

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

No. F.11(738)/DERC/2011-12/

Petition No. 61/2011

In the matter of: Petition U/s 94 of the Electricity Act, 2003 for review of the order dated 26.08.2011 passed by the Hon'ble Commission in the matter of determination of tariff for the Petitioner (PPCL) for the year FY 2011-12.

Pragati Power Corporation Ltd.
Through its: **Director (Tech.)**
Himadri
Rajghat Power House Complex,
New Delhi 110 002.

....**Petitioner**

Coram:

**Sh. P.D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member.**

Appearance:

1. Ms. Swapna Seshadri, Advocate
2. Mr. Anand Ganeshan, Advocate
3. Mr. R.K. Jain, G.S. IPGCL/PPCL
4. Mr. Rajendra Kr. Yadav, Sr. Mgr (Comml.) IPGCL/PPCL
5. Mr. Sanjay Kumar Sharma, AM (Comml.) IPGCL/PPCL
6. Mr. Sunil Barnwal, Manager, BRPL
7. Ms. Megha Bajpeyi, Manager, BRPL
8. Mr. Sanjay Srivastav, Asstt. VP BRPL

Order

(Date of Hearing: 23.08.2012)
(Date of Order: 26.11.2012)

- 1.1 The Pragati Power Corporation Limited (PPCL) has filed the present Review Petition No. 61 of 2011 on 30.09.2011 for review of the impugned Order dated August 26, 2011 passed by the Commission in Petition No. 32 of 2011.
- 1.2 The Petition for determining the revenue requirements and multi-year generation tariff for Pragati Power Corporation Limited (PPCL) for FY 2011-12 was admitted by the Commission after seeking additional information/clarifications necessary for the admission of the said Petition. The Commission passed its Order on August 26, 2011 on the aforesaid Petition after examining the information submitted by the Petitioner and also keeping in mind the subsequent interaction/submissions with the Petitioner and the views expressed by various stakeholders.
- 1.3 This Review Petition has been filed subsequent to the said impugned Order. According to the Petitioner, the impugned Order passed by the Commission suffers from mistakes and errors apparent on the face of the record, which are required to be corrected and that there are other sufficient reasons for reviewing and/or modifying the impugned Order.

- 1.4 It is important to understand that while dealing with an application for a review of an Order, it is necessary to process the application with utmost caution as the powers of review are not ordinary powers.
- 1.5 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.
- 1.6 With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commissions have been vested with powers for reviewing its decision, directions and Orders by virtue of sub-Section 1(e) of Section 94 of the Electricity Act, 2003. The 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.
- 1.7 The Commission is of the view that the scope of review is more restricted than an appeal. The Court of review has only a limited jurisdiction and limited by the unqualified language of Order 47, Rule 1. The review power, under the aforesaid provision is 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 or 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 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."*
- 1.8 The above mentioned provisions of CPC mandate that a Court of review may allow a review only on one or more of 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 error apparent on the face of the record; or
 - iii. For any other sufficient reason which is analogous to the above two grounds.
- 1.9 Under Order 47, Rule 1, CPC, an 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, and has to be detected by process of reasoning, can hardly be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said provisions.

- 1.10 On a detailed consideration of the issues raised in the review petition, we find that these issues have been adequately addressed in our tariff order dt. 26.08.2012 and none of the three pre-conditions indicated above at para 1.8 are attracted. An analysis of each issue raised is given in the subsequent paragraphs.

ISSUES RAISED

A. Extension of the DERC Tariff Regulations for the period FY 2011-12 as well without providing for the relevant adjustments in accordance with CERC (Terms and Conditions of Tariff for Determination of Tariff) Regulations, 2009;

- 1.11 The Petitioner has submitted that the Commission has extended the multiyear tariff control period of FY 2007-08 to FY 2010-11 without considering the modifications introduced by the Central Electricity Regulatory Commission in the CERC Tariff Regulations (2009-14), which have taken into account the various changes in the circumstances for the generating stations.

Commission's Analysis

- 1.12 The Commission vide its Order dated May 10, 2011 extended the MYT Regulations 2007 and the corresponding Control Period (FY 2007-08 to FY 2010-11) for a further period of one year up to March 31, 2012 after following the due process of law. The relevant Control Period now extends from FY 2007-08 to FY 2011-12. Accordingly, the operational and financial norms given in the MYT Regulations, 2007 have been used for computation of tariff for generating stations owned by the Petitioner for FY 2011-12.
- 1.13 The Commission would like to point out that the extension of the MYT Regulations 2007 was carried out vide Order dated May 10, 2011 and as such any objection against the same cannot be considered as a part of the review of the tariff order dated August 26, 2012. It is also noted that the MYT Regulations 2007 have not been challenged.

B. Relaxation of Heat Rate for PPS-I for FY 2011-12;

- 1.14 The Petitioner has submitted that it is not always possible to achieve SHR of 2000 kCal/kWh in combined cycle mode and is not at all possible to achieve 2900 kCal/kWh in open cycle mode as specified in the MYT Regulations 2007. The guaranteed heat rate of these turbines as given by the manufacturer is 1939 kCal/kWh in combined cycle mode and 2986 kCal/kWh in open cycle mode at 100% PLF. According to the Petitioner CEA has computed the combined cycle heat rate as 1978 kCal/kWh. After applying the correction factor of 5%, the combined cycle heat rate computes to 2036 kCal/kWh and 3135 kCal/kWh in open cycle mode.
- 1.15 The Petitioner has submitted that heat rate of the gas turbines depends upon technology and climatic conditions of operation. The climatic conditions for Rajiv Gandhi CCPP of NTPC at Kayamkulam, Kerala are different from conditions for PPS-I in Delhi. Thus the heat rate allowed to Kayamkulam CCPP cannot be allowed to PPS-I.

Commission's Analysis

- 1.16 The Commission has already given its views regarding the matter while approving the Station Heat Rate for PPS-I for FY 2011-12. The relevant portion of the tariff order dated August 26, 2011 is reproduced below.

“Station Heat Rate

Petitioner's Submission

3.52 The Petitioner has submitted that it is not possible to achieve SHR of 2000 kCal/kWh in combined cycle mode and is not possible to achieve 2900 kCal/kWh in open cycle mode as approved by the Commission in the MYT Order. According to the Petitioner, the guaranteed heat rate of these turbines as given by the manufacturer is 1939 kCal/kWh in combined cycle mode (which has been computed by the CEA as 1978 kCal/kWh) and 2986 kCal/kWh in open cycle mode at 100% PLF. Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for the period FY 2009-14 (regulation 26 (ii)(B)(b) on gross heat rate for newly commissioned projects) provides a correction of 5% over the design heat rate. Applying the correction factor of 5%, the combined cycle heat rate of PPCL-I computes to 2036 kCal/kWh and 3135 kCal/kWh in open cycle mode. The Petitioner has requested that the same be considered for FY 2011-12.

3.53 The Petitioner has also submitted that CEA has also considered the open cycle heat rate as 3075.3 kCal/kWh at 100% PLF in its report of December, 2004 on Technical Standards on Operational Norms for Gas Turbine Stations.

3.54 The Petitioner submitted that the large number of grid trippings in Delhi and backing down of generation on the instruction of SLDC have attributed to a lower PLF and higher SHR of the plant in the past and the same is expected to continue in future.

Table 1: Station Heat Rate submitted by the Petitioner (kCal/kWh)

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
	Actual			Provisional	Projection
Station Heat Rate (Combined Cycle)	1973	1967	1984	2003	2036
Station Heat rate (Open Cycle)	3130	3075	3084	3138	3135

Commission's Analysis

3.55 The Commission directed the Petitioner to submit performance guarantee test report conducted and the machine specification, at site conditions, at the time of commissioning of the machines. Despite repeated queries, the details were not furnished by the Petitioner. Therefore, the Commission has decided to retain the SHR as per the norms specified in the MYT Regulations, which were set in accordance with the CERC norms for similar stations.

3.56 It may also be noted that the CERC has provided for SHR of 2000 kCal/kWh (combined cycle operations) and 2900 kCal/kWh (open cycle operations) to the Kayamkulam Combined Cycle Power Project, which is very close in technical specifications to PPCL-I.

Table 2: Station Heat Rate (in kCal/ kWh) approved by the Commission

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
	Approved in MYT Order				Approved Now
Station Heat Rate (Combined Cycle)	2000	2000	2000	2000	2000
Station Heat rate (Open Cycle)	2900	2900	2900	2900	2900

- 1.17 As already mentioned in the tariff order, the Commission directed the Petitioner to submit performance guarantee test report conducted and the machine specification, at site conditions, at the time of commissioning of the machines. Despite repeated queries, the details have not been furnished by the Petitioner. Therefore, the SHR allowable for FY 2011-12 has been retained as per the norms specified in the MYT Regulations.
- 1.18 The operational norms for Station Heat Rate have been specified in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 for the entire MYT Control Period. The Heat Rate for PPS-I has thus been taken at 2000 kCal/kWh for combined cycle and 2900 kCal/kWh for open cycle as per the norms set out in the MYT Regulations, 2007. The Petitioner has not made available any new information to the Commission and there is no error apparent on the face of the record. As such, the Petitioner could not make out a case for review. It is also noted that the MYT Regulations 2007 have not been challenged.

C. O&M escalation allowed at 4% whereas even CERC has allowed a 5.72% escalation factor.

- 1.19 The Petitioner has submitted that the Commission has allowed an escalation factor of only 4% per annum for estimating the O&M expenses for each year of the Control Period (FY 2007-08 to FY 2011-12) which has resulted in disallowing the legitimate expenses incurred by the Petitioner.
- 1.20 The Petitioner has submitted that the inflation rate was higher during the period from FY 2007-08 to FY 2010-11 as well as for FY 2011-12. The Petitioner has prayed to the Commission to allow a higher escalation factor, in tune with the actual expenses incurred by the Petitioner.

Commission's Analysis

- 1.21 The MYT Regulations 2007 categorize Operation and Maintenance (O&M) expenses of a generating station as a 'Controllable' parameter.
- 1.22 As per clause 5.7 of the MYT Regulations 2007, for certain 'Controllable' parameters viz. O&M expenses Station Heat Rate, Availability, Auxiliary Energy Consumption etc no true up is required to be done on account of actual performance of the generation company. The relevant portion of the said Regulations is quoted below:

"Performance Targets

5.7 The Commission shall set targets for each year of the Control Period for the items or parameters that are deemed to be "controllable" and which include

(a) Station Heat Rate;

(b) Availability;

(c) Auxiliary Energy Consumption;

(d) Secondary Fuel Oil Consumption;

(e) Operation and Maintenance Expenses;

(f) Plant Load Factor

(g) Financing Cost which includes cost of debt (interest), cost of equity (return); and

(h) Depreciation.

5.8 Any financial loss on account of underperformance on targets for parameter specified in Clause 5.7 (a) to (e) is not recoverable through tariffs. Similarly, any financial gain on account of over-performance with respect to these parameters is to the Generating Company's benefit and shall not be adjusted in tariffs."

- 1.23 It is clear from clause 5.7 and clause 5.8 of the said Regulations that any financial loss on account of underperformance on targets for O&M expenses is not recoverable through tariffs. Similarly, any financial gain on account of over-performance with respect to O&M expenses is to the Generating Company's benefit and shall not be adjusted in tariffs.
- 1.24 The targets for O&M expenses for the first four years of the Control Period i.e. FY 2007-08 to FY 2011-12 were set by the Commission in its MYT Order dated December 14, 2007¹ using an escalation of 4% per annum, which is in line with the escalation provided by the CERC on O&M expenses during FY 2004-09. It is to be noted that the Petitioner had not challenged the escalation of 4% allowed by the Commission in the review petition filed by it against the MYT Order (Petition No.3 of 2008). Further, as per the provisions of MYT Regulations 2007 there is no provision for truing up of the O&M expenses based on the actual O&M cost incurred by the Petitioner.
- 1.25 The Commission has extended the MYT Regulations 2007 and the first MYT Control Period for a period of one year upto March 31, 2012. Accordingly, the principles and norms used for the calculation of tariff for previous years (FY 2007-08 to FY 2010-11) of the Control Period have been used for computation of tariff for the company for FY 2011-12 in the impugned Order. Accordingly, the O&M expenses have been approved for FY 2011-12 by providing an escalation of 4% on the approved O&M expenses of the previous year.
- 1.26 In view of the above, none of the issues raised fulfil any of the criteria for review listed at para 1.8. Accordingly, the Review Petition is dismissed.
- 1.27 Order accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRMAN

¹ The base O&M expenses allowed to the Petitioner have already been revised in Tariff Order dated August 26, 2011 to correct for the error in determination of the value of Base Year in the MYT Order dated December 14, 2007.