IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 48 of 2018

Dated : 14th November, 2025

Present: Hon`ble Mr. Virender Bhat, Judicial Member
Hon`ble Mr. Ajay Talegaonkar, Technical Member

In the matter of:

Federation of Industries Associations, Silvassa
Office No. 8, Danudyog Shopping Center,
Opposite Hirvavan Garden,
Piparia, Silvassa,
Dadra and Nagar Haveli - 396230 … Appellant

Versus

1. **Joint Electricity Regulatory Commission for the State of Goa and Union Territories,**
Representative by Secretary
Udyog Vihar, Phase V,
Sector 19, Gurugram, Haryana – 122008

2. **M/s Dadra & Nagar Haveli Power Distribution Company Ltd.**
Represented by Chairman and Managing Director
Vidyut Bhavan, Near Secretariat,
Amli, Silvassa,
Dadra and Nagar Haveli - 396230 … Respondent (s)

Counsel for the Appellant(s)	:	Mukund P. Unny Devahuti Tamuli Rohit Rao N Sanjay Nair for App. 1
Counsel for the Respondent(s)	:	Pradeep Misra for Res. 1 Anand K. Ganesan Swapna Seshadri Parichita Chowdhury Ritu Apurva for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, the Appellant M/s Federation of Industries Associations, Silvassa has assailed the order dated 30th January, 2018 passed by the 1st Respondent – Joint Electricity Regulatory Commission, State of Goa and Union Territory (hereinafter referred to as "the Commission") with regards to the true-up of accounts of the 2nd Respondent for the Financial Year 2016-17, Annual Revenue Requirement (ARR) for Financial Year 2017-18 and tariff determination for 2018-19.

2. The Appellant is a conglomeration of all the Industries Associaitons of Silvassa in Dadar and Nagar Haveli and is a registered Society under the Society Registration Act. All its members are the consumers of 2nd Respondent which has been created from the erstwhile Electricity Department of Dadar & Nagar Haveli and is a statutory body engaged in the procurement as well as distribution of electricity in the Union Territory of Dadar & Nagar Haveli.

3. The 2nd Respondent had filed petition No. 240 of 2017 before the Commission for approval of true up for Financial Year 2016-17, ARR for Financial Year 2017-18 and for the determination of tariff for Financial Year 2018-19. The said petition has been disposed

off by the Commission vide Order dated 30th January, 2018 which has been impugned in this appeal.

4. Though, the Appellant had raised several issues/grounds in the memorandum of appeal but only following four issues were pressed upon and argued on its behalf during the hearing of this appeal :-

I. **Erroneous setting aside of Rs.180 crores from the surplus determined by the commission for Financial Year 2016-17.**

II. **Rebate granted by NTPC left out in the review of APR for the Financial Year 2017-18.**

III. **Benefit of carrying cost on surplus derived to the consumers.**

IV. **Imposition of Regulatory Surcharge**

5. We have heard Learned Counsels for the parties and have perused the impugned order. Our issue wise analysis is as under:-

Issue No. I

Erroneous setting aside of Rs.180 crores from the surplus determined by the commission for Financial Year 2016-17.

6. The grievance of the Appellant is that while the Commission had approved a revenue Surplus of Rs.383.88 crores for the 2nd

Respondent till 31.03.2016 in the APR order for Financial Year 2016-17, it has in the impugned order set aside the said sum of Rs.180 crores from the said surplus without any basis or justification. Learned Counsel for the Appellant would submit that this was done on a mere oral request from the Govt. of Dadra & Nagar Haveli (in short “DNH Govt.”) in the absence of a formal written request from the DNH Govt. or any other document in this regard. The Learned Counsel has drawn our attention to the relevant portion of the impugned order i.e. para 6.3 where the Commission has noted that a written submission to this effect is yet to be received.

7. It is argued on behalf of the Appellant that by doing so, the Commission has reviewed its APR order for the Financial Year 2016-17 at the true up stage without there being a written request from any of the parties to this effect, which is not permissible.

8. Learned Counsels for the Respondents have clarified that the DNH Govt. had submitted a formal letter in this regard to the Commission subsequent to the passing of the impugned order which fact has been noted in the order dated 20.05.2019 while considering true up of the accounts of 2nd Respondent for Financial Year 2017-18. A copy of the said order of the commission has been placed on record.

9. We find it apposite to reproduce the relevant portion of the said order dated 20.05.2019 of the Commission on this aspect :-

> *"2.2.1.4. Surplus to be set aside*
>
> ***Stakeholder's Comment:***
>
> *The Stakeholders have raised the issue of setting aside of an amount of INR 180 Cr from the surplus for FY 2016-17. It was requested that the said amount be considered in the true up of FY 2017-18.*
>
> ***Petitioner's Response:***
>
> *As per the directions from the Commission, the Corporation has already submitted a letter from DNH administration in this regards to the Commission.*
>
> ***Commission's View:***
>
> *The Commission has noted the concern of the Stakeholders. The Commission has set aside the surplus of INR 180 Cr in accordance with the submission made by the DNH UT Administration."*

10. Thus, it is limpid that a formal communication has been received by the commission from the DNH Govt., even though after the passing of the impugned order, to the effect that sum of Rs.180 crores has been given to the 2nd Respondent as Capital Grant. In view of the same, the grievance of the Appellant evaporates in thin air and does not survive at all. The Appellant has assailed the setting aside of Rs.180 crores as capital grant from the Revenue Surplus of 2nd Respondent only on the ground that no document in this regard was submitted either by the 2nd Respondent or by the

DNH govt. and it was done merely on oral request from DNH govt. Now that a formal document in regard has been submitted by the DNH Govt. during the hearing of true up petition for Financial Year 2017-18, the premise on which impugned order was challenged on this issue disappears and the challenge looses the legs to stand upon.

11. Hence, the challenge to the impugned order on this issue fails. The issue is decided in favour of the Respondents and against the Appellant.

Issue No. II

Rebate granted by NTPC left out in the review of APR for the Financial Year 2017-18.

12. The contention of the Appellant on this issue was that the Commission has erroneously not taken into account Rs.100.09 crores, received by 2nd Respondent as rebate from NTPC, in the Approved Power Purchase cost.

13. However, concededly the grievance of the Appellant in this regard has been taken care of by the Commission in the subsequent order dated 20.05.2019 in which the Commission has considered the rebate of Rs.100.09 crores received from NTPC by 2nd respondent while determining the net power purchase cost in

the true up of Financial Year 2017-18. The relevant portion of the said order is extracted herein below:-

> *"2.2.1.3. Rebate received from NTPC*
>
> ***Stakeholder's Comment:***
>
> *The Stakeholders have raised the issue of non-consideration of INR 100.09 Cr rebate received from NTPC. It was requested that the rebate be considered in the true up of FY 2017-18.*
>
> ***Petitioner's Response:***
>
> *The power purchase cost submitted as part of the true up for the FY 2017-18, has been arrived at after deducting the rebate of INR 100.09 Crores received from NTPC from total power purchase cost of FY 2017-18.*
>
> ***Commission's View:***
>
> *The Commission has noted the concern of the Stakeholders. The Commission has considered the rebate of INR 100.09 Cr received from NTPC while determining the net power purchase cost in the true up of FY 2017-18."*

14. This issue, therefore, does not survive for consideration and is accordingly disposed off as such.

Issue No. III

<u>Benefit of carrying cost on surplus derived to the consumers.</u>

15. While referring to table 118 forming part of para 6.3 of the impugned order, it is contended on behalf of the Appellant that

though Rs.97.09 crores have been earned as surplus by the 2nd Respondent in Financial Year 2016-17 yet the commission has not considered any carrying cost on it to be passed on to the consumers. It is pointed out that the commission has computed carrying cost @8% per annum at Rs.6.44 crores for revenue deficit of Rs.218.20 crores in Financial Year 2017-18 as well as at Rs.30.74 crores for revenue deficit of rs.544.25 crores in Financial Year 2018-19. The Learned Counsel for Appellant, thus, argued that Commission has provided carrying cost when there is deficit but does not given the benefit of carrying cost when there is surplus which patently is discriminatory and can't be accepted.

16. We find it pertinent to reproduce hereinbelow the table 118 from the impugned order:-

Table 118: Consolidated Revenue Gap/Surplus determined by Commission (In Rs. Cr)

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Opening Gap / (Surplus)	(383.88)	(97.09)	224.24
Surplus set aside	(180.00)	-	-
Gap / (Surplus) available for adjustment	(203.88)		
Add: Gap / (Surplus)	106.79	315.29	320.01
Closing Gap / (Surplus)	(97.09)	218.20	544.25
Carrying Cost (@8.00%p.a.)	0.00	6.04	30.74
Final Closing Gap / (Surplus)	**(97.09)**	**224.24**	**574.99**

17. In providing carrying cost @8% on the revenue deficit to 2nd Respondent, the Commission has reasoned as under :-

> *"The Petitioner while projecting consolidated revenue gap has not considered the carrying cost. The Commission observes that the petitioner has the surplus fund, which is deposited in the Banks. This surplus fund is being used by the Petitioner for funding the revenue gap. The Commission, further notices that the Petitioner has not taken any loan till date. As per the preamble of the Electricity Act, 2003, the Commission is required to balance the interest of all the stakeholders while determining the tariff. Keeping in mind all of the above, the Commission as considered the carrying cost @ 8.00% which is the opportunity cost for the Petitioner."*

18. We find merit in the contention of the Appellant. Allowing carrying cost only on revenue deficit but not on surplus creates asymmetry between consumers and utilities. The principle of *time value of money* applies equally in both cases—just as a utility is compensated for delayed recovery, consumers too must be credited for funds held in excess. Therefore, carrying cost on surplus ensures fairness and regulatory neutrality. The Revenue

surplus of Rs.97.09 Cr for the FY 2016-2017 would have earned interest and therefore should be accounted for. We conclude that carrying cost on revenue surplus should be allowed by the Respondent Commission for FY 2016-2017.

19. In view of the foregoing, this issue is decided in favour of the Appellant.

Issue No. IV

Imposition of Regulatory Surcharge

20. The Commission has, vide the impugned order, imposed a Regulatory Surcharge @9.7% on all consumers served by the 2nd Respondent and is applicable on all the bills raised on or after 01.02.2018 upto 31.03.2019.

21. It is firstly argued on behalf Appellant that in Table No. 118, the consolidated Revenue Gap determined for Financial Year 2018-19 to be Rs.574.99 crores is erroneous as setting aside of Rs.180 crores as capital grant from DNH Govt. is not legally valid and tenable. We have dealt with this aspect in our discussion on Issue No. I hereinabove and have found no merit in these contentions of the Appellant. Hence, these arguments raised on behalf of the Appellant do not hold any water.

22. Secondly, it is argued that the Commission has imposed the regulatory surcharge suo moto in blatant violation of the principles of natural justice when no such request had been made by 2nd Respondent. It is further argued that the Commission has nowhere explained in the impugned order as to why the Regulatory Surcharge is to be imposed on all the consumers across the Board.

23. Learned Counsels for the Respondents have strongly refuted these submissions on behalf of the Appellant.

24. We find it apposite to extract the relevant position of the impugned order hereinbelow:-

> ***"6.4.4. Regulatory Surcharge***
>
> *As is evident from above, the revenue from Approved Retail Tariff is not commensurate with the Net Revenue Requirement of FY 2018-19. The Commission has tried to limit the tariff increase in each category in order to safeguard the interests of consumer by avoiding abnormal increase in tariffs. It is pertinent to mention here that the average tariff increase of 11.00% has been done to partially recover the standalone revenue gap of FY 2018-19. In addition to this, the revenue gap of FY 2017-18 resulting from the Annual Performance Review is yet*

to be recovered. Therefore, the Commission in order to realize the remaining revenue gap for FY 2018-19 and complete revenue gap along with carrying cost for FY 2017-18, proposes to impose a Regulatory Surcharge of 9.70% on all consumers.

Applicability and Conditions of the Regulatory Surcharge

- *This Regulatory Surcharge shall be applicable on all consumer categories served by the Petitioner.*
- *The Surcharge shall also be applicable to consumers opting for open access.*
- *The Regulatory Surcharge shall be levied in the monthly/bimonthly bill as a percentage of the total energy and fixed charges payable by the consumer.*
- *The Surcharge shall be applicable for all the bills raised on or after 1st February 2018 and shall continue till 31st March 2019."*

25. Manifestly, there was a revenue gap of Rs.574.99 crores for Financial Year 2018-19. Continuation of the revenue gap without liquidating it in time-bound manner undermines the very purpose

of Electricity Act i.e. to provide cost reflective tariffs. This is in accordance with the provisions of Tariff Policy, 2016 which act as guiding principles for Tariff determination as per Section 61(i) of Electricity Act, 2003. Section 61(d) also envisages recovery of cost of electricity in a reasonable manner while safeguarding the interest of the consumers.

26. Steep increase in the revenue gap i.e. the revenue required by the DISCOM to meet its cost and expenditure and the actual revenue realized by through tariff, leads to creation of "regulatory assets" and unless these assets are liquidated in time bound manner, these will balloon to an unmanageable extent. In this regard we find the following observation of the Hon'ble Supreme Court in the recent judgement dated 06.08.2025 in W.P(C) 104/2014 very apt :-

> *"The decisions taken by the Regulatory Commissions, which were considered in appeal by the APTEL and this Court, give a clear impression that the Regulatory Commission is not able to take firm decisions. Instead of taking strong decisions on the basis of the statutory mandate, we see instances where the Regulatory Commissions manage and manoeuvre to arrive at a tariff*

by creating regulatory assets over and above all permissible limits. This is where the problem lies. Though the Electricity Act envisages functional autonomy for Regulatory Commissions and the statutory scheme is complete in all respects, the decisions taken by the Commissions, many a time, have not inspired confidence of independence and autonomy. The reasons are not difficult to conceive as there is an issue about the appointment process. The assertion of independence, however, comes through individual volition and that is where the mandate of transparency leads to accountability. The decisions taken by the Commission, rather the Regulatory Commissioners, are subject to scrutiny in the appellate and the review jurisdiction of the APTEL and thereafter by the Supreme Court. We have dealt with this issue in more detail while considering accountability of the Regulatory Commissions and powers of the APTEL. All these factors give rise to a situation where the tariff for the subsequent years has to be substantially increased to meet the ARR of the previous years.

66.1 A Regulatory Commission's power to create a regulatory asset is part of the tariff fixation process, as long as it is in reasonable measure. However, in an egregious situation where the regulatory asset has grown beyond proportion and is also extended from time-to-time inefficiently, there is a compelling need to deal with it. In this context, the Regulatory Commissions have twin obligations: first, the Commission must enable an efficient and effective recovery of the regulatory asset by the utility, and second, more importantly, it must manage the regulatory asset in a manner that does not transgress the principles that inform and govern tariff determination. The regulatory asset cannot be permitted to balloon into such proportions or continued for such periods, year after year, that the governance of the sector is set in peril, affecting the rights of the utilities and at the same time jeopardising the consumer interest, who eventually end up bearing the burden. Creation, management and dissolution of regulatory assets are subject to law and regulation. In performance of these duties, the orders of the Regulatory Commissions are subject to the orders, instructions, and directions of the APTEL issued in exercise of its statutory *powers. When they fail to comply with these statutory and other requirements, one can infer regulatory failure.”*

27. The Apex Court has frowned upon the Regulatory Commissions in allowing Revenue gaps to swell upto unmanageable limits leading to creations of regulatory assets which remain to be liquidated in time bound manner thereby jeopardizing the interests of the consumers and also adversely affecting the rights of the distribution companies. Finally the Court has concluded as under “-

“…………………………………………………………………..

IV. Tariff determination is a regulatory function and it is the exclusive province of the Regulatory Commissions. Tariff determination involves multiple variables requiring the regulators to act with expertise and also with certain amount of flexibility. Creation of regulatory asset is a ‘measure’ that the Commission adopts for good governance of tariff. It is also a recognition of revenue recoverable by distribution companies, and as such, it is an enforceable right, though only through tariff determination for later years. This 'measure' gives rise to *correlative obligations of the Regulatory Commissions to manage it efficiently and allow easy liquidation.*

V. Disproportionate increase and long pending regulatory asset depict a 'regulatory failure'. It has serious consequences on all stakeholders and the ultimate burden is only on the consumer.

……………………………………………………………..."

28. In the instant case, the Commission has imposed regulatory surcharge to do away with the revenue gap. This step was not only desirable but also necessary and no fault can be found in the same. Imposition of regulatory surcharge to minimize the revenue gap is in tune with the Tariff Policy and the Electricity Act, 2003. We have been informed by the Learned Counsel for the 2nd Respondent that objective of imposing regulatory surcharge has been achieved and the Discom has been at revenue surplus again by the end of the Financial Year 2018-19.

29. Hence, we do not find any force in the contentions of the Appellant on this issue. The issue is decided against the Appellant and in favour of the Respondents.

30. We summarize our findings on these issue hereunder :-

Issue No. I	Erroneous setting aside of Rs.180 crores from the surplus determined by the commission for Financial Year 2016-17.	The issue is decided in favour of the Respondents and against the Appellant.
Issue No. II	Rebate granted by NTPC left out in the review of APR for the Financial Year 2017-18.	This issue does not survive for consideration and is accordingly disposed off as such.
Issue No. III	Benefit of carrying cost on surplus derived to the consumers.	Finding of the Commission on this issue are found unsustainable and this issue is decided in favour of the Appellant.
Issue No. IV	Imposition of Regulatory Surcharge	we do not find any force in the contentions of the Appellant on this issue. The issue is decided against the Appellant and in favour of the Respondents.

31. Accordingly, the appeal stands disposed off in these terms.

Pronounced in the open court on this 14th day of November, 2025.

(Ajay Talegaonkar) (Virender Bhat)
Technical Member (Electricity) Judicial Member

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