

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 33 of 2020

Dated : 10th February, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Tata Power Delhi Distribution Limited

Through its authorized signatory
NDPL House, Hudson Lines,
Kingsway Camp, New Delhi - 110009

... Appellant

Versus

Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block,
Shivalik, Malviya Nagar, New Delhi – 110017
Through Secretary

... Respondent

Counsel on record for the Appellant(s)	:	Amit Kapur Anupam Varma Nikhil Sharma Rahul Kinra Aditya Gupta for App. 1
Counsel on record for the Respondent(s)	:	Dhananjay Baijal for Res. 1

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, Tata Power Delhi Distribution Limited (in short "TPDDL"), a joint venture between Tata Power Company Limited (TPCL) and Delhi Power Company Limited (DPCL) and operating as for Distribution Licensee in the NCT of Delhi in terms of Delhi Electricity Reforms Act, 2000 read with Section 14 of Electricity Act 2003, has preferred this appeal against the Order dated 11th November, 2019 (hereinafter referred as "Impugned Order") passed by the 1st Respondent Delhi Electricity Regulatory Commission (hereinafter referred to as "Commission") thereby disposing off the Appellant's petition No. 51 of 2017 for true-up of expenditure for financial years 2010-11 to 2017-18 with regards to its 94.8 MW Combined Cycle Power Plant situated at Rithala, New Delhi (in short "CCPP").

2. The grievance of the Appellant is that the Commission has erred in restricting the recovery of the cost of Rithala CCPP by way of depreciation @6% till financial year 2017-18 only despite the fact that

its useful life was 15 years, thereby leaving substantial part depreciation of un-recoverable.

3. It appears that in June, 2007, a proposal was moved by the Appellant for change of usage of six acres of land in Rithala, Delhi for the purpose of setting up gas based of plant. The proposal was processed by the Government of National Capital Territory of Delhi (GNCTD). No Objection Certificate in this regard was issued by Delhi Development Authority (DDA) for establishment of Rithala plant in Sector 11, Rohini, Delhi which was forwarded by GNCTD to North Delhi Power Limited (NDPL), the predecessor of interest of the Appellant on 8th January, 2008. The Appellant intimated the Commission on 17th May, 2008 about its intention to establish and operate the Rithala plant. The Commission granted “in principle” approval in the month of April, 2009 to the scheme for evacuation of power from Rithala plant based on Appellant’s scheme submitted in August, 2008.

4. On 27th July, 2009, the TPDDL-G and TPDDL-D signed Terms and Conditions for Sale and Purchase of Power from Rithala plant being set up by the Appellant. The date of commissioning of Rithala

plant was declared in Open Cycle Mode on 4th February, 2011 and in Combined Cycle Mode as 4th September, 2011.

5. The GNCTD had granted permission on temporary basis in the year 2009 for setting up of the said gas based power plant at Rithala for a period of 5 to 6 years only. The Appellant was directed to obtain all necessary regulatory approvals well in time before starting the generation. This was basically to enhance power requirement during the common wealth games 2010. The Ministry of Power, Government of India also recommended to make additional gas available for the three stations in building the Rithala-plant to be commissioned during 2009-10.

6. On 21st August, 2009, the Appellant filed Petition No. 11 of 2009 under Section 62 read with 86(1)(b) of the Electricity Act seeking approval of “Terms and Conditions for Sale and Purchase of Power” executed between the Generation and Distribution Division of the Appellant i.e. TPDDL-G and TPDDL-D in respect of entire capacity of Rithala-CCPP. Another petition bearing No. 7 of 2010 was filed by the Appellant Before the Commission on 26th February, 2010 seeking approval for usage of 6 acres of land located in the licensed area of the

Appellant to set up 108 MW power generation plant at Rithala-Delhi. 3rd Petition bearing No. 06 of 2013 was filed by the Appellant at 23rd November, 2012 before the Commission seeking determination of final generation tariff for its 94.8 MW Rithala-CCPP under Section 62 of the Electricity Act read with DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2007 and 2011.

7. All the three petitions were disposed off by the Commission vide common order dated 31st August, 2017. Petition No. 11 of 2009 was allowed to the extent of permission granted by GNCTD for operation of the plant for a period of 6 years from the year of commissioning in combined cycle mode which comes out to March, 2018. Petition No. 7 of 2010 was also allowed with the rider that the profit, if any, from the plant shall be governed by the provisions of DERC (Treatment of Income from other business of Transmission Licensee and Distribution Licensee) Regulations, 2005. Petition No. 6 of 2013 was also allowed by the Commission thereby approving fixed charges and operational parameters required for computation of energy charges for the Appellant's power plant in question with further direction that Appellant shall file true up petitions based on the applicable regulations for the

said parameters for finalization of generation tariff for the respective years.

8. Meanwhile, the Appellant declared commercial operation of the said Rithala-CCPP in combined cycle mode on 4th September, 2011.

9. Thereafter, the Appellant approached the Commission by way of Petition No. 51 of 2017 seeking true up for financial years 2010-11 to 2016-17 and ARR for financial year 2017-18. The petition was later amended to include prayer for true-up of financial year 2017-18 also. This petition has been disposed of by the Commission vide the impugned order dated 11th November, 2019 allowing depreciation to the Appellant for the Rithala-CCPP @6% upto the year 2017-18 only.

10. We have heard Learned Counsels for the parties and have perused the impugned order. We have also gone through the written submissions filed by the Learned Counsels.

11. Learned Counsel for the Appellant vehemently argued that the Commission has erred in restricting Appellant's claim for depreciation till financial year 2017-18 only despite the fact that the useful life of the said Rithala-CCPP is admittedly 15 years and by doing so has

contradicted its own previous order dated 31st August, 2017 passed in Petition Nos. 11 of 2009, 7 of 2010 and 6 of 2014. According to the Learned Counsel, the Commission has failed to provide any mechanism/methodology for claiming depreciation along with associated costs for the Rithala-CCPP for the remaining useful life beyond the financial year 2017-18. He pointed out that the capital cost of the plant has already been slashed by 38% i.e. from claimed cost of Rs. 320.17 crores to Rs.197.70 crores by order dated 31st August, 2017 and the depreciation of the same has been spread over a period of 15 years for Rs.177.93 crores i.e. 90% of the capital cost of Rs.197.70 crores and yet the recovery has been curtailed to Rs.83.34 crores only till March, 2018. No other provision for recovery of remaining amount of depreciation i.e. Rs.94.59 crores along with associated costs.

12. It is the submission of the Learned Counsel that in case useful life as well as operation life of the Rithala-CCPP is taken as 6 years, the recovery of capital cost should also be allowed within the said time period. It cannot be a case where the capital cost is computed and spread over fifteen years but the recovery is allowed for only six years.

13. The arguments advanced by the Appellant's counsel were strongly refuted by the Learned Counsel appearing for the Respondent

Commission. He argued that the submissions made on behalf of the Appellant are wholly contrary to DERC (Terms and Conditions for Determination of Generation Tariff) Regulation 2005, 2007 and 2011. He referred to Regulation 6.30 to 6.32 of the 2011 Regulations which are extracted herein below :-

“6.30 Depreciation shall be calculated for each year of the Control Period, on the amount of Capital Cost of the Fixed Assets as admitted by the Commission; Provided that depreciation shall not be allowed on assets funded by any capital subsidy/grant.

6.31 Depreciation for each year of the Control Period shall be determined based on the methodology as specified in these Regulations along with the rates and other terms specified in Appendix-1 of these Regulations.

6.32 Depreciation shall be calculated annually, based on the straight line method, over the useful life of the asset. The base value for the purpose of depreciation shall be capital cost of the asset as admitted by the Commission.

Provided that, the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the date of commercial operation shall be spread over the balance useful life of the assets.”

14. Learned Counsel also referred to Regulation 4.1 which mandates that the tariff for supply of Electricity by the generating company to the Distribution Licensee shall be in accordance with the PPA or any other arrangement for such period as may be so approved or adopted by the Commission, to the extent of the existing Installed Capacity as contained in the PPA.

15. Learned Counsel further argued that the Regulations mandate that the depreciation is required to be calculated annually and the generation tariff has to be in accordance with the PPA for the approved period and adopted by the Commission, based on the straight line method spread over the useful life of the asset. He pointed out that the useful life is a defined term in 2011 Regulations which in fact is set at 25 years for Gas based thermal generating station, but in this case relaxation was given on account of peculiarities of the power plant in question thereby restricting the useful life of the plant to only 15 years. He further argued that once the Appellant has not assailed the order dated 31st August, 2017 vide which the PPA was approved and adopted only for 6 years taken, it cannot seek in true-up any change in the fundamental principle that was adopted by determination of generation tariff vide the said order. Further submission of the Learned Counsel is that :-

“(a) Commission has not restricted the operational life of the Rithala Power Plant to six years and only restricted and adopted the PPA for the Appellant's Distribution business for six years, which was as per its own repeated submissions that it required the power for only six years. In the event that the Appellant was able to secure gas for the plant and/or secure an extension of the lease, it was free to operate the same as a

merchant generator and enter into a PPA to supply power on commercial terms as per the applicable regulatory framework.

(b) The submission of the Appellant, if taken to its logical conclusion, would be that any medium term PPA the Appellant enters into hereinafter would obligate the Appellant to account for the entire depreciation for the useful life of the Generating Station, without considering the residual useful life of the said station after expiry of the PPA.

(c) Acceptance of the Appellant's submission would be in wholesome contravention of Section 61 of the Electricity Act, 2003 since it would be giving a go-bye to Consumer interest, since it would essentially pass the burden of the Appellant's imprudent decision making as captured in paragraph 23 of the 31.08.2017 judgment completely onto the Consumers of Delhi.

(d) Allowing depreciation for periods beyond the approved PPA would open a Pandora's box and create a slippery slope where each and every component of generation tariff that is spread over the useful life of a Generating Station could then be sought to be recovered in a compressed timeframe by unduly burdening the Consumers. It is further submitted that the very fact that the Appellant is only seeking the Depreciation component of the fixed cost for the entire useful life within six years, shows that the claims are really not maintainable."

16. We have given our thoughtful consideration to the rival submissions made by the Learned Counsels and have minutely perused the impugned order as well as the previous order of the Commission dated 31st August, 2017.

17. Depreciation means and indicates the decrease in value of an asset over its useful life. It is calculated by following three methods;

(i) **Straight Line Method**; assumes an equal depreciation over the asset's useful life.

(ii) **Written Down Value Method**; assumes depreciation is higher in initial years and decreases over time.

(iii) **Units of Production Method**; It is based on asset's usage or production.

18. We have already extracted the Regulations 6.30 to 6.32 of 2011 DERC Regulations. Regulation 6.30 prescribes the mode of calculation of depreciation for an asset. Regulation 6.32 provides that depreciation shall be calculated annually based on straight line method, over the useful life of the asset. It further provides that the base value for the purpose of depreciation shall be capital cost of the asset as admitted by the Commission.

19. While computing capital cost of the Rithala CCPP for determining final generation tariff for it in the order dated 31st August, 2017, the Commission has observed as under :-

“The useful life of Rithala Plant after refurbishment, as certified by various agencies appointed by the Petitioner is 15 years (TCE and M/s Protocol Insurance Surveyors and Loss Assessors Pvt. Ltd.).

therefore, considering the Capital Cost of Rithala Plant of 94.80 MW. after applying correction factor, pro-rated for 15 years useful life. considering per MW cost of RGTPS plant works out as:
 $[2.84 \times (94.80/25) \times 15] = \text{Rs. } 161.44 \text{ Cr.}$

20. Thereafter, upon considering certain additional site specific cost particulars for the said plant, the Commission has considered total capital cost of the plant as Rs.197.70 crores in the said order dated 31st August, 2017 which is reflected in the following table as given in paragraph 20 (A) (q):-

Sr. No.	Particulars	Submitted by Petitioner	Approved by the Commission
1.	Project Cost excluding Civil & site specific expenses	159.38	149.74*
2.	Additional Site Specific Expenses (2a+2b+2c+2d+2e+2f)		
2a	DDA Land use change charges	10.16	10.16
2b	Charges towards effluent treatment plant	4.39	0.00
2ba	User Charges paid to DJB	1.43	
2bb	Construction of Reservoir etc.	4.36	
2bc	Design, Manufacture, erection, testing & commissioning of Water Treatment Plant	10.11	
2bd	Additional costs incurred for Reservoir	4.50	
2c	Steam injection system to meet NOx emission	4.82	4.82
2d	Additional charges incurred in IDC	35.97	0.00
2e	Additional capital cost incurred on infirm fuel	26.35	0.00
2f	Charges towards ground improvement and Piling	9.10	9.10
3	Sub Total Plant and Machinery Cost (1+2)	266.18	178.20
4	Civil Cost other than Piling	53.99	19.50
5	TOTAL PROJECT COST (3+4)	320.17	197.70

21. In paragraph No. 21 of the said order, the Commission has computed the fixed charges for the plant keeping in view the said total capital cost of Rs.197.70 crores.

22. It is, therefore, manifest that the Commission has computed the capital cost of the Rithala CCPP as Rs.197.70 crores considering its useful life as 15 years as certified by various agencies appointed by the Appellant. At the same time, the Commission approved the PPA between TPDDL-G and TPDDL-D related to the said plant only for the period of 6 years from the year of its commercial operation i.e. till March, 2018 only.

23. In the impugned order dated 11th November, 2019, the Commission has allowed depreciation to the Appellant for the said plant @6% till the year 2017-18 only on the following reasoning :-

“5.3.1 The Commission observed that the contention of the Petitioner for consideration of useful life of the plant for 6 years cannot be considered as the Commission in its order dated 31.08.2017 determined the useful life of the Petitioner plant as 15 years based on the certificates issued by the various agencies appointed by the Petitioner.

5.3.2 The plant has useful life of 15 years and it has been used for around 6 years only. the market value after usage of 6 years would not only be 10%, but a much better value in commensuration with the remaining useful life of the said plant. The Petitioner has informed that sincere efforts are being made for the disposal of the plant but things have not reached to the final stage, it is likely to take some more time.

5.3.3 In such a situation, without waiting for the final disposal of the plant, the petitioner is allowed depreciation as per the extant regulations. The Petitioner

is allowed depreciation @6% as per the specified formula to recover the cost in 15 years.

Accordingly, the depreciation for the period FY 2012-13 to FY 2017-18 at the rate of 6% in line with the provisions of DERC MYT Regulations, 2011 and DERC Tariff Regulations, 2017 is as under:

Particulars	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Depreciation (Rs. Crore)	11.86	11.86	11.86	11.86	11.86	11.86

5.3.4 Depreciation for the FY 2010-11 and FY 2011-12 has already been approved as Rs.12.18 crore vide Tariff Order dated 31.08.2017. Accordingly, the cumulative depreciation for the period from FY 2010-11 to FY 2017-18 comes out to be Rs.83.34 crore.

24. We are unable to sustain the reasoning given by the Commission.

25. We note at the cost of repetition that as per Regulation 6.32 of 2011 DERC Regulations, the depreciation has to be calculated annually, based on the straight line method, over the useful life of the assets. In the instant case, the Commission has itself stated specifically in the order dated 31st August, 2017 that useful life of Rithala CCPP is 15 years as certified by various agencies appointed by the Appellant. It has further proceeded to work out the capital cost of the said plant as 197.70 crores after applying correction factor pro-rated for 15 years useful life of the plant. The mere fact that the plant has been used for only six years does not mean that its useful life

has to be restricted to only six years while calculating depreciation. We concur with the arguments advanced on behalf of the Appellant that in case the useful life of the plant is taken as six years only, the recovery of capital cost by way of depreciation should also be allowed within the same period of time. It would be incongruous to say that recovery of capital cost by way of depreciation is permissible only for a period of six years when the capital cost was worked out while considering the useful life of the plant as 15 years. Since the useful life of the plant has been taken to be 15 years by the Commission itself in the order dated 31st August, 2017, the recovery of the capital cost by way of depreciation should also be spread over for a period of 15 years.

26. We also find that by allowing depreciation to the Appellant for the said plant till the financial year 2017-18 only, the recovery of the capital cost has been curtailed to Rs.83.34 crores only without specifying any modalities for recovery of the remaining amount of capital cost i.e. 94.59 crores along with associated cost beyond April, 2018.

27. In our opinion, the computation of depreciation for the Appellant's power plant at Rithala done by the Commission in the

impugned order restricting it to an amount of Rs.83.34 crores only recoverable till the financial year 2017-18, is not only contrary to its own previous order dated 31st August, 2017 but also contrary to its 2011 Regulations and, therefore, cannot be sustained. Regulation 6.32 clearly specifies that depreciation shall be calculated annually, based on straight line method, over the useful life of the Asset. "Useful life" of the Appellant's power plant has been taken by the Commission itself as 15 years in its previous order dated 31st August, 2017 passed in the three petitions filed by the Appellant, as noted herein above.

28. The Commission has nowhere stated in the impugned order that the useful life of the Appellant's Rithala CCPP has been erroneously mentioned as 15 years in the order dated 31st August, 2017, which needs rectification. The Commission has not undertaken any exercise to review/modify the said order in the wake of such error, if any. Therefore, there was no basis for the Commission to curtail useful life of the plant to only six years in the impugned order and allow depreciation to the Appellant for the period of six years i.e. till the Financial Year 2017-18 only.

29. For the aforesaid reasons, the impugned order dated 11th November, 2019 is hereby set aside. The case is remanded back to the Commission with the direction to allow the recovery of entire capital cost of the Appellant's power plant at Rithala by way of depreciation over its useful life of 15 years. The Appeal stands allowed to the said extent.

Pronounced in the open court on this 10th day of February, 2025.

(Virender Bhat)
Judicial Member

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REPORTABLE / NON REPORTABLE

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(Sandesh Kumar Sharma)
Technical Member (Electricity)