

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

Appeal No. 34 of 2014

Dated : 28th November, 2014

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of :

**Delhi Metro Rail Corporation Ltd.
Metro Bhawan, 13, Fire Brigade Lane,
Barakhamba Road, New Delhi – 110 001.**

... Appellant(s)

Versus

- 1. Delhi Electricity Regulatory Commission
Viniyamak Bhawan, C-Block,
Shivalik, Malviya Nagar,
New Delhi – 110 017**
- 2. New Delhi Municipal Council
Through Its Secretary,
Palika Kendra,
New Delhi – 110001**
- 3. BSES Rajdhani Power Limited
Through its CEO,
BSES Bhawan,
Nehru Place, New Delhi – 110 019**

**4. BSES Yamuna Power Limited
Through its CEO
Shakti Kiran, Karkardooma,
Delhi – 110 092.**

**5. Tata Power Delhi Distribution Limited.
Through its CEO, Substation Building,
Hudson Lines, Kingsway Camp,
Delhi – 100 009.**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Chandan Kumar

Counsel for the Respondent(s): Mr. Manu Seshadri for R.1
Mr. Buddy A. Ranganadhan
Mr. Aditya Panda
Mr. Hasan Murtaza for
R.2 & 3
Mr. Manish Srivastava
Mr. Arav Kapoor for R.5

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

Delhi Metro Rail Corporation Limited is the Appellant herein.
Aggrieved by the Order dated 31.07.2013 passed by the Delhi

Electricity Regulatory Commission, the Appellant has presented this Appeal.

2. The short facts of the case are as follows:

- i) Delhi Metro Rail Corporation Limited, the Appellant is a 50:50 joint venture of Government of India and Government of National Capital Territory of Delhi. The Appellant started its operations in Delhi. In a joint meeting held by the Principal Secretary of Power with Delhi Transco, Distribution Companies, DMRC, it was decided jointly that Delhi Metro Rail Corporation needed to be treated as a special category and Discoms will recommend to Delhi Commission the tariff based upon the actual cost of supply at 200/66 kV without either the cross-subsidy or subsidy elements.
- ii) In the year 2012-2013, the Delhi Commission introduced the Time of Day (TOD) tariff. The Appellant

wrote letters to the Delhi Commission seeking for review of the Time of Day (TOD) applicability to it. However, there was no response.

iii) For the year 2013-2014, the Delhi Commission again proposed to apply Time of Day (TOD) to the Appellant by issuing Public Notice dated 14.02.2013. The Appellant made written and oral submissions against the said proposal before the Delhi Commission. However, the Delhi Commission, by the impugned Order, dated 31.07.2013, without considering the submissions made by the Appellant, passed the impugned Order imposing the Time of Day (TOD) tariff along with other few tariffs on the Appellant. Hence, the present Appeal has been filed by the Appellant before this Tribunal.

3. The learned Counsel for the Appellant has raised the following issues.

- i) Imposition of Time-of-Day (TOD) tariff on the Appellant;
- ii) Imposition of Higher Unit Charges;
- iii) Imposition of levy of revenue deficit charges; and
- iv) Non-acceptance of Security Deposit in the form of Bank Guarantee.

4. On these issues, elaborate arguments have been advanced by the learned Counsel for the Appellant contending that the Delhi Commission without considering the submissions made by the Appellant, gave a wrong finding in respect of the above issues, and therefore, the impugned Order on these issues is liable to be set aside.

5. According to the Respondents including the Delhi Commission, the contentions of the Appellant on the above mentioned four issues stating that the Appellant is not liable to pay the said charges and that the Appellant be allowed to give Security deposit in the form of Bank Guarantee are against the provisions of law, and the findings given by the Delhi Commission on those issues are perfectly justified.

6. In the light of the rival contentions, let us discuss the issues referred to above.

7. The first issue is relating to the ***imposition of Time-of-Day (TOD) tariff on the Appellant.*** The short submissions of the learned Counsel for the Appellant on this issue are as follows:

- a) Section 61 of the Act mandates that before the appropriate Commission proceeds to fix tariff under Section 62, it shall specify the terms and conditions for the determination of tariff. Section 181 (zc) empowers

the Commission to make Regulations in that regard. Neither any term or condition was specified nor was any Regulation made prior to its imposition. The Application of Time-of-Day (TOD) has no nexus, much less a reasonable nexus to the object, which it purports to achieve.

b) For the first time, Time-of-Day (TOD) was applied as tariff as Commissions' proposals in the notice seeking for the comment on ARR for the year 2012-13. This was repeated for the financial year 2013-14. The application of TOD was done in haste and was not informed by reasons. Therefore, the finding on this issue is wrong.

8. As pointed out by the Delhi Commission, the TOD tariff was introduced by the Delhi Commission for the financial year 2012-13 with effect from 01.07.2012 for all consumers other

than domestic, whose sanctioned load is 300 KVA and above. Since the TOD tariff is a progressive step, the Delhi Commission by way of the impugned Order for 2013-14 made the TOD tariff applicable to all consumers other than domestic consumers.

9. The Appellant has a sanctioned load of above 300 KVA, therefore TOD tariff has been imposed on the Appellant for the financial year 2012-13. During the financial year 2012-13, the Appellant's load was 43.3 MW. and was therefore well within the ambit of TOD tariff.

10. Admittedly, the Appellant did not challenge the imposition of TOD tariff for 2012-13. It is pointed out by the Delhi Commission, as referred to above in the impugned Order, the TOD tariff is an important Demand Side Management (DSM), which is used as a means of incentivizing consumers to shift a portion of their loads from peak hours to off-peak time, thereby

improving the system load factor by reducing the demand on the system during peak period. At the same time, rebate was offered on the consumption during off peak hours.

11. It is also pointed out by the Respondents that various legislative and legal frameworks have been introduced in order to promote the implementation of TOD as an important Demand Side Management (DSM) tool, which is as follows:

Electricity Act, 2003

Sec 62 (3) : The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

b) National Tariff Policy

8.4. Definition of tariff components and their applicability

1. Two-part tariffs featuring separate fixed and variable charges and Time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year. This would also help in flattening the peak and implementing various energy conservation measures.

c) National Electricity Policy

5.4.9. The act required all consumers to be metered within two years. The SERCs may obtain from the Distribution Licenses their metering plans, approve these, and monitor the same. The SERCs should encourage use of pre-paid meters. In the first instance, TOD meters for large consumers with a minimum load of one MVA are also to be encouraged. The SERCs should also put in place independent third-party meter testing arrangements.

d) CEA Regulations

Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006.

20. Adoption of new technologies:

The distribution licensee shall make out a plan for introduction and adoption of new technologies such as pre-paid meters, time of the day meters (TOD), automatic remote meter reading system through appropriate

communication system with the approval of the appropriate Commission or as per the regulations or directions of the appropriate Commission or pursuant to the reforms programme of the appropriate Government.”

12. In view of the above, it has to be held that imposition of TOD tariff on the Appellant is in consonance with various legislations as an effective Demand Side Management (DSM) measure aimed at optimizing the cost of power purchase and achieving the energy efficiency.

13. This Tribunal has dealt with the similar issue in Appeal No. 300 of 2013 in ***DELHI VOLUNTARY HOSPITAL FORUM VS. DERC AND ORS.*** This Tribunal by the Judgment dated 12.08.2014, while rejecting the contention that the TOD tariff cannot be applied to hospitals/dispensaries/clinics, has held that the Commission is fully empowered under Section 62 (3) of the Act of 2003 to categorize or re-categorize the class of persons considering the purposes provided therein including the purpose for which the supply of electricity is required.

Apart from that, this Tribunal has appreciated the submissions of the Commission that TOD tariff has aimed at optimizing the cost of power purchase which constitute a major cost of the distribution licensee and its importance in implementing Demand Side Management (DSM) and achieving the energy efficiency.

14. In view of the above discussion, we have to hold that the imposition of Time-of-day (TOD) tariff on the Appellant is in consonance with the various legislations as an effective measure aimed at optimizing the cost of power purchase and achieving energy efficiency. Therefore, the contention urged by the Appellant on this issue is not tenable. Accordingly, this issue is decided against the Appellant.

15. ***The second issue is relating to imposition of higher unit charges.*** According to the Appellant there has been a huge increase in tariff as compared to other categories of

consumers. As pointed out by the Respondents, the distribution companies have been directed by the Delhi Commission to ensure that the Appellant receive uninterrupted power supply in terms of the tariff Order dated 13.07.2012. As a matter of fact, the Delhi Commission has created a separate category for the Appellant in line with its earlier tariff Orders. The tariff applicable for the Appellant is much lower than the tariff prevailing for Delhi Jal Board etc., which also provides essential services to the consumers.

16. There is no dispute in the fact that the Appellant is being supplied on cost of supply basis, as a separate category without having to bear any cross subsidy, unlike other industrial consumers. As indicated above, the tariff for the Appellant is lower than the domestic tariff which ranges between Rs. 5.80 per KWh to Rs. 7 per KWh. As such, it is noticed that the TOD tariff which has been applied uniformly to all the consumers other than the domestic is fair and justified.

The Appellant which is being supplied power at Rs.5.50 per KVAh (without cross subsidy) as a separate category would not be entitled to any exemption from TOD tariff, which applies to all non domestic consumers. Therefore, the finding on this issue by the Delhi Commission is valid and perfectly justified. Therefore, this issue is also decided as against the Appellant.

17. The third issue is relating to the ***imposition of revenue deficit surcharge***. The Appellant has challenged the imposition of levy of 8% revenue deficit surcharge as the tariff has already based on actual cost of service. The surcharge has been introduced to meet the cost of the increasing revenue gap of the distribution companies. According to the tariff policy regulatory assets have to be recovered as early as possible preferably within the period of three years. This Tribunal has earlier directed the Commission to liquidate the regulatory assets in an efficient manner. While imposing surcharge for recovery of regulatory assets no differentiation

can be made and it is to be applied across the board on all the consumers. According to the Appellant, the Delhi Commission has no road map for recovery of regulatory assets. This is factually not correct. The State Commission has submitted the road map containing the proposal for liquidation of the revenue gap to this Tribunal in Appeal No. 266 of 2013 pertaining to BRPL and BYPL.

18. The huge revenue deficit, which is sought to be partially recovered through this surcharge includes costs, reduced/cheaper tariff for electricity that has already been consumed by the consumers including the electricity that has been consumed by the Appellant herein. By claiming that it should not contribute to the recovery of deficit already having reached alarming levels, the Appellant cannot escape its liability of paying the said surcharge. That apart, as per the provisions of Section 62 (3) of the Electricity Act, 2003, undue preference cannot be shown to any consumer of electricity

while determination of tariffs. Accordingly, this issue is decided against the Appellant.

19. The last issue is relating to the ***non-acceptance of Security Deposit in the form of Bank Guarantee***. The Appellant by way of present Appeal has sought an exemption from payment of security deposit and consequently sought a refund of the deposit already made. In short, the Appellant has sought to give a bank guarantee instead of the security deposit. The Delhi Commission, in this regard, in the impugned Order has held as under:

“....the Commission is in the process of revision of Delhi Electricity Supply Code and Performance Standard Regulation, 2007 and will examine the issue of interest rate on Security Deposit and providing security deposit in the form of Bank Guarantee, while finalizing the revised Delhi Electricity Supply Code and Performance Standards Regulations.....”

20. The receipt of Security Deposit is in accordance with the Regulation 29 of the Delhi Electricity Supply Code and Performance Standard Regulation, 2007. Through this prayer, the Appellant is virtually seeking for the amendment to the Regulations framed by the Delhi Commission. This is not permissible under the law in this Appeal filed under Section 111 of the Electricity Act, 2003.

21. As pointed out by the Respondents, the DERC (Terms and Conditions for determination of Wheeling Tariff and Retail Supply Tariff) Regulations 2011, lays down and recognizes the right of the Distribution Companies to obtain the income derived from the security deposits, therefore the prayer on this issue is against the provisions of Supply Code as well as Regulations. Hence, this point also would fail.

22. SUMMARY OF FINDINGS:

(I) Imposition of TOD tariff is in consonance with various legislations as an effective Demand Side Management measure aimed at optimizing the cost of power purchase and achieving energy efficiency. This Tribunal has dealt with similar issue in Judgment dated 12.08.2014 in Appeal No. 300 of 2013 wherein the Tribunal has rejected the contention that TOD tariff cannot be applied to hospitals/dispensaries/clinics. The finding of the Tribunal in Appeal no. 300 of 2013 will apply squarely in the present case.

(II) We do not find any infirmity in the tariff fixed for the Appellant.

(III) While imposing surcharge for recovery of the regulatory assets of the distribution licensee no

differentiation can be made and it is to be applied across the board on all the consumers.

(IV) The receipt of security deposit is in accordance with the Regulations. The State Commission is in the process of revision of the Supply Code Regulations. The Appellant is at liberty to file its objections/suggestions before the State Commission and the State Commission shall consider the same while revising the Regulations and decide as per law.

23. In view of our above finding, there is no merit in the Appeal. Consequently, the Appeal is dismissed. However, there is no order as to costs.

24. Pronounced in the Open Court on this **28th day of November,**
2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 28th November, 2014

~~REPORTABLE/NON-REPORTABLE~~