

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.3(206)/Tariff/DERC/2007-08/

Petition No. 03/2008

In the matter of: Petition under Section 94 of the Electricity Act, 2003 for review of the Order dated 14.12.2007 passed by the Commission Determining the Revenue Requirements and Multi Year Generation Tariff for Indraprastha Power Generation Company Ltd. for the period FY 2007-08 to FY 2010-2011.

And

In the matter of:

Indraprastha Power Generation Company Ltd.
Through its: Managing Director
'Himadri' Rajghat Power House Complex,
Rajghat, New Delhi-110002.

...Petitioner

Coram:

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &
Sh. Shyam Wadhera, Member.**

Appearance:

1. Sh. R.K. Jain, Company Secretary, IPGCL;
2. Sh. S.K. Sharma, A.M. (Commercial);
3. Ms. Swapna Seshadri, Advocate for IPGCL;
4. Sh. Anand K. Ganesan, Advocate for IPGCL;
5. Sh. A. K. Dutta, Manager, NDPL;
6. Sh. Anurag Bansal, HoG Corporate, Legal, NDPL;
7. Sh. Sanjay, DGM. BYPL;
8. Ms. Megha Bajpeyi, AM, BRPL.

ORDER

(Date of Order: 20.07.2009)

1. The Review Petition has been filed under the provision of Section 94(1)(f) of the Electricity Act, 2003 by Indraprastha Power Generation Company Limited (IPGCL), hereinafter called the Petitioner, against the Commission's Order dated 14.12.2007 in Petition no. 03/2008. The Petitioner through this Petition sought the following relief:
 - a) Review and modify the Order dated 14.12.2007 to the extend challenged by the Petitioner in the present Review Petition (Petition no. 03/2008) and also to give effect to the Order of Hon'ble Appellate Tribunal for Electricity

in respect of truing up for F.Y. 2005-06 and Determination Tariff for F.Y. 2006-07.

- b) Pass such other further orders as this Hon'ble Commission may be pleased to pass.
2. The Delhi Electricity Regulatory Commission (DERC) (hereinafter referred to as "Commission") was established under the Electricity Regulatory Commission Act, 1998 and has been assigned the functions as described under Delhi Electricity Reform Act, 2000 and 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. A Petition for determining the revenue requirements and multi year generation tariff for Indraprastha Power Generation Company Ltd. for the period FY 2007-08 to FY 2010-2011 was filed by IPGCL in Aug., 2007.
 4. The Petition for determining the revenue requirements and multi year generation tariff for Indraprastha Power Generation Company Ltd. for the period FY 2007-08 to FY 2010-2011 filed by IPGCL was admitted by the Commission after seeking additional information/clarifications necessary for the admission of the said Petition. The Commission passed its Order on 14.12.2007 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.
 5. 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.
 6. While touching the issues raised in this 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. The scope of review, at the very outset, is much restricted than that of an appeal. The Court of review has only a limited jurisdiction under Order 47, Rule 1.
9. 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(f) 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.
10. 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; or*
- (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 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”.*

11. 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: -
 - (a) 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
 - (b) Mistake or error apparent on the face of the record; or
 - (c) For any other sufficient reason which is analogous to the above two grounds.
12. An error apparent on the face of 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, which renders it difficult to be ignored. The error is not one limited to one of the fact but it also includes obvious error of law. Further, 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.
13. The application for review on the discovery of new evidence should be considered with great caution. The applicant should show that: -
 - (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.

ISSUES RAISED

(A) TRUE-UP OF F.Y. 2006-07

A1) O&M CHARGES

Petitioner's Submission:

1. The Petitioner has submitted that the Commission in its Order dated 14.12.2007 has trued up the Operation & Maintenance Expenses of Rs. 37.32 crore as submitted by the Petitioner. However, the Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 in Appeal no. 81 of 2008 has directed that the Operation & Maintenance charges to be determined as under:

"...The Commission is duty bound to allow all reasonable O&M expenses as pass through. The Commission is allowed to only impose a prudence check. If the O&M expense had escalated within the norms prescribed by CEA, the task of the Commission would have been quite easy. However, in the present case, the O&M expenses have gone higher than the CEA norms. The Commission, therefore, was required to examine the expenditure incurred by the appellant for various purposes and to detect if the appellant had incurred any avoidable expense. The appellants are only successors in interest of the erstwhile DVB and it has inherited some old power plants. It, along with power plant, has also received a large number of employees which in the present legal regime cannot be shed immediately. The appellant has attempted to reduce the number of employees by offering VRS. The plant being old the maintenance expense can also be higher than what is estimated at the given point of time. The fact that the appellant has been making efforts to improve its performance is clear from the figures of actual heat rate for 2005-06 and 2006-07 which show that there is a fall in the station heat rate in 2006 compared to in the year 2005. It cannot be said that the appellant had altogether been irresponsible in its expenditure. Therefore, it will be appropriate for the Commission to examine individual items of expenditure and disallow only those which it finds as avoidable or imprudently high..."

Commission's Analysis

In the light of directions made by the Hon'ble Appellate Tribunal for Electricity as mentioned above and in the clarificatory order dated 9th May, 2008, the Commission shall reconsider the O&M expenses for F.Y. 2006-07 only separately.

A2) STATION HEAT RATE:

Petitioner's Submission:

1. The Petitioner has submitted that the Commission has maintained the Station Heat Rate for Indraprastha Power Generation Station and Indraprastha Gas Turbine Station at the normative levels as decided by the Commission in its Order dated 22.09.2006. Subsequently, the Hon'ble Appellate Tribunal has observed that:

"The Petitioner could not submit the design Heat Rate for IP Station which was nearly 38 years old. The CEA norms for Station Heat Rate is based on the design Heat Rate. Therefore, the Commission could not employ the CEA norms for the Station Heat Rate of the IPTPA Station. Accordingly, the Commission retained the approved figure of 3235 Kcal/kWh which was agreed to by the Petitioner inline with the draft PPA submitted by Transco alongwith ARR Petition for 2004-05. The Petitioner submitted before the Commission that in order to comply with the directions of Delhi Pollution Control Committee IPTPA Station was proposed to be closed down and, therefore, no R&M expenses could be taken for improvement or even for maintaining the same Station Heat Rate. The final closing will be in 2010. In view of this situation, it will only be fair for the Commission to bear with the Station Heat Rate which the Appellant has been able to achieve for this station during the period in question.

For IPGTPS, the target of 2450 Kcal/kWh could not be achieved. Actual Heat Rate for 2006-07 was 2497 Kcal/kWh. So far as the OPGTPS is concerned, the Commission has fixed the Station Heat Rate norm as 2450 Kcal/kWh for F.Y. 2005-06 and F.Y. 2006-07. This is based on the gross calorific value of gas. The Appellant pleads that the station was very poorly maintained and that the availability of gas was greatly reduced during the period in question

The impugned order shows that the Petitioner had sufficiently canvassed its case of shortage of gas caused by the cuts imposed by GAIL. The Commission has not analysed in the impugned order the affect of such cuts on the Station Heat Rate of the IPGTPS station. Even if the other factors mentioned in the 'Director's Report' above are ignored the shortage of gas should have been taken into account by Commission because this is not within the control of the Appellant. We, therefore, feel that the Commission needs to carry out this exercise afresh so far as the Station Heat Rate of IPGTPS is concerned. The Commission will now refix the target heat rate for the IPGTPS from 2006-07 after taking into consideration the shortage of gas as well as the factor mentioned in the Directors report as indicated in para 7 above. Consequent benefit be given to the Appellant in the truing-up and in the subsequent Tariff Order."

2. The Petitioner in view of the above has prayed that the Commission may reconsider and allow the actual Heat Rate achieved by the Petitioner.

Commission's Analysis

In view of the above directions and clarification vide order dated 9th May, 2008 of the Hon'ble Appellate Tribunal for Electricity, the Commission shall consider the issue of Station Heat Rate for Indraprastha Power Station and Indraprastha Gas Turbine Power Station for F.Y. 2006-07 only separately.

A3) REBATE ON EARLY PAYMENT:

Petitioner's Submission

1. The Petitioner has submitted that the Commission has reiterated its views on the issue of Rebate on Payments given to Delhi Transco Limited by the Petitioner and has not allowed the same for Determination of Tariff in the true-up exercise for F.Y. 2006-07. The Hon'ble Appellate Tribunal for Electricity observed as follows:

"So far as rebate on timely repayment is concerned, the Commission feels that the cash outflow on this account is sufficiently matched by the interest allowed on working capital. The appellant submits that the interest allowed by the Commission on working capital works out to 20.50 % p.e. while the rebate worked out to 24% p.a. As such the trade off concept has caused a loss of Rs.1.94 Crores annually. The appellant accordingly says that this amount of Rs.1.94 Crores should be allowed to be recovered from tariff. This point was also submitted in the review petition filed by the appellant. The Commission in the review order dated 30th March, 2007 has noted the submission but has not taken any decision on the submission and has merely reiterated the original order dated 22nd September, 2006. We have given our thought on the subject and we feel that there is no reason why the appellant should lose the sum of Rs.1.94 Crores annually because of the rebate allowed to the transmission licensee for timely payment. The Commission has to allow the sum of Rs.1.94 Crore as pass through and the same be done in the trueing up and subsequent tariff orders."

2. The Petitioner has prayed that the Commission may allow 2% rebate granted to Delhi Transco Ltd. as a pass through in tariff.

Commission's Analysis

1. In the Order dated 10.01.2008, the Hon'ble Appellate Tribunal has ordered that a sum of Rs. 1.94 Cr be allowed as pass through in tariff. Therefore, in compliance to the Tribunal's Order, the Commission shall implement the same.

A4) PLF FOR RAJGHAT POWER HOUSE

Petitioner's Submission

1. The Petitioner has submitted that the Commission in its Order dated 22.09.2006 fixed 60% combined PLF for recovery of fixed cost of the Rajghat Power Station. The Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 observed the following with respect to PLF for RPH Station:

" Taking the case of RPH station the Commission has considered the vintage and current status of plant operation including long shut downs of unit nos. 1 and 2 and has relaxed the target availability for the recovery of fixed charges of RPH to 60% combined for FY 2005-06 and 2006-07 as against 70%. It is to be noted that practically one unit of the station was not available for operation because of major repairs for more than 8 months out of 24 months in FY 2005-06 and 2006-07. Viewing it year-wise, the station was having one unit with chronic problem and the second unit was available for only 4 months after the repairs in FY 2005-06. Whereas in FY 2006-07 one unit was available after repairs for the entire year and the second unit was only available for nearly 7 months after repairs. Expected availability of RPH in FY 2005-06 is widely different from that achievable in FY 2006-07 and combining them and fixing relaxed normative target availability of 60% will not represent true picture. It will be reasonable to fix target availability separately for each year. We, therefore, direct the Commission to fix target availability of RPH for recovery of fixed cost separately for each year while taking into account the factors for relaxation. No incentive, however, is allowed if the PLF does not exceed target PLF of 70%."

2. The Petitioner has prayed that the Commission may review the said issue on the basis of observations of Hon'ble Appellate Tribunal for Electricity.

Commission's Analysis

In view of the above observation of the Hon'ble Tribunal the Commission shall consider the issue of fixing the target availability for Rajghat Power House for each year separately.

A5) VARIABLE COST OF INDRAPRASTHA GAS POWER STATION

Petitioner's Submission

1. The Petitioner has submitted that on the issue of variable cost of IP GT Station for F.Y. 2005-06, the Hon'ble Appellate Tribunal for Electricity has directed as under:

"So far as variable cost of IPGPT station is concerned, the Commission has taken note of the possibility of an error. In the reply affidavit the Commission says that it asked the appellant to provide necessary details in support of its claim during the subsequent tariff filings and assured the appellant that the Commission would consider variation, if any, between actual fuel expense and fuel expense approved during the truing up exercise."

2. The Petitioner has submitted that the Commission has not considered the variation in the fuel cost in its Order dated 14.12.2007. This appears to be an error

apparent on the face of the record and, therefore, may be considered by the Commission.

Commission's Analysis

The Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 has considered the view of the Commission wherein, the Commission has taken note of possibility of an error in its Order dated 14.12.2007. Thus, the Commission shall consider any variation between the actual fuel expenses and fuel expenses approved during the truing-up, subject to the Station Heat Rate as approved by the Commission.

A6) INTEREST ON SECURED LOANS

Petitioner's Submission

The Petitioner has stated that the actual interest payable from 01.07.2006 for the F.Y. 2006-07 covers nine months period and, therefore, the same should be accounted for by the Commission.

Commission's Analysis

The Commission has accepted the submission of the Petitioner and shall provide for nine months of interest payable for F.Y. 2007 on secured loans instead of six months as allowed in the impugned order.

(B) ISSUES PERTAINING TO THE CONTROL PERIOD FY. 2007-08 TO F.Y. 2010-11

B1) PLANT LOAD FACTOR (PLF) FOR GTPS

Petitioner's Submission

1. The Petitioner submitted that the Commission has fixed the PLF for GTPS at 70% as against 64.77% proposed by the Petitioner in its tariff petition. The Petitioner has stated that there has been severe shortage of gas throughout the country and Gas Authority of India Limited is imposing cuts on a daily basis. The Petitioner also submitted that it has no control over the gas availability, frequent grid tripping and lack of cooperation from BHEL and is making efforts to optimize the gas available.
2. The Petitioner has further submitted that the Commission had allowed the Plant Load Factor for RPH and IP Station at higher level than submitted by the Petitioner and also when compared to the actual figures for the prior period. The reasons for the lower plant load factor are the vintage of the plant in case of the thermal stations and the frequent grid tripping.

3. The Petitioner prayed for reconsideration and review of the PLF fixed for the GTPS Station.

Commission's Analysis

The Commission has observed that in its earlier Tariff Order dated 22.09.2006 it had given unambiguous direction to the Petitioner to make all efforts to arrange for additional gas at competitive rates and also to optimise the use of gas between GTPS and PPCL. The Petitioner has not submitted any details on the action taken by it in this regard. The Commission further noticed that due to the inability of the Petitioner to improve its functioning, the Steam Turbine Generator # 2 (STG2) of GTPS has not been functioning since 14.12.2006, and has been recommissioned only very recently after a gap of nearly 22 months. The very purpose of adopting a normative PLF is to provide incentive to the utility to improve performance to earn the stipulated return/incentives and at the same time ensuring that recipients of power also pay an appropriate tariff.

Further, regarding the issue of frequent grid tripping, the Commission is of the considered view that the normative parameters of availability, Station Heat Rate etc. as prescribed in the Regulation/Order takes into account the conditions of operation in the grid and, therefore, such normative parameters do not need any correction for routine tripping of the transmission lines. Grid disturbances, it has to be noted, is far and few after the introduction of ABT in November, 2002. In order to verify the claims presented by Petitioner, the Commission has analysed the monthly power data of Delhi SLDC for the month of January, 2008, which contains information for the period of 01.04.2007 to 31.01.2008. It has been noticed that there have been 304 instances in this period which caused outage of the various units of GTPS, resulting in a cumulative loss of 4146.08 hrs. of outage of different machines. Of the 304 instances of outages, only 17 instances accounting for 22.70 hrs. (0.55%) of outages were due to grid disturbances. Hence, the Commission is of the view that frequent grid tripping as cited by the Petitioner is not valid enough to consider relaxation in PLF for the GTPS.

B2) REBATE ALLOWED TO PURCHASERS TO BE ADJUSTED IN INTEREST ON WORKING CAPITAL

Petitioner's Submission

The Petitioner has submitted that the Hon'ble Appellate Tribunal has, in the Order dated 10.01.2008 allowed the balance of rebate offered to purchasers for timely payment after its adjustments with the interest computable on 2 months receivable in the working capital. The petitioner submits that the same principal need to be

adopted for the multi year tariff period and order dated 14.12.2007 be reviewed accordingly.

Commission's Analysis

1. The rebate allowed by the Petitioner to the purchasers is a cash discount granted in consideration of expeditious payment. Cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed. The rebate allowed to the purchasers of electricity is not simply a trade-off between interest computable on two months receivables in the working capital. It is relevant to note that the Commission has consciously moved to a performance based regulation called Multi Year Tariff Regulations whereas, the Petitioner is seeking cost plus regulation. The MYT Regulation is similar to the norms adopted under CERC Regulations and therefore the contention of the Petitioner is untenable. **The MYT Regulations further stipulates the interest on working capital is payable on normative basis whether the working capital is actually raised or not.**
2. **It may be noted that as per the CERC norms the NTPC also allows rebate on timely payment of bills to its buyers, but the same is not reimbursed to NTPC as it is saving on interest on working capital requirements. Payments received prior to due dates are enjoyed by the utility and the utility which has enjoyed the benefits should pay for it. In case they do not want to provide the rebate, they are at liberty to accept payment within 30 days with 1% rebate as a commercial arrangement between the buyer and seller.**
3. The Commission notes that the same condition has been stipulated in the PPA signed by the Petitioner on March 31, 2007 for the period of 15 years starting from 01.07.2002. Therefore, the Commission has retained the same for the MYT Control Period 2007-11. Moreover, **this is in accordance with MYT Generation Regulations which have not been challenged by the Gencos.**
4. In the light of above discussion, the Commission is of the view that Petitioner has no case on the said issue for review of the impugned order, therefore, the Commission does not admit this issue for review..

B3) COAL TRANSIT LOSS

Petitioner's Submission

1. The Petitioner has submitted that the Commission has allowed Coal Transit Loss @ 0.8%. the Petitioner has claimed 3.8% based on the fact that the CERC norm of 0.8% is in relation to normal coal. However, the Petitioner is under obligation to use only washed coal on the basis of the orders of the Hon'ble Supreme Court. During beneficiation of coal, using washing technique, coal absorbs water resulting in higher weight at the time of loading. The extra moisture evaporates during transit and storage. The claim of extra 3% loss over and above 0.8% transit loss is due to the loss of extra moisture content in the washed coal. The Petitioner has further submitted that, the Commission has allowed in its previous Order, the financial impact of 3.8% on this account by escalating the coal price for the year by that extent.
2. The Petitioner has prayed that the Commission may allow a loss of 3.8% loss on coal for the moisture level as well as transit loss of coal.

Commission's Analysis

The Commission has observed that the Badarpur Plant of NTPC uses substantial quantity of washed coal and it is allowed only 0.8% transit loss. Similarly, Dadri Power Plant is running at 100% washed coal and it too has been allowed Coal Transit Loss of 0.8% only by the CERC. The Commission has accordingly considered Coal Transit Loss of 0.8% to obtain the gross coal requirement for IP Station. The contention of the Petitioner that 0.8% loss in coal on account of transit and handling and 3% loss on account of surface moisture due to deshaling of coal have been provided for, by the Commission in its previous Tariff Orders is not correct. In fact it can be seen from para 3.16.2 of the Commission's order for FY 2006-07 that the Commission has allowed 3% escalation over the coal price of 2005-06 to arrive at coal price for 2006-07, to take care of increase in coal prices from year to year. This increase of 3% in coal price is not on account of moisture in coal. Further, it is observed by the Commission that NTPC Dadri Thermal Plant which is running on 100% washed coal is also being allowed only 0.8% loss of coal by CERC. Similarly, NTPC Badarpur Plant which is also using substantial quantity of washed coal is being allowed 0.8% fuel loss only. The Commission has allowed a total of 0.8% loss on account of use of washed coal for the MYT Period 2007-08 to 2010-11 in accordance with Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007.

B4) O & M EXPENDITURE ESCALATION

Petitioner's Submission

The Petitioner has submitted that the escalation in O&M expenditure is to be allowed at a specified rate on the base year O&M expenses. Accordingly, the Commission ought to take the FY2006-07 figure and apply escalation rate to arrive at the figure for the subsequent years.

In the Order dated 14.12.2007, the Commission has taken the base figure for O&M escalation as the average of the FY2005-06 and FY2006-07 figures and has provided escalation on the same. The above is an error apparent which requires to be corrected.

Commission's Analysis

1. The Commission observed that Clause 8.3(c) of the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 provides that:

"Operation and Maintenance (O&M) expenses: This shall include the costs estimated for the Base Year, the actual expenses incurred in the previous two years and the projected values for each year of the Control Period based on the proposed norms for O&M cost, including indexation and other appropriate mechanisms."

2. On plain reading of the above clause 8.3(c) it is clear that the said Regulation specified that for Operation & Maintenance Expenses, the actual expenses incurred in the previous two years shall be submitted. Therefore, the base O&M Expenses are taken as the average of two years. However, the escalation applicable would be of one and a half year over the expense of 2005-06 and 6 months over expenses of FY 2006-07 instead of 1 year approved in the MYT Order. In accordance with MYT Regulations, the same shall be trued up at the end of the Control Period.

B5) STATION HEAT RATE AND AUXILIARY CONSUMPTION

Petitioner's Submission

The Petitioner sought that the Station Heat Rate be trued-up for the F.Y. 2006-07 based on the actual figures for the said Financial Year. However, the Commission has stated that the same is allowed on the basis of the PPA signed between the Petitioner and the Delhi Transco Ltd. The Petitioner has submitted that this is an error apparent as the PPA signed between the Petitioner and the Delhi Transco Ltd. does not contain any such

stipulation for Station Heat Rate. In view of the above, the same needs to be rectified and the Petitioner prays that the Commission allow the Station Heat Rate on the basis of the actual figures available.

The Petitioner has further submitted that the Commission has stated that the auxiliary consumption is to be allowed on the basis of the PPA signed between the Petitioner and the Delhi Transco Ltd. However, the PPA does not contain any such stipulation in relation to the auxiliary consumption and, therefore, there is an error on the face of the record. The Petitioner prays that the Commission true-up the auxiliary consumption on the basis of actual figures available for the F.Y. 2006-07.

The Petitioner further submits that even otherwise, the Station Heat Rate ought to be allowed at the appropriate level due to the gas shortages, frequent grid tripping and the vintage of the plants which have an adverse impact on the Station Heat Rate. In addition, the auxiliary consumption ought to be allowed at a higher level due to lower Plant Load Factor achievable in the generating station due to partial loading of the machines, the vintage of the generating station as well as high number of trippings which are outside the control of the Petitioner.

Commission's Analysis

The Commission observed that as per Clause xxxii of the PPA signed between Petitioner and Delhi Transco Ltd. on 30.03.2007, it has been stated that:

“Station Heat Rate: shall be as allowed by DERC from time to time.”

“Auxiliary Consumption: As determined by DERC from time to time.”

Further, operational norms for Station Heat Rate and auxiliary consumption have been specified in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 for the MYT Control Period and the Commission has fixed the Station Heat Rate and auxiliary consumption as per the above-mentioned Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007. As such, the Review Petitioner could not make out a case for review. It is also noted that the MYT Generation Regulations have not been challenged.

B6) TAXES TO BE ALLOWED AS A PASS-THROUGH

Petitioner's Submission

The Petitioner has submitted that the taxes actually paid by the Petitioner ought to be allowed as a pass through in the tariff as is the normal practice in the tariff determination process all over the country. While, the Commission has recognized the same in the tariff order, the same has not been mentioned/ allowed for Fringe Benefit Tax, Property Tax and Water Cess paid by the generating stations. The petitioner submits that the disallowance/ non-consideration of the entire tax liability on this account of the Petitioner in the tariff is an error apparent and ought to be corrected in the review proceedings.

Commission's Analysis

A reference to Para 4.296 and 4.297 of the MYT Order indicates that the Petitioner has not projected any tax expenses for the Control Period and accordingly the Commission has not considered any tax expenses. The same order also provides that Income Tax shall be directly collected by the Petitioner from the beneficiaries. Other taxes, if any, paid by the Petitioner, shall be dealt with based on the claim made and prudence check at the time of true-up.

B7) CAPITAL EXPENDITURE

Petitioner's Submission

The Petitioner has submitted that the Commission has not fully allowed the capital expenditure as claimed by the Petitioner in the tariff petition. The Petitioner has submitted that the Hon'ble Appellate Tribunal has consistently held that the capital expenditure as claimed by the utility ought to be allowed and prudence check can be applied at the time of true up exercise. Further, even on the account of capital expenditure considered by the Commission, only 90% of the same has been considered for the tariff purpose. The above are errors apparent and needs to be corrected.

Commission's Analysis

The Commission studied the various schemes in revised capital expenditure plan submitted by the Petitioner and noted that the plan includes schemes that could normally be covered under normal O&M Expenses. Therefore, for the Control Period, the Commission has approved 90% of proposed capital expenditure for Tariff

Determination. Further, the Commission shall true-up the capital expenditure incurred by the Petitioner at the end of the Control Period. The details of capital expenditure for each of the Power Station is discussed below:

Indraprastha Power Station

No capital expenditure has been proposed by the Petitioner for this plant since, this plant is proposed to be shut down by 2010.

Rajghat Power House

The Commission directed the Petitioner to resubmit its capital expenditure plan according to Clause 8.3(a) of the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007, which states as under:

“Capital Investment Plan: This shall include details of the investments planned by the Generating Company, along with the corresponding capitalization schedule and financing plan. This plan shall be commensurate with capacity enhancement and proposed efficiency improvements for various plants of the Company.”

The Petitioner revised and submitted its capital expenditure plan as per the directives of the Commission. The Commission considered the revised capital expenditure plan submitted by the Petitioner for the Control Period. The revised capital expenditure plan submitted by the Petitioner is detailed below:

Revised Capital Expenditure for RPH submitted by Petitioner

(Values in Rs Cr)	FY08	FY09	FY10	FY11	Total
Capital Expenditure	3.70	15.00	10.25	0.00	28.95

The initial estimated capital expenditure of Rs.31.35 Cr has been revised downwards to Rs.28.95 Cr. The reduction is on account of revision in the estimated cost of Scheme No. 3 i.e. “Re-use of plant’s drain water for ash disposal and disposal of clarifier sludge to ash pond”, which was reduced from Rs.5.50 Cr to Rs.1.50 Cr and deletion of the two schemes ‘Air blasting of RC bunkers’ & ‘Provision of boiler fill tank’. However two schemes have been added i.e. ‘Renovation of DM Plant’ and ‘Renovation of Generator & Transformer Protection’ estimated at Rs.1.50 Cr and Rs.0.25 Cr respectively.

The Commission studied the various schemes in the revised capital expenditure plan submitted by the Petitioner and noted that the plan included schemes that could normally be covered under normal O&M Expenses. The Petitioner had also proposed to incur Rs.6.76 Cr as capital expenditure on various civil works planned for RPH during the Control Period. The Commission has considered total capital expenditure of Rs.35.71 Cr comprising of Rs.28.95 Cr on the station and Rs.6.76 Cr on civil works for the Control Period.

The Petitioner has proposed to incur Rs.1.80 Cr as capital expenditure on Information Technology and Rs.0.20 Cr on Human Resources. The Commission has proportionally divided the capital expenditure on Information Technology and Human Resources between GTPS and RPH in the ratio of their installed generation capacities.

The proposed capital expenditure is to be funded by debt and equity in the ratio of 70:30. The capital expenditure plan approved by the Commission is detailed below.

Approved Capital Expenditure for RPH

(Values in Rs Cr)	FY08	FY09	FY10	FY11	Total
Revised Capital Expenditure	3.70	15.00	10.25	0.00	28.95
Civil Capital Expenditure	2.07	2.52	2.17	0.00	6.76
Total Capital Expenditure	5.77	17.52	12.42	0.00	35.71
Allowed Capital Expenditure (90%)	5.19	15.77	11.18	0.00	32.14
IT Expenditure (RPH Share)	0.30	0.17	0.08	0.04	0.58
HR Expenditure (RPH Share)	0.06	0.00	0.00	0.00	0.06
Total Capital Expenditure	5.56	15.93	11.25	0.04	32.79

In the absence of any specific commitment for improvement of various parameters on account of additional capital expenditure, the Commission has allowed 90% of the proposed capital expenditure. The Commission shall analyse the actual performance of the plant during the Control Period and may determine a “suitable profit sharing mechanism” at the end of the Control Period, to share the benefits accrued on account of the capital investment made during the Control Period, as already provided in the impugned order.

Gas Turbine Power Station

The Commission directed the Petitioner to resubmit its capital expenditure plan according to the guidelines prescribed in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007, 8.3 (a).

The Petitioner revised and submitted its capital expenditure plan as per the directives of the Commission. The Commission considered the revised capital expenditure plan submitted by the Petitioner for the Control Period. The revised capital expenditure plan submitted by the Petitioner is detailed below:

Revised Capital Expenditure for GTPS submitted by Petitioner

(Values in Rs Cr)	FY08	FY09	FY10	FY11	Total
Capital Expenditure	43.59	42.43	37.05	29.00	152.07

Initially, the Petitioner had estimated capital expenditure of Rs.129.45 Cr for GTPS, which was later revised to Rs.152.07 Cr on account of addition of two more schemes i.e. Procurement of Inner Casing, Guide Blade Carrier-1, 2 & 3 and HP/ LP Turbine Glands for Steam Turbine (WHRU) estimated at Rs.6.42 Cr and Rs.10.80 Cr respectively. These two schemes amounting to Rs.17.22 Cr was a development after the Public Hearing and therefore the Commission was not in a position to consider these schemes.

The Commission, for the Control Period, has considered and approved 90% of the proposed capital expenditure plan which amounts to Rs.121.36 Cr in the absence of any commitment for improvement in performance parameters on account of the additional capital expenditure. The Commission shall examine the capital expenditure incurred by the Petitioner during the end of the Control Period duly taking into account the performance improvements and allow capitalization accordingly.

The Petitioner has also proposed to incur Rs.1.80 Cr as capital expenditure on IT and Rs.0.20 Cr on HR as a whole. The Commission has proportionally divided the capital expenditure on IT and HR between GTPS and RPH in the ratio of their installed generation capacities.

The proposed capital expenditure will be funded by debt and equity in the ratio of 70:30. The capital expenditure plan approved by the Commission is detailed below.

Approved Capital Expenditure for RPH

(Values in Rs Cr)	FY08	FY09	FY10	FY11	Total
Revised Capital Expenditure	43.59	42.43	37.05	29.00	152.07
Less: Disallowed	0	0	6.42	10.8	17.22
Total Capital Expenditure	43.59	42.43	30.63	18.20	134.85
Allowed Capital Expenditure (90%)	39.23	38.19	27.57	16.38	121.37
IT Expenditure (GTPS Share)	0.63	0.34	0.16	0.08	1.22
HR Expenditure (GTPS Share)	0.14	0.00	0.00	0.00	0.14
Total Capital Expenditure	40.00	38.53	27.73	16.46	122.72

In the absence of any past data regarding improvement in plant performance due to capital expenditure, the Commission shall analyse the actual performance of the plant during the Control Period and may determine a suitable profit sharing mechanism at the end of the Control Period, to share the benefits accrued on account of the capital investment made during the Control Period.

In view of the above, Commission is of the considered view that there is no force in the arguments of the Petitioner and there is no error apparent on the face of record. This issue does not deserve to be reviewed and hence, dismissed.

B8) FUEL COST FOR GAS TURBINE POWER STATION

Petitioner's Submission

Price of excess gas consumption:

The Petitioner has submitted that the Commission while disallowing alleged excess gas consumed by the Petitioner over the allowable limits has deducted the excess gas consumption from the most expensive gas purchased including R-LNG and spot purchases. While the Commission has consistently held gas purchases to be at the risk of the utility, has disallowed gas purchased on spot basis and expensive purchases to overcome shortages. The additional costly gas was used as requisitioned by SLDC with a full awareness about the high variable cost payable for the same. The Petitioner prays that the Commission may review the said aspect and allow the gas purchased by the Petitioner to tide over the shortages at expensive rates.

Non-consideration of Auxiliary Consumption:

The Petitioner has submitted that the Commission while computing the gas consumption has considered the net generation of the plant instead of the gross generation. This is an error apparent on the record.

Commission's Analysis

The Commission has determined the quantum of gas requirement for a gross generation of 1729 MU considering the plant load factor of 70% and SHR of 2450 kCal/ kWh as per the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2007. The quantum of gas determined by the Commission is 453.21 MMSCM. The Petitioner, in its true-up petition had considered PLF of 64.77% and SHR of 2500 kCal/ kWh for gross generation of 1600 MU and a gas requirement of 448.71 MMSCM. The Petitioner has considered 5% of generation under open cycle conditions.

The parameters considered by the Commission and the Petitioner for FY2007-08 are tabulated below:

Parameter	Considered by Petitioner		Considered by Commission	
Plant Load Factor (PLF)	64.77%		70%	
Station Heat Rate (SHR)	2500 kCal/kWh - Combined Cycle Operation 3300 kCal/kWh - Open Cycle Operation		2050 kCal/kWh - Combined Cycle Operation 3125 kCal/kWh - Open Cycle Operation	
Gross Generation	1600 MU		1729 MU	
Quantum of Gas (MMSCM)	APM Gas	185.16	APM Gas	185.16
	PMT Gas	45.55	PMT Gas	45.55
	R-LNG	210	R-LNG	210
	Spot R-LNG	8	Spot R-LNG	12.50
	Total Gas	448.71	Total Gas	453.21

The Commission has considered gross generation, for calculating total gas consumption as claimed by the Petitioner. The net generation has been used only to indicate the variable cost of generation for the station. Therefore, it is clear that the Commission has not disallowed excess consumption of gas. **FPA formula and billing of variable cost for scheduled energy sent out takes into account the gas consumption in line with the station heat rate as stipulated in the Regulations.**

After the introduction of the Intra-State ABT in Delhi w.e.f. 01.04.2007 the energy charges are to be paid on the basis of scheduled energy and for any Unscheduled Interchanges (UI) charges are to be recovered by the Petitioner, separately. The UI charge is a single charge and, therefore, covers the fuel charges for the energy accounted for in UI transactions. The Commission also notes that 2 gas turbines out of 6 GTS have been modified to use both gas and liquid fuels. Depending upon the need for energy, and the beneficiaries agreeing, the scheduling is done for various types of fuels separately and the variable charge is also billed on the actual fuel used, corresponding to normative Station Heat Rate.

The Commission in its tariff order has clarified that any variation in the fuel price shall be recovered through the fuel price adjustment formula. Thus, the price considered by the Commission is commensurate with the quantum of gas considered, as per the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007.

The Commission is of the opinion that Petitioner has no case on this point also and this issue is not admitted for review.

B9) FUEL PRICE ADJUSTMENT

Petitioner's Submission

The Petitioner has submitted that the Commission has taken different base for calculating the fuel cost and fuel price adjustment. The Petitioner submits that taking such different base for fuel cost and fuel price adjustment formula adversely affects the Petitioner and is an error apparent which needs to be corrected.

Commission's Analysis

The Commission has considered the weighted average price of fuel as per the data for the FY2006-07. The FPA will be determined periodically and any change in the price of fuel will be automatically taken care of through the Fuel Price Adjustment (FPA) formula stipulated in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007.

B10) WORKING CAPITAL REQUIREMENT

Petitioner's Submission

The Petitioner has submitted that the Commission has not trued up the working capital requirement of the Petitioner and has instead escalated the working capital requirement for FY2009, 2010 and 2011 at an annual rate of 4% to consider the escalation in fuel costs. The Petitioner submits that the above formula does not reflect the true picture as non consideration of the costly gas and actual O&M expenses will further reduce the amount of working capital allowed to the Petitioner. There are wide differences between the figures proposed by the Petitioner and the figures allowed by the Commission with respect to working capital due to the formula adopted by the Commission. The Petitioner submits that the working capital allowed by the Commission is not adequate and prays that the Commission reconsider this aspect in this review petition.

Commission's Analysis

The Commission in its Tariff Order dated 14.12.2007 has clarified that any variation in the fuel price, for the purpose of energy charges, shall be recovered through the Fuel Price Adjustment (FPA) formula and the working capital requirement will not be trued up because of change in the fuel price. Further the fuel price also varies both ways.

As per the Regulations, working capital is considered on normative basis and is not linked to actual borrowing. Hence, there is no error apparent on the face of the record in the impugned order.

B11) SECONDARY FUEL FOR IP STATION

Petitioner's Submission

The Petitioner submitted that the Commission has allowed 9.29 ml/ kWh of LDO for FY2006-07, which has been reduced to 9.00 ml/kWh for the Control Period. The age of

the plant is increasing with every passing year, hence, the same should have been allowed on actual basis.

Commission's Analysis

The Commission has considered the specific oil consumption for IP Station based on the operational norm stipulated in the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2007. It may also be noted that the MYT Regulations have not been challenged by the Generating Company (IPGCL).

On the basis of the records produced before the Commission during the processing of the ARR and Tariff Petition, in the present Review Petition and the averments made before the Commission, the Petitioner has not been able to make out any case for review of the Commission's impugned order dated 14.12.2007. The Petitioner has not been able to brief that there is any error apparent on the face of the record which would justify the review of the impugned order. The Commission opines that the issues raised by the Petitioner in its Review Petition and enumerated in this order have already been heard and deliberated in detail in the Commission's impugned order dated 14.12.2007. The said issues were decided by the Commission based upon the prevalent law, practices and principles in the domain of determination of generation tariff. On these considerations, issues B-1) to B-11) in this Review Petition are dismissed being devoid on any merit.

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN