

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.3(207)/Tariff/DERC/2007-08/

Petition No. 02/2008

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 Pragati Power Generation Company Ltd. for the period FY 2007-08 to FY 2010-2011.

And

In the matter of:

Pragati Power 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 PPCL;
4. Sh. Anand K. Ganesan, Advocate for PPCL;
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 Pragati Power Company Limited (PPCL), hereinafter called the Petitioner, against the Commission's Order dated 14.12.2007 in Petition no. 02/2008. 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. 02/2008) 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 Pragati Power Company Ltd. for the period FY 2007-08 to FY 2010-2011 was filed by PPCL on 08.10.2007.
 4. The Petition for determining the revenue requirements and multi year generation tariff for Pragati Power Company Ltd. (PPCL) for the period FY 2007-08 to FY 2010-2011 filed by PPCL 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) STATION HEAT RATE

Petitioner's Submission:

1. The Petitioner has submitted that the Commission has provided the Station Heat Rate for Pragati Power Station at 2000 kCal/kWh for combined cycle and 2900 kCal/kWh for open cycle operations. Through this Review Petition, the Petitioner has sought Station Heat Rate at a higher rate due to the large number of grid trippings and the shortage of gas fuel. However, the Commission has held that the fuel risk is a part of the regular business of the Petitioner and it should not be passed on to the consumers.
2. The Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 in Appeal no. 82 of 2007 has directed as under:

"The impugned tariff order says that the Station Heat Rate is fixed as per the norm followed by CERC for similar Gas Turbine Stations. The appellant specifically pleads shortage of availability of gas at the relevant time. In the review petition also the petitioner raised the same issue. The fact that at the relevant time the Gas Authority of India Ltd. has been imposing cuts on gas supply has not been disputed. Neither the tariff order nor the review order shows that this aspect was considered by the Commission. We, therefore, feel that the Commission needs to carry out the exercise of fixing Station Heat Rate for the appellant afresh by taking into account the factor of shortage of gas for 2006-07. This be done and the consequent benefits be given to the appellant in the truing up exercise and in the subsequent tariff orders."

3. In view of the above, Petitioner prays that the Commission may revisit the issue and allow the actual Heat Rate achieved by the Petitioner.

Commission's Analysis

1. The Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 in the Appeal no. 82 of 2007 inter-alia observed as under:

"5. The impugned tariff order says that the Station Heat Rate is fixed as per the norm followed by CERC for similar Gas Turbine Stations. The Appellant specifically pleads shortage of availability of gas at the relevant time. The fact that at the relevant time the Gas Authority of India Ltd. has been imposing cuts on gas supply has not been disputed. Neither the tariff order nor the review order shows that this aspect was considered by the Commission. We, therefore, feel that the Commission needs to carry out the exercise of fixing Station Heat Rate for the Appellant afresh by taking into account the factor of shortage of gas for 2006-07. This be done and the consequent benefits be given to the Appellant in the truing up exercise and in the subsequent tariff orders."

2. In the light of the above direction and subsequent clarification vide Order dated 9th May, 2008 of Hon'ble Appellate Tribunal for Electricity, Commission shall consider the issue of Station Heat Rate for F.Y. 2006-07 only separately.
3. For the MYT period 2007-11, the Commission has already prescribed the operating norms vide DERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2007.

A2) 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 (DTL) by the Petitioner and has not allowed the same for determination of tariff in the truing up exercise for FY2006-07.
2. The Hon'ble Appellate Tribunal with regard to rebate on early payment has directed as under:

"6 So far as rebate on timely payment is concerned there is no reason why the re-payment should not be looked upon as cash outflow and why it should not be considered for recovery of revenue. The gap between the interest allowed on working capital and the rebate allowed on timely re-payment by Respondent No.2 need to be considered as amount recovered through revenue. The Commission therefore should allow such difference as pass through and this be done in the truing up and in the subsequent tariff order"
3. The Petitioner has prayed the Commission that it may be allowed 2% rebate granted to Delhi Transco Ltd. as a pass through in tariff.

Commission's Analysis

1. The Hon'ble Appellate Tribunal for Electricity in its Order dated 10.01.2008 observed as follows:

"6 So far as rebate on timely payment is concerned there is no reason why the re-payment should not be looked upon as cash outflow and why it should not be considered for recovery of revenue. The gap between the interest allowed on working capital and the rebate allowed on timely re-payment by Respondent No.2 need to be considered as amount recovered through revenue. The Commission therefore should allow such difference as pass through and this be done in the truing up and in the subsequent tariff order."
2. In compliance to the Tribunal's above-mentioned Order for the FY 2006-07, and subsequent clarificatory Order dated 9th May, 2008, the Commission will give effect to Tribunal's direction in the truing-up.

3. For the MYT Control Period 2007-11, the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 are applicable and they do not provide for reimbursement of rebate on timely payment of bills to the Generation Utilities.

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

B1) STATION HEAT RATE FOR THE CONTROL PERIOD F.Y. 2007-08 TO F.Y. 2010-11

Petitioner's Submission

1. The Petitioner has submitted that the Commission has disallowed the Station Heat Rate of 31502 kCal/kWh for open cycle operation and 2050 kCal/kWh for combined cycle operations as proposed by the Petitioner. However, it is submitted for the Petitioner that it is facing acute gas shortage as Gas Authority of India Limited is imposing daily cuts in gas supply. Further, Commission may also take into consideration that the guaranteed heat rate committed by the turbine manufacturers is 1939 kCal/kWh at 100% PLANT LOAD FACTOR only. Whereas, the guaranteed heat rate is 2039 kCal/kWh at 80% Plant Load Factor.
2. Further, it is submitted that there were regular grid trippings and disturbances which were totally beyond the control of the Petitioner. At last, it is submitted that the Station Heat Rates for open cycle operations as well as combined cycle operations fixed by the Commission as per the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 are unrealistic and are unachievable. The Petitioner, therefore, prays the Commission to reconsider and allow the Station Heat Rates as proposed by the Petitioner.

Commission's Analysis

1. The Commission has observed in its impugned order that the manufacturers guarantee for Station Heat Rate is at 80% output and is not at 80% Plant Load Factor. The output of the unit refers to the output at any specific point in time whereas PLF relates to the aggregate output over a period of time, normally over a year i.e. 8760 hrs. The plant is not required to run at 80% of its output all the time to achieve Plant Load Factor of 80%. But, the same can be normally achieved as the plant is expected to run close to full load for most of the time except during maintenance to achieve 80% target availability, particularly, when it is a combined cycle power station. Further, the heat rate for Pragati Power Station has been approved keeping in mind the general operating conditions of the grid.

2. The Petitioner's plant was commissioned in FY2002-03 with GE Frame 9E machines. As per the CERC (Terms and Conditions of Tariff) Regulations, 2004, the Station Heat Rate stipulated for E/EA/EC/E2 Class Machines in combined cycle mode is 1950 kCal/ kWh and in open cycle mode is 2830 kCal/ kWh.
3. CERC has provided for Station Heat Rate of 2000 kCal/ kWh (combined cycle operations) and 2900 kCal/ kWh (open cycle operations) to the Kayamkulam Combined Cycle Power Project and Faridabad GTPS, which were commissioned in 1999 and are very close in technical specifications to Pragati Power Station. Faridabad and Pragati Power Stations operate under similar conditions. CERC has set same Station Heat Rate for NTPC Gandhar GTPS, which was set up in 1994-95.
4. The Pragati Power Station being only five years old is expected to operate at the efficiency levels, similar to other gas based generating stations in the region. As a standard industry practice the fuel risk is borne by the generator. Taking into account the availability of gas from GAIL, the generator should make prior arrangements for gas supplies with other suppliers.
5. Even in respect of NTPC stations, no relaxation is given by way of higher heat rate due to part loading of machines on account of shortage of gas. Fuel risk is to be mitigated by the generating company as fuel procurement is a part of their regular business. Therefore, impact due to unavailability of fuel should not be passed on to the consumers.
6. As a matter of fact, as per advice of the Commission, the Petitioner has diverted the supply of gas from Gas Turbine Power Station of IPGCL to Pragati Power Station resulting in better PLANT LOAD FACTOR of the plant and consequential improvement in Station Heat Rate. The fixed cost for IPGCL Gas Turbine Power Station is being paid even though the gas is diverted to the Pragati Power Station. Two of the gas turbines in IP Gas turbine power station were allowed to be modified to operate on dual fuel. Both the Conversion Charges for dual fuel operation and higher variable charges on account of liquid fuel are being allowed. With such enabling provisions regarding use of alternative fuels, non availability of gas should not be an issue for any relaxation of Station Heat Rate.
7. The Commission has, therefore, maintained the Station Heat Rate for Pragati Power Station at 2000 kCal/ kWh for combined cycle and 2900 kCal/ kWh for open cycle for FY 2007-08 to 2010-11 as per the DERC Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 and expects the Petitioner to take adequate steps to improve

its performance to achieve the same in future by making suitable arrangement for gas.

8. The open cycle operation of the power station is bare minimum and is resorted to under specific instructions of the SLDC and scheduling by the beneficiaries.
9. **The Commission has fixed the above norms in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 after considering all relevant factors and the same have not been challenged by the Petitioner.** The Commission is also following the norms specified in the Delhi Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2007 for determination of tariffs for the Petitioner during the Control Period. The Station Heat Rate stipulated for the Petitioner by the Commission is, therefore, not stringent or unachievable and is also as per the CERC norms stipulated for similar power plants in the country even for the period 2009-14.

B2) OPERATION & MAINTENANCE EXPENDITURE ESCALATION

Petitioner's Submission

The Petitioner has submitted that the escalation in O&M expenditure is to be allowed at specified rate on the base year O&M expenses. Accordingly, the Commission ought to take the F.Y 2006-07 figure and apply the escalation rate to arrive at the figure for subsequent years. In the impugned Tariff Order dated 14.12.2007, the Commission has taken the base figure in O&M escalation as the average of the 2005-06 and 2006-07 figures and has provided escalation on the same. According to the Petitioner the method adopted by the Commission to determine O&M expenditure escalation is wrong, therefore, there is an error apparent on the face of the record which needs to be corrected.

Commission's Analysis

1. 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 expenses of FY 2005-06 and over 6 months for expenses of FY 2006-07. In accordance with MYT Regulations, the same shall be trued up at the end of the Control Period.

B3) PRICE OF EXCESS GAS CONSUMPTION

Petitioner's Submission

1. The Petitioner has submitted that the Commission while disallowing alleged excess gas consumed by the Petitioner over the permissible limits has deducted the excess gas consumption from the most expensive gas purchase, including R-LNG and spot purchases. While on one hand, the Commission was of considered view that entire gas purchases to be at the risk of the utility at the same time it 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 by it. The Petitioner prays that the Commission may reconsider the said aspect and allow expensive gas purchase by the Petitioner to tied over the shortages.

Commission's Analysis

1. As per the DERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2007, the gas quantity has been computed for a normative Station Heat Rate of 2000 kCal/ kWh and the gross generation of 2313 MU in each of the financial year (from FY2007-08 to FY2010-11), and PLANT LOAD FACTOR of 80%. The quantum of gas determined by the Commission is 495.80 MMSCM, with no requirement for spot purchases.
2. In the MYT petition, the Petitioner had submitted higher Plant Load Factor of 83.02% and Station Heat Rate of 2050 kCal/ kWh for gross generation of 2400 MU and gas requirement of 535.66 MMSCM, requiring spot purchases of gas.
3. The details submitted by the Petitioner and parameters approved by the Commission for FY2007-08 are tabulated below:

Parameter	Considered by Petitioner		Considered by Commission	
Plant Load Factor (PLF)	83.02%		80%	
Station Heat Rate (SHR)	2050 kCal/kWh- Combined Cycle Operation 3150 kCal/kWh-Open Cycle Operation		2000 kCal/kWh-Combined Cycle Operation 2900 kCal/kWh – Open Cycle Operation	
Gross Generation	2400 MU		2313 MU	
Quantum of Gas (MMSCM)	APM Gas	385	APM Gas	385
	PMT Gas	95	PMT Gas	95
	R-LNG	0	R-LNG	15.80
	Spot R-LNG	55.66	Spot R-LNG	0
	Total Gas	535.66	Total Gas	495.80

4. Thus, 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 automatically takes into account the gas consumption in line with the Station Heat Rate as stipulated in the MYT Regulations. After the introduction of the Intra-State Availability Based Tariff in Delhi w.e.f. 01.04.2007, the energy charges are to be paid on the basis of scheduled energy and not based on actual generation. For any Unscheduled Interchanges (UI), 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 is of the view that adequate arrangements for purchase of R-LNG should be made by PPCL instead of resorting to the highly expensive Spot R-LNG. However, depending upon the need for energy, and the beneficiaries agreeing, the Petitioner may procure costlier fuel. **Once scheduling is done for various types of fuels separately, the variable charge is also billed on the actual fuel used at normative Station Heat Rate.**

5. The Commission in its Tariff Order date 14.12.2007 has clarified that any variation in the fuel price shall be recovered through the fuel price adjustment formula and hence the working capital requirement shall not be trued up because of change in the fuel price. **The Commission is allowing Working Capital on normative basis irrespective of whether working capital is actually raised or not in accordance with Regulation 6.14.** Weighted average price of fuel may vary from year to year and in any case, the Fuel Price Adjustment clause will take care of the price variations. Such a provision of taking the Weighted Average price of all the fuels does not exist in CERC Regulations as well. Thus, the price considered by the Commission is commensurate with the quantum of gas

considered, as per the MYT Regulations. Thus, there is no error apparent on the face of record and this issue is not admitted for review.

B4) COST OF MAINTENANCE OF DLN BURNERS

Petitioner's Submission

The Petitioner has submitted that it is mandated to install DLN Burners in its generating station to control the discharge of Nitrogen Oxide which is a pollutant. The Petitioner claimed the cost of maintenance of DLN Burners which is being incurred to safeguard the environment by reducing the resultant pollution considerably in the Annual Revenue Requirement. However, the Commission has reduced the amount allowed in this regard without any apparent reason. The Petitioner prays that the error be corrected in the present review proceedings.

Commission's Analysis

The Commission had held various technical validation sessions with the Petitioner during the determination of the tariff order and a sum of Rs. 20 Cr/ annum has been allowed provisionally towards DLN burners subject to true up based on prudence check. The Petitioner is, therefore, not justified in raising this issue and the Commission does not admit this issue for review.

B5) 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, but it has not been allowed Rs. 13.61 Cr paid as Income Tax by the Petitioner. In addition, the Commission has not allowed/ considered the Property Tax and Water Cess paid by the generating station. The petitioner submits that the disallowance of the entire tax liability on this account in the tariff is an error apparent and ought to be corrected.

Commission's Analysis

The Commission has allowed taxes to the extent of Rs 10.38 Cr for FY2006-07 based on the audited figures in the annual accounts of the Petitioner. Regulation 6.28 provides for recovery of income-tax directly by the Generating Company from the beneficiaries

without making any application before the Commission. For any other taxes paid by the petitioner during the MYT Control Period, the Commission shall consider the actual taxes paid by the Petitioner on the basis of the receipt produced, as a pass through in tariffs, subject to prudence check, during the true up exercise to be carried out at the end of the MYT Control Period in 2011.

B6) 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 on the face of the record which needs to be corrected.

Commission's Analysis

The Commission notes that the base price used for computing variable charges is different from the base used for computing FPA. It may be noted that the fuel price adjustment will be determined based on the formula on monthly basis and any change in Gross Caloric Value and price of fuel will be reflected in the fuel price adjustment. However, any difference shall be trued-up at the time of truing-up in 2011.

B7) WORKING CAPITAL REQUIREMENT

Petitioner's Submission

1. 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 Commission has not considered the expensive fuel purchased by the Petitioner for the purpose of computation of working capital and prays that the Commission include the total cost of fuel including the expensive fuel for the purpose of computation of working capital.
2. The Petitioner submits that the cost of maintenance spares have been allowed on the basis of actual figures which have been derived after the date of commissioning of the plant. However, Commission has failed to take into consideration the escalation factor on the cost of maintenance spares so derived after the adjustment with effect from the date of project completion i.e.

year 2003-04 as all the adjustments/ additions were related to the project closing only.

3. The Petitioner also 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.
4. 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

1. The Commission had mentioned in the Tariff Order dated 14.12.2007, that appropriate action shall be initiated to include the provision for maintenance spares in working capital requirements as per the MYT Regulations.
2. According to the MYT Regulations, Working Capital is based on norms and not linked to actual borrowings. The MYT Regulations have also not been appealed against by the PPCL.
3. The Petitioner in its review petition before the Commission has submitted that the cost of maintenance spares have been allowed on the basis of the actual figures which have been arrived after the date of commissioning of the plant but the Commission has failed to take into consideration the escalation factor from the date of completion of the project.
4. The Commission in its tariff order for FY2006-07 dated 22.09.2006 had directed the Petitioner to finalize the project cost and that the books of accounts of the Petitioner should reflect the correct value of fixed assets before filing of the next tariff petition.
5. The Petitioner in its true up petition has submitted the finalized project cost as of FY2006-07, which has been considered by the Commission for determination of maintenance spares. As the project cost on the date of commercial operation of the project was not final and not submitted to the Commission, the Commission has considered the project cost as per FY2006-07 as submitted by the Petitioner, and escalated the maintenance spares @ 6% from FY2007-08. The

Commission also notes that the Regulation did not specifically provided for maintenance spares. The impugned Order however provided for the same with the specific reason that appropriate action will be initiated for inclusion of maintenance spares in the Working Capital.

6. As such, any error apparent on the face of the record cannot 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 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 establish 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(7) in this Review Petition are dismissed being devoid of any merit.

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN