

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

Petition No. 53/2006

In the matter of:

Review Petition under Section 94 of Electricity Act, 2003 against Order dated 22nd September 2006 passed by Delhi Electricity Regulatory Commission on the petition filed by Delhi Transco Limited for determination of their Annual Revenue Requirement and Bulk Supply Tariff for FY 2006-07.

And

In the matter of:

Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.

Before
Delhi Electricity Regulatory Commission

Coram:

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member, &
Sh. R. Krishnamoorthy, Member**

ORDER
(Date of Hearing -19.12.2006)
(Date of Order - 22.03.2007)

The Review Petitioner, Delhi Transco Ltd. (DTL), hereinafter called the Petitioner, has filed the present Review Petition for the review of the Commission's Order dated 22.09.2006 passed on the Petition No. 07/2006 for F.Y.2006-07 for determination of the Annual Revenue Requirement (ARR) and Bulk Supply Tariff for F.Y. 2006-07.

2. The Delhi Electricity Regulatory Commission (DERC) (herein-after referred to as "Commission") was established under the Electricity Regulatory Commission Act, 1998 and has been assigned the functions as described under the Delhi Electricity Reform Act, 2000 and the Electricity Act, 2003. The Commission as per Section 86(1) (a) of the Electricity Act, 2003 is vested with the powers to determine tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.

3. The petition for approval of the Aggregate Revenue Requirement (ARR) and determination of Bulk Supply Tariff for FY 2006-07 filed by TRANSCO was admitted by the Commission after seeking additional information/clarifications necessary for the admission of the petition. Subsequently, the Commission examined the information submitted by the Petitioner alongwith the subsequent submissions made and after keeping in mind the views expressed by various stakeholders has passed the Impugned Order dated 22.09.2006.

4. The Policy Directions, issued by the Government of NCT of Delhi, envisages a uniform retail supply tariff for all the DISCOMs and tariffs have to be determined in a manner that allows the DISCOMs to recover all permissible expenses and return for the year. Further, the tariff of Generating Company is an input to the Power Purchase Cost of the TRANSCO. Therefore, the Commission processed the ARR and Tariff Petitions of IPGCL, PPCL, TRANSCO and three DISCOMs simultaneously, since the Bulk Supply Tariff for the DISCOMs for a particular period cannot be determined in isolation. The Commission passed its orders on the ARR and tariff petitions of IPGCL and PPCL, Transco and DISCOMs on 22nd September, 2006 and revised the electricity Bulk Supply Tariff in Delhi w.e.f 1st October, 2006.

5. The review petition has been filed subsequent to the said Impugned Order and according to the Petitioner, the said Impugned Order dated 22.09.2006 passed by the Commission suffered from mistakes and errors, which are required to be corrected and there are sufficient reasons for reviewing and/or modifying the Order.

6. While considering the issues raised in this review petition, it is important to understand that while dealing with an application for a review of an Order, it is very necessary to process the application with utmost caution, as the powers of review are not ordinary powers.

7. The provisions relating to review of an Order constitute an exception to the general Rule to the effect that once a judgement is signed and pronounced, it cannot be altered. Therefore, the Orders are not generally interfered with, till there are circumstances as defined under the law, which make it necessary for a Court to alter or modify or reverse its original judgement. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. The power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by law expressly or by necessary implication.

8. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with powers for reviewing its decision, directions and Orders by virtue sub-Section 1(f) of Section 94 of the Electricity Act, 2003. The instant application, made before the Commission, for the review of its decision, directions and Orders, therefore, derives its scope and authority from the aforesaid section of Electricity Act 2003 read with Order 47, Rule 1, of the Code of Civil Procedure.

9. The scope of review is more strict and restricted than that of an appeal. The Court of review has only a limited jurisdiction under Order 47, Rule

1. The review power, under the aforesaid provision are re-produced as below: -

“Application for review of judgement – (1) Any person considering himself aggrieved –

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;
- (b) by a decree or order from which no appeal is allowed, or;
- (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or an error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement of the Court which passed the decree or made the order”

The above mentioned provisions of CPC mandates that a Court of review may allow a review only on three specific grounds which are as under: -

- (i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
- (ii) Mistake or an error apparent on the face of the record; or
- (iii) For any other sufficient reason which is analogous to the above two grounds.

Under Order 47, Rule 1, CPC, Order/Judgement may be opened to Review, inter-alia, if there is a mistake or an error apparent on the face of record. An error, which is not self-evident, has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions.

10. An error apparent on the face of the record may not be defined precisely and exhaustively, as there is an element of indefiniteness inherited in term so used and it must be left to the Court to determine judicially, on the basis of the fact of each case. However, an error must be one which speaks of itself and it glares at the face of it which rendered it difficult to be ignored. The error is not one limited to one of the fact but it also included obvious error of law. However, it is further to the fact that the error is not just limited to error of fact or law but an error apparent on the face of the record is a ground, which would render a particular judgement to be reopened. Whether, the error may have crept by oversight or by mistake may need to be established. The exercise of review of judgement under Order 47, Rule 1, is not permissible for an erroneous judgement so as to render the judgement as “reheard and corrected”. The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by a higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has a limited purpose that cannot be allowed to be an appeal in disguise.

11. The application for review on the discovery of new evidence should be considered with great caution. The applicant should show :-

- a) That such evidence was available and of undoubtable character.
- b) That it was so material that the absence might cause miscarriage of justice.
- c) That it could not with reasonable care and diligence have been brought forward at the time of decree/order. It is well settled that new evidence discovered must be relevant and of such character that it has clear possibility of altering the judgement and just not merely reopening the case for the sake of it.

On the question of scope of review the Supreme Court in the case of Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma (AIR 1979 SC 1047) held that: -

“There are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or an error apparent on the face of the record is found. It may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be

confused with appellate power which may enable an appellate Court to correct all errors committed by the Subordinate Court”.

12. The Supreme Court while discussing the scope and jurisdiction of mistake apparent on the face of the record has held that:

“The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of an error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226”.

13. Under Order 47, Rule 1, CPC, Order/Judgement may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of the record. An error which is not self-evident has to be detected by process of reasoning and can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

14. Further also in the case of Parsion Devi Vs. Sumitri Devi, the Supreme Court has held that;

“A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel’s certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment

of review and fight over again the same battle which has been fought and lost”

15. Keeping in view the statutory provisions and the pronouncements of the Supreme Court of India, the scope of review has been limited into the following words: -

1. That the power of review can be exercised only within the domain prescribed under Order 47, Rule 1, for the rectification of an error patent and glaring on the face which would warrant reconsideration of the judgement/order so pronounced.
2. Where there is nothing to contest that the error is so convincingly parched in the order that at the face of the record it would be acceptable to continue. The error should be self-evident.
3. Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

16. Issues Raised:

A) Treatment of DVB Arrears

Petitioner's Submission

1. In the Review Petition, the Petitioner has referred to the relevant abstracts of the Orders issued by the Commission on June 26, 2003 and July 7, 2005, wherein the issue of treatment of DVB arrears has been discussed. The Petitioner has stated that the Commission in its order dated 26th June, 2003 had considered 80% of DVB arrears for FY 2002-03 and FY 2003-04 amounting to Rs. 210 crore as funds available to TRANSCO in FY 2003-04 as against provisions made in the Transfer Scheme which stipulated that the receivables against DVB arrears would be shared between the Holding Company and the DISCOMs in the ratio of 80:20.
2. The Petitioner has stated that the matter was however reviewed by GNCTD and GNCTD issued a clarification vide their letter dated March 31, 2004 and 4th June, 2004 and reiterated that the original Transfer Scheme would remain as it is and the receivables against DVB arrears would be shared between the Holding Company and the DISCOMs in the ratio of 80:20 respectively.
3. The Petitioner has submitted that they had also raised this issue in the Review Petition filed on 22nd July, 2004. However, the Commission in its Order on Review Petition had not accepted the remittance of DVB

arrears to Holding company and reiterated its remittance to TRANSCO. The Petitioner has further submitted that they had again filed a review petition against the Commission's Order dated July 7, 2005 on this issue. However, the Commission did not admit the review petition and continued with the same approach and considered Rs. 119 crore received from Discoms and Rs. 100 crore received from Delhi Jal Board as receipt of Transco in FY 2005-06 instead of the Holding Company while truing up of the expenses for FY 2005-06 in tariff order of FY 2006-07.

4. The Petitioner has submitted that as a result of the Tariff Orders issued by the Commission for FY 2002-03 & FY 2003-04 on June 26, 2003, for FY 2004-05 on June 9, 2004, for FY 2005-06 on July 7, 2005 and for FY 2006-07 on September 22, 2006, a total amount of Rs. 429 crore would not be available to TRANSCO which would result in widening of the revenue gap of the Petitioner.
5. The Petitioner has also submitted that in the tariff petition, they had requested the Commission to direct M/S DPCL for providing the amount of DVB arrears (80% of total amount collected by DISCOMs) to Transco as mentioned by the Commission in its various Orders, but there are no specific directions to DPCL for remittance of the past DVB arrears to TRANSCO. The Petitioner, therefore, has requested the Commission to issue specific directions to M/S DPCL for remittance of the past DVB arrears to TRANSCO and review its Order dated 22.09.2006.

Commission's Analysis

1. The above issue was repeatedly deliberated in various Orders of the Commission dated June 26, 2003, June 9, 2004, July 7, 2005 and September 22, 2006. It is the considered view of the Commission that 80% of the arrears collected by the DISCOM should be remitted to the TRANSCO rather than the Holding Company. The positive side of this view is that as the TRANSCO is a 100% subsidiary of the Holding Company, the money will still remain in GNCTD hands and also remain within the sector. If this money is given to TRANSCO, it will be considered as Other Income for the TRANSCO and the overall sector gap will reduce, resulting in small increase in the RST".
2. The issue was deliberated by the Commission at length in its Tariff Order dated July 7, 2005 and the Commission ordered as under:

"In the above backdrop, this issue has been further examined by the Commission in light of Policy Directions regarding treatment of efficiency

gains with respect to over achievement and under achievement of AT&C loss reduction during the period FY 2002-03 to FY 2006-07. According to the arrangement as stipulated in the Policy Directions, the benefits of over-achievement by the DISCOMs in AT&C losses which is calculated by taking into account the past DVB arrears has to be passed on to consumers fully if the AT&C loss reduction is upto minimum level and if the AT&C loss level reduction is beyond the minimum level, revenue realised on account of AT&C loss reduction between the Minimum level and actual level has to be equally shared between the consumers and the Licensees. The additional revenue to be passed on to consumers due to over-achievement has to be taken into account for the purpose of determination of ARR for next year. In case, the DVB arrears are passed on to the Holding Company, the arrangement proposed for treatment of over achievement of efficiency targets in the Policy Direction is not implementable. Therefore, the Commission while estimating the ARR and Revenue Gap for FY 2005-06 has considered 80% of the collected DVB arrears remaining within the sector as revenue to TRANSCO, in line with the practice followed in previous years.”

Further, this issue was deliberated in the Commission’s Order on review petition filed in respect of ARR Order of the Commission for FY 2005-06 .

3. The Commission has reiterated its views in the tariff Order of FY 2006-07 dated September 22, 2006 and the paragraph shown in italics under item no. 2 above is also mentioned in para 3.19 of Tariff Order dated September 22, 2006. The Commission’s views on the past DVB Arrears as detailed in para 3.19 of Tariff Order dated September 22, 2006 is as follows:

“It is the considered view of the Commission that the 80% of the receivables, which is going to the Holding Company, should, in fact, go to Delhi Transco Ltd., to be ploughed back into the sector. This would be the most logical course of action since at the time of the calculation of the Bulk Supply Tariff in February, 2002, the entire receivables was taken into account as an income being generated within the sector. It is to be borne in mind that, as mentioned above, in case 80% of the receivables is repatriated to the Holding Company, the consumers of Delhi would have to incur the burden by way of an enhanced tariff shock. In this context, the Commission also notes that in determination of AT&C losses, no distinction is made between the amounts realised against current billing and amounts realised against the past receivables”.

4. Therefore, the Commission while estimating the ARR and Revenue Gap/Surplus for FY 2006-07 has considered 80% of the collected DVB arrears remaining within the sector as revenue to TRANSCO, in line with the practice followed in previous years. Continuing with the same approach, the Commission has thus considered DVB arrears of Rs.119 crore received through DISCOMs and Rs 100 crore received directly from Delhi Jal Board, for FY 2005-06 as revenue to TRANSCO which is mentioned in para 3.19 of the Tariff Order of FY 2006-07 dated 22nd September, 2006.
5. As far as issuing directions to M/S DPCL for remittance of past DVB arrears to TRANSCO is concerned, the Commission would like to clarify that since M/S DPCL is not a regulated entity, the Commission would not like to issue directions to M/S DPCL in this regard. The Commission however, has issued a statutory advice to GNCTD under Section 86(2) of the Electricity Act, 2003 in this regard for appropriate action by the Government.
6. It would be evident that the issue raised by the Petitioner has been deliberated at length in its various Orders and review Orders in respect of ARR of FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06 and FY 2006-07 and the Petitioner has not shown anything to indicate that the Commission has left it in its Order that can be addressed as an “error apparent on the face of the record”. The Petitioner has raised the instant issue in the review petition, which does not qualify and succeed in invoking the review jurisdiction of the Commission. Therefore, the Commission does not admit this issue for review.

B) Reactive Energy

Petitioner's submission

1. The Petitioner has submitted that in its ARR petition for FY 2006-07, they have prayed before the Commission to apportion the payment of reactive energy charges paid by TRANSCO to the pool account of NRLDC to the DISCOMs in the manner considered appropriate by the Commission. The Petitioner has also submitted that in the ARR petition for FY 2006-07, they have also prayed that the payment of reactive energy by the TRANSCO be made a pass-through or the reactive energy charges payable by the DISCOMs to TRANSCO be fixed.
2. The Petitioner has submitted that since the Commission has not made any specific order for reactive energy drawl by DISCOMs at interface point and

tariff of reactive energy chargeable by TRANSCO from DISCOMs, TRANSCO is raising the bills to the DISCOMs at the same rate, i.e. 2.00 paise per KVAh for the reactive energy drawl by DISCOMs.

3. The Petitioner has, therefore, requested the Commission to consider and issue appropriate directions in this regard so that TRANSCO is compensated for the reactive energy drawl from the Grid and system capacity up to Distribution Transformer is available for active load.

Commission's Analysis

1. The issue of compensating TRANSCO for payment against reactive energy draws by DISCOMs was considered by the Commission in its Order dated June 26 2003 and the Commission had decided and allowed TRANSCO to charge for reactive energy @2.00 paise per KVAh on all reactive energy draws from the TRANSCO system. The said Order was followed by TRANSCO in FY 2005-06 after getting direction from the Commission in the review order dated 17.02.2006.
2. Further, the Commission in its order dated 25.11.2003 on the review petition filed by DISCOMs had stated that the reactive energy drawl from the Grid by the DISCOMs would not be required if the DISCOMs ensure that the requisite capacitor banks as per NREB are installed and kept operational. As per Commission's Order dated 25.11.2003, the DISCOMs are required to pay @ 2.00 paise per KVAh irrespective of voltage and would not be paid for any reactive energy injected by them in DTL system.
3. Insofar as the fixing of the reactive energy charges payable by the DISCOMs to TRANSCO is concerned, the Commission has separately clarified that the existing rate 2 paise/KVAh shall continue for the period covered by the Tariff Order for FY 2006-07.
4. As such, the Commission would like to clarify that the tariff and provisions of reactive energy billing which was applicable during FY 2005-06 shall continue during FY 2006-07 as well.
5. As discussed in the preceding paragraphs, the scope and applicability of the review petition is circumscribed into a very limited sphere as defined under Order 47, Rule1, of the Code of Civil Procedure and the Petitioner has not been able to make out of a case for review on this point.

C) Power Purchase Cost

Petitioner's Submission

1. The Petitioner has submitted that the power purchase cost for FY 2006-07 allowed by the Commission in its ARR order dated 22.09.2006 is much lower than what is being paid by the Petitioner in respect of Central Generating Stations, NJPC and BTPS. The Petitioner has indicated that the power purchase cost for the period April 2006' to August 2006' (5 Months) comes to 260.75 paise per unit whereas the Commission in its tariff Order dated 22.09.2006 have assessed the power purchase cost for FY 2006-07 @ 222 paise per unit only.
2. The Petitioner has further submitted that the Commission has allowed the short term power purchase of 667 MUs @ Rs. 4.10 per unit whereas the actual rate of short term power purchase comes to more than Rs. 5.00 per unit.
3. The Petitioner has also mentioned that the Commission has considered sale of 1672 MUs of energy under UI/ sale to other states @ Rs. 3.00 per unit whereas the actual sale rate will be much lower than estimated by the Commission due to the operation of the Tala link , which has improved Grid frequency. Normally it remains around 50 Hz during night hours, less availability of off-peak power during current season due to reallocation of share to other States (RPPC, MPPTC), outage of plants, and banking arrangement with Madhya Pradesh and Rajasthan, etc.
4. As such, The Petitioner will face shortage of funds and will face difficulty in the Cash flow in discharging its power purchase and other liabilities in FY 2006-07. The Petitioner has, therefore, requested the Commission to pass appropriate directions/ modifications.

Commission's Analysis

1. The average power purchase cost for FY 2006-07 as estimated by the Commission in its Tariff Order dated 22nd September, 2006 is based on the Annual Fixed Charges approved by CERC for FY 2006-07 for NTPC and NHPC Generating stations in project specific tariff orders issued in May 2006 for the tariff period FY 2004-05 to FY 2008-09. For Rihand STPS – Stage I of NTPC, the Commission has considered the annual fixed charges based on the CERC's Tariff Order issued in May 2006 for the FY 2003-04. In case of Unchahar-Stage-III and Kahalgaon-II of NTPC, the Commission has considered the provisional Tariff @ Rs. 2.19/kwh and @ Rs. 1.79/kwh ,

respectively for the FY 2006-07 as submitted by TRANSCO in their subsequent submission dated 13.06.2006 to the Commission. For Nathpa Jhakri and Tehri hydro electric projects, the Commission has calculated the power purchase costs based on provisional tariff fixed by CERC. The Annual Fixed Charges thus arrived at for NTPC and NHPC stations have been allocated to TRANSCO in proportion to its allocated share in the Central Generating stations for FY 2006-07.

2. To arrive at the variable charges for NTPC stations for FY 2006-07, the Commission has escalated the actual variable charges for FY 2005-06 as submitted by TRANSCO by 3% for coal-based plants and 5% for gas-based plants.
3. For Nuclear Power Corporation (NPC) Stations, the Commission has estimated the power purchase cost considering the rates approved by the CEA, GOI for FY 2006-07.
4. While considering the Petitioner's claim that the power purchase cost for the period April 2006' to August 2006' (5 Months) comes out to 260.75 paise per unit, it is to be pointed out that the Petitioner while computing the power purchase cost for the aforesaid months has considered the variable charges of NTPC Stations for 5 months based on actuals, whereas the Commission has worked out variable charges for NTPC stations for FY 2006-07 by escalating the actual variable charges for FY 2005-06 by 3% for coal-based plants and by 5% for gas-based plants. Further, the units purchased by the Petitioner for 5 months is based on actuals, whereas the average rate of 222 paise per unit as approved by the Commission is projected based on station capacity and the Petitioner share etc. on annual basis.
5. Insofar as the rate considered for short-term power purchase for FY 2006-07 is concerned, the Commission has considered it @ Rs. 4.10 per unit, which is the same rate as projected by TRANSCO in their ARR petition for FY 2006-07.
6. For estimating the quantum /rate of energy under sale to other States/UI transactions, the Commission has considered 1672 MUs of energy @ Rs. 3.00 per unit, which was a realistic conclusion after considering the existence of improved Grid frequency due to integration/synchronisation of the Northern Grid with Central Grid in August 2006. Further, the quantum /rate of energy under sale to other States/UI transactions as estimated by the Commission for FY 2006-07 is very much on lower side when compared to projections made by TRANSCO in their ARR petition for FY 2006-07 and their

subsequent submission dated 13.06.2006 which was of the order of 2194 MUs and 3089 MUs, respectively @ Rs. 3.26 per unit.

7. However, the average power purchase rate approved by the Commission for FY 2006-07 shall be reviewed at the time of truing up of data for FY 2006-07 after availability of actual data.
8. The Petitioner has not pin pointed the errors, which are apparent on the face of the record and justify the review of the Commission's impugned Order dated 22.09.2006. The Commission had deliberated on the cost of power purchase in detail in the impugned Order and took a conscious decision to approve the charges for the Petitioner. The Petitioner is attempting through this review petition to revise the details furnished at the time of original petition. The power of review can be exercised only within the domain prescribed under Order 47, Rule 1, for the rectification of an error apparent and glaring on the face which would warrant reconsideration of the judgment /order so pronounced. Further, the error should be such that it is so placed that its continuance would strike at the roots of justice. However, there is nothing in the review petition to touch upon these issues and therefore, the Commission is of the view that the instant issue did not qualify for review.

D) Revenue loss on account of delayed Tariff order

Petitioner's Submission

1. The Petitioner has submitted that they had filed ARR petition for FY 2006-07 before the Commission for determination of ARR and BST on 29.12.2005 in terms of Section 64 of Electricity Act, 2003. Section 64 of Electricity Act, 2003 provides that the Commission shall decide and determine the tariff within a period of 120 days of filing of the petition for determination of ARR and BST.
2. The Petitioner has also submitted that the Commission has admitted the ARR petition on 30th March, 2006 and passed order on 22nd September, 2006 fixing BST for Transco to be made effective w.e.f. 1st October, 2006. The Petitioner has further submitted that while computing the revenue realization of TRANSCO from sale of Power to Discoms, the Commission has considered the total sales to Discoms during FY 2006-07 at the revised Bulk Supply Tariff whereas the revised Bulk Supply Tariff was made effective w.e.f. 1st October, 2006. As a result of delay, the actual revenue receipt during FY 2006-07 would be less than that projected by the Commission in the Tariff Order by an amount of Rs.230.47 crore (approx.). Therefore, the Petitioner has requested the Commission to review its Order dated July 7, 2005 and pass appropriate orders.

Commission's Analysis

1. The Commission is of the opinion that the delay in issuance of ARR order for FY 2006-07 is mainly attributable to delays made by Licensees as well as Transco/ Gencos in providing the required information to the Commission for analysis purpose.

The original petition submitted by the Petitioner was lacking in critical data/information in certain key areas. This led to a series of interactions, both written and oral, wherein the Commission sought additional information/clarification and justifications on various issues that were critical for the determination of the ARR and BST. After admission of the ARR petition, the Commission further held technical sessions with the concerned staff of the Petitioner to seek additional information and clarifications.

2. The delay in issuance of ARR order for FY 2006-07 is further attributable to appeals filed by DISCOMS before the Hon'ble Appellate Tribunal for Electricity in respect of Tariff Orders for FY 2002-03, FY 2003-04 and FY 2004-05 issued by the Commission. The Hon'ble Appellate Tribunal had passed its Order dated 24th May 2006 in appeal no. 38-39, 122 of 2005 and 48 of 2006. Thereafter, the Commission had preferred an appeal against the said Order of the Hon'ble Appellate Tribunal for Electricity before the Hon'ble Supreme Court vide Civil Appeal No. 2733 of 2006. As the matter was sub-judice, the ARR Orders of DISCOMS for FY 2006-07 could not be issued without the leave of the Hon'ble Supreme Court.
3. Thus, the Commission feels that there is no merit in allowing the revenue loss due to delay in implementation of revised tariffs. Hence, the Commission does not admit this issue for review.

E) Interest on loan

Petitioner's Submission

1. The Petitioner has submitted that they had borrowed short-term loan from the DPCL (Holding Company) in FY 2005-06 to meet the short-term requirement and the interest on the above short-term loan was computed as Rs.1.91 crore up to 31st March, 2006.
2. The Petitioner has further submitted that they had prayed to the Commission to approve interest expenditure on the borrowing of short-term loans.

However, the Commission in its ARR Order dated 22nd September, 2006 did not allow the same. It has been submitted that as per the balance sheet, the interest amount on the short-term loan taken from DPCL in FY 2005-06 comes to Rs.2.28 crore.

3. The Petitioner has prayed that interest of Rs.2.28 crore on the short-term loan taken from M/s DPCL may kindly be allowed.

Commission's Analysis

1. In the ARR Order for FY 2006-07, the Commission has considered the interest for FY 2005-06 on GNCTD loans only, which have been actually availed under the Plan Fund Assistance and which have been specifically utilized for funding the capital expenditure. As the loan raised by TRANSCO from DPCL amounting to Rs. 50 crs. during FY 2005-06 was for meeting the short term requirements of TRANSCO and not for funding the capital expenditure, the same was not considered by the Commission in its ARR order dated 22.9.2006 for FY 2006-07.
2. Further, the Commission has not considered any additional funding for short term /working capital requirements for FY 2005-06 as mentioned in para - 3.9.1.3 of its ARR order dated 22.9.2006 for FY 2006-07. As such, there was no error apparent on the face of the record. Hence, the Commission does not admit this issue for review.

F) NDMC and MES TARIFF:

Petitioner's Submission

1. The Petitioner has referred to the relevant abstracts of the Commission's ARR order dated 22nd September, 2006 which reads as under:

"The existing BST of Rs. 2.57 per kVAh for NDMC and MES is based on the Order issued by the Commission on May 31, 2002. The Commission had asked the erstwhile DVB to identify the 33 kV feeders supplying power to NDMC and MES and submit the details to the Commission vide its letter dated November 11, 2001 to Govt. of NCT of Delhi. This would have enabled the Commission to assess the losses and the wheeling charges applicable for the NDMC and MES. However, requisite details are not available with the Commission. NDMC has submitted the ARR and Tariff Petition for FY 2006-07 and the Commission is separately processing the same. The Commission is of the opinion that in such a situation, it would not be proper to either increase or decrease the tariffs applicable for NDMC and MES, and has hence retained the existing tariffs for NDMC and MES at Rs. 2.57 per kVAh in this Order".

2. The Petitioner has however, submitted that all the feeders supplying power to NDMC and MES area have now been identified and handed over to the respective utilities. The Petitioner has also submitted that at present, the billing to NDMC and MES is being carried out on the basis of meter recording at the receiving end of feeders. The meters at the sending end have been installed for proper accounting of energy.
3. The Petitioner has therefore, prayed that energy billing to NDMC and MES may be allowed to be carried out on sending end i.e Transco Grids Station, Genco Power station and DISCOMS Grids Station as is being done in case of other three distribution licensees and fix the BST of NDMC and MES at sending end as is being done in case of other three distribution licensee.

Commission's Analysis

1. As far as fixing the BST of NDMC and MES at sending end is concerned, the Commission is of the view that even if billing to NDMC and MES is carried out on the basis of meter recording at the sending end, the overall revenue of TRANSCO will not change because in that case, the BST for NDMC and MES will go down, but the quantum of energy will correspondingly increase.

In this connection, the Commission would like to clarify that while issuing tariff order for NDMC for FY 2006-07, the Commission has retained the BST for NDMC at Rs. 2.57/kVAh because in its Order on ARR and determination of BST for TRANSCO for FY 2006-07, the Commission had retained the BST for NDMC and MES at Rs. 2.57/kVAh. As far as fixation of the BST for MES is concerned, they did not file any ARR and Tariff Petition for FY 2006-07.

2. As such, it is the considered view of the Commission that in such a situation, it would not be proper to either increase or decrease the Bulk Supply tariff applicable for NDMC and MES. However, the issue could be considered at the time of determination of tariff of NDMC for the control period 2007-11 under MYT framework.
3. As such, any error apparent on the face of the record can not be found and hence, the Commission does not admit this issue for review.

On the basis of the records produced before the Commission during the processing of the ARR and Tariff petitions of the Petitioner, in the present review petition and the averments placed before the Commission, the Petitioner has not been able to make out any case which would endorse a case for review of the

Commission's Order dated 22nd September, 2006 issued for the purpose of determining the Tariff of the Petitioner. The Petitioner has failed to show that there is any error apparent on the face of the record, which would justify the review. Nor the Petitioner is able to bring out any new evidence which would require reconsideration of the Commission's order. The Commission opines that the issues, which were raised by the petitioner in its review application, and enumerated in this order, have already been heard and deliberated in detail in the Commission's Order of 22nd September, 2006. The issues were decided by the Commission based upon the prevalent law and practice and principles in the domain of determination of bulk supply tariff. Further, the Commission has been guided by the principles, which are in the interest of the public at large. On these considerations, this review petition is liable to be dismissed.

The Commission orders accordingly.

Sd/-
(K. Venugopal)
Member

Sd/-
(R. Krishnamoorthy)
Member

Sd/-
(Berjinder Singh)
Chairman

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

No. F.3(146)/Tariff/DERC/2006-07/

22.03.2007

To,

Shri Rakesh Mehta,
Principal Secretary (Power),
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
New Delhi-110 002

Sub. : Review Petition under Section 94 of Electricity Act 2003 against Order dated 22nd September, 2006 passed by Delhi Electricity Regulatory Commission on the Petition filed by Delhi Transco Limited for determination of their Annual Revenue Requirement and Bulk Supply Tariff for FY 2006-07.

Sir,

As you are aware, the Delhi Transco Limited has filed a Review Petition before this Commission against the Tariff Order issued by the Commission on 22/09/2006 (on Petition No. 07/2006) pertaining to Bulk Supply and Retail Tariffs for Financial Year 2006-07.

2. In the Review Petition, the Delhi Transco Limited has, inter-alia, raised the issue of treatment of DVB arrears and has submitted that while in the Tariff Petition, it had requested the Commission to direct M/s DPCL for providing the amount of DVB arrears to Transco, there are no specific directions from the Commission to M/s DPCL in this regard. In the Review Petition, therefore, the Delhi Transco Limited has requested the Commission to issue specific directions to M/s DPCL for remittance of the past DVB arrears to Transco and review its Orders of 22/09/2006.

3. While the Commission has disposed off the Review Petition filed by the Delhi Transco Limited vide Order dated 22/03/2007 (copy enclosed), the Commission is alive to the fact that M/s DPCL is not a regulated entity of this Commission and, therefore, has refrained from passing any directions in the Review Order to remit the money of DVB arrears to Transco. Instead, the Commission has decided to advise the Government of NCT of Delhi to direct M/s DPCL to remit the DVB arrears to Transco as has been mentioned in the various Tariff Orders of this Commission.

4. This letter may kindly be treated as statutory advice to the Government of NCT of Delhi under Section 86(2) of the Electricity Act, 2003.

Yours faithfully,

(Somit Dasgupta)
Secretary