

**Impact for prior period issues decided in favour of the Petitioner**

**A) Impact of Appeal 246 of 2014**

The Hon'ble Commission while truing up the ARR for FY 2012-13 has disallowed some legitimate claims of Tata Power- DDL. Aggrieved by such disallowance, Tata Power- DDL has filed an Appeal no 246 of 2014 against the said Tariff Order before the Hon'ble APTEL.

The Hon'ble APTEL on 30<sup>th</sup> September, 2019 has pronounced its Judgment issue wise. Twelve issues are decided in favour of the Petitioner for which the Petitioner is seeking final true up of these issue.

Given below is the list of issue which are decided in favour of Tata Power DDL.

<b>Issue No</b>	<b>Particulars</b>	<b>Refer Page no of the Judgment</b>	<b>Remark</b>
ISSUE NO.1	Re-determination of AT&C loss trajectory.	Page no 64-65	Refer Note no 1
ISSUE NO.7	Double deduction of additional misuse units from the trued up sales of FY 2010-11.	Page no 38-39	Refer Note no 2
ISSUE NO.8	Wrongful re-opening of tariff orders relating to FY 2004 - 05 to FY 2009-10.	Page no 95-96	Refer Note no 3
ISSUE NO.9	Disallowance of other expenses.	Page no 109-110	Refer Note no 4
ISSUE NO.26	Non implementation of direction of this Hon'ble Tribunal in relation to notional loans.	Page no 29-30	Refer Note no 5
ISSUE NO.25	Wrongful Computation of Advance Against Depreciation.	Page no 22-23	Refer Note no 6.
ISSUE NO.28	Erroneous computation of equity capital.	Page no 52-53	
ISSUE NO.30	Disallowance of capital expenditure made during the year 2012-13.	Page no 159-160	
ISSUE NO.31	Erroneous computation of means of financing assets capitalized.	Page no 168	
ISSUE NO.32	Erroneous allowance of depreciation rate.	Page no 177-178	
ISSUE NO.37	Overestimation of sale rate for surplus power for FY 14-15.	Page no 206-207	
ISSUE NO.38	Allowance of carrying cost relating to issues raised in the present appeal.	Page no 208	

*Note No wise detailed information is provided below:*

**Note No 1. Re-determination of AT&C loss trajectory.**

While allowing the trueing up of AT&C overachievement incentive for FY 2012-13 (1<sup>st</sup> year of the 2<sup>nd</sup> MYT control period) the Base year Target AT&C Loss Level was changed to 15.325% against the earlier AT&C target of 13%. However, the Hon'ble Commission did not change the loss level trajectory for 2<sup>nd</sup> MYT control period, which was approved based on base year AT&C Target Level of 13% for FY 2011-12.

Aggrieved by the above treatment of not-revising the AT&C Targets for 2<sup>nd</sup> MYT control period, Tata Power- DDL has raised this issue before the Hon'ble APTEL and thereafter this issue has been decided by the Hon'ble APTEL in favour of the Petitioner.

*Relevant extract of the Judgment is reproduced below:*

" .....

*12.4.2 In view of these facts, the AT&C loss trajectory beyond FY 2011-12 is required to be revised by considering the principle laid down by this Tribunal in Appeal No.14 of 2012 and, subsequently, followed by the Respondent Commission in its MYT order. Accordingly, we decide this issue in favour of the Appellant."*

Based on the above submission, the Petitioner is re-computing the AT&C overachievement incentive based on the revised AT&C Target.

**Table 2.1: Revised Computation of Billed Sales & AT&C overachievement incentive**

Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
AT&C Target as considered by Hon'ble Commission in the true up orders	15.33%	12.50%	12.00%	11.50%	11.00%	11.00%
Revised AT&C Target – based on APTEL Judgment		14.83%	14.33%	13.83%	13.33%	13.33%
AT&C Loss Actual		10.73%	10.56%	10.42%	9.37%	9.09%

Particulars	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
Trued up overachievement incentive – "A"		0.63%	2.89%	2.16%	3.26%	3.82%
Revised Overachievement Incentive – "B"		8.19%	7.54%	6.81%	7.91%	8.47%
Additional overachievement incentive (%) required to be considered for the purpose of computation of Incentive  C= (B-A)*30% Share towards Equity		2.27%	1.40%	1.40%	1.40%	1.40%
RRB (i) – D		2,231.48	2,282.00	2,378.57	2,558.01	2,638.41
Additional overachievement incentive = D*C		50.62	31.83	33.18	35.68	36.81

Therefore, in view of the above Submissions, the Hon'ble Commission is requested to kindly revise the AT&C loss level trajectory and allow the additional overachievement incentive to Tata power-DDL along with carrying costs.

**Note No 2. Double deduction of additional misuse units from the trued up sales of FY 2010-11.**

While allowing the truing up of AT&C overachievement incentive for FY 2010-11, additional units on account of Misuse was reduced twice, resulting into lower allowance of AT&C incentive. The Petitioner has raised this issue before APTEL and the Hon'ble APTEL agreed with our contentions and decided the issue in favour of us.

Relevant extract of the Judgment is reproduced below:

"10.4.1....."

*In the light of this factual matrix, the State Commission is directed to consider the additional misused units as 11.82 MUs only and re-compute the sales for FY 2010-11 and corresponding AT&C incentive also. Hence, we decide this issue in favour of the Appellant."*

Based on the above submission, the Petitioner is re-computing the Billed Sales, AT&C overachievement incentive for FY 2010-11 as follows.

**Table 2.2: Revised Computation of Billed Sales & AT&C overachievement incentive**

Particulars	Target	Trued up	Revised sought for trued up
Units Billed (MU)		6,342.09	6,342.09
Add- Adjustment for misuse units			11.82
Units Billed (MU) for AT&C purpose		6,342.09	6,353.91
Energy Input (MU)		7,305.68	7,305.68
Amount Billed (Rs. Cr.)		2,970.32	2,970.32
Average Billing Rate (Rs. Unit)		4.68	4.67
Amount Collected (Rs. Cr)		2,937.38	2,937.38
Units Realized (MU)		6,271.76	6,283.45
AT&C Actual	17%	14.15%	13.99%
Over achievement		2.85%	3.01%
Total benefit on account overachievement beyond Target level (Y - X)		97.44	102.72
Benefit on account of over achievement for min AT&C loss reduction level upto 2% to be shared in the ratio of 50:50 between the Petitioner and Consumers		68.43	68.31
Benefit on account of over achievement for min AT&C loss reduction level to be retained by the Petitioner		29.00	34.42
Benefits passed on in ARR to the Consumers		34.22	34.15
Total Incentive to the Petitioner		63.22	68.57
Differential amount sought for revised trued up			5.35

Therefore, in view of the above Submissions, the Hon'ble Commission is requested to kindly allow the additional overachievement incentive of Rs 5.35 Cr to Tata power-DDL along with carrying costs.

**Note No 3. Wrongful re-opening of tariff orders relating to FY 2004 - 05 to FY 2009-10.**

The Hon'ble Commission in its true up order dated July 2014 had reduced AT&C overachievement incentive from FY 05 to FY 10 by reopening the tariff orders which have already attained finality in respect to allowance of AT&C overachievement incentive. Relevant extract of Tariff Order for FY 2014-15 is reproduced below:

**Table 3.36: Summary of Misuse units**

Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
Over achievement	3.40%	6.33%	5.12%	3.47%	3.61%	3.52%
Misuse Units reported (MU)				25.07	12.98	15.18
Misuse Units (MU)	53.17	41.39	32.21	25.07	12.98	15.18
AT&C Loss reduction incentive	38.32	81.69	71.50	49.86	52.86	56.64
Reduction in AT&C due to Misuse (Rs. Crore)	(10.41)	(8.73)	(7.42)	(5.76)	(3.03)	(3.47)

Aggrieved by the above disallowance, the Petitioner has challenged the issue before the Hon'ble APTEL and the Hon'ble APTEL has decided the issue in favour of the Petitioner. Relevant extract of the Judgment is reproduced below:

"15.4.2. ....

*In view of these facts, we are of the opinion that when final true up for previous years have been completed and final orders passed by the Commission, which have attained finality, cannot be reopened for re-examination. We, therefore, decide this issue in favour of the Appellant that true up matters/ orders cannot be reopened or reexamined /reconsidered."*

Based on above submission, the Petitioner is requesting to the Hon'ble Commission to reverse back the disallowance made in Tariff Order for 2014-15 and allow the said amounts along with carrying costs.

**Table 3.36: Summary of Misuse units**

Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
Over achievement	3.40%	6.33%	5.12%	3.47%	3.61%	3.52%
Misuse Units reported (MU)				25.07	12.98	15.18
Misuse Units (MU)	53.17	41.39	32.21	25.07	12.98	15.18
AT&C Loss reduction incentive	38.32	81.69	71.50	49.86	52.86	56.64
Reduction in AT&C due to Misuse (Rs. Crore)	(10.41)	(8.73)	(7.42)	(5.76)	(3.03)	(3.47)

**Note No 4. Disallowance of Other Expenses**

While truing up for FY 2012-13, the Hon'ble Commission has not considered legitimate claims of the Petitioner and this unfair disallowance was challenged before the Hon'ble APTEL. It is worth to mention that these expenses are done in the interest of the consumer and uncontrollable in the hands of Petitioner. Hence, the Petitioner has sought these expenses over and above the normative expenses.

Considering the submission made by the Petitioner before the Hon'ble APTEL, the Hon'ble APTEL agreed with TPDDL contentions and decided the issue in favour of TPDDL. Relevant extract of the Judgment is given below:

*"16.4.1 We have carefully gone through the rival submissions of learned counsel for the Appellant and learned counsel for the Respondent Commission and also taken note of the findings of this Tribunal in its judgment dated 10.02.2015 in Appeal No. 171 of 2012. It is not in dispute that the Appellant has actually incurred various expenses as claimed by it in the petition which the State Commission has disallowed while truing up for FY 2012-13 giving reasoning that these expenses are controllable. It is, however, seen that many of the expenses*

*so claimed by the Appellant are in the category of uncontrollable in nature and need to be looked into by the Commission by adopting a judicious approach instead of disallowing all of them in totality.....*

*Accordingly, we decide this issue in favour of the Appellant."*

Thus, in line with the Hon'ble APTEL Judgment, the Petitioner seeks the following claims for entire 2<sup>nd</sup> MYT Control period along with carrying costs.

**Table 2.3: Additional O&M Expenses**

Particulars	FY 13	FY 14	FY 15	FY 16	FY 17
Change in Service Tax Rate	1.96	2.67	3.03	5.45	7.18
Service Tax under Reverse charge mechanism	0.31	1.50	0.67	3.44	4.44
Cost of Auditor Certificate	0.07	0.09			
Financing charges	0.40	1.04	0.70	0.48	0.21
Increase in LC charges	0.73	0.59			
Credit rating fees	0.13	0.22			
<b>Total – Rs Cr.</b>	<b>3.60</b>	<b>6.11</b>	<b>4.40</b>	<b>9.37</b>	<b>11.83</b>

**Note No 5. Non implementation of direction of this Hon'ble Tribunal in relation to notional loans**

To implement the Hon'ble APTEL Judgment in relation to consideration of interest rate for notional loans, the Petitioner had submitted claim of Rs 0.64 Cr for FY 2006-07 while sought true up of FY 2012-13. Relevant extract of the Tariff Order is given below:

Tata Power Delhi Distribution Limited

Tariff Order for FY 2014-15

**Interest rate for Notional loans of FY 2006-07**

**Petitioner's Submission**

3.95 As per the directions given by the Hon'ble ATE, the interest rate for Notional loans should be the market rate at the time of induction of the notional loan and interest be allowed for each year based on prevailing market rate of interest of that year. The relevant para of the order is reproduced below:

*"13. The above directions with observations do not mean that the Delhi Commission should adopt the weighted average of the SBI Prime Lending Rate during the year. What it actually mean to us is that interest rate of notional loan should be market rate at the time of the induction of the notional loan.*

*14. This direction given by this Tribunal in Appeal No. 52 of 2008 should apply and should be given full effect in each year by allowing interest amount of notional loan based on the market related interest rate prevailing in that year".*

3.96 It is submitted that as no loan is availed in FY 2006-07, the Petitioner has considered interest rate of 8.5% p.a. (as allowed by the Hon'ble Commission based on loans last availed in FY 2004-05) plus the change in SBI prime lending rates of FY 2004-05 and FY 2006-07.

Particulars	Interest rate
SBI PLR during FY 2004-05	10.25%
SBI PLR during FY 2006-07	11.09%
Change in SBI PLR	0.84%
Rate for Notional loan considered during FY 2004-05	8.50%
Rate for notional loan should be considered based on change in SBI PLR	9.34%

**Table 3.21: Impact of the change in interest rate of Notional Loan**

Particulars	UOM	FY 2006-07
Notional Loan Amount – A	Rs Cr	151.75
Interest rate for Notional Loan – B	%	9.34
Approved Rate of Notional Loan- C	%	8.50
Additional Interest cost sought for the year – (A/2*(B-C))	Rs Cr	0.64

The Hon'ble Commission has not considered the above submissions of TPDDL. Thus, TPDDL has again raised the issue before the Hon'ble APTEL in Appeal no 246. The Hon'ble APTEL decided the issue again in favour of TPDDL. Relevant extract of the Judgment is given below:



*"9.4.2 In view of these facts, we find force in the submissions of learned counsel for the Appellant that the Respondent Commission has not correctly applied the ratio laid down by this Tribunal in above two judgments. It is crystal clear that the Commission was required to allow interest rate on notional loan at market rate at the time of induction of notional loan and not weighted average of the SBI PLR during the year. The Respondent Commission is accordingly directed to adopt the findings and directions of this Tribunal in the aforesaid judgments in letter and spirit. Accordingly, this issue is decided in favour of the Appellant."*

**Based on above submission, the Petitioner is requesting to the Hon'ble Commission to allow amount of Rs 0.64 Cr as sought earlier.**

**Note No 6. Issues related to Capitalisation, Depreciation, Advance Against Depreciation:**

The Hon'ble APTEL also decides the following issues in favour of TPDDL. However, due to pending the physical verification of assets from FY 05-06 onwards the Hon'ble Commission is requested to implement the Judgment delivered by the Hon'ble APTEL in letter and spirit.

<b>Issue No</b>	<b>Particulars</b>	<b>Refer Page no of the Judgment</b>
ISSUE NO.25	Wrongful Computation of Advance Against Depreciation.	Page no 22-23
ISSUE NO.28	Erroneous computation of equity capital.	Page no 52-53
ISSUE NO.30	Disallowance of capital expenditure made during the year 2012-13.	Page no 159-160
ISSUE NO.31	Erroneous computation of means of financing assets capitalized.	Page no 168
ISSUE NO.32	Erroneous allowance of depreciation rate.	Page no 177-178

**B) Impact of Rithala Tariff Order dated 11<sup>th</sup> Nov, 2019 issued by the Hon'ble Commission**

The Hon'ble Commission has issued a tariff order for Rithala on dated 11<sup>th</sup> Nov, 2019. In the said Tariff Order, the Hon'ble Commission has approved recovery of fixed charges & variable charges from FY 2010-11 to FY 2017-18 as given below:

**Table 2.4: Summary of the Y-O-Y approved Fixed Charges & Variable Charges**

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Fixed Charges*	5.03	46.08	57.29	56.84	49.54	50.47	50.17	45.05
Fuel Cost <sup>^</sup>	14.52	89.77	51.97	0.08				
<b>Total</b>	<b>19.55</b>	<b>135.85</b>	<b>109.26</b>	<b>56.92</b>	<b>49.54</b>	<b>50.47</b>	<b>50.17</b>	<b>45.05</b>

\*Refer para no 4.10 on Page no 6 of 22 for FY 10-11 & FY 11-12 & Refer para no 5.5.4 on Page no 13 of 22 from FY 12-13 onwards

<sup>^</sup> Refer para no 5.5.4 on Page no 13 of 22

Against the above approved amount, the Hon'ble Commission has provisionally allowed an amount of Rs 121 Cr. Break-up of the same is given in table below:

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
<b>Total</b>	<b>10.82</b>	<b>70.63</b>	<b>40.50</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Based on above tables, it is requested to the Hon'ble Commission to allow the year on year differential amount as computed in table below.

**Table 2.5: Summary of the Y-O-Y Differential Amount**

**(Rs. Cr.)**

Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
Total as per Table	19.55	135.85	109.26	56.92	49.54	50.47	50.17	45.05
Provisionally approved as per table	10.82	70.63	40.5	0	0	0	0	0
<b>Differential amount</b>	<b>8.73</b>	<b>65.22</b>	<b>68.76</b>	<b>56.92</b>	<b>49.54</b>	<b>50.47</b>	<b>50.17</b>	<b>45.05</b>

\*Carrying cost on the same is computed in Table no. 2.8

**C) Inadvertently Non allowance of refinancing incentive on loans for FY 2017-18**

The Hon'ble Commission has tried up ARR for FY 2017-18, based on the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

Relevant extract of the said Tariff Order is reproduced below:

*"Return on Capital Employed for FY 2017-18*

*5.4.14 Interest on Loan, Return on Equity and Interest on Working Capital for FY 2017-18 have been considered under Return on Capital Employed (RoCE) concept in line with the provisions of DERC Tariff Regulations, 2017."*

Tata Power- DDL would like to bring in the kind attention of the Hon'ble Commission that while approving the ROCE for FY 2017-18, the Hon'ble Commission has inadvertently not give the incentive for Refinancing of loans. It is worth to mention that the as Hon'ble Commission has considered lower cost of debt for FY 2017-18 (i.e. 8.84% for Capex & 8.14% for Working Capital) in comparison to cost of debt considered for FY 2016-17 (i.e. 10.55% for capex and 13.50% for working capital), thus, Tata Power- DDL is eligible for claiming incentive as per Regulation 71 of Tariff Regulations 2017 further to be read with Regulation 10 of DERC (Business Plan Regulations), 2017.

In line with BPR, computation of Incentive for lower financing cost for FY 2017-18 is given below:

**Table 2.6: Incentive for lower financing cost for FY 17-18 (Rs. Cr.)**

Particulars	Debt Amount – Rs Cr.	Cost of Debt	SBI MCLR+ 2%	Difference in margin available for Incentive*	Total Amount of Incentive – Rs Cr.	TPDDL share (50% of total incentive) Rs Cr.
	A	B	C	D= C-B	E = A*D	F= E/2
Avg Debt at 70% of net capitalization	*84.20	^8.84%	10%(8% +2%)	1.1600%	0.98	0.49
Debt at 100% of working capital	*14.39	^8.14%	10%(8% +2%)	1.8600%	0.26	0.13
Total amount of Incentive					1.24	0.62

\*Refer Row no "O" & "P" respectively on Page no 12 of 22 of Impugned Tariff Order

^Refer Row no "S" & "T" respectively on Page no 12 of 22 of Impugned Tariff Order

Based on above submissions, it is requested to the Hon'ble Commission to acknowledge the said computation and allow the impact of Rs 0.62 Cr in the ensuing Tariff Order of TPDDL-Distribution.

**D) Impact on account of Judgement pronounced by the Hon'ble Commission in Petition no 10/2014**

The Hon'ble Commission in its previous tried up tariff order has disallowed an amount of Rs 47.40 Cr. on account of non-complying with the merit order despatch principle by the Petitioner. Year wise breakup of the amount disallowed is given below:

**Table 2.7: Allowance of disallowed amount of Merit Order Scheduling (Rs Cr.)**

Sl. No.	Particulars	*FY 14	FY 15	FY 16	FY 17
1	Amount Disallowed	49.11	0.04	0.00	1.56
2	Less- Already Allowed	3.31*	-	-	-
3	Differential amount now sought	45.80	0.04	0.000	1.56

\* An amount of Rs. 3.31 Crores was allowed for FY 2013-14 in Tariff order dated 28<sup>th</sup> March 2018.

Aggrieved by the above disallowance the Petition has filed an Appeal 10/2014 before the Hon'ble Commission and seeking permission from the Hon'ble Commission to produce relevant evidence of SLDC, so that it can state that there is no default at the Petitioner side to comply with the merit order dispatch principle.

Based on the evidence provided the Hon'ble Commission on dated 06.12.2019 has passed its judgement in respect to disallowance of power purchase account for those plants whose energy has been forcefully schedule to TPDDL.

Relevant extract of the Judgement in reproduced below:

**"c) Payments towards the excess energy forcefully scheduled by SLDC to TPDDL in deviation to the scheduling requirements of TPDDL**

*The Petitioner had provided a list of instances of forced scheduling of power for financial year 2016 and 2017 to SLDC, which was analyzed by the SLDC and it was confirmed that the instances of such forced scheduling was done on account of technical/transmission constraints. Regarding the request of the Petitioner that it should not be subjected to adverse impact DSM penalty and merit order violation penalty due to forced scheduling of power by Delhi SLDC which is attributable to technical constraints, **the claim of the Petitioner***

**regarding disallowance/penalty on account of violation of merit order dispatch shall be considered during the next ARR exercise."**

Based on above, it is requested to the Hon'ble Commission to allow Rs 47.40 Cr as stated in the table above along with the carrying cost.

**d) Computation of Impact of Judgement in Petition no 04/2014 along with carrying cost upto FY 17-18**

The Hon'ble Commission in its Judgement in Petition no 04/2014 has agreed to allow impact of Rs 1.97 Cr. for FY 09-10 in the next tariff order. Relevant extract of the same is reproduce below:

**"ISSUE NO.3 :**

**Rs. 1.97 Cr. Additional street light material billing inadvertently offered for ARR without claiming corresponding expenses on material cost of street lighting.**

24. As much it is related to the claim of the petitioner that Rs.1.97 crore towards additional street light material inadvertently included for ARR without claiming corresponding expenses on material cost of street light, the same was not allowed as the audited account submitted by the Petitioner has entries grouping various expenses and as such Rs.1.97 crore towards additional street light material could not be verified. If the Petitioner has made an inadvertent error as claimed, it may be allowed to be rectified subject to prudence check. The Petitioner is directed to get the entry regarding Rs.1.97 Cr. reconciled and verified within one month from the issue of this Order. **The impact of the claim of the Petitioner on being admissible may be considered in the subsequent Tariff Order."**

Based on the above judgement, it is requested to the Hon'ble Commission to allow the impact of Rs 1.97 Cr along with carrying cost in the upcoming tariff order. The detailed information of the aforesaid claim shall be submitted separately to the Hon'ble Commission.

**E) Implementation of Judgment pronounced by the Hon'ble APTEL towards Solar Plant of TPDDL**

TPDDL had filed Petitions before the Hon'ble Commission seeking determination of tariff for solar Rooftop plants installed by the Petitioner itself. The Hon'ble Commission by Orders passed in the respective Petitions had determined tariff in a piecemeal manner, i.e., Hon'ble Commission granted levelized tariff for the plants a period of only two years and thereafter for remaining 23 years of useful life of the project adopted an arbitrary approach of considering tariff for sale of power from the plants at Average Pooled Power Purchase Cost (APPC) of TPDDL's distribution business. Apart from the above, the Hon'ble Commission *interalia* made observations, regarding mandatory requirement of meeting the RPO obligation through REC Mechanism etc.

TPDDL, aggrieved by the aforesaid piecemeal approach towards tariff determination had filed Appeal Nos. 82 of 2015 and batch before the Hon'ble Appellate Tribunal for Electricity ("**Hon'ble Tribunal**") against each of the Orders passed by this Hon'ble Commission, i.e.:

S. No.	Plant Name	Appeal No.	Petition No.	Tariff Order
1.	Keshavpuram	Appeal No. 82 of 2015	06 of 2010	09.01.2015
2.	GTK	Appeal No. 58 of 2016	31 of 2011	07.01.2016
3.	Narela & DSIDC-II	Appeal No. 136 of 2015	30 of 2011	16.03.2015
4.	CENNET	Appeal No. 285 of 2015	08 of 2011	24.04.2015

The Hon'ble Tribunal on 16.04.2019 passed a judgment in the aforesaid Appeals and had partly allowed the said Appeals, holding as under:

*"11.3 We have analyzed the submissions of the learned counsel for the Appellant and the learned counsel for the Respondent Commission and it is manifest that the State Commission is in fact adopted an adhoc piece-meal approach for determination of tariff for solar projects of the Appellant, namely, calculating tariff for first two years based on the project's cost and other applicable norms and decided to grant tariff at APCC*

*for the balance period i.e. 23 years. We, thus opine that the decision of the State Commission to bifurcate the useful life of the project for determination of tariff in 2 and 23 years, does not appear appropriate. As per the settled norms as well as relevant regulations, the tariff is required to be determined for the entire period of useful life of the projects i.e. 25 years. Whatsoever may be the reason, we are unable to accept the stand of the State Commission in this regard, as brought out in the Impugned Order. In fact, the State Commission ought to have applied the judicious approach for arriving at the levelized tariff for the entire life of the solar projects based on the actual/audited cost of the projects with application of other associated norms for computation of project wise tariff. In view of these facts, we hold that the Impugned Order of the State Commission suffers from legal infirmity and perversity to the extent of the facts mentioned above.*

.....

*12.3 The State Commission vide its Order dated 23.02.2008, advised the Appellant to try to achieve 1% of the total power purchase from renewable sources and accordingly approved the execution of Solar PV Projects. During course of implementation of the projects, the Appellant could not avail the facility of incentive/subsidy from MNRE and as a result the reference projects could not qualify for generic tariff applicable as per CERC regulations. Merely by not allowing generic tariff to the Appellant's projects, does not amount to any violation of the Electricity Act and Policies of the Government to promote the generation from RE sources.*

*12.4 Thus, we hold that the approach of the State Commission to allow computed tariff for first two years and APCC tariff for balance 23 years is erroneous.*

**ORDER**

*For the foregoing reasons, as stated supra, we are of the considered opinion that issues raised in the instant appeals being Appeal No. 82, 136, 274, 285 of 2015 & 58 of 2016 have merit and accordingly, the appeals are partly allowed.*

*The Impugned orders passed by Delhi Electricity Regulatory Commission dated 09.01.2015, 16.03.2015, 07.01.2015, 24.04.2015 & 07.01.2016 in Appeal Nos. 82, 136, 274, 285 of 2015 & 58 of 2016 are hereby set aside so far it relates to our findings and directions as stated in Paragraph 12.1 to 12.4. **The Respondent State Commission is directed to pass the consequential orders in the light of the observations made in the above paragraphs from 12.1 to 12.4 as expeditiously as possible within a period of 4 months from the date of receipt of this copy of judgment and order.***

*No order as to costs.*

*Pronounced in the Open Court on this 16th April, 2019."*

As such in view of the aforesaid judgment, the Hon'ble Commission was to determine tariff for each of the Solar Roof top plants based on the actual/audited cost of the projects with application of other associated norms for computation of project-wise tariff, within a period of four months from the date of passing of the Order, i.e., 16.04.2019.

The Hon'ble Commission had preferred a Civil Appeal against the said Order passed by the Hon'ble Tribunal, being Civil Appeal -Diary No. 28198 of 2019 "*Delhi Electricity Regulatory Commission v Tata Power Delhi Distribution Ltd*", which was listed before the Hon'ble Supreme Court on 18.12.2019.

The Hon'ble Supreme Court on 18.12.2019 was pleased to admit the said Civil Appeal and did not entertain the interim application seeking stay of operation of the Impugned Judgment. On the contrary, the Hon'ble Supreme Court directed the counsel for Hon'ble Commission to implement the Order dated 16.04.2019. Copy of the Order dated 18.12.2019 is attached herewith for ease of reference.



In view of the above and considering the judicial propriety, the Hon'ble Commission is requested to implement the Directions contained in order dated 16.04.2019 and to allow the differential tariff along with carrying cost by redetermine the tariff for each of the Solar Roof top plants set up by TPDDL in line with the Hon'ble APTEL Judgment.

**F) Impact of Income Tax related to Policy Direction Period & 115 JB of Income Tax ACT**

The Petitioner in its submission in the prudence check of last year true up has mentioned that due to pending of final assessment of Income Tax for some of the year related to Policy Direction Period. Therefore, the Petitioner requested to the Hon'ble Commission to defer the allowance till the issuance of final assessment order by Income Tax authorities. Thus, in case if the pending final assessment order are issued during the preceding the true up for FY 2018-19, it is requested to the Hon'ble Commission to consider and allow the impact of the same along with carrying cost.

**Computation of Impact of Appeal 246, Rithala Tariff Order & Judgement in Petition no 10/2014 & Petition no 4/2014 along with carrying cost upto FY 17-18**

Based on all above submission, the issue wise and year wise impact along with carrying cost is computed as below:

**Table 2.8: Year wise impact along with Carrying cost**

Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
<b>Appeal Impact 246 of 2012</b>														
Non implementation of direction of Hon'ble Tribunal in relation to notional loans	-	-	0.64	-	-	-	-	-	-	-	-	-	-	-
Double deduction of additional misuse units from tried up sales of FY 11	-	-	-	-	-	-	5.35	-	-	-	-	-	-	-
Re-determination of AT&C loss trajectory	-	-	-	-	-	-	-	-	50.62	31.83	33.18	35.68	36.81	-
Wrongful re-opening of tariff orders FY 04-05 to FY 2009-10	10.41	8.73	7.42	5.76	3.03	3.47	-	-	-	-	-	-	-	-
Disallowance of Other Expenses	-	-	-	-	-	-	-	-	3.60	6.11	4.40	9.37	11.83	0.00
<b>Rithala Tariff Order impact</b>														
Differential claim	-	-	-	-	-	-	8.73	65.22	68.76	56.92	49.54	50.47	50.17	45.05
Incentive refinancing loans	-	-	-	-	-	-	-	-	-	-	-	-	-	0.62
Reversal of Merit order disallowance	-	-	-	-	-	-	-	-	-	45.80	0.04	-	1.56	-
Street Light Material	-	-	-	-	-	1.97	-	-	-	-	-	-	-	-
<b>Total Addition</b>	<b>10.41</b>	<b>8.73</b>	<b>8.06</b>	<b>5.76</b>	<b>3.03</b>	<b>5.44</b>	<b>14.08</b>	<b>65.22</b>	<b>122.98</b>	<b>140.66</b>	<b>87.16</b>	<b>95.52</b>	<b>100.37</b>	<b>45.67</b>
Carrying cost rate (%)	9.00%	9.00%	9.00%	10.61%	11.32%	10.17%	10.41%	12.20%	11.78%	11.88%	11.98%	12.08%	12.08%	10.33%
Opening Balance	10.41	10.41	20.08	29.94	39.18	46.82	57.30	78.07	156.80	305.49	490.81	641.99	820.84	1,026.42
<b>Addition</b>	10.41	8.73	8.06	5.76	3.03	5.44	14.08	65.22	122.98	140.66	87.16	95.52	100.37	45.67
<b>Carrying Cost</b>	-	0.94	1.81	3.48	4.61	5.04	6.70	13.50	25.71	44.66	64.02	83.32	105.22	108.39
Closing Balance	10.41	20.08	29.94	39.18	46.82	57.30	78.07	156.80	305.49	490.81	641.99	820.84	1,026.42	1,180.48



*with you Non-Stop*