SOUTH BIHAR POWER DISTRIBUTION COMPANY LIMITED
Registered Office: Vidyut Bhawan, Bailey Road, Patna – 21.
A Govt. Of Bihar Undertaking
(Department of Commercial)
CIN: U40109BR2012SGC018890

Letter No SBC/68/2023/Tariff   Dated ....

From,

Purushottam Prasad,
Chief Engineer (Com.)

To,

The Secretary,
Bihar Electricity Regulatory Commission,
Patna

Sub. :- **Implementation of TOD Tariff issued in Tariff Orders for FY 2023-24 by the Hon'ble Commission.**

Ref. :- 1. BERC letter No. 495 BERC-Tariff (Corr)- 05/2021 dtd 11.05.2023.
2. Tariff Order for FY 2023-24 dated 23.03.2023 for the State DISCOMs.
3. This Office Letter no.- 301 dated – 31.03.2023.

Sir,

In response to the Hon'ble Commission's letter dated 11.05.2023, this is to submit that the DISCOMs has always taken the highest possible endeavour to comply the directions of the Commission. However, due to practical and technical hurdles there remain some challenges for the DISCOMs to comply the direction of Hon'ble Commission to change the ToD structure as per the approved tariff for the year 2023-24.

Accordingly, the Petitioner vide its letter No. 301 dated 31.03.2023 communicated to the Commission that due to technical and practical hardships, it would not be able to implement the revised TOD structure with effect from 01.04.2023 and the DISCOMs prayed to continue billing of the consumers availing the TOD facility based on the TOD structure (both timing and the rate) approved by the Hon'ble Commission in the Tariff Order dated 25th March 2022 (applicable for FY 2022-23).

Further, the Petitioner also filed a Petition for seeking exemption in implementation of Time-of-Day structure as directed in Tariff Order issued on 23.03.2023 and allow to continue the TOD structure as approved in Tariff Order for FY 2022-23. The matter is subjudice before Hon'ble Commission. A detailed Review Petitions against the Tariff Order for FY 2023-24 has also been filed in this regard.

In furtherance to the Commission directions vide letter dated 11.05.2023, the DISCOMs organized a meeting on 07.06.2023 with the meter manufacturers to discuss the matter of reconfiguration of TOD in the HT meter in compliance to implementation of Tariff Order for FY 2023-24 passed by the Hon'ble Commission. The Minutes of Meeting dated 07.06.2023 is enclosed herewith. During the discussion held and submission received from the meter manufacturers it has been observed that expected delivery of already ordered HT meters to be completed by September 2023 & on-going replacement of old make HT meter from existing stock as well as through procurement of balance HT meters (keeping in view the replacement as well as release of new service connection in HT category), the

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whole activity of replacement of TOD compatible HT meter with updated TOD is expected to go up to March'2024.

Therefore, in view of the above genuine challenges being faced by the DISCOMs as cited above, Hon'ble Commission is humbly prayed to allow the following:

1. To allow a time till 31st March 2024 to the DISCOMs for replacement of non-re-configurable TOD HT meters so that any change in TOD structure (time slot) may be implemented.
2. Meanwhile, with respect to ToD rates, the DISCOMs may kindly be allowed to bill the consumers on the older TOD structure (time slot) as per Tariff order for FY 2022-2023 with the TOD rates approved by the Hon'ble Commission in the Tariff Order for FY 2023-24.
3. Further, bills with revised TOD rates may only be issued from July 2023 onwards. However the bills already issued in the period April 23-June 23 may be allowed as it is issued.

Further, it is requested to consider the above request in the related petition, review petition filed by both the DISCOMs such as case no. 06/2023 & 09/2023 & accordingly petition may be considered to be amended to that extent.

Encl. :- MoM held on 07.06.2023.

Yours faithfully,
Sd/-
(Purushottam Prasad)
Chief Engineer (Com.)

Memo No............614.......... Dated.....09/06/23

Copy forwarded to Chief Engineer (Commercial), NBPDCL for information.

09/06/23
(Purushottam Prasad)
Chief Engineer (Com.)

CC (NB)

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North Bihar Power Distribution Company Limited
(Regd. Office : Vidyut Bhawan, Baily Road, Patna)
(CIN- U40109BR2012SGC018920)
(Commercial Department)

Letter No:-NB/CoM/Review Petition metering/17/2023 - 265 Email- cecom2.nbpdcl@gmail.com
Dated - 15/05/23

From,

Deepak Kumar
Chief Engineer (Commercial)

To,

The Secretary,
Bihar Electricity Regulatory Commission, Patna

Sub:- Review Petition on behalf of North Bihar Power Distribution Company Limited (NBPDCL) for review on Tariff Order dated 23.03.2023 passed by the Hon'ble Commission in Case No 16/2022 under Regulation 31 of BERC (Conduct of Business) Regulations, 2005.

Ref:- (i) Tariff Order dated 23.03.2023 incase no .16/2022
(ii) CE(Commercil)SBPDCL letter no. 392 dated 17.04.2023
(iii) BERC letter no. 461 dated 03.05.2023 to SBPDCL.

Sir,

Kindly find enclosed herewith a Review Petition on behalf of North Bihar Power Distribution Company Limited (NBPDCL) for review on Tariff Order dated 23.03.2023 passed by the Hon'ble Commission in Case No 16/2022 under Regulation 31 of BERC (Conduct of Business) Regulations, 2005 along with an affidavit.

The instant review petition has been filed after subsuming the ToD petition filed earlier petition vide SBPDCL letter no. 392 dated 17.04.2023

The petition may kindly be admitted.

Encl:- **1.Six Copy Review Petition with CD**
2.Affidavit in original

Yours faithfully,
15.5.23
Deepak Kumar
Chief Engineer (Commercial)

बिहार विद्युत विनियामक आयोग
15 MAY 2023
पटना-21
P.M. 6.00

BEFORE THE HON'BLE BIHAR ELECTRICITY REGULATORY COMMISSION, PATNA

REVIEW PETITION NO. of 2023

in

CASE NO. 16 of 2022

IN THE MATTER OF:

PETITION UNDER SECTION 94 (1) (f) OF THE ELECTRICITY ACT, 2003, READ WITH REGULATIONS 38, 39 and 40 OF THE BIHAR ELECTRICITY REGULATORY COMMISSION MULTI YEAR TARIFF (DISTRIBUTION) REGULATIONS, 2021, ALONG WITH REGULATIONS 6(3), 12, 31, 36, 37, 38, 39 OF THE BIHAR ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2005 AND ORDER 47 RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908, SEEKING REVIEW OF TARIFF ORDER DATED 23rd MARCH 2023 PASSED BY THE HON'BLE COMMISSION FOR TRUING UP OF FY 2021-22, ANNUAL PERFORMANCE REVIEW (APR) FOR FY 2022-23, ANNUAL REVENUE REQUIREMENT AND DETERMINATION OF TARIFF FOR FY 2023-24 OF NORTH BIHAR POWER DISTRIBUTION CO. LTD.

AND

IN THE MATTER OF:

North Bihar Power Distribution Company Limited (the Review Petitioner or the Petitioner)
Fourth Floor, Vidyut Bhawan-III,
Bailey Road, Patna – 800 001
Acting through
The Chief Engineer (Commercial)

MOST RESPECTFULLY SHOWETH:

1. The present review petition is being filed by the Petitioner, North Bihar Power Distribution Company Limited for review of the Tariff Order dated 23rd March 2023 passed by the Bihar Electricity Regulatory Commission hereinafter referred as the Hon'ble Commission undertaking the truing up of the FY 2021-22, Annual Performance Review **(APR)** for FY 2022-23 and Annual Revenue Requirements **(ARR)** & determination of Tariff for FY 2023-24. The Hon'ble Commission under sections 62 and 64 of the Electricity Act, 2003 read with Bihar Electricity Regulatory Commission (Multiyear Distribution Tariff) Regulations, 2018, and Bihar Electricity Regulatory Commission (Multi Year Distribution Tariff) Regulations, 2021 respectively has passed on the Tariff Order dated 23rd March 2023.

2. In view of the above, it is hereby submitted that the Tariff Order dated 23rd March 2023 passed by the Hon'ble Commission in Case No. 16 of 2022 suffers from certain review points and requires modification of the said order on certain specific aspects as detailed herein.

3. The Petitioner states that primarily the present review petition is being filed on the following aspects:

   A. Distribution Loss and AT&C loss as approved for FY 2021-22 to FY 2023-24 and its corresponding resultant parameters – Energy Balance and Power purchase cost as per the RDSS scheme
   B. Disallowance of Power Purchase cost due to additional UI Charges for FY 2021-22
   C. Computation of Employee expenses for FY 2021-22
   D. Smart Prepaid Meter rent not allowed for the period from FY 2021-22 to FY 20-23-24

E. Error in calculation of GFA, CAPEX, Capitalisation, O&M Expense, Depreciation. Interest on Loan and Interest on Working Capital for FY 2021-22 and FY 2023-24

F. Computation of Other Finance Charges for FY 2021-22

G. Change in Time-of-Day Tariff structure.

H. Other Errors and Disallowances

4. The Petitioner request the Hon'ble Commission to condone any inadvertent omissions/errors/shortcomings and permit to add/change/modify/alter this filing and make further additional submissions as may be required at a future date. The Petitioner's believes that such an approach would go a long way towards providing a fair treatment to all the stakeholders and may eliminate the need for a review or clarification.

5. A summary of the requests from the Hon'ble Commission in the review petition is provided below:

S. No.	Particulars	Claimed	Approved	Disallowed / Amount Difference
FY 2021-22				
1	Purchase of power (excluding rebate)	8,194.23	8,152.71	41.52
2	Employee expenses	422.14	402.50	19.64
3	A&G expenses	180.52	156.73	23.79
4	Depreciation	306.79	280.61	26.18
5	Interest on loan	497.58	471.05	26.53
6	Other finance charges	79.08	47.24	31.84
7	Return on equity	358.13	330.19	27.94
8	Interest on working capital	41.28	-	41.28
FY 2023-24				
9	Purchase of power (excluding rebate)	10,044.95	8,981.20	1,063.75
10	Transmission charges	1,925.26	1,538.42	386.84
11	R&M expenses	290.76	264.65	26.11

S. No.	Particulars	Claimed	Approved	Disallowed / Amount Difference
12	A&G expenses	508.83	218.77	290.06
13	Holding company expenses	27.29	25.28	2.01
14	Depreciation	415.13	362.02	53.11
15	Interest on loan	740.63	546.77	193.86
16	Other finance charges	95.69	57.16	38.53
17	Return on equity	565.03	412.89	152.14
18	Interest on working capital	68.61	-	68.61

6. The reasons and grounds for review of the Tariff Order dated 23rd March 2023 are detailed hereunder:

A. Distribution Loss and AT&C Loss as approved for FY 2021-22 to FY 2023-24 and its corresponding resultant parameters as per the RDSS scheme

- **Background:**
  - Bihar has been one of the fastest-growing states in the country. An important enabler has been the remarkable transformation undertaken by the State Government to ensure sustainable and reliable electricity access to 100% of the population.
  - Bihar is majorly an agricultural state with a per capita power consumption of around 231 kWh as against the national average of 1208 kWh for FY 2019-20. Approx. 24 Lakhs of consumers (majorly Kutir Jyoti or BPL and DS-I: Rural domestic) across rural areas in the jurisdiction of the Petitioner were added under various projects like Har Ghar Bijli Yojana, Saubhagya and RE-DDUGJY. As a result, there was an increased volume of energy consumption on long low-tension distribution networks, thereby increasing both the length of the LT line as well as corresponding increase in losses and having a cascading effect due to an increase in consumer profile having very low power consumption scattered across length and breadth of the Petitioner area

- The LT:HT Ratio for the Petitioner for FY 21-22 is 88:12 in terms of Sales and 99.99:0.01 in terms of number of Consumers. This skewed LT:HT consumer ratio has adversely affected the sales volumes to high value consumers. Higher volume of sales to LT consumers has led to low energy consumption and revenues per consumer, at a similar cost of service, thereby impacting overall losses. As is consequent from above, and the fact that most of the consumers added recently to the network under the Saubhagya and Har Ghar Bijli scheme are LT consumers, the LT network length has further increased which led to rise in AT&C losses against the target approved by the Hon'ble Commission. Increase in AT&C losses has also led to increase in financial losses.
- Towards the end of March 2020 onwards and again in the FY 2021-22, the pandemic struck the country forcing the Central Government to announce a nation-wide lockdown and restrictions by the State Government which has led to shut down of all commercial and industrial activities across the state. Consequently, the electricity demand from Commercial and Industrial (C&I) categories and railways (due to suspension of passenger trains) has reduced significantly.

- **Revamped Distribution Sector Scheme (RDSS)**

1.1.1. this is to inform to the Hon'ble Commission that Government of India, through Ministry of Power introduced "Revamped Distribution Sector Scheme – A Reform based, and Results linked scheme" in July 2021. The scheme is applicable for all the State/UTs Utilities or Power Departments to avail such financial assistance under the revamped scheme. The scheme has a total outlay of Rs 3,03,758 Crores with an estimated gross budgetary support of Rs 97,631 Crores (~32% of total outlay) from the Government of India.

1.1.2 The three objectives of the scheme are as follows:

- Improve quality and reliability of power supply to consumers through a financially sustainable and operationally efficient distribution sector
- Reduce the AT&C losses to pan-India levels of 12-15% by FY 2024-25
- Reduce ACS-ARR gap to zero by FY 2024-25

Note:

- *Above targets are national targets*
- *State-wise targets to depend on current levels of AT&C losses and ACS-ARR gap in the respective states*

1.1.3. The scheme has two parts namely:

- Part A – Financial Support of Upgradation of the Distribution Infrastructure & Prepaid Smart Metering & System Metering
- Part B–Training & Capacity Building and other enabling & supporting activities.

1.1.4. The Petitioner participated in the said scheme and submitted the action plan, DPR of the total project outlay & roadmap for AT&C Loss to the State Government for its approval in the month of March 2022. The Monitoring Committee for RDSS constituted under Chairmanship of Secretary (Power), Govt of India, in its 9th meeting held on 28.04.2022, has approved the Action Plan and Loss Reduction DPR of North Bihar Power Distribution Company Limited under Revamped Distribution Sector Scheme. Accordingly, the Monitoring Committee approved the following trajectory for AT&C loss for the Petitioner.

Particulars	**FY 2021-22**	**FY 2022-23**	**FY 2023-24**	**FY 2024-25**
AT&C Loss	25%	22%	19%	16%

1.1.5 Hence, it would be appropriate and realistic for the DISCOMs that the projections for the AT&C losses be approved by the Hon'ble Commission in line with the trajectory approved in the RDSS.

1.1.6 Further, the Petitioner in its MYT Petition for determination of Tariff for FY 2022-23 and in the additional submissions dated 09.12.2021 in response to the Commission's letter dated 29.11.2021 had requested the Hon'ble Commission to consider the distribution loss, AT&C loss as per the Petition, which is yet to be approved under the RDSS, as during the time of filing of Tariff Petition DPR of RDSS scheme was at draft preparation stage. The DISCOMs had also requested the Hon'ble Commission that the DISCOMs may please be allowed to submit the revised details AT&C losses after approval of the RDSS scheme. However, the Hon'ble Commission, in the Tariff Order dated 26th March 2022, has approved distribution losses at 15% with collection efficiency at 100% and AT&C loss at 15% for the FY 2022-23 to FY 2024-25, i.e., at the same level as approved during the previous MYT control period. It is pertinent to mention here that, now as the approval of the RDSS scheme is at the final stage, the Hon'ble Commission may kindly take into consideration the pleading made by the DISCOMs to consider the AT&C loss trajectory approved in the Sanction letter and DPR of RDSS.

1.1.7. Accordingly, the Petitioner in the Tariff Petition for FY 2023-24 requested the Hon'ble Commission to approve the Distribution Loss, Billing Efficiency, Collection Efficiency, AT&C Loss for FY 2022-23 & FY 2023-24, as below:

S. No	Particulars	FY 2022-23	FY 2023-24
1	Distribution Loss (%)	20.00%	18.14%
2	Billing Efficiency (%)	80.00%	81.86%
3	Collection Efficiency (%)	97.50%	98.95%
4	AT&C Loss (%)	22.00%	19.00%

1.1.8 However, the Commission in Tariff Order dated 23.03.2023 has not considered the submission of the Petitioner and approved the Distribution losses at 15% for FY 22-23 & FY 23-24 while the Collection efficiency has been considered at 100%.

1.1.9 The Petitioner based on the losses as approved in the RDSS has computed the Power Purchase cost of Rs 11,970.22 Cr for FY 2023-24. The Hon'ble Commission is requested to kindly consider the submission of the Petitioner, approve the losses at the same level as approved in the RDSS of GoI and subsequently consider the Power Purchase cost of Rs 11,970.22 Cr as claimed by the Petitioner for FY 2023-24.

B. Disallowance of Power Purchase cost due to additional UI Charges for FY 2021-22

i. The Hon'ble Commission in the Tariff order dated 23.03.2023 has disallowed the Additional Deviation Charges of Rs 88.63 crore comprising of Additional deviation charges and sign change charges of Rs 39.58 crore and Rs 49.05 crore respectively treating it as penal charges. In this context reference is invited towards following observations of the Hon'ble Commission extracted from said order:-

UI rate is frequency dependent. The licensee while under drawal / over drawal of UI energy should be strictly within the specified limit stipulated by CERC to avoid any additional deviation charges. No over drawal of energy is permitted when grid frequency is below 49.85 Hz. The additional charges on account of deviation in volume and Sign Change are penal in nature. Hence, it is not prudent to allow such charges to pass on to consumers. The Commission therefore does not consider additional deviation charges of Rs. 39.58 Crore payable and Rs. 49.05 Crore of additional charges on Sign Change Violation and considers only deviation charges of Rs. 119.48 Crore. This amount is shared among SBPDCL & NBPDCL in their power purchase *ratio under UI (over drawal MUs) at Rs. 64.69 Crores for SBPDCL and Rs. 54.78 Crore for NBPDCL.*

ii. However, in contrary to the above observations and treatment, the objective of CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 very explicitly specifies that charges under the Regulations are commercial mechanism. Moreover, said treatment and disallowance of Additional Deviation Charges does not seem to be in conformity with the scheme of the Electricity Act, 2003 particularly provisions under Section 32, Objective of the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (CERC DSM Regulations) as well as provisions of BERC (Multi Year Distribution Tariff) Regulations, 2018 more specifically Regulations 10 and 14 (b). In support of this, the Licensee/Petitioner would like to submit following contentions for kind consideration of the Hon'ble Commission:

iii. Deviation/Additional Deviation is an inherent phenomenon associated with power system operation which keeps on happening continuously in the integrated power system. These instances of Deviations, depending on grid operation conditions at any particular instance, may qualify to be called additional deviation as per criteria specified under the above said CERC Regulations. Depending upon grid operation condition, at any particular time block such deviation might be helping the grid operation viz deviation in the form of over drawal at high frequency, under drawal at low frequency conditions whereas some kind of deviation might not be helping the grid operations viz deviation in the form of over drawal at low frequency, under drawal at high frequency conditions.

iv. Apparently, the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (CERC DSM Regulations) aims to put in place a commercial settlement mechanism for settlement of energy/power that is drawn/injected in deviation of the schedule with an overall objective of maintaining the grid discipline and security. This would be evident from the Objective mentioned in regulation 2 of the CERC DSM Regulations which is reproduced below:-

"The objective of these regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through drawl and injection of electricity by the users of the grid."

v. Thus, from the above it is amply evident that the charges (i.e., both Additional Deviation as well as Deviation) specified under above Regulations are merely a commercial mechanism and not the penal charges.

vi. Further, it can be seen from provisions under the above Regulations particularly regulation 5 and 7 that the commercial mechanism specified in the said Regulations for both the charges i.e., Deviation and Additional Deviation are of similar nature and the difference between the two charges are linked to grid operation conditions which are obviously uncontrollable factors for DISCOMs. As an example, if grid frequency is more than 50.05 Hz then over drawal of any volume (say 300 MW) neither attracts deviation nor additional deviation charges. Thus, the two charges, Deviation and Additional Deviation charges, specified under CERC DSM Regulations require same treatment as both the charges are of identical nature.

vii. The Hon'ble Commission may kindly appreciate that the forecasted demand being dependent upon unforeseen and uncontrollable factors is liable to deviate from actual demand as there is no tool/system devised yet which can exactly know the future power demand. Similarly, the power availability from various sources considered in power procurement planning (which are done at least one day in advance) very often changes due to various unforeseen and uncontrollable factors. Thus, deviation is an inherent phenomenon associated with power system operation which keeps on happening continuously in the integrated power system.

viii. In this connection it is further to submit that all possible efforts are constantly being made on 24x7 basis to adhere to the schedule but due to reasons which are unforeseen and uncontrollable, some instances of

Additional deviation become inevitable. The following points mentioned herein below may clarify and substantiate this:

a. The block wise demand forecast is being done on best effort basis to enable Day Ahead Power procurement planning. While assessing the forecasted demand the expected behaviour of all the consumers (about 1.7 crore in number), power availability, system/network availability, forecasted weather for entire geographical area of the State spread in approx 1 lakh square kilometres, for all 96 blocks of following day, expected drawal by Nepal under International Commitment etc are taken into consideration. However, the input parameters considered while assessing forecasted demand on Day Ahead basis are liable to change due to various reasons like different consumer behaviour, change in power/ system/network availability, mismatch in forecasted weather conditions in any part of the State, and its subsequent impact etc. Hence the demand so forecasted are liable to change and deviate from actual demand which causes deviation and sometimes additional deviation from forecasted demand (schedule). Similarly, due to variation in actual availability from the forecasted availability namely variation in availability of RE based generators, and other generators/suppliers can cause deviation from schedule. This phenomenon is common to all Power utilities and Bihar having a major domestic consumer base is more vulnerable to larger deviation quantum including Additional Deviation.

b. The power sector is driven by many parameters of its associated ecosystem majority of which are unforeseen/uncontrollable. The variation in any of these parameters associated with integrated power system network leads to variation in either injection or drawal of power and such variation continuously keeps on happening resulting in variation in system frequency as well as mismatch in injection and drawal. Thus, due to factor inherent within the power system dynamics. deviation is continuous phenomenon and many times such deviation falls under additional deviation category as defined by CERC DSM Regulations 2014 This aspect is supported by block wise DSM account prepared by the Regional Power Committees which shows all the constituents are contributing to deviation/additional deviation which are available in public domain on their official websites.

c. Although, DISCOMs take all possible steps to match the schedule with the actual drawal but the change in schedule required to mitigate the effect of deviation takes at least 7/8-time blocks to be effective as per provisions of Indian Electricity Grid Code. Hence, in these intervening time blocks instances of Additional Deviation, if occurred, become unavoidable and uncontrollable for DISCOMs. Moreover, from provisions under section 32 of the Electricity Act, 2003 read with provisions of Bihar Grid Code it would be evident that it is the State Load Despatch Centre (SLDC) and not the DISCOMs who is vested with the power and responsibilities for optimum scheduling and despatch of electricity, monitoring grid operations, and carrying out real time operations for Grid control and despatch of electricity through secure and economic operation. Thus, from the scheme of the Act, which vests above referred responsibilities which are critical to mitigate the instances of Additional Deviation to a separate entity i.e., SLDC, it can be construed that instances of Additional Deviation are uncontrollable for DISCOMs.

d. However, as a drawing entity DISCOMs are committed to mitigate the instances of Additional deviation by making all possible efforts but due to foregoing reasons instances of Additional deviation cannot be removed completely.

ix. Further, as per regulation 14 of BERC MYDT Regulations, 2018 True-up is to be done on the basis of actual expenses booked in the audited books of accounts subject to prudence check by the Commission. From the foregoing, it can be seen that the expenses of Additional Deviation charges are liable to be incurred on account of intermittent nature of electricity supply sector and the dynamics of Demand Side Management under the prevailing Regulations and prudent checks are done before booking these expenses in the audited books of accounts as such expenses are incurred due to factors which are uncontrollable to DISCOMs. Thus, as per Regulation 10 and 14 of BERC MYDT Regulations, 2018 expenses incurred towards Additional deviation charges ought to have been allowed as pass through in the ARR.

x. This is also pertinent to mention that in other neighbouring states like- Jharkhand, Chhattisgarh, etc. the Hon'ble State Regulators allows total UI cost to the DISCOMs taking into consideration the reasons mentioned above.

xi. Therefore, in view of the foregoing, the Hon'ble Commission is prayed to allow the expenses actually incurred and booked in the audited books of accounts towards Additional deviation charges as claimed in true up Petition for FY 2020-2021 by the DISCOMs.

xii. Further, the DISCOMs vide letter dated 130 dated 27.2.2023 in the Subject Matter- "additional submission for Additional DSM" submitted to the Hon'ble Commission the following:

Quote

2. Deviation Settlement Mechanism (DSM)

Regarding Deviation Settlement Mechanism (DSM) this is to submit that the DISCOMs in the Tariff Petitions and additional information has submitted to the Commission that the UI deviation as submitted in the Petition is at the State periphery. ***The DISCOMs in the Tariff Petition filed on dtd 15.11.2022 submitted the following for DSM (UI):***

Particulars	***NBPDCL***	***SBPDCL***	***Total***
DSM quantum (MU)	*71.09*	*83.96*	*154.05*
DSM charges (Rs Cr)	*54.78*	*64.69*	*119.47*
Additional DSM charges (Rs Cr)	*40.64*	*48.00*	*88.64*

But the DSM for the DISCOMs includes the deviation incurred by Indian railways and deviation incurred in power procurement by Bhutan as well.

<u>Treatment of DSM by Indian Railways-</u>

The Bihar DISCOMs initially pay for the total deviation settlement for the state of Bihar. The SLDC deviation (MU) and SLDC deviation charge (Rs Cr) as shown in the Tariff Orders of the DISCOMs, and Tariff Petition is the DSM settlement of Railways. As per the process followed, the Bihar DISCOMs initially pay for the deviation settlement for the state of Bihar and later the BSPTCL calculates and raises bills to Railways for their respective deviation in schedule and withdrawal. The amount recovered from Railways is then refunded to the DISCOMs and is booked under the revenue head in the audited books of account of the DISCOMs in Note 54 for NBPDCL and Note 51 for SBPDCL under ***SLDC deviation charges.***

For FY 2021-22, the UI deviation for Railways (SLDC deviation charge) is 184.74 MU and the corresponding amount booked under the revenue head is Rs 134.09 Cr for NBPDCL. For SBPDCL UI deviation for Railways (SLDC deviation charge) is 218.18 MU and the corresponding amount booked under the revenue head is Rs 158.36 Cr for SBPDCL

Further, the breakup of DSM railways of Rs 134.09 Cr for NBPDCL and Rs 158.36 Cr for SBPDCL is as follows:

Particulars	***NBPDCL***	***SBPDCL***	***Total***
Railways DSM quantum (MU)	*184.74*	*218.18*	*402.92*
Railways DSM charges (Rs Cr)	*70.63*	*83.41*	*153.04*
Railways Additional	*63.46*	*74.95*	*137.41*

DSM charges (Rs Cr)

Week wise bills pertaining to Railways DSM are enclosed herewith for kind reference of the Hon'ble Commission along with its Summary. It is very clear that the Railways have deviated from their power purchase schedule due to which additional DSM of Rs 137.41 Cr has been paid by Railways.

Treatment of Bhutan DSM-

The DISCOMs also purchase Hydel power from Bhutan from four Stations- CHUKKA HEP, MANGDECHHU HEP, TALA HEP and KURICHHU HEP. It is important to note that DSM is not applicable for these Hydel Power Stations located in Bhutan and the applicable deviation (difference between actual and scheduled) is to be paid by the procurers (DISCOMs). The settlement of such deviation in actual and scheduled power is known as Bhutan DSM. As submitted in the additional submission dtd 16.12.2022, the NBPDCL has incurred Bhutan DSM of Rs (2.51) Cr while SBPDCL has incurred Rs (2.95) Cr.

Treatment by the Hon'ble Commission

The Hon'ble Commission in previous Tariff Orders for treatment of DSM has adopted a methodology wherein Deviation has been allowed by the Commission, but additional DSM has been disallowed. As submitted above, the DSM of DISCOMs includes DSM of Railways and Bhutan Deviation as well. So, while computing the DSM of DISCOMs, the Hon'ble Commission may net off the DSM incurred due to the Railways and Bhutan DSM.

Further, the Hon'ble Commission considers the SLDC Deviation charges (DSM of Railways) as non-Tariff income of the Petitioner and reduce the same from ARR of the Petitioner. So, it is double hit for the DISCOMs as the DSM charges paid by the Railways are net off from the ARR of the Petitioner while the actual DSM of the

Petitioner is not allowed by the Commission. As above, additional DSM of Rs 137.41 Cr has been occurred by the deviation on part of the Railways. So, disallowing additional DSM of the DISCOMs that has been actually done on the part of Railways is not correct as per the financing principles.

So, the Hon'ble Commission is requested to consider the following for treatment of DSM:

Additional DSM of Rs 40.64 Cr for NBPDCL and Rs 48 Cr for SBPDCL may kindly be allowed by ,the Hon'ble Commission as this additional DSM is actually incurred on the part of railways and cost for the same is reduced from the ARR of the Petitioner considered it as Non-Tariff Income.

Unquote

xiii. As above, the Hon'ble Commission has been prayed to allow Additional DSM of Rs 40.64 Cr for NBPDCL and Rs 48 Cr for SBPDCL as this additional DSM is actually incurred on the part of railways and cost for the same is reduced from the ARR of the Petitioner considered it as Non-Tariff Income. The expenses actually incurred and booked in the audited books of accounts towards Additional deviation charges as claimed in true up Petition for FY 2020-2021 by the DISCOMs.

xiv. So, the Hon'ble Commission is requested to kindly consider the submission of the Petitioner and allow the corresponding additional DSM for FY 2021-22.

C. Error in computation of Employee expenses for FY 2021-22

i. The Hon'ble Commission while computing the Employee expenses for FY 2021-22 has considered the base value of "Annual expenses per personnel (Rs. Crore)" as 0.03224 and computed the Employee expenses considering the same. However, the Hon'ble Commission in MYT Order dated 25.02.2019 had approved the base value of "Annual expenses per personnel (Rs. Crore)" as 0.0306. So, there's an error apparent on the record as the Hon'ble Commission has not considered the base value of "Annual expenses per personnel" as approved in the MYT Order dated 25.02.2019.

ii. It is pertinent to mention that the Hon'ble Commission in the past had approved the Employee expenses based on the base value of "Annual expenses per personnel" approved in the MYT Order. However, in the Tariff Order dated 23.03.2023 the Hon'ble Commission has deviated from the past treatment made in the Tariff Orders and has changed the base value of "Annual expenses per personnel".

iii. The Petitioner has claimed Rs 422.14 Cr in the Employee expenses for FY 2021-22 while the Hon'ble Commission has allowed Rs 402.50 Cr. The Hon'ble Commission is requested to kindly consider the submission made by the Petitioner and recompute the Employee expenses considering the base value of "Annual expenses per personnel (Rs. Crore)" as 0.0306 as approved in the MYT Order.

D. Smart Prepaid Meter rent not allowed for the period from FY 2021-22 to FY 2023-24

i. The Hon'ble Commission in the Tariff Order dated 23.03.2023 has not allowed the Smart Prepaid Meter rent of Rs 1.74 Cr for FY 2021-22. Further, the Commission has also not considered the Smart Prepaid Meter rent of Rs 3.35 Cr. for FY 22-23 and Rs 137.30 Cr for FY 23-24. The relevant excerpt of the Tariff Order dated 23.03.2023 is as follows:

Quote

The Commission has not considered the rental charges for smart prepaid meters since the capex and opex of the said scheme has not yet been approved. However, the said expenses shall be considered in truing up based on actual expenses reported through audited accounts due prudence check and validation

Unquote

ii. This is to submit that the DISCOMs had filed the Petition for approval of the additional A&G cost in the ARR of the DISCOMs due to the installation of Smart Meters in the state taken up by the DISCOMs on OPEX model with EESL in March 2020. Further, as per the directions of the Hon'ble Commission the DISCOM had submitted additional submission and all requisite supporting documents like- Cost Benefit Analysis of the scheme, etc. from time to time to the Commission.

iii. The Commission vide Order dated 25.04.2023 has pronounced the final Order in the case, however, the Commission has approved a rental of Rs 86.23 per meter per month including GST while the DISCOMs submitted the rental of Rs 91.099 per meter per month including GST. The DISCOMs reserve the right to file Review Petition for the Commission's Order dated 25.04.2023 in the above matter under Regulations 6(3), 12, 31, 36, 37, 38, 39 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

iv. It is evident that the Smart Meter rent involves working Capital for the DISCOMs. In case of disallowance of the Smart Meter rent, it would be a huge financial impact on the DISCOMs. The DISCOMs which are already struggling to maintain the adequate cash flow will get the hit through disallowance of Smart Meter rent.

v. So, it is requested to the Hon'ble Commission to kindly allow the Smart Prepaid rent to the Petitioner for the operating period from FY 2021-22 to FY 2023-24.

E. Error in calculation of GFA, CAPEX, Capitalisation, O&M Expense Depreciation, Interest on Loan, Interest on Working Capital for FY 2021-22 and subsequent effect in FY 2023-24

2023-24	2,094.93	2,094.93	-

The Petitioner has projected the capex and capitalisation of new schemes of Mukya Manthri Krishi Vikas Yojana (MKVYS) and creation of new infrastructure, implementation of smart prepaid meters, IT/OT, etc. works under RDSS schemes for FY 2023-24 as given hereunder:

MKVYS	215.11	215.11
State Plan – RDSS	44.80	44.80
Infrastructure works	1,220.36	1,220.36
IT/OT	80.00	80.00
PMA	19.50	19.50
Smart Prepaid meters (Phase 2)	382.57	382.57
Smart Prepaid meters (Phase 3)	132.59	132.59
Total	2,094.93	2,094.93

The Commission provisionally considers capex of these schemes for FY 2023-24 as projected by the petitioners.

CAPITALISATION [illegible]

2023-24	1,599.99	913.64	686.35

FY 2023-24:

The Commission in the tariff order dated 23rd March 2023 has cited the following reason for disallowing capitalisation in FY 2023-24:

> *"The Commission provisionally considers capex of these schemes for FY 2023-24 as projected by the petitioners. Capitalisation in respect of*

MKVYS is considered as projected by the petitioner, since the scheme is being implemented through Grants and capitalisation has no impact on the ARR. Capitalisation in respect of other works is considered at 50% of the projected capitalisation (except PMA) for FY 2023-24 since, the said works involve gestation period and performance parameter efficiency, handing over taking over, etc. Accordingly, the Commission provisionally considers the capex and capitalisation during FY 2023-24 as given below".

[illegible]	[illegible]	[illegible]	[illegible]
MKVYS	215.11	215.11	-
State Plan – RDSS	44.80	22.40	22.40
Infrastructure works	762.72	381.36	381.36
IT/OT	50.00	25.00	25.00
PMA	12.19	12.19	-
Smart Prepaid meters (Phase 2)	382.57	191.29	191.29
Smart Prepaid meters (Phase 3)	132.59	66.30	66.30
Total	1,599.98	913.64	913.64
Total disallowance			**686.35**

i. The Petitioner further submits that the reason cited by the Hon'ble Commission for disallowing the scheme wise capex is because the above schemes have involved gestation period and performance parameter efficiency, handing over taking over, etc.

ii. The Petitioner would like to highlight that the Capital Expenditure and Capitalisation submitted for FY 2023-24 was an estimate based on assumptions like Government preferences, right of way, Manpower requirement, Land issues, political compulsions, developments and targets to be achieved under various schemes during the forthcoming years. As a result, the Petitioner has projected the capex and capitalisation of new schemes of Mukya Manthri Krishi Vikas Yojana (MKVYS) and creation of new infrastructure, implementation of smart prepaid meters, IT/OT, etc. works under RDSS schemes for FY 2023-24

iii. Further, this is to submit that the Petitioner has filed Petition for approval of capital expenditure and Capitalisation Plan for the MYT Control Period 2022-23 to 2024-25 that has been admitted as Case No. 27/2022. While, the final Order in this case is pending the Petitioner request the Hon'ble Commission to kindly consider the impact of Capitalization of schemes as submitted in the Tariff Petition for FY 23-24.

iv. Accordingly, the petitioner requests the Hon'ble Commission to kindly reconsider the disallowance made in FY 2023-24 to the extent of Rs 686.35 crores in the case of NBPDCL.

For FY 2021-22

i. The Petitioner further submits that for FY 2021-22, the Petitioner has claimed Rs 5,010.92 Cr. Capitalization, however, the Hon'ble Commission has allowed only Rs 3,193.31 Cr. This is to submit that the Petitioner has filed Petition for approval of capital expenditure and Capitalisation Plan for FY 2021-22 that has been admitted as Case No. 27/2022. While, the final Order in this case is pending the Petitioner request the Hon'ble Commission to kindly consider the impact of Capitalization of schemes as submitted in the Tariff Petition for FY 21-22.

[illegible]

2023-24	24601.39	25290.78	689.39

v. **<u>Reason for difference:</u>** The commission has considered opening balance of GFA as per the closing balance of GFA approved in the previous tariff order dated 25.03.2022. NBPDCL and SBPDCL has adopted the opening GFA as per the audited books of accounts. The opening balance of fixed assets adopted by the Commission is not in consonance with the books of accounts of the Petitioner.

vi. The Hon'ble commission has considered the opening GFA for FY 2022-23 and FY 2023-24 which is not in accordance with the books of accounts of the Petitioner for FY 2021-22, thereby creating a cascading effect for subsequent years, as the closing balance of the previous year is treated as the opening balance for subsequent years.

Accordingly, the petitioner requests the Hon'ble Commission to kindly consider the Opening Gross Fixed Assets of FY 2023-24 based on the audited annual accounts of the petitioner.

DEPRECIATION [illegible]

[illegible]	[illegible]		
	[illegible]	[illegible]	[illegible]
2023-24	415.13	362.02	53.11

vii. The Hon'ble Commission has considered the opening balances of fixed assets based on the closing GFA approved in the Truing up for FY 2021-22. The opening balance of fixed assets adopted by the Hon'ble Commission is not in consonance with the audited books of accounts of the Petitioner. The deviation in opening balance adopted by the commission with that adopted by the petitioner is on account of difference in Ind-AS adjustment with respect to accumulated depreciation.

viii. The Hon'ble Commission has considered the same weighted average rate of depreciation on assets created by DISCOM and for assets created through grants. As per the Petitioner's view, the depreciation of Rs

415.13 crores in the case of NBPDCL and Rs 378.42 crores in the case of SBPDCL is as per the audited annual books of accounts and the same should have been allowed as pass through for the Petitioner.

ix. Further, the Hon'ble Commission has considered the opening balances of fixed assets based on the closing GFA approved in the Truing up of 2021-22. The opening balance of fixed assets adopted by the commission is thus not in consonance with the audited books of accounts, thereby leading to deviation from the books of accounts. The Hon'ble Commission has considered the same weighted average rate of depreciation on assets created by DISCOM and for assets created through grants instead of considering the actual weighted average rate of depreciation on grants.

x. The disallowance in depreciation is majorly on account of disallowance in capex and capitalization. Further in FY 2023-24 the entire addition to fixed asset has been considered by way of grant thereby leading to reduced depreciation. Accordingly, the petitioner requests the Hon'ble Commission to revisit the methodology adopted and accordingly allow the depreciation claimed by the petitioner for FY 2023-24.

R&M EXPENSES

[illegible]	[illegible]		
	[illegible]	[illegible]	[illegible]
2023-24	290.76	264.65	26.11

xi. As per the Bihar Electricity Regulatory Commission (Multi Year Distribution Tariff) Regulations, 2021:

"Repairs and Maintenance expense shall be calculated as percentage (as per the norm determined) of Opening Gross Fixed Assets excluding land cost for the year governed by following formula:

R&Mn = Kb * GFAn

Where:

R&Mn : Repairs & Maintenance expense for nth year

GFAn : Opening Gross Fixed Assets for nth year

Kb : Percentage point as per the norm"

xii. The commission has disallowed R&M expenses to the extent of Rs 26.11 crores for FY 2023-24 in the case of NBPDCL and Rs 26.96 crores in the case of SBPDCL. The said disallowance is on account of disallowance in capitalisation made during FY 2022-23 which has already been submitted for review in the above section. Accordingly, the petitioner once again requests the Hon'ble Commission to kindly consider the capitalisation submitted by the petitioner and accordingly allow the R&M expenses as claimed by the petitioner.

[illegible]

[illegible]	[illegible]		
	[illegible]	[illegible]	[illegible]
2023-24	508.83	218.77	290.06

xiii. The Hon'ble Commission had determined A&G expense norm for the MYT control period of FY 2022-23 to FY 2024-25 in the Tariff Order dated 25.03.2022. Accordingly, the Hon'ble Commission has worked out average WPI inflation based on the available WPI index points as 5.32% for FY 2023-24. The Commission has not considered the rental charges for smart prepaid meters.

xiv. The Petitioner, in addition to the normative A&G expenses have projected rent charges for smart prepaid meters proposed to be installed under Phase-II and Phase-III under RDSS scheme. Further, it is hereby submitted that BERC has issued Order dt.25.04.2023 for recovering monthly rental for Smart Meter deployment. Accordingly, the petitioner once again requests the Hon'ble Commission to kindly consider the A&G expenses submitted by the petitioner and accordingly allow the A&G expenses as claimed by the petitioner.

2023-24	27.28	25.28	2.00

xv. Based on past trends DISCOMs have adopted a 10% increase in holding company expense, whereas the commission escalated with CPI inflationary increase of 5.89%.

xvi. It is worth mentioning here that projection of holding company expenses by CPI and WPI inflation is not an ideal basis for projecting holding company expenses, as the Holding Company Expenses represent employee cost, R&M expenses and A&G expenses. Further, the Petitioner has projected holding company expenses basis on the projections and estimates made in the past tariff petitions

2023-24	740.63	546.77	193.86

2023-24	95.69	57.16	38.53

2023-24	565.03	412.89	152.14

[illegible]

[illegible]	[illegible]		
	[illegible]	[illegible]	[illegible]
2023-24	68.61	-	68.61

xvii. The difference between Interest on Loan, Interest on working capital, other finance charges & Return on Equity claimed by the petitioner and that approved by the Hon'ble Commission is on account of disapproved capex and capitalisation which has already been contested by the petitioner in the above section.

xviii. Based on the reasons cited by the petitioner for allowing the capex and capitalisation, it is requested to the Hon'ble Commission to allow the Interest on Loan, Interest on working capital, other finance charges & Return on Equity as claimed by the petitioner.

F. Other Finance Charges for FY 2021-22

i. The Hon'ble Commission while approving the Other Finance Charges for FY 2021-22 has not approved the Bill discounting finance charges. The relevant excerpt of the Tariff Order dated 23.03.2023 is as follows:

Quote

Bill discounting finance charges

NBPDCL and SBPDCL have claimed Rs.31.83 crore and Rs.47.44 Crore respectively towards bill discounting finance charges for FY 2021-22 based on the audited accounts.

Bill Discounting facility is a short-term finance and is source of funding the working capital requirement availed by the generators/power traders, etc. wherein they can sell unpaid invoices due on a future date, to financial institutions. The Bank purchases the bill and credits the bill's value after a discount charge to the borrower i.e., Generators/power suppliers. The Bank then presents the Bill to the borrower's customer (instant case Discoms) on the due date of the Bill and collects the total amount. If the bill is delayed, the borrower or his customer pays the Bank a pre-determined interest depending upon the terms of transaction.

The bill discount charges claimed by Discoms represent and relates to power purchase bills payment and shall be considered as working capital financing charges. ***The Commission has considered and allowed interest on working capital separately and hence these charges are not approved in true up for FY 2021-22.***

Unquote

ii. As above, the NBPDCL and SBPDCL had claimed Rs.31.83 crore and Rs.47.44 Crore respectively towards bill discounting finance charges for FY 2021-22 based on their audited accounts. However, the Commission did not consider the audited accounts figures and has disallowed the Bill Discount charges claimed by the Petitioner.

iii. In this regard, it is important to note that the Petitioner in response to the Technical Validation Session had submitted that through the mechanism/facility of Bill Discounting the DISCOMs are able to reduce their requirement of working capital and the Interest on Working Capital (IOWC) submitted in the Tariff Petition is after reducing it through the process of Bill Discounting. Had the DISCOMs not used the Bill Discounting there has been more requirement/ projection in IOWC. So, it is not prudent to not consider the cost attached to the Bill Discounting as the DISCOMs have accrued interest on the same that should be allowed to pass through in ARR.

iv. However, the Hon'ble Commission did not consider the submission made by the Petitioner and has disallowed the Bill Discount charges claimed by the Petitioner as per the Audited Accounts. This is again to submit that through the mechanism/facility of Bill Discounting the DISCOMs are able to reduce their requirement of working capital and the Interest on Working Capital (IOWC) submitted in the Tariff Petition is after reducing it through the process of Bill Discounting.

v. So, the Hon'ble Commission is requested to kindly consider the bill discount charges claimed by Discoms as per the Audited Accounts.

G. Change in TOD Tariff Structure

1. Whereas the Hon'ble Commission in the Tariff Order dated 23.03.2023 for Truing up of FY 2021-22, Annual Performance Review of FY 2022-23, Annual Revenue Requirement (ARR) and determination of Retail Tariff for FY 2023-24 for North Bihar Distribution Company Limited (NBPDCL) and South Bihar Distribution Company Limited (SBPDCL) has approved Time of Day (TOD) Tariff. Relevant excerpt of the Tariff Order is as follows:

13) Time of Day tariff (ToD) (for all HT consumers including HTSS and Oxygen Gas Manufacturers (33kV and 11kV)

ToD tariff shall be mandatory for all HT consumers. Under the Time of Day (ToD) Tariff, electricity consumption and demand in respect of HT consumers for different periods of the day, i.e., normal period, peak load period and off-peak load period, shall be recorded by installing a ToD meter. The consumption recorded in different periods shall be billed at the following rates on the tariff applicable to the *consumer.*

(i) Normal Period (09:00 am - 05:00 pm)	*Normal Rate*	*Normal rate of energy charges*
(i) Evening Peak load Period (05:00 pm - 11:00 pm)	*Normal Rate*	*105% normal rate of energy charges*
(iii) off-peak load Period (11:00 pm - 09:00 am)	*Normal Rate*	*85% normal rate of energy charges*

2. As above, the Commission has made normal period from 9:00 am to 5:00 pm and the off-peak period from 11:00 pm to 9:00 am. While the existing TOD structure as approved by the Hon'ble Commission in Tariff Order dated 25.03.2022 and applicable for FY 2022-23 has normal period from 5:00 am to 5:00 pm and the off-peak period from 11:00 pm to 5:00 am. Further, the Commission has also changed TOD rate of off-peak and peak period as from the existing rate of 90% and 110% of the normal rate to 85% and 105% of the normal rate respectively.
3. However, the DISCOMs in the Tariff Petition for FY 2023-24 submitted the following TOD structure:

(i) Normal Period (05:00 am - 05:00 pm)	*Normal Rate*	*Normal rate of energy charges*
(i) Evening Peak load Period (05:00 pm - 11:00 pm)	*Normal Rate*	*110% normal rate of energy charges*
(iii) off-peak load Period (11:00 pm - 05:00 am)	*Normal Rate*	*90% normal rate of energy charges*

4. Whereas the Hon'ble Commission without any request of the DISCOMs or any other stakeholders has changed the TOD structure as shown above for FY 2023-24. The Commission has changed the normal period starting from 5:00 am to 9:00 am. Similarly, the ending of off-peak period has changed from 5:00 am to 9:00 am. The Commission has also changed the off-peak rate from 85% to 90% of the normal rate and the peak rate from 110% to 105% of the normal rate.
5. Whereas due to some technical and practical issues the Petitioner is unable to carry out the changes in the TOD meter as approved by the Hon'ble Commission in Tariff Order dated 23.03.2023 for FY 2023-24.
6. Whereas the Petitioner vide Letter No. SBC/1742/202 (Part-I) 301 dated 31.03.2023 in the subject matter "Seeking exemption in implementation of TOD structure as directed in Tariff Order issued on 23rd March 2023 by Hon'ble BERC for NBPDCL & SBPDCL" has submitted to the Commission the technical difficulties in carrying out the changes in TOD meters as approved by the Hon'ble Commission in Tariff Order dated 23.03.2023 for FY 2023-24 and requested the Hon'ble Commission to exempt the DISCOMs from implementing the change in TOD structure from 01st April 2023.
7. Through the revised TOD structure, the Commission has made peak tariff as 105% of the normal tariff while keeping the non-peak tariff as 85% of the normal tariff. In such a case it is evident that there would be a financial impact on the DISCOMs as the off-peak charges are not commensurate with the peak charges. The DISCOMs which are struggling to maintain the adequate cash flow will get the hit of different peak and off-peak charges in the operating period of FY 2023-24.
8. Further, the Petitioner has also filed the Petition under Regulations 6(3), 12, 31, 36, 37, 38, 39 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for seeking exemption in implementation of Time-of-Day structure as directed in Tariff Order issued on 23.03.2023 and allow to continue the TOD structure as approved in Tariff Order for FY 2022-23. The matter is subjudice as Case No. 06/2023 in BERC. (DISCOM letter no. 392 dated 17.04.2023)

9. The DISCOMs hereby request the Hon'ble Commission to subsume this instant Petition with Case No. 06/2023 and grant exemption in implementation of revised Time of Day (TOD) structure (both timing and the rate) from 01st April 2023. In the meantime, the DISCOMs may please be allowed to bill the consumers availing the TOD facility based on the TOD structure (both timing and the rate) as approved by the Hon'ble Commission in the Tariff Order dated 25th March 2022 (applicable for FY 2022-23).

H. Other Errors and Disallowances

i. While approving the Reactive Energy Charges for FY 2021-22, the Hon'ble Commission has approved the following:

8.9 Reactive Energy Charge

Petitioners' submission

Petitioners have submitted that the open access consumers should pay a reactive energy charge to Transmission and Distribution companies as the case may be for drawl/ injection of reactive energy. Accordingly, NBPDCL & SBPDCL have proposed the reactive charges of 16 paise / kVAR for the FY 2023-24.
It is also submitted that the rate proposed is based on actual rate of Reactive Energy charge billed by ERPC and its escalating trend.

Commission's analysis:
The Reactive energy charges levied by ERLDC over years is as shown in Table below:
Table 8.14: Reactive energy charges levied by ERLDC over years

Year	*Reactive energy charges*
2020-21	*14 paisa/unit*
2019-20	*14 paisa/unit*

2018-19	*14 paise/unit*
2017-18	*13.5 paise/unit*

The Commission in the Tariff Order for FY 2022-23 dated 25.03.2022 has considered the reactive energy charges at 4 paise/unit and the same is continued for FY 2023-24.

ii. In the Order the Hon'ble Commission has considered the submissions of the Petitioner pertaining to the reactive energy charges being charged by ERLDC of 16 paise/kVAR but has still approved a reactive energy charge of 4 Paisa/kVAR for FY 2023-24 without providing any prudent rationale for the same.

iii. Therefore, the Petitioner believes that the Hon'ble Commission has errored while approving the Reactive Energy Charges for FY 2021-22 for the DISCOMs.

iv. In the facts and circumstances mentioned herein above, the Petitioner submits that the Hon'ble Commission may examine the claim of the Petitioner under such heads afresh without being influenced by the decision taken in the earlier orders. In this regard it is well settled that there is no res judicata applicable in tariff matters and each tariff period need to be independently assessed and decided.

v. In view of the above, the Petitioner submits that there are errors apparent on the face of the record in the Order dated 23rd March 2023. There is otherwise sufficient cause for review and reconsideration of the Order dated 23rd March 2023 passed in Case no. 16 of 2022.

vi. The Petitioner has not filed any appeal against the Order dated 23rd March 2023 passed in Case No. 16 of 2022. The Petitioner has also not availed any other remedy or proceedings other than the present review petition as on date.

vii. For the reasons mentioned herein above, the Hon'ble Commission may be pleased to review the order dated 23rd March 2023

viii. It is, therefore, respectfully prayed that the Hon'ble Commission may be made to:

(a) To admit the review petition and treat it as complete;

(b) To review and modify the Order dated 23rd March 2023 passed in Case No. 16 of 2022 on the following aspects:

i. Distribution Loss and AT&C loss as approved for FY 2022-23 to FY 2023-24 and its corresponding resultant parameters as per the RDSS scheme;

ii. Disallowance of Power Purchase cost due to additional UI Charges for FY 2020-21

iii. Computation of Employee expenses for FY 2021-22

iv. Smart Prepaid Meter rent not allowed for the period from FY 2021-22 to FY 20-23-24

v. Error in calculation of GFA, CAPEX, Capitalisation, O&M Expense, Depreciation, Interest on Loan and Interest on Working Capital for FY 2021-22 and subsequent effect in FY 2023-24

vi. Computation of Other Finance Charges for FY 2021-22

vii. Change in Time-of-Day Tariff structure.

viii. Other Errors and Disallowances

(c) To subsume this instant Petition with Case No 06/2023 in the subject matter "Seeking exemption in implementation of Time-of-Day structure as directed in Tariff Order issued on 23.03.2023 for State DISCOMs".

(d) To examine the proposal submitted in the enclosed Review Petition for a favourable dispensation

(e) To pass such further order, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.

ix. The Petitioner further request the Hon'ble Commission to condone any inadvertent omissions/errors/shortcomings and permit to add/change/modify/alter this filing and make further additional submissions as may be required at a future date. The Petitioner's believes that such an approach would go a long way towards providing a fair treatment to all the stakeholders and may eliminate the need for a review or clarification.

Regulatory Provisions

I. Electricity Act, 2003

Regulation 61. (Tariff Regulations)

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

.....

Section 94. (Powers of Appropriate Commission): ---

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- *a) summoning and enforcing the attendance of any person and examining him on oath;*
- *b) discovery and production of any document or other material object producible as evidence;*
- *c) receiving evidence on affidavits;*
- *d) requisitioning of any public record;*
- *e) issuing commission for the examination of witnesses;*

II. <u>BERC (Multi Year Distribution Tariff) Regulations, 2022</u>

Regulation 38. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

Regulation 39. Right to vary terms and conditions

the Petition should be divided appropriately into separate paragraphs, which shall be numbered serially. The Petition shall be accompanied by such documents, supporting data and statements as the Commission may specify.

(2) The Petition as far as possible, shall refer to the relevant provisions of the Act.

(3) On receiving any application or complaint other than the Petition, the Commission shall have a right either to change such application or complaint into a Petition and initiate its proceedings or send such application or complaint to the concerned licensee/utility for appropriate action.

....

Regulation 31. Review of the decisions, directions, and orders

(1) The Commission may on its own motion, or on the application of any of the person or parties concerned, within 60 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.

Provided that the Commission may, if it is satisfied, that the petitioner was prevented by sufficient cause from filing the review petition within the said period, allow it to be filed within a further period not exceeding 30 days, subject to such terms and conditions which commission may consider appropriate.

(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations.

(3) The application shall be accompanied by such fee, if any, as may be laid down by the Commission.

....

Regulation 36. (Issue of orders and directions)

Subject to the provisions of the Act and these Regulations, the Commission may, from time to time, issue orders and directions in regard to the implementation of the Regulations and procedure to be followed and various matters which the Commission has been empowered by these Regulations to specify or direct.

Regulation 37. (Saving of inherent power of the Commission)

(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

Regulation 38. (General Power to Amend)

The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, rectify any defect or error in any proceeding before it, and all acts shall be done for the purpose of determining the real question or issue arising in the Proceedings.

Regulation 39. (Power to Remove Difficulties)

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties.

Deepak Kumar

PETITIONER

(Deepak Kumar)
Chief Engineer (Commercial)
N.B.P.D.C.L. Patna

Place: PATNA

Dated: 15. 05 **2023**

AEE(Com)

The terms and conditions for determination of tariff specified in these regulations are in the nature of general framework on the basis of which the tariff shall be determined. The Commission reserves its right to vary these terms and conditions, as and when deems fit.

Regulation 40. Limitation of Power of Commission

Nothing in these regulations shall be deemed to limit the powers of the Commission to deal with any matter or exercise any power under the relevant Acts for which no regulations have been made / framed and to make such orders as it may consider appropriate to meet the ends of justice in any case.

III. <u>BERC (Conduct of Business Regulation, 2005) and its amendments issued therein</u>

Regulation 6. Officers of the Commission

(3) The Commission shall, at all times, have the authority, either on an application made by any interested or affected party or suo motu, to review, revoke, revise, modify, amend, alter or otherwise change any order issued or action taken by the Secretary or any Officer of the Commission, if considered appropriate.

....

Regulation 12. (Petitions and Pleadings before the Commission)

(1) All Petitions to be filed before the Commission shall be typewritten, cyclostyled or printed neatly and legibly on one side of white paper and every page shall be consecutively numbered and signed. The Commission may in addition, seek copies of Petitions in electronic form on such terms and conditions, as the Commission direct. The contents of