

**4<sup>th</sup> TILA ONLINE INTERNATIONAL MOOT COURT  
COMPETITION ON ENERGY AND INTERNATIONAL LAWS  
(TIMCCE-IV) 2021  
01st & 02nd October - 2021**

**TIMCCE-IV**

**Organized jointly by Dr. Gopal Energy Foundation and Trans India law  
Associates as Knowledge Partner**

**TIMCCE-IV- MOOT PREPOSITION**

**State of Delaware and North Atlantic Edison Inc  
Vs.  
Thermal Power Corporation (TPC)**

Delaware Electricity Board (DEB) was a state run electricity distribution firm, which was low in operating efficiency and was running in heavy losses. So it was unbundled into Generation, Transmission and Distribution Company in 2003, as part of reforms in the power sector, to increase the efficiency of power distribution and to ensure uninterrupted power supply in the city. Delaware is the capital city of Indiana. Indiana is a common law country having cultural, social, geographical and political and legal system similar to that of India.

In the year 2003, under a competitive bidding only Distribution Company/entity of the Delaware Electricity Board was privatized. The Generation and Transmission Companies remained with State of Delaware and was taken over by North Atlantic Edison Inc, an UK based energy company. Acquisition of Delaware Electricity Board by North Atlantic Edison Inc. was at that point of time the biggest energy acquisition done by any International energy firm in Indiana.

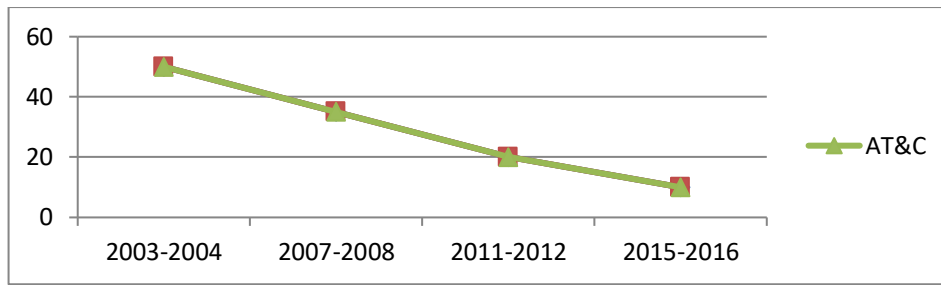
During the past years, Delaware Electricity Board is a board under Government of Delaware (State/ Provincial Government). Privatization of the Distribution Company/entity of the

Delaware Electricity Board was done by transfer of 51 percent of shares in the name of North Atlantic Edison Inc. and 49 percent shares remained with the Government of Delaware. Electricity discom has delivered intended results, reduction in losses and improved operating efficiency. Deficit situation in Delaware has improved in terms of both peak and energy deficit. Peak deficit has reduced from 9.2 per cent in 2002 to 0.1 percent in 2015. Base deficit has also reduced from 1.9 per cent in 2002 to 0.3 percent in 2015. However, government have tended to disadvantage private discom by freezing tariffs for period resulting in accumulations of regulatory assets. Power purchase cost has increased threefold since the electricity distribution has been privatized, whereas the tariffs has risen only 90% so far.

One of the foremost reasons for higher cost of distribution of electricity has been the rate at which the electricity is being purchased from the state run electricity generating company, Thermal Power Corporation (TPC) is a Public Sector undertaking of Central / Federal Government, i.e. Government of India. Actually before privatization, Delaware Electricity Board had entered into 30 year long power purchase agreement with Thermal Power Corporation, however, the private power distribution companies were made to comply with various pacts that Delaware Electricity Board had signed with central government entities. Presently, Delaware discom's has to incur 60% more cost on buying power compared with other states because of the long-term power purchase agreements.

Due to the high power purchasing cost, power thefts and bill collection inefficiencies in past years have risen aggregate technical and commercial –AT&C—losses to the private discom. Now the private discom in Delaware, North Atlantic Edison Inc., have regulatory asset of nearly 15000cr, as per an estimate the electricity prices in Delaware would need to hike tariff by 10 % every year for 5 years for liquidation of regulatory assets.

Private power distributor has fared way better than state-owned ones in operational efficiency. The power discom has lowered its AT&C losses to less than 9% of the total units of electricity supplied from about 53% at the start of operations but it's not enough for the discom company to safeguard themselves from high rising electricity purchasing cost.



**Figure 1 North Atlantic Edison Inc. AT&C cost since privatization**

The private electricity company, North Atlantic Edison Inc., now want not just government intervention in a debt rejig, but concerted efforts to reduce their power purchase cost, including replacement of costly long-term power purchase agreements that were signed by their predecessor Delaware Electricity Board before its privatization in 2003 with new ones from efficient and cost-effective power plants. At present, every unit of power supplied add to distributor's debt burden because the regulated power tariff charged to the consumer does not reflect the actual cost of power purchase.

Delaware government have to strike a delicate balance between avoiding tariff shocks to consumers and preventing un allowed costs (called regulatory assets) building up on the books of power distributor i.e North Atlantic Edison Inc., which reduces their ability to give quality service. More than 80 % per cent of total revenue of discom goes into purchasing power from central and state government owned entities through long term power purchase agreements, at rates determined by the central and state regulators. Cash flow problem is affecting distribution Company's ability to buy power and to invest in infrastructure maintenance leading to supply disruptions.

Long term Power purchase agreements needs to be scrapped to bring down the power rates. Presently, power is bought at Rs. 4–Rs. 4.8 per unit by Delaware discom, whereas many new private companies have come up with offers as low as Rs. 2.5-3.0 per unit in five year agreement. The one rupee differences will create at least 50 paisa/unit reduction in tariff. Higher costs of power purchased from the state run electricity organization, Thermal power Corporation, is ultimately being billed to the consumers of Delaware.

Power procurement Companies	Energy requirement (MUs)	Amount (Rscore)	Rate(Rs/unit)	% increase in rates over two years
TPC	3740	1794	4.8	22

Other long term PPA's	2436.5	978	4.01	0
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In 2015 there has been a change in government of Delaware, which has come to the power on the populist agenda of reduction in electricity prices of the city. Now the present government wants to cancel the existing power purchase agreements entered into by the previous government, so that the benefit of lower cost can be transferred onto the consumers. The Central Electricity Regulator of Indiana appointed under the Electricity Act, allowed the petition of the Delaware on suspending long term purchase power agreements. However, on the appeal filed by the Thermal power Corporation, the Appellate Tribunal of Electricity rejected the claim of Delaware, now the state of Delaware has approached the Honourable Supreme Court of Indiana.

Separately North Atlantic Inc. has requested the UK Government to invoke the provision of Bilateral Investment Promotion & Protection Treaty to international commercial arbitration against the government of Indiana.

### **ISSUES:**

- **Is the appellant (State of Delaware) justified in seeking for the cancellation of the long term purchase agreement with Thermal Power corporation?**
- **Whether North Atlantic Edison Inc is correct in approaching through UK government to seek relief under Bilateral Agreements?**
- **Do state government have any other option to deal with the situation rather than cancelling the long term agreements?**

### **NOTE:**

The Legislations having the force of Law in the territories of Union of India shall be considered the same as the Laws in force in The Government of Indiana.

### **TERMS:**

*TILA International Moot Court Competition on Energy and International Laws (TIMCCE - IV), to be held on 01<sup>st</sup> & 02<sup>nd</sup> October 2021*

## AT&C Losses

Aggregate Technical and Commercial Losses is nothing but the. Sum total of technical loss, commercial losses and shortage due to non- realisation of total billed amount:  $\{(Total\ Energy\ Input\ LESS\ Energy\ Realised)/\ Total\ Energy\ Input\} * 100$ .

Aggregate Technical and Commercial Loss (AT&C) loss indicates technical as well as commercial losses in the power distribution and transmission network.

## Regulatory Asset

Specific costs or revenues, which a regulatory agency permits a public utility (usually an energy company) to defer to its balance sheet. These amounts would otherwise be required to appear on the company's income statement and would be charged against current expenses or revenues.

### **The Teams can refer to the following for better presentation of case:-**

1. Electricity Act 2003
2. Distribution company Privatisation model of Delhi
3. The promotion and Protection of Investment treaty between Government of India and Government of United Kingdom (Date of enforcement 6<sup>th</sup> Jan 1995)

For any clarification with respect to Moot problem please write to [administrator@dgef.in](mailto:administrator@dgef.in). Or in alternative you can speak at Handheld No, +91 8860635075 / Landline No: +91-11-26943664/ +91-11-26970075

Options of Registration	Mode of Registration	Particulars
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