

**DELHI ELECTRICITY REGULATORY COMMISSION**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.**

F.11 (502)/DERC/2009-10

**Review Petition No. 06/2009**

**In the matter of:**

Petition seeking clarification and/or reconsideration and/or review and/or modification of certain observations & findings in the Order dated 28.05.2009 in Petition no. 64/2008 on True-up for F.Y. 2007-08 and ARR for F.Y. 2009-10.

**AND**

**In the matter of:**

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

**...Review Petitioner**

**Coram:**

**Sh. Berjinder Singh, Chairman & Sh. Subhash R. Sethi, Member.**

**Appearance:**

1. Sh. Puneet Munjal, GM(CS&P), NDPL;
2. Sh. Anurag Bansal, HoG, Corp. Legal, NDPL.

**ORDER**

(Date of Hearing: 26.11.2009)

(Date of Order: 11.05.2010)

1. The North Delhi Power Ltd. (NDPL) has filed the present Review Petition No. 06/2009 on 29.06.2009 for review of the impugned Order dated 28.05.2009 passed by the Commission in Petition No. 64/2008.
2. The Review Petitioner (NDPL) has filed the Supplementary Petition in Petition no. 64/2008 seeking clarification and/or reconsideration and/or review and/or modification of certain observations & findings in the Order dated 28.05.2009 on True-up for F.Y. 2007-08 and ARR for F.Y. 2009-10 on 14.09.2009. Particularly, on the issue of letter of credit charges (L/C charges) for power purchase and income out of business covered under Section 51 of the Electricity Act, 2003 shared disproportionately between the DISCOM and Non-Tariff Income.
3. The NDPL through this Supplementary Petition prayed that this Petition be treated as part and parcel of Review Petition no. 06/2009 filed on 29.06.2009 and take

this Petition on record and adjudicate upon it expeditiously to clarify and/or reconsider and/or review and/or modify the specific observations and findings of the true-up of the Tariff Order in terms of the submissions made in the present Review Petition.

4. The NDPL has also filed an application for condonation of delay on behalf of NDPL in filing of Supplementary Petition to the Review Petition no. 06/2009 (filed on 29.06.2009).
5. The Commission first heard the application for condonation of delay on behalf of NDPL in filing of Supplementary Petition to the Review Petition no. 06/2009 filed on 29.06.2009 on 26.11.2009.
6. Sh. Puneet Munjal, GM(CS&P), appearing for NDPL, submitted that Review Petition no. 06/2009 was filed before the Commission within the stipulated time period for review of impugned Order. Sh. Munjal further submitted that the NDPL wished to raise certain other issues arising out of the impugned Order of this Commission before the Appellate Tribunal for Electricity (ATE) under Section 111 of the Electricity Act, 2003. However, as per legal advice and to the best of its judgment on reconsidering the specific issues on (i) L/C charges; (ii) Treatment of other income under Section 51 of the Electricity Act, 2003. The NDPL has deemed it fit to agitate these issues before this Commission.
7. Sh. Munjal further submitted that the present Supplementary Petition may be taken as part and parcel of main Review Petition no. 06/2009 filed on 29.06.2009.
8. Sh. Munjal further submitted that there has been a delay of 73 days in filing the Supplementary Petition which is mainly on account of the delay in legal advice obtained on findings of the Commission and internal deliberations within the NDPL's regulatory team with regard to the Forum where these findings may be agitated. The NDPL after due deliberations is filing the present Supplementary Petition after a delay of 73 days with a request that the said Supplementary Petition be admitted and taken on record.
9. Sh. Munjal further submitted that in the consideration of the facts and circumstances of the case it is prayed that the delay of 73 days in filing the Supplementary Petition may kindly be condoned in the interest of justice.
10. The Commission considered the detailed submissions of the NDPL. The Commission also observed that in the month of July, 2009, NDPL had filed an

Appeal against the Commission's Tariff Order dated 28.05.2009 before the ATE. The Supplementary Review Petition was filed on 14.09.2009. The arguments advanced on behalf of the petitioner do not justify any delay beyond the date of filing of the appeal before the ATE. Each day's delay has to be justified in such cases. The Commission is of the considered view that the reasons assigned for the delay of 73 days in filing the Supplementary Petition are not justified. The Commission is not convinced with the submissions made by the NDPL and, therefore, the delay of 73 days in filing the Supplementary Petition is not condoned. Thus, the application for condonation of delay of 73 days in filing of Supplementary Petition is dismissed.

11. Sh. Munjal further submitted that being aggrieved by certain observations and findings in the approval of Aggregate Revenue Requirement and Tariff Order dated 28.05.2009, the present Review Petition is filed to:
  - a) place its concerns before the Commission and seek suitable redress/relief;
  - b) take this Petition on record and adjudicate upon it expeditiously to clarify and/or reconsider and/or review and/or modify the suitable observations and findings of the True-up/Tariff Order in terms of the submissions made in the present Review Petition;
  - c) at the time of hearing this Petition, summon the Commission's records of the Petition no. 64/2008; and
  - d) pass such Order as the Commission may deem fit and proper in the facts and circumstances of the case.
12. According to the Petitioner, the Order passed by the Commission suffers from mistakes and errors apparent on the face of record which are required to be corrected and that there are other sufficient reasons for reviewing and/or modifying the Order.
13. 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.
14. 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.

15. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commissions have been vested with powers for reviewing its decision, directions and Orders by virtue of sub-Section 1(e) of Section 94 of the Electricity Act, 2003. The application, made before the Commission, for the review of its decision, directions and Orders, therefore, derives its scope and authority from the aforesaid section of Electricity Act, 2003, read with Order 47, Rule 1, of the Code of Civil Procedure.
16. The Commission is of the view that the scope of review is more restricted than an appeal. The Court of review has only a limited jurisdiction and limited by the unqualified language of Order 47, Rule 1. The review power, under the aforesaid provision are re-produced as below :-

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

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;*

*(b) by a decree or order from which no appeal is allowed, or;*

*(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement of the Court which passed the decree or made the order.”*

17. The above mentioned provisions of CPC mandate that a Court of review may allow a review only on three specific grounds which are as under :-
  - i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
  - ii) Mistake or error apparent on the face of the record; or
  - iii) For any other sufficient reason which is analogous to the above two grounds.

Under Order 47, Rule 1, CPC, an Order/Judgement may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident and has to be detected by

process of reasoning, can hardly be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said provisions.

**ISSUES RAISED:**

**A. WRITE BACK OF DOUBTFUL DEBTS CONSIDERED AS NON-TARIFF INCOME (NTI) WHEN THE SAME HAD NEVER BEEN ALLOWED AS AN EXPENSE:**

18. Sh. Munjal for the NDPL has submitted that the Commission has computed F.Y. 2007-08 Non-Tariff Income (NTI) available for tariff determination as the residual amount available after removing or deducting from the total Non-Tariff Income appearing in audited financials, certain items which are incomes not available for tariff determination, or which are treated as deduction in expenditure rather than as Non-Tariff Income. Table-22 of the impugned Tariff Order reflecting computation of Approved Non-Tariff Income is reproduced below:

**“Table 22: Approved Non-Tariff Income for F.Y. 2007-08 (Rs. Crs.)**

Particulars	Revised ARR
Non-Tariff Income as per Audited A/c	103.91
<b>Less:</b>	
Rebate	35.94
Transfer from Capital Grants	0.51
Transfer from Consumer Contribution	4.94
Income from Consulting Business (20%)	0.19
Service Line Charges to be deferred in Future Years	9.41
Interest on Investment of Contingency Reserve	1.41
<b>Total Non-Tariff Income</b>	<b>51.50</b>
<b>Less: Financing cost incurred against LPSC</b>	<b>0.69</b>
<b>Net Non-Tariff Income</b>	<b>50.82”</b>

19. While the approach for computing Non-Tariff Income available for tariff determination is correct, the Commission has through oversight missed deducting income on account of ‘Reversal of doubtful debts’ from the total Non-Tariff Income appearing in the books of accounts. Mr. Munjal explained that income recognized in books of accounts on account of reversal of doubtful debts could not be considered towards tariff determination as no expenditure towards provision of bad and doubtful debts had been allowed in the first place. Consequently, the Non-Tariff Income considered for tariff determination is Rs. 0.17 Cr. higher (at Rs. 50.82 Cr.) than what should have been considered i.e. Rs. 50.65 Cr. (Rs. 50.82 Cr. – Rs. 0.17 Cr.). Mr. Munjal further clarified that while income in financial books is accounted on accrual basis with a certain amount being provided towards bad and doubtful debts, the Regulatory Accounting adopted by the Commission for purpose of Revenue Accounting is based on Cash

receipts which includes all moneys collected out of current as well as any past arrears (including any collection from those which may have been provided as doubtful debts in the books of accounts in the past). Thus, the Commission does not take into account or allow in ARR any expenditure towards provision for bad/doubtful debts as it considers Revenue Receipts only to the extent actually collected irrespective of the Net Revenue (Gross Sales minus provision for bad/doubtful debts) accrued in the books of accounts; As and when any past arrears (which may have been provided as bad/doubtful in books of accounts) are collected, the same are accounted by the Commission as Revenue Receipts in the year of Receipt. Consequently, this amount of Rs. 0.17 Cr. which has been reflected as an 'Other Income' in books of accounts as the same has been recovered against those dues which had earlier been expensed out in books of accounts, is already included in the actual cash realizations for F.Y. 2007-08 and accounted as Revenue Realised for ARR purposes. Mr. Munjal further submitted that inadvertently treating the same towards Non-Tariff Income when expense for provision of Bad/Doubtful Debts was never allowed would tantamount to double accounting of the same as this realization of past dues (which had been provided as Bad/Doubtful earlier) has also been considered towards Revenue Receipts for AT&C Loss and Tariff determination purposes. Thus, a consideration of an amount of Rs. 0.17 Cr. provided as income in books of account due to reversal of doubtful debts is an error apparent on the face of record. Therefore, the Commission is requested to reverse the same and allow Rs. 0.17 Cr. as an expense on True-up.

**COMMISSION's ANALYSIS:**

20. The Commission has revisited the trued-up Non-Tariff Income of the Petitioner for F.Y. 2007-08 and has observed that the claim of the Petitioner is valid. There has been an inadvertent error while computing the Non-Tariff Income where the write back of doubtful debts amounting to Rs. 0.17 Cr. have been considered as a part of Non-Tariff Income. The Commission, therefore, allows the amount of Rs. 0.17 Cr.

**B. INTEREST INCOME ON SHAREHOLDERS FUNDS INVESTED IN BUSINESS ERRONEOUSLY CONSIDERED AS NON-TARIFF INCOME:**

21. Sh. Munjal submitted that the Commission in the Impugned Tariff Order, has considered entire interest income for F.Y. 2007-08 as part of Non-Tariff Income for tariff determination purposes on the premise that such income is incidental to electricity business and is consequently to be considered as part of Non-Tariff

Income. It was submitted that the Commission has erred in considering interest income as incidental to the electricity business as these earnings are primarily related to shareholder funds retained in the business in excess of the amounts invested from time to time in capital expenditure and working capital and hence cannot be considered as being 'incidental to electricity business'. Mr. Munjal further submitted that it is worthwhile to point out that the Petitioner had clarified this issue way back in its F.Y. 2005-06 Petition as to why such interest income could not be considered as part of Non-Tariff Income which had been accepted by the Commission, based on which it did not treat such interest income as part of Non-Tariff Income. As stated above, the Commission has followed the same approach in subsequent tariff orders including true-up of Non-Tariff Income for F.Y. 2006-07 in MYT Order. Sh. Munjal further submitted that having once accepted and followed the said proposition it is obviously erroneous on the part of the Commission to now hold in the Impugned Order that such income has to be treated as part of Non-Tariff Income when it has already accepted the Petitioner's contentions on the same and has not been considering the same as part of Non-Tariff Income till F.Y. 2006-07. It is further submitted that since, these funds which are earning returns by way of interest/capital gains actually belong to the shareholders over which they have an absolute right, interest income from the same cannot be inferred to be 'incidental to electricity business'. Further, it is worthwhile to note that the MYT regulations provide the working capital on normative basis. In case, Petitioner is able to earn any surplus by better managing its working capital, it should not be treated as Non-Tariff Income. It is requested that the interest income of Rs. 3.06 Cr. which has been treated by the Commission as Non-Tariff Income be reversed in the subsequent true-up.

#### **COMMISSION's ANALYSIS:**

22. Since, the current tariff is determined under MYT Regulations, the Commission is of the view that the methodology adopted by the Commission in earlier Tariff Orders should not be compared with the current tariff determination process. Under the MYT Regulations Non-Tariff Income is defined as under:

*"All incomes being incidental to electricity business and derived by the Licensee from sources, including but not limited to profit derived from disposal of assets, rents, delayed payment surcharge, meter rent (if any), income from investments other than contingency reserves, miscellaneous receipts from the consumers and income to Licenced business from the Other Business of the Distribution Licensee shall constitute Non-Tariff Income of the Licensee."*

23. The MYT Regulations clearly define categories of Non-Tariff Income and state that any income earned from investments other than contingency reserves is also under the ambit of the Non-Tariff Income. Therefore, the income earned from investment of any funds will form part of Non-Tariff Income. The Regulations in no way constrain the Petitioner to distribute the income earned by the Petitioner in the form of RoE, Incentives, etc. to the shareholders.
24. Further, the Petitioner is agreeable to the approach of the Commission on the determination of interest on working capital which is computed on normative basis and any savings resulting from lower interest cost is to the account of the Petitioner. The Commission does not restrain the benefit on this account to the Petitioner. Therefore, any savings by deployment of the shareholder's fund in the working capital results in additional benefits for the shareholders.
25. Any income earned on account of interest from investment of shareholder's equity in mutual funds, etc. is very difficult to monitor. Since, there are other investments undertaken by the Petitioner which are incidental to the electricity business and result in generation of interest income for the Petitioner, the segregation of interest earned from shareholder's equity and interest earned in normal course of business is difficult. Therefore, the Commission cannot specifically account for any interest income earned by the Petitioner as interest income from shareholder's fund.
26. During the course of True-up for F.Y. 2007-08 and determination of ARR for F.Y. 2009-10, the above mentioned issues were discussed by the Commission with the Consultants in detail. The records suggest that the Commission had taken a conscious decision to include interest income for F.Y. 2007-08 as part of Non-Tariff Income. Therefore, there is no error apparent on the face of the record and the Commission does not admit this issue for review.

**C. NON-ALLOWANCE OF EXPENSES ON ACCOUNT OF NEW INITIATIVE CREDIT RATING:**

27. Sh. Munjal submitted that the Commission in the impugned Truing-up Order has mentioned that as Petitioner has not taken the prior approval for the credit rating expense and hence, it has not allowed the expense on account of credit rating.
28. Sh. Munjal further submitted that Credit Rating of banking (Fund/Non-fund based) facilities has become imperative under the newly introduced Basel-II



Norms as per which Unrated facilities would be offered at higher costs as the Capital Adequacy Requirement for unrated facilities is at least 4.5% higher.

29. Sh. Munjal clarified that the guidelines for implementation of a New Capital Adequacy Framework issued by the RBI in April, 2007 allow commercial banks to allocate capital in relation to the credit risk embedded in their exposures. Credit Risk in this case would be measured by the rating assigned to such exposures by external credit rating agencies like ICRA, CRISIL, etc. As capital is the most expensive source of funding, any increase or decrease in such capital allocation due to (non)/obtaining of credit rating by a borrower translates into substantial additional costs/savings for banks which eventually gets reflected in the interest charged to the borrower.
30. While Basel-I Norms which were applicable till March, 2007 did not provide for any differential capital allocation based on credit risk, Basel-II norms have clearly linked the Risk Weightage (and consequently the Capital allocation requirement) to Credit Rating by External Agencies.
31. Thus, in the case of unrated facilities, banks would have to block higher capital vis-a-vis rated facilities and consequently, interest costs for such facilities/borrowers would be higher than that of rated facilities. By getting the facilities rated, the benefit of lower costs, if any, would be passed on to the consumers as the interest cost would have been higher if the facilities would not have been rated.
32. Sh. Munjal further submitted that as per National Tariff Policy, Structuring of debt, including its tenure, with a view to reducing the tariff should be encouraged. Savings in costs on account of subsequent restructuring of Debt should be suitably incentivized by the Regulatory Commissions keeping in view the interests of the consumer.
33. Sh. Munjal further submitted that benefits of obtaining credit rating far exceeds the nominal cost incurred for obtaining the same, which is unambiguously in Public Interest. Considering the same, it is submitted that the expenditure of Rs. 0.19 Cr. incurred on credit rating be allowed.

**COMMISSION's ANALYSIS:**

34. The Commission had disallowed the expenditure on credit rating undertaken by the Petitioner in the True-up for F.Y. 2007-08 because the Petitioner had not taken prior approval of the new initiative from the Commission.
35. To obtain prior approval of the new initiative from the Commission has been clearly specified in the Clause 4.156 of the Petitioner's MYT Tariff Order which state:
- "Thus in consideration of the above, the Commission is of the view that Petitioner should try to bring efficiency into the system, thereby, reducing the burden of inefficiencies on to the consumers of Delhi. The Commission also direct the Petitioner to carry out a proper cost benefit analysis before taking up any new initiatives and submit the same for the approval of the Commission."*
36. The Commission had directed the Petitioner in the MYT Order to obtain prior approval of the new initiatives from the Commission by submitting a cost benefit analysis of the proposed initiative. It is noticed that inspite of such direction by the Commission, the Petitioner did not submit a Cost Benefit Analysis of the proposed new initiatives to the Commission to obtain prior approval of the Commission of new initiative. As the Petitioner did not obtain prior approval from the Commission on Credit Rating Expense, therefore, the same had been disallowed in the True-up Order by the Commission. It is observed that in the past also other DISCOMs have not complied with the directions of the Commission regarding obtaining the prior approval of the Commission on Credit Rating Expense which resulted in disallowance of such expenditure.
37. The records in the Commission clearly indicate that a conscious decision was taken to disallow the expenditure on credit rating undertaken by the Petitioner in the True-up for F.Y. 2007-08 due to lack of any approval from the Commission. Therefore, there is no mistake apparent from record and the Commission does not admit this issue for review.

**D. ALLOWANCE/CHARGING OF FINANCING COST ON ACCOUNT OF BANKING TRANSACTION OF POWER:**

38. Mr. Munjal submitted that the NDPL vide its ARR submission dated 31.03.2009 had requested the Commission to allow/charge financing cost on the outstanding banking transactions at the year end, which are being notionally considered by the Commission as sale or purchase (depending upon banked/received back leg of banking transaction) while determining the net power purchase cost

allowable to the DISCOMs. It was explained in the afore referred submission that the forward leg of banking transaction relates to supply of power to other utility which, though treated by the Commission as a sale does not result in any revenues, thus leaving a revenue gap with the DISCOM which is required to be financed; consequently a carrying cost needs to be allowed on the same.

39. Sh. Munjal further submitted that similarly, the Backward leg transactions i.e. receipt of power (to be returned in subsequent year) is treated by the Commission as a Purchase and consequently allowed a power purchase cost in ARR which will actually be incurred only when the power is returned to the banking utility. Thereby, a revenue surplus to this extent is generated, on which carrying cost should be charged. It was, therefore, requested that the financing cost of Rs. 7.58 Cr. may be allowed on account of banking transaction carried out by the NDPL during F.Y. 2007-08.

**COMMISSION'S ANALYSIS:**

40. The Commission has reviewed the claim of the Petitioner and is of the view that banking transactions is a zero sum process where the forward banking or reverse banking both are settled within a time period of one year. Therefore, the impact of the banking transactions on the overall working capital of the distribution company is nil.
41. The Commission has observed that the Petitioner is viewing the banking transaction with respect to financial year. Therefore, any energy sold to another distribution company under reverse banking by the Petitioner during the winter months will be received back during the summer months of the next financial year. However, if the same is viewed in light of the transaction period (from the date of supply to the date of receipt), there would be no implications of the working capital of the Petitioner.
42. In view of the above, the Commission holds that the claim of the Petitioner regarding carrying cost is unjustified and there is no requirement for additional financing cost on account of the banking arrangements.
43. The Commission, therefore, does not admit this issue also for review.
44. Ordered accordingly.

Sd/-  
(Subhash R. Sethi)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN