2007-08 onwards based on average of opening and closing balance method is in consonance with the MYT Regulations of 2007 and in our opinion the correct methodology. The appellant has also not challenged this methodology.

14. We are in agreement with the appellant that if the methodology is changed from opening balance to average

of opening and closing balance during a block of financial years, there will be some impact on the total carrying cost for the entire period, which in this case is from FY 2002-03 to 2007-08. The difference could be positive or negative depending on the opening and closing balance of the revenue gap in different financial years. The State Commission has used the methodology based on the opening balance from 2002-03 to 2006-07 in the earlier orders. In our opinion, the correct methodology for calculation of carrying cost for a financial year is on the basis of average of opening and closing revenue gap of that year. We feel that the State Commission should have used the same methodology for the period from 2002-03 to 2007-08. However, the State Commission has used opening balance method in the earlier orders which have attained finality. Therefore, we would not like to give any directions for changing the methodology for the period 2003-07. At this instant when the tariff and true up orders for the previous years (2002-03 to 2006-07) have attained finality it is not proper to interfere with the impugned order. Therefore, we do not want to intervene with the findings of the State Commission in the impugned order.

15. In view of above, the appeal is dismissed. No order as to costs.

16. Pronounced in the open court on this 16th **day of December, 2014.**

**(Justice Surendra Kumar)**
**Judicial Member**

**(Rakesh Nath)**
**Technical Member**

√
**REPORTABLE/~~NON-REPORTABLE~~**
**mk**