DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017

F.11(427)/DERC/2007-08

Review Petition No. 28/2008

In the matter of:

Petition seeking clarification and/or reconsideration and/or review and/or modification of certain observations & findings in the MYT Order dated 23.2.2008.

AND

In the matter of:

North Delhi Power Ltd.
Through: its **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009.

Coram:

Sh. Berjinder Singh, Chairman & Sh. K. Venugopal, Member

Appearance:

1. Sh. Sunil Wadhwa, CEO, NDPL;
2. Sh. Amit Kapur, Advocate, NDPL;
3. Sh. Massoor Ali, Advocate, NDPL;
4. Ms. Poonam Verma, Advocate, NDPL;
5. Sh. Puneet Munjal, NDPL;
6. Sh. Anurag Bansal, AM-Corp. Legal;
7. Sh. Dhiraj Bengani, NDPL.

ORDER

(Date of Order: 30.09.2008)

1. The review petition has been filed under the provisions of Section 94(1)(f) of the Electricity Act, 2003 by North Delhi Power Ltd. (NDPL), herein after called the Petitioner, against the Commission's MYT Order dated 23/29 February 2008 in Petition No. 50/2007. Through this petition the Petitioner has sought review of the following issues:-

A. Truing Up (Upto FY 2007):

a) Employees expenses: Lower allowances of actual expenses for FY 2005-06.

b) Employee Expenses: Arithmetical Error in computation of SVRS Amortizations.

B. **Loan, FY 2003-04:**

a) Errors in computing loan amount approved for FY 2003-04.

b) Lower Allowance of Actual Interest Cost on DPCL refinanced loan.

c) Interest on PFC loan allowed less than the contracted rate.

d) Lower Loan repayment considered upto FY 2007.

e) Impact of various errors.

C. O&M : Computation of K-Factor for determination of R&M expenses.

D. Weighted Average Cost of capital (WACC) calculated erroneously by Commission by considering incorrect debt: equity ratio.

E. Higher Revenue estimation on account of higher Average Billing Rate (ABR).

2. The Petitioner has submitted that the impugned Order (MYT Order) suffers from mistakes and errors apparent on the face of the record which require to be corrected and that there are sufficient reasons for reviewing and/or modifying the impugned order.

A. **Truing Up (Upto FY 2007) :**

3. The Petitioner has submitted that the actual employee expenses for FY 2004, FY 2005, FY 2006 and FY 2007 were Rs. 109.69 crore, Rs. 94.14 crore, Rs. 103.40 crore and Rs. 126.04 crore respectively. In addition to the employee expenses, the Petitioner has also incurred expenses on billing distribution and meter reading to the tune of Rs. 5.45 crore, Rs. 4.29 crore and Rs. 4.71 crore for FY 2005, FY 2006 and FY 2007 respectively. The Petitioner further submitted that the Appellate Tribunal for Electricity (ATE) in its order dated 23.05.2007 held that the Commission has to allow all actual expenses towards employees cost including contractual employees. As per the said order, the Commission allowed the contractual employee expenses while computing the savings available for SVRS expenses amortisation. The Petitioner submitted that while the Commission has considered the actual expenses for FY 2003-04 and FY 2004-05 it has erroneously allowed a lower amount against actual expenditure for FY 2005-06. The actual gross employees expenses on existing employees for FY 2005-06 were Rs. 108.71 crore against which the Commission has erroneously allowed Rs. 103.40 crore, resulting in an under-allowance of Rs. 5.31 crore. The under-allowance of Rs. 5.31 crore is an error apparent on the face of record.

4. Regarding Arithmetical error in computation of SVRS amortization, the petitioner had sought allowance of amortization of expenses towards "Golden Hand Shake/One-Time Payment" towards VSS Optees. The Petitioner has

submitted that in the MYT Order the Commission has correctly followed the principles laid down by the Appellate Tribunal for Electricity in its Order dated 23.5.2007 but, while calculating the un-recovered SVRS amount there appears to be an arithmetical error. The unrecovered SVRS amount was shown as Rs.87.6 crore, Rs.58.37 crore and Rs.26.17 crore for FY 2004, FY, 2005 and FY 2006 respectively against the correct computation of Rs.87.6 crore, Rs.61.62crore and Rs.29.70 crore. The impact of this arithmetical error resulted in lower allowance of expense by Rs.3.68 core including carrying cost up to FY 2006-07.

B. **Loan FY 2003-04** :

5. The Petitioner submitted that the Commission has approved the total debt financing of Rs.113.23 crore including Rs.17.91 Crore APDRP loan for capital expenditure as per the means of financing approved for FY 2004. The total debt taken by the Petitioner in FY04 was Rs.117.91 crore. It was higher than the debt approved by the Commission. The Commission has sorted the actual loans taken by the Petitioner as per their date of drawl and has allowed loans till the cumulative value of loans reached the value of debt now approved by the Commission. This is a clear error apparent on the face of the record which resulted in lower allowance of both, interest cost and amount for loan repayment in FY 2003-04 with a cascading effect on depreciation utilization.

6. The Petitioner in regard to lower allowance of actual interest cost on DPCL refinanced loan has submitted that the Commission's view in the MYT Order that the Petitioner has paid interest of Rs.37.25 crore on account of DPCL loan and refinanced loan (including refinancing charges) is incorrect as it was clearly reflected in the MYT Petition that the interest portion alone is Rs.37.25 crore with an additional sum of Rs.1.64 crore for refinancing/upfront charges/fees paid to IDBI besides interest costs for Rs.37.25 crore. It is submitted by the Petitioner that the non allowance of Rs.1.64 crore of refinancing costs/upfront fee paid to IDBI is an error apparent on the face of record which needs to be allowed together with carrying cost.

7. The Petitioner has further submitted that the contracted rate of interest on PFC loan is 9% per annum with a provision of rebate for timely payment. From FY 2005-06, the eligible rebate was initially reduced by the PFC from 0.5% to 0.25% thus increasing the effective interest rate from 8.5% p.a. to 8.75%p.a. The petitioner has submitted that the Commission has incorrectly considered the interest @ 8.5% per annum on Rs.25.32 crore of PFC loan form FY 2003-04 onwards and @ 9% p.a. on Rs.10 crore from FY 2004-05 onwards. Further, at para 3.75 of

the MYT Order, the Commission has sorted the actual loans taken by the Petitioner as per their date of drawl and has allowed loans till the cumulative value of such loans becomes equal to the debt now approved by the Commission.

8. The Petitioner has submitted that the total loan repayment funding allowed by the Commission for 3 years up to FY 2007 by way of depreciation is Rs.71.28 crore. The total loan approved by the Commission till FY 2007 is Rs.1117.34 crore. In contrast, loan outstanding upto FY 2007 considered by the Commission is Rs. 1008.83 crore. This implies a loan repayment of Rs. 108.51 crore upto FY 2007. However, the depreciation utilised for loan repayment upto FY 2007 is Rs. 71.28 crore. As such, there is a shortfall of Rs. 37.23 crore. However, the Commission has erroneously considered loans less by Rs. 17.91 crore in FY 2003-04. After adjusting for the above shortage, the funding of loan repayment is short by Rs. 19.32 crore which is the amount of loan repaid during FY 2006-07 on the refinanced DPCL loan which again appears to have been ignored. The under allowance of loan/repayment would result in change in utilisation of depreciation which in turn will lead to change in the approved means of financing and resultant change in interest and Return on Equity (ROE).

9. The Petitioner has submitted that the overall impact of all errors mentioned above on interest and ROE together with carrying cost till FY 2007 is Rs. 8.06 crore. The petitioner has requested that Rs. 8.06 crore together with carrying cost for the period beyond FY 2007 may be allowed.

C. Computation of K-factor for determination of R&M Expenses.

10. The petitioner has submitted that the Commission has determined the value of 'K' factor for the control period as the average of the individual 'K' for the last five years i.e. FY 2003 to FY 2007 and has erroneously ignored the fact that the R&M expenditure for FY 2002-03 was only for 9 months (July 2002 to March 2003). Therefore, the total R&M expenditure during FY 2002-03 to FY 2006-07 is actually for 4.75 years and not 5 years as has been erroneously considered by the Commission in its computations.

11. The Petitioner has further submitted that In order to obtain the correct average 'K' factor, either the summation of each years' 'K' factors should have been divided by 4.75 (i.e. 4 years and nine months which is the period for which R&M expense has been incurred) or the R&M expenses for FY 2002-03 should

have been annualised and 'K' factor computed accordingly. This could then be divided by five years to derive the 'K' factor to be used for the MYT Control period rather than incorrectly dividing summation of 'K' factors based on 4.75 years R&M expenses by 5 years which obviously is an error apparent on the face of record. Based on annualisation of FY 2002-03 R&M expenses and then computing FY 2002-03 'K' factor, the same works out to 2.42 % (21.93*12/9 divided by 1210 GFA) instead of 1.81% as incorrectly computed by the Commission.

12. Secondly, the Commission has erroneously considered approved R&M expenses for FY 2003-04 at Rs.32.16 crore against the actually approved expenditure of Rs.55.27 crore.

13. It is clarified that Rs.53.68 crore of R&M Expenses approved by the Commission for FY 2004-05 is the expenditure incurred during FY 2004-05 and does not include the FY 2003-04 trued up amount of Rs.23.11 crore which is the expenditure of FY 2003-04 and is consequently to be considered in FY 2003-04 for computation of the 'K' factor for the FY 2003-04. Based on the above, the 'K' factor for FY 2003-04 should have been 4.58% instead of 2.66% erroneously computed by the Commission.

14. Thus it can be seen that the average 'K' factor for the control period shall consequently be 3.33% instead of 2.82% computed in the said impugned MYT Order.

D. Weighted average cost of capital calculated erroneously by the Commission by considering incorrect debt : equity ratio:

15. The Petitioner has submitted that the weighted average cost of capital (WACC) is the weighted average cost of debt and cost of equity applying the debt/equity ratio as also recognised in Regulation 5.10 of the MYT Regulations. The Commission has stated that it shall consider closing values of debt and equity of that year while computing WACC. However, while computing WACC the Commission has taken the closing value of debt and average equity. This is inconsistent with the methodology to be followed. The erroneous computation of WACC by the Commission has resulted in a lower allowance of RoCE to the extent of Rs. 2.86 crore, over the four years MYT Control Period. The above error being apparent on the face of record, it is requested that the computation of WACC and consequently the RoCE be corrected by applying the methodology

laid down in Para 4.243 of the MYT order and the differential be allowed in truing up together with carrying cost.

16. The Commission heard the Petitioner on the above issues and considered the errors pointed out by the Learned Counsel Sh. Amit Kapoor, appearing on behalf of the Petitioner. Prima facie a case is made out for admission of the review petition on above issues. The Commission, therefore, admits the review petition with respect to the aforesaid four issues (A to D).

E. Higher Revenue Estimation on account of higher ABR

17. The Petitioner has submitted that the Commission has estimated the average billing rate @ Rs. 4.72/unit (net of E-tax) for FY 2007-08. While the Commission has not provided the category-wise billing amounts which would have provided the petitioner an insight into the category-wise average billing rates estimated by the Commission. It is worthwhile to point out that the Commission has approved an ABR of Rs. 4.67 and an ABR of Rs./unit 4.46 for FY 2006-07 net off Electricity Tax for FY 2006-07.

18. The Petitioner has further submitted that the tariff have been revised only from March 2008 onward i.e. 11 months at old tariff and new tariff with an increase of only 5 paise per unit for one month. As per the Commission's own computations for the impugned MYT Order only Rs. 4 crore additional revenue due to tariff hike should be generated during FY 2007-08 and Rs.36 crore during FY 2008-09, which should have an impact of only 1 paise/unit and 7 paise/unit over the existing ABR for FY 2006-07. It is also worthwhile to point out that the Petitioner had also submitted to the Commission during the technical discussions category-wise billing rates together with the company wide ABR of Rs. 4.45/unit upto December, 2007. Based on the above, it is obvious that the Commission's estimations are erroneous as it is impossible that the impact of last quarter billing (which would be approximately 20% of the total billing) could raise the billing rate to Rs. 4.77/unit from the level of Rs. 4.45/unit. This has resulted into higher estimation of revenue and thus artificially reduced the revenue gap by Rs. 312 crore.

19. The Commission heard the Petitioner at length on this issue and observed that it has approved the revenue of Rs.2238.34 crore and Rs.2461.77 crore in FY2007-08 and FY2008-09 respectively. The Commission has arrived at these values after considering the sales approved by the Commission for different consumer categories (& slabs within) and tariff approved by the Commission.

The Commission has not projected revenue of the Petitioner on the basis of Average Billing Rate.

20. The Petitioner had projected increase in domestic sales @ 15%, 12%, 8% and 9% for FY08, FY09, FY10 and FY11, although the year-wise increase in domestic sales in past three years were 3%, 12%, 4%. The sales projection for DMRC were also not in-line with the projection made by DMRC which are as under:

Category	**FY08**		**FY09**		**FY 10**		**FY 11**	
	Appellant	Commission/ DMRC	Appellant	Commission/ DMRC	Appellant	Commission/ DMRC	Appellant	Commission/ DMRC
DMRC	81	75	90.76	115	249.59	130	274.55	140

The trend of sales of Petitioner in previous years as per their submission in MYT petition are as under:

Year	**2002-03 * (9 mts)**	**2003-04 ***	**2004-05**	**2005-06**	**2006-07**	**2007-08 projected by the petitioner**
Sales in MUs		3196	3667	4154	4351	4936
YOY growth (%)			15	13	5	13

A bare perusal of the above table makes it clear that the increase in sales on year on year basis for FY 06-07 is 5%, for FY 05-06 is 13% and FY 04-05 is 15%. Hence there is no definite pattern of sales in the area of Petitioner in the previous years. Therefore, the Commission considered the consolidated sales of a specific category (i.e. Domestic, Industrial, Commercial etc) of all the three DISCOMs namely, BRPL, BYPL and NDPL and has forecasted the same for the Control Period by considering an appropriate growth rate based on the past trends. The Commission calculated the weighted average share of sales of each distribution company in FY06 and FY07 in a particular category and had allocated the consolidated sales forecasted for that category to the respective distribution company in the proportion of its weighted average share.

21. To determine the appropriate growth rate for forecasting the energy sales for a particular category, the Commission had analysed the year-on-year variations in sales as well as the short term and long term trends in sales. It had computed the CAGR for 2 years to 12 years duration and had considered the appropriate CAGR depending upon the consumer categories, consumption trend in recent period, excluding the abnormal variations. Further, for

forecasting sales of bulk consumers like DMRC and Railway, the Commission had relied on the interaction with the consumers and projections made by them. The Commission had used the same methodology as used by it in the previous tariff orders.

22. The Commission had considered the CAGR for domestic as 5.54%, for non-domestic as 13.56%, for industrial as 1.03%,for public lighting as 12.19%, for agriculture & mushroom cultivation as 14.84%, for DMRC actual as submitted by DMRC and for others as 0.87%.

23. The Commission had estimated the energy billed during the control period and revenue had been estimated for each year on the basis of the above methodology.

24. As per the MYT Regulations clause 4.10 to 4.12, Sales is an uncontrollable item and would be trued up in subsequent years based on the actual sales.

25. Also the average billing rate for the Petitioner in previous three years including electricity tax is shown below:

	FY 2004-05	**FY 2005-06**	**FY 2006-07**
Average billing rate (Rs./ kWh)	4.06	4.53	4.67

From the bare perusal of the above it is amply clear that average billing rate (ABR) has continuously gone up in previous years and the ABR of the Petitioner for FY 08 as per the revenue approved by the Commission comes out to be Rs. 4.73 as compared to Rs.4.47 for FY 07, both the figures being exclusive of electricity tax.

26. The Petitioner in the MYT Petition had proposed Average Billing Rate (ABR) of Rs. 4.43, 4.39, 4.33, 4.31/kWh for MYT period FY 2008, 2009, 2010, 2011 respectively excluding electricity tax (declining year on year, which is against the past trends). The Petitioner has now submitted actual ABR of Rs. 4.61 for FY 08 much higher than its projected ABR of Rs. 4.43.

27. The total sales of the Appellant for FY 2007-2008 is 4980 MUs against the Commission's approved estimates of 4733 MUs i.e. net increase of 247 MUs. The Petitioner had made incremental revenue of Rs 56.78 Crore on account of the additional sales, even though its actual ABR as per its own submission is 12 paise

lower than the approved ABR. Hence, the claim of the Petitioner to revenue loss is wrong and totally unjustified. The Petitioner has not been able to make out a case for review in the matter of ABR. Further, there is no error apparent on the face of the record. The Commission, therefore, does not admit this issue for review.

28. Considering the matter in entirely, the Commission directs the NDPL to provide a copy of the review petition to the Stakeholders/objectors living in NDPL area, who were also the respondents before the Commission for determination of ARR and Multi Year Tariff (wheeling and retail supply) for the control period of FY 2008 to FY 2011. The Petitioner is directed to do so within a week with a further direction to convey to the Respondents to file their reply, if any, within 10 days before the Commission, with an advance copy to the NDPL. Thereafter, the matter with respect to the issues admitted for review, shall be heard by the Commission on 17.10.2008.

29. Ordered accordingly.

Sd/-	Sd/-
(K. Venugopal) Member	(Berjinder Singh) Chairman