

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.3 (147)/Tariff/DERC/2006-07

Review Petition No. 51/2006

In the matter of:

Petition seeking clarification and/or reconsideration and/or review and/or modification of certain observations & findings in the Tariff order under the relevant provisions of the Electricity Act 2003 read with the Delhi Electricity Reform Act, 2000.

AND

In the matter of :

North Delhi Power Ltd.
Through : its **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.

Respondents/Stakeholders list enclosed.

Before
Delhi Electricity Regulatory Commission

Coram :

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &
Sh. R. Krishnamoorthy, Member.**

Date of Order : 05 February, 2007

ORDER

1. The Review Petitioner, North Delhi Power Ltd. (NDPL) has filed the present Review Petition dated 23.10.2006 for review of the Tariff Order of the Commission dated 22nd September 2006 passed on the petition No. 01/2006 for FY 2006-07 pertaining to the Annual Revenue Requirement (ARR) and Tariff determination for the financial year 2006-07. The matter was listed for hearing on 14.12.2006 where some of the stakeholders informed the Commission that the copy of the Review petition sent by the Petitioner (NDPL) was not legible / or was incomplete. Therefore it would not be possible for them to offer any comments on the Review petition. The Commission had directed the Petitioner to provide a legible and complete copy of the Review petition to all the stakeholders. The matter was adjourned and further listed for hearing on 4th Jan. 2007.

2. The Commission heard the Review petitioner and the stakeholders present on 4th Jan. 2007. The stakeholders opposed the review on all the issues raised by the Review petitioner in its Review petition.

3. The Review Petitioner has referred to Section 94 and 185(3) of the Electricity Act, 2003, Section 114 read with Order 47 of the Code of Civil Procedure, 1908 and Regulations 57, 58 and 59 of the DERC Comprehensive (Conduct of Business) Regulations 2001 of the Commission to establish that the Commission has powers to review its Order.

4. Sh. Amit Kapur, the Learned Counsel for Review Petitioner submitted that being aggrieved by certain observations and findings in the approval of Annual Revenue Requirement vide Tariff Order dated 22.9.2006 for FY 2006-07 and truing up of previous years' ARRs vide the said Order, it is filing the present composite petition to :-

- (a) place its concerns before the Hon'ble Commission and seek suitable redress/relief;
- (b) seek clarifications and/or rectification of such observations and/or findings to facilitate effective and efficacious implementation; and
- (c) wherever necessary, seek review of and/or modification to such observation and/or findings and/or computations.

5. This review petition has been filed subsequent to the said Order and according to the Petitioner, the Order passed by the Commission suffered 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.

6. 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. 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.

9. The Commission is of the view that the scope of review is more strict and 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”

10. 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 :-

- (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, 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 has to be detected by process of reasoning and such an error 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.

11. 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.

12. Further also in the case of Parsion Devi Vs. Sumitri Devi the Supreme Court has held that;

“A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost.”

13. Keeping in view the statutory provisions and the pronouncements of the Supreme Court of India, the scope of review has been limited into the following words :-

1. That the power of review can be exercised only within the domain prescribed under Order 47, Rule 1, for the rectification of an error

patent and glaring on the face which would warrant reconsideration of the judgement/order so pronounced.

2. Where there is nothing to contest that the error is so convincingly parched in the order that at the face of the record it would be unacceptable to continue.
3. The error should be self-evident.
4. Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

ISSUES RAISED:

A. Second Truing up of ARR for FY 2004-05

Sh. Amit Kapur, Learned Counsel for the Review Petitioner submitted that having Trued up the expenses for FY 2004-05 in the Tariff Order dated July 7, 2005, (hereinafter referred as 'Tariff Order for FY 2005-06) after carrying out due prudence checks, the Commission has denied the Review Petitioner legitimate expenses to the extent of Rs.19.73 crore for the same FY 2004-05 in Tariff Order for FY 2006-07 on carrying out a second truing up of expenses for FY 2004-05.

The Ld. Counsel further submitted that the Commission while determining the tariff for FY 2005-06 has considered various submissions made by the Petitioner and has carefully analysed the different heads of expenditure to true up the ARR for FY 2004-05 and to project the realistic level of allowable expenditure during FY 2005-06. The process of ARR determination for FY 2005-06 got extended beyond March 31, 2005, and therefore, the Commission obtained the details of actual expenses and revenue for FY 2004-05. As the actual details of expenses and revenue for FY 2004-05 were available based on the provisional audited accounts, the Commission had trued up all the elements of ARR based on the actual expenses and income of NDPL after ensuring that the expenses satisfy the test of reasonable prudence. Further, the Commission had also examined the Petitioner's request for truing up of certain elements for FY 2003-04 based on the final audited accounts. The expenses to be trued up for FY 2003-04 have been discussed while analysing the relevant head of expenditure for FY 2004-05 and FY 2005-06.

The Ld. Counsel further submitted that :-

- (a) the Commission had trued up all the elements of ARR based on the actual expenses and income of NDPL for FY 2004-05 after ensuring that the expenses satisfied the test of reasonable prudence and the provisional audited accounts for FY 2004-05.

- (b) The final Truing for FY 2004-05 in FY 2006-07 was to be carried out, if required, only to account for any variations arising out of difference in audited accounts with revised estimates or provisional accounts.

It is evident that the second truing up carried out by the Commission for FY 2006-07 Tariff Order, meets neither of the above two criteria set-out by the Commission itself; once having allowed the expenses for FY 2004-05 in the Tariff Order for FY 2005-06 after determining the reasonableness and prudence of the expenditure, the Commission could have carried out any final Turing up of FY 2004-05 expenses in FY 2006-07 only to the extent of any variations arising out of difference in audited accounts with revised estimates or provisional accounts. As there is no variation in the final audited accounts from the provisional audited accounts on which truing up for FY 2004-05 in the Tariff Order of FY 2005-06 was based, and since there was no change in data, this downward revision of previously allowed expenses is a fresh judgement rather than a mere truing-up and is contrary to the Commission's own Order on this issue.

The Ld. Counsel has further submitted that though the Commission has not provided any reasons for the downward revision and consequent denial of prudently incurred and previously trued-up and allowed expenses aggregating to Rs.19.73 crore for FY 2004-05, the Review Petitioner specifically wishes to point out the arbitrary nature of the second/final truing up in relation to R&M expenses, which were originally approved at Rs.32 crore in the Tariff Order for FY 2004-05. The approved estimates for FY 2004-05 were increased by Rs.23 crore by the Commission in its Order on the Petitioner's Review Petition, thus approving estimate of R&M expenses at Rs.55 crore. Against the approved estimate of Rs.55 crore, the Review Petitioner incurred an expenditure of Rs.53.68 crore which was subsequently approved by the Commission in its Tariff Order for FY 2005-06. In the Tariff Order for FY 2006-07, the same has been unjustly reduced by Rs.7.03 crore, thus approving an expenditure of Rs.46.65 crore against actual expenditure of Rs.53.68 crore and the approved estimate of Rs.55 crore.

Commission's Analysis: -

In the Tariff Order dated 22.9.2006, the Commission had deliberated on this issue. While doing the second Truing up of expenses for FY 2004-05 in the FY 2006-07, the Commission has mainly trued up in the following heads:-

Component	2004-05		
	Trued up by Commission in FY 2005-06 Tariff Order	Final Truing up done by Commission in FY 2006-07 Tariff Order	Difference
Employee costs	134.57	125.29	(9.28)
R&M	53.68	46.65	(7.03)
A&G Expenses	19.20	17.78	(1.42)

I. Employee cost:

The Commission has followed the same principles as has been done in the previous Tariff Orders wherein the concept of Tariff Neutrality has been followed. The Commission has mentioned the following in the Tariff Order for FY 2004-05 with regard to VSS :

"The Petitioner has submitted that there is an actual cash outflow of Rs.90.59 Crore towards VSS. NDPL has submitted that they have not claimed the entire amount of VSS cash outflow in the ARR and have taken commercial loans at an interest rate of around 8% with a tenor of 2-3 years, to fund this liability. NDPL has further submitted that it proposes to spread the VSS outgo over a number of years thus ensuring that the consumers do not have to bear any cost over and above the employee expenses that would have been incurred if these employees had continued. With this the VSS cost is expected to be spread over the next 2.5 years and the entire savings of VSS will accrue to NDPL and its consumers. Based on this mechanism of spreading over the VSS cost, NDPL has requested the Commission to consider the total employee cost based on original number of employees (viz. Pre VSS) to be allowed in the ARR."

Keeping the above in view, the Commission continued allowing the employee expenses as if there was no Voluntary Separation Scheme (VSS) and that the excess amount left with the Distribution Company would be used for amortization of the expenses incurred by the Distribution Company at the time of VSS. The only difference insofar as the Tariff Order of FY 2006-07 is concerned is that the Commission has considered that other benefits which were being given to the employees who have already taken the VRS would not be provided to the Distribution Companies. The implication is that the amortization period which was earlier stated as 2.8 years would go up but this is purely a decision which lies within the powers of the Commission itself. The amortization period of around 2.8 years worked out by the Commission in the Tariff Order for FY2004-05 is based on the parameters available at that point of time and as such may undergo a change.

Keeping these points in view the Commission has extended the amortization period from the previous 2.8 years till the end of FY 2006-07. Further, The Commission in the Tariff Order for 2006-07 has asked for the complete details as reproduced below:

“The Commission directs the Petitioner to submit the complete detail of savings, amortisation, additional trust liabilities and other expenses related to SVRS separately within 3 months of issue of this Order.”

The Commission is yet to receive the same from the Review Petitioner.

The Commission further wants to state that the other allowances and benefits incurred in respect of existing employees, including outsourcing expenses are being allowed by the Commission on actual basis. This matter has been referred to in the Tariff Order for FY 2006-07 also which states the following :

“The Commission has considered all the items of employee's expenses on actual basis subject to prudence test, except the basic salary dearness allowance and terminal benefits which the Commission has worked out without considering the costs of SVRS and savings in employee costs due to SVRS for the FY 2005-06.”

Further, it is stated that the Commission has allowed the total actual other cost and allowance as claimed by the NDPL the detail of which is given below

Other Cost in Employees Expenses for FY 2004-05

Other Cost	NDPL		
	Allowed in Tariff Order for FY 2005-06	Actual incurred by NDPL	Final trued up in Tariff Order 2006-07
Other Staff Costs	54.52		
Medical Expenses Reimbursement		2.63	2.63
Leave Travel Assistance		0.40	0.40
Adhoc payment on Corporisation		1.72	1.72
Others		12.89	12.89
Overtime		3.74	3.74
Other allowances including HRA		20.14	20.14
Bonus/Exgratia		3.15	3.15
Staff Welfare Expenses		0.58	0.58
Total	54.52	45.24	45.24
Difference	9.28		

As far as the amortization of the VRS is concerned, the Commission, keeping the above in view, has extended the amortization period from the previous 2.8 years till the end of FY 2006-07 and has mentioned the following in the Tariff Order for FY 2006-07:

"The Commission in its Order on ARR and Tariff Petition for FY 2005-06 and other earlier orders has elaborated on the mechanism to be followed for treatment of SVRS expenses (including meter reading and bill distribution expenses) and the treatment of employee expenses in lieu of SVRS and also worked out payback period of 2.8 years which will be over by September 2006. However, keeping in view the additional trust liabilities and other related expenses incurred by the Petitioner, the Commission extends the payback period till the FY 2006-07."

The Commission has asked for full details in this regard from the Distribution Company as given in the Tariff Order of FY 2006-07 and this is yet to be forwarded by the Petitioner.

Thus the Commission is of the view that there is no apparent error on the face of the record and the said issue is not admitted for review.

II. R & M Expenses :

The Commission has observed that in Form 1.3(e) (Repair & Maintenance Costs) filed by the Review Petitioner in the ARR Petition for 2006-07, an amount of Rs.7.67 Crore has been booked in the accounts of FY 2004-05 as previous period consumption. Since the amount of Rs.7.67 Crore was mentioned in the accounts of FY 2004-05 as prior period consumption, it is understood that this expenditure was made either in 2003-04 or even earlier. That being the case, there is no scope for it's being admissible at this stage. The Commission further observes that in the provisional accounts for 2004-05 submitted by the Petitioner for the ARR Petition for 2005-06 the fact that this expenditure is prior period was not indicated.

Thus the Commission is of the view that there is no apparent error on the face of the record and the said issue is not admitted for review.

III. A & G Expenses.

In the relevant form for A & G Expenses filed by the Review Petitioner in its ARR petition for 2006-07, the detail of A & G Expenses for FY 2004-05 based on audited accounts is given wherein Bill distribution Expense is mentioned as Rs.0.69

crore and Bill Collection Expenses is mentioned as Rs.0.73 crore. The Commission has consistently taken the stand in all the Tariff Orders that the consumers should not be burdened by the VRS offered by the Distribution Companies. Accordingly, the Commission is of the opinion that in case VRS has been offered to some employees of the Distribution Company, commensurate additions should not be made in other employee expenses, namely, for contractual employees since then the consumer gets no benefit once the VRS has been amortized. Accordingly, expenses made for bill distribution and bill collection should be made from the savings which the Distribution Company gets under the provisions made by the Commission for meeting VRS amortization.

In view of the above, the Commission is of the view that there is no apparent error on the face of the record and therefore the said issue is not admitted for review.

B. Employees Expenses:

Sh. Amit Kapur, Ld. Counsel for the Review Petitioner, submitted that against the gross employee costs of Rs.155.37 crore in FY 2005-06 (including Rs.114.02 crore of cash expenditure plus Rs.41.35 crore on account of VSS amortisation during the year), the Hon'ble Commission has approved an expenditure of Rs.139.83 crore. Thus, denial/ deferment of Rs.15.54 crore of Employee Expenses for FY 2005-06 is an error apparent on the face of record in as much as: -

(a) The Commission has deviated from its laid down principles for amortization of the VRS costs by not considering for the first time the allowances of VRS optees which would have been payable to them had not retired, as part of Establishment costs. Only the other elements of Employees Cost for VRS optees have been considered, (i.e. Basic, DA and Terminal Benefits) which would have been payable had these VRS optees not retired. Till the previous Tariff Order, all employee costs saved due to VRS were being considered for computing the extent of amortization to be allowed for VRS costs.

b) Earlier, the Commission has allowed employee cost constituting of (a) cost of existing employees, and (b) Cost of VSS optees, with the cost of VSS Optees being towards amortization of the VSS costs. By partially disallowing costs of VSS Optees, amortization of the balance VSS costs has been further deferred; this is in

direct contradiction to the Commission's order to amortize the VSS expenses in 2.8 years (by end of FY 2006-07). This action of the Commission of disallowing VSS savings on one hand, and insisting that the VSS expenses be amortized within FY 2006-07 on the other hand, is contradictory and untenable and consequently is an error apparent on the face of record.

c) The Commission has allowed expenditure for FY 2005-06 on actual basis rather than on normative basis. This has resulted in under allowance of expenses for FY 2005-06 to the extent of Rs.9.67 crore being the expenditure that would have been incurred on CCA, HRA, Uniform allowance, TPA, Washing allowance, Exgratia and Interim Relief, which would have been paid to those erstwhile DVB employees (on NDPL Rolls) had they not opted for VSS. The Review petitioner has been similarly under allowed Rs.9.01 crore for FY 2006-07 on this account which together with Rs.9.67 crore for FY 2005-06 should be allowed in the ARRs for FY 2006-07/FY 2005-06 by amendment of the Tariff Order for FY 2006-07.

The change in methodology viz-a-viz the methodology earlier approved and followed by the Commission is not only arbitrary and unilateral, it has also led to an anomalous situation whereby the recovery of VSS expenses which, as per the Tariff Order are required to be recovered within 2.8 years (end of FY 2006-07), shall actually get deferred due to under allowance of aforementioned costs (HRA, CCA, etc.)

In addition to the above, the Commission has not considered recovery of additional liability of Rs.5.31 crore for FY 2005-06 (which was not envisaged earlier) and has arisen with respect to Medical/LTA reimbursement of DVB pensioners for the period April 2003 to December 2005. The ETBF Trust had demanded the aforementioned amount towards Medical and LTA reimbursements to the erstwhile DVB pensioners. This amount is in addition to the contribution for Terminal Benefits of erstwhile DVB employees made by the Company. Consequently, the Petitioner has been denied a legitimate expenditure of Rs.5.31 crore for FY 2005-06 and an estimated expenditure of Rs.2 crore for FY 2006-07.

Commission's Analysis :-

Employee expenses are allowed by the commission based on the methodology for amortisation of VSS expenses. The Commission has followed the same principles as has been done in the previous Tariff Orders wherein the concept of Tariff neutrality has been followed. The issue has been dealt in detail at the previous para 'A'.

It is further observed by the Commission that the Review Petitioner is claiming the other cost under employees expenses apart from salaries (basic, dearness pay, dearness allowance and terminal benefits). The break up of the other costs as mentioned by the Review Petitioner in the relevant form in its ARR consist of the following :

- Overtime/Holiday pay
- Exgratia
- Staff Welfare Expenses
- Adhoc payment on corporatisation
- Other staff costs
 - Medical Expenses
 - Leave Trave Assistance
 - Others (TPC deputationists/Consultants/Stipend/Outsourcing)
- Other allowances.

As already explained in Para A, the Commission has delinked the said expenses from the normative salary costs allowed by the Commission. As such, the Commission has allowed such other costs on actual basis. It can be noticed that the Commission has allowed full actual other cost for the FY 2005-06 incurred by the Review Petitioner as given below :

Rs. in Crore

SI No.	Particulars of Other Cost for FY 2005-06	Incurred by the Licensee	Allowed by the Commission
1.	Overtime/Holiday Pay	3.43	3.43
2.	Ex-gratia	3.71	3.71
3.	Staff Welfare Expenses	0.76	0.76
4.	Adhoc payment on corporatisation	1.67	1.67
5.	Other staff costs <ul style="list-style-type: none"> ○ Medical expenses ○ Leave Travel Assistance ○ Others – (TPT deputatinists/Consultants/Stipend /Outsourcing) 	3.05 0.90 12.67	3.05 0.90 12.67
6.	Other allowances	26.63	26.63
	Total	52.82	52.82

The Commission has considered the contention of the Review Petitioner that the Commission has not considered the recovery of additional liability of Rs.5.31 crore for FY 2005-06 which has arisen due to medical/LTA reimbursement of DVB pensioners for the period April 2003 to December 2005. The Review Petitioner has submitted in his ARR petition for 2006-07 that the issue of payment of terminal benefit together with pension/medical/LTA payments is presently subjudice before the Hon'ble High Court of Delhi. This being the position taken by

the Review Petitioner in ARR petition for FY2006-07, it will be advisable to await the orders of Hon'ble High Court of Delhi.

Thus the Commission is of the view that there is no apparent error on the face of the record and the said issue is not admitted for review.

C. Repair and Maintenance Expenses

Sh. Amit Kapur, Learned Counsel for Review Petitioner submitted that: -

- (a) The Commission had approved a budget estimate of Rs.55.83 crore for FY 2005-06 for Repair and Maintenance expenses, against which the Review Petitioner incurred an expenditure of Rs.55.09 crore which was within the approved limit of Rs.55.83 crore. Therefore, it was erroneous on the part of the Commission to deny a part of the actual expenditure which is an error apparent on the face of record. Further, it is submitted that the entire purpose of approving the expenditure estimates in advance would be defeated and rendered meaningless, if the Commission were not to allow the expenditure, even if incurred within originally approved estimates.
- (b) The Commission has directed the Petitioner to take prior approval for any increase in R&M expenses during FY 2005-06 beyond the approved R&M expenses before committing/incurred any expenses. It is clear from the above that no further approval was required from the Commission in the event of expenses incurred being within the approved limits. Consequently, the Commission cannot arbitrarily deny it, part of the expenses incurred on security on the specific grounds that these have increased substantially over the previous year, hence cannot be allowed.
- (c) The Commission has denied the Review Petitioner Meter Reading expenses to the extent of Rs.3.45 crore on the ground that the same needs to be set-off/recovered from the savings arising out of VSS as if Meter Reading expenses were VRS costs. The Review Petitioner in its submissions to the Commission has suggested that the Meter Reading expenses should not be linked to VSS savings as this expenditure was of perpetual nature which would be incurred and subsequently need to be recovered in the ARR. Even after the meter readers who had opted for VSS would have normally retired, thus implying that if Meter Reading expenses were to be set-off/recovered from the VSS savings R&M costs would suddenly increase after a few years once the VSS savings got over due to normal retirement of VSS optees.

- (d) The Commission has approved an over all R&M expenditure amount without providing any details whatsoever of the break-up of the same; in such a scenario, having once approved an over-all amount of Rs.55.83 crore for the FY 2005-06, the Commission has erred by disallowing/partly allowing a specific item of expenditure.
- (e) The expenditure to the extent of security expenses disallowed (Rs.3.8 cr.) in FY 2005-06 be allowed. Further, based on the expenditure actually incurred in FY 2005-06, the proposed budget estimate of Rs.57.25 crore be approved for FY 2006-07 and the Tariff Order for FY 2006-07 be amended accordingly.

Commission's Analysis :

The Commission has considered the issue and is of the view that the R&M expenses approved by the Commission for FY 2005-06 are Rs.47.87 crore which includes various R&M expenses incurred by the Review Petitioner. Further, the R&M expenses were allowed by the Commission after considering the actual expenses incurred and approved for FY 2004-05. The overall estimate of R&M expenses for FY 2005-06 in the Tariff Order for FY 2005-06 was arrived at after adding the estimated expenditure for each and every item of the R&M expenses after giving the escalation of 4% over the approved figure for FY 2004-05. It was observed from the ARR filing for FY 2006-07 made by the Review Petitioner that the expenses for security of Grid substations, etc. for the FY 2004-05 was Rs.0.09 crore whereas for the FY 2005-06 the same has been Rs.3.86 crore. There has been abnormal increase in this expenditure. It is noticed that no specific reasons and justifications have been provided in the petition for this sudden increase in this item in their ARR petition for the FY 2006-07.

With regard to Meter Reading expenses, the Commission is of the view that such expenses are Administrative expenses and are to be booked under A & G expenses. By no stretch of imagination these kind of expenses can be classified under "Repair and Maintenance Expenses(R&M Exp.)". By wrongly booking these expenses in "R&M Exp." head the Review Petitioner has increased the overall R&M Expenses. With regard to the treatment for Meter Reading expenses, as explained in the previous Tariff order, these expenses are to be met from the savings which the Distribution Company gets under the provisions made by the Commission for meeting VRS amortization. The Commission has mentioned the following in the Tariff Order of FY 2005-06:

"Though the Petitioner has submitted that the Meter Reading expenses paid to outsourced agencies are for ascertaining the losses in the system which comprises of both technical and commercial losses and is not due to VSS, the

Commission is of the opinion that this sudden increase in R&M expenses is mainly due to outsourcing of meter reading activity a result of implementation of VSS. In line with the approach adopted by the Commission towards treatment of VSS expenses, any increase in expenses due to VSS has to be met through savings on account of VSS."

The approach of the Commission regarding treatment of meter reading and bill distribution expenses was accepted by all the three Discoms and there was no review petition on this point in the earlier Tariff Orders. The Commission has adopted the same approach in the impugned Tariff Order for FY 2006-07 also. Thus, the reasons advanced by the Review Petitioner do not hold any water and there is hardly any merit in changing the established methodology for treatment of meter reading and billing distribution expenses.

In view of the above, the Commission is of considered view that there is no apparent error on the face of record and therefore, the said issue is not admitted for review.

D. Depreciation Utilization: -

The Review Petitioner has submitted that the Commission's approach of considering average repayment period of 3 years for notional loan is a departure from the practice followed in the past years and the treatment is also contrary to the provisions of National Tariff Policy which inter-alia provides the following: -

"5.(b). "The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project."

The Review Petitioner has further submitted that if the repayment period of 3 years based on the gestation/average payback period of three years for distribution assets is considered adequate then the depreciation @33.33% should have been allowed to cover the repayment of these loans over a period of 3 years. In view of considering normative loan repayment as 3 years, the depreciation allowed towards loan repayment is insufficient to cover the same. The petitioner has further submitted that the disallowance of Rs.23 crore and Rs.110 crore to cover the total repayment liability for FY 2005-06 and 2006-07, respectively is an error apparent on the face of the record and be allowed by way of error against depreciation or alternatively to treat the notional loan with a weighted average long term tenure of 10 years which will entail additional

interest of notional loans of Rs.0.97 crore in FY 2005-06 and Rs.6.60 crore in FY 2006-07.

Commission's Analysis:

In the Tariff Order for FY 2006-07, the Commission has considered the depreciation entirely for loan repayment including the notional loan. In the case of notional loans, a notional repayment period of three years is considered keeping in view the gestation period of commissioning of distribution assets and average payback period as three years.

However, considering the points raised by the Review Petitioner, the Commission has accepted the submission of the Review Petitioner to treat the notional loans with a weighted average long term tenor of ten years for the FY 2005-06 and FY2006-07. Necessary adjustments based on quantum of notional loan shall be made while taking up the Truing up exercise for FY 2005-06 and FY2006-07 in the next Tariff Order.

E. Investment

The Ld. Counsel for the Review Petitioner has submitted that all scheme wise details of expenditure incurred during the FY 2005-06 have been submitted to the Commission. The entire expenditure of Rs.430 crore is in accordance with the DPRs submitted to the Commission.

It is further submitted that DPRs aggregating to Rs.868 crore are pending with the Commission for approval with the oldest DPRs being for FY 2004-05. The Review Petitioner has requested that the entire amount of CAPEX, which has been judicially incurred, be allowed for recovery in the ARR by revision of the Tariff Order for FY 2006-07. The Commission has approved the capital expenditure of only Rs.209.88 crore for FY 2006-07 against an estimate of Rs.285.08 crore. The Review Petitioner has further submitted that the Commission's caveat to restrict capital expenditure mainly to allow for load growth scheme is unrealistic and unfeasible as additional capital expenditure needs to be incurred to reduce AT & C losses and improve upon reliability of the system. Further, Loss reduction requires additional capital expenditure and the impugned Tariff Order of the Commission restricting capital expenditure to mainly load growth schemes shall adversely affect the AT&C Loss reduction programme which shall be in the interest of the consumers of Delhi.

In this connection the Review Petitioner would like to inform the Commission that it has already made commitments for FY 2006-07 to the tune of

Rs.161 crore up to the end of September 2006. Further, based on the load growth schemes which the Review Petitioner is statutorily bound to undertake under its Universal Service Obligations, and AT&C Loss reduction schemes underway, additional expenditure of nearly Rs.110 crore is required to be incurred for the remaining two quarters.

The total Capex requirement for FY 2006-07 has been restricted to the base cost of Rs.271.7 crore, as has been originally submitted to the Commission for approval in September, 2005.

It is further submitted by the Review Petitioner that the Commission may review its observations and findings on the total capital investment for FY 2006-07 and approve an additional capital investment of Rs.62 crore (plus capitalization of establishment costs) for FY 2006-07 over and above the amount already approved in the Tariff Order for FY 2006-07. This would be in addition to the requirement for the balance capital expenditure of Rs.112.23 crore for FY 2005-06. The Review Petitioner has also requested the Commission to provide the financing of this additional capital expenditure.

Commission's Analysis:

The Commission has considered the above issue. The submission made by the Review Petitioner with regard to DPRs aggregating to Rs. 868 crore being pending with the Commission for approval, is not correct. This issue was never raised as part of the ARR Petition of the Review Petitioner which was subject matter for the impugned Tariff Order of FY 2006-07 issued by the Commission. Therefore, this new issue cannot be raised now under the ambit of Review Petition. In fact this issue of Rs. 868 crore worth CAPEX (Capital Expenditure) schemes awaiting approval of the Commission was separately raised along with other issues in a letter dated 10th August, 2006 from Shri A. J. Engineer, Chairman, NDPL addressed to Chairman, DERC and the position in this regard had been clarified vide Commission's letter No. F.17(99)/Engg/DERC/2006-07/2925 dated 07.11.2006. In the context of the CAPEX schemes it was explained by the Commission that it was not aware of the break-up of Rs 868 crore worth of CAPEX and as far as FY 2004-05 was concerned the Commission had approved all the schemes which were found prudent.

The other submissions of the Review Petitioner with regard to capital expenditure for FY 2005-06 and FY 2006-07 have been dealt in detail in the impugned Tariff Order and no error apparent on the face of the records has been brought out by the Review Petitioner. The Commission has in its Tariff Orders made it clear that

the approval of the schemes has to be undertaken separately from ARR and Tariff Determination process. The complete DPRs alongwith cost-benefit analysis and other relevant details are to be submitted for obtaining the scheme-wise investment approval from the Commission. Till the time of issuance of the impugned Tariff Order for FY 2006-07, the Review Petitioner had not submitted the complete scheme wise details of actual expenditure incurred during the FY 2005-06 along with the completion report and prescribed certificates. Since the scrutiny of actual capital expenditure was yet to be completed based on details which were still to be submitted by the Review Petitioner, therefore, the Commission, in the impugned Tariff Order has specifically mentioned that the consideration of capital investment of Rs.318.70 crore for the FY 2005-06 is only for the purpose of determination of ARR and the Review Petitioner has to submit the balance requisite details for firming up the capital expenditure incurred during the FY 2005-06. The Commission has further clarified that the variation in the capital expenditure considered in the Tariff Order with respect to the firmed up capital cost based on the details to be submitted by the Review Petitioner shall be considered by the Commission during the truing up exercise.

For the FY 2006-07 also the Commission has in its impugned Tariff Order reiterated that the capital expenditure of Rs.209.88 crore is only for the purpose of determination of ARR and the Review Petitioner was directed to obtain the scheme-wise approval for the capital expenditure to be incurred during FY 2006-07 from the Commission. Thus, it is clear that the issue of capital expenditure for both the years FY 2005-06 and FY 2006-07 needs to be dealt separately depending on submission of the requisite details by the Review Petitioner for the approval of capital schemes by the Commission. The capital expenditure considered by the Commission in the impugned Tariff Order of FY 2006-07 is provisional subject to truing up in the next Tariff Order based on the approval of the capital expenditure schemes by the Commission subject to the details furnished by the Review Petitioner in justification of the prudence of investment in an efficient and economical manner. It is also to be noted that this principle has been followed by the Commission in its earlier Tariff Orders and the same had not been contested by the Review Petitioner.

Thus in the light of the above discussion, it is clear that there is no error apparent on the face of record and the said issue is not admitted for review.

F. Legal Charges

It is submitted by the Review Petitioner that the 50% disallowance of Legal Charges (Rs. 0.96 Cr. allowed against Rs. 1.92 Cr. actually incurred in FY 2005-06)

is arbitrary and constitutes an error apparent on the face of the record, in as much as:-

- (a) The expenses are largely being incurred to benefit the consumers' long-term interests at large.
- (b) The benefit to the sector by way of increased revenue collections due to various legal interventions, such as interpretation of statute regarding theft/misuse, etc., far outweighs the expenditure incurred on legal charges. In addition to the expenditure incurred for consumer related issues, the Review Petitioner has been constrained to take recourse to reviews before appropriate legal/quasi legal institutions to protect its RoE.

Commission's Analysis:

The Commission has observed that the legal charges incurred by the Review Petitioner have increased manifold due to increasing litigation by the Review Petitioner and most of such cases are against the consumers. It is a peculiar situation that the consumers are asked to reimburse the legal expenses which are incurred by the Review Petitioner to fight cases against the consumers. The Commission has observed in the impugned Tariff Order for FY 2006-07 that the consumers should not be over burdened. Further, it is noticed that the Review Petitioner has not submitted the complete details and the corresponding legal expenditure in its ARR petition or in subsequent submissions. In the absence of complete details of such expenditure, the Commission is not in a position to find out the expenses for the cases which are in the interest of consumer and those which are not in the interest of consumers. The Commission, therefore, has provisionally allowed 50% of the legal expenses incurred by the Review Petitioner for the FY 2005-06 i.e. Rs.0.96 crore against the total legal expenses of Rs.1.92 crore subject to final truing up based on the complete details to be furnished by the Review Petitioner. The Review Petitioner may, therefore, provide the complete details and the corresponding expenditure incurred for the FY 2005-06 which will be trued up in the next Tariff Order after prudence check.

Thus the Commission is of the view that there is no apparent error on the face of the record and the said issue is not admitted for review.

G. Interest on Loans.

The Review Petitioner has submitted that while the Commission has appreciated the Review Petitioner's pro-active efforts in swapping the high cost DPCL loan with cheaper loans, it has not incentivized the Review Petitioner. The

Review Petitioner further submitted that the swapping of the DPCL loan with cheaper loan has resulted in reducing the interest costs by more than Rs.10 crore in FY 2006-07 (9 months) which will be benefiting all consumers across Discoms. However, the full benefit of lower interest costs has not accrued to the consumers due to the other utilities in the sector not having exploited this potential of lowering costs and their higher debt servicing costs being allowed in their respective ARR. It is submitted on behalf of the Review Petitioner that this treatment of allowing only the actual lowered cost of loans is also contrary to the provisions of the National Tariff Policy which inter alia provides :

“Savings in costs on account of subsequent restructuring of debt should be suitably incentivized by the Regulatory Commissions..”

The Review Petitioner has requested that in accordance with the provisions of the Tariff Order the Review Petitioner be suitably incentivized for restructuring the Opening Balance Sheet Debt and reducing the over all cost of the Debt.

Commission Analysis :

The Commission is following the practice of allowing the actual rate of interest for the actual loans taken by the Discoms. Incidentally the other two Discoms have also prepaid the DPCL loan before the issue of the Tariff Order for FY2006-07. . In view of the above the Commission is of the opinion that there is no apparent error on the face of the record and therefore, the above issue is not admitted for review.

H. Depreciation

The Review Petitioner has submitted that as the issue of Depreciation is being sub-judice, the Petitioner is not raising it here. The Petitioner reserves its right to take up the issue of appropriate Depreciation rate depending on the Order of the Hon'ble Supreme Court.

I. Provisions written back – Non tariff income:

The Review Petitioner had offered “Provisions written back” amounting to Rs. 1.30 Cr. as income in FY 2005-06; this was on the basis of entire expenditure for FY 2004-05 being allowed in the ARR. However, the Hon'ble Commission has now re-opened the expenses of FY 2004-05 and denied the Petitioner's expenses aggregating to Rs. 19.73 Cr.. While the Petitioner has sought the restoration of these legitimately incurred expenses, in the event of the Hon'ble Commission denying these expenses (fully or partially), this income from 'Provisions written

back' which relate to the expenses being denied, should not be considered as Non Tariff Income for the FY 2005-06.

Commission's Analysis:

The Review Petitioner has not furnished the complete details of the 'Provisions Written back' which were considered by them as Non-Tariff income for FY 2005-06 in the ARR petition for FY 2006-07. The Commission has been allowing all the prudently incurred expenses of the Review Petitioner in each Tariff Order. Accordingly, the Commission has also considered the same Non-Tariff income for FY 2005-06 as offered by the Review Petitioner in the ARR, duly reconciled with their books of accounts. The Commission is of the view that this issue will be revisited again at the time of next truing up of FY 2005-06 subject to submission of complete details by the Review Petitioner.

Thus the Commission is of the view that there is no apparent error on the face of the record and the said issue is not admitted for review.

J. Carrying Cost

The Review Petitioner has submitted that the Commission has erred in revising the rate at which carrying cost on Regulatory Assets is allowed from 10.75% per annum to 9% per annum on the ground that the Hon'ble Appellate Tribunal for Electricity has so directed. It was contended that the reference to the rate of 9% per annum on Regulatory Assets in the Hon'ble Appellate Tribunal for Electricity Order was only related to the rate to be applied on the debt component of Regulatory Assets. Neither the determination of applicable rate of carrying cost nor the determination of debt equity ratio to be used for determining the composite rate of carrying cost was in question. The Review Petitioner has requested to allow carrying cost at the originally allowed rate of 10.75% and restore Rs.1.29 crore expenses in the ARR of FY 2006-07.

Commission's Analysis:

The Commission has considered the carrying cost on the balance Regulatory Asset as specified by the Commission in the previous Tariff Orders considering the weighted average cost of funds with debt equity ratio of 70:30. For allowing of carrying cost (i.e. weighted average interest), the Commission has followed the Hon'ble Appellate Tribunal for Electricity Order dated 9.6.2004 on the issue of creation of Regulatory Assets which is reproduced below: -

"... direct the Regulatory Commission to allow 9% interest, as it has already allowed by the Commission in Chapter 3.11.1 of its Tariff Order, for deprivation of the amounts which were ordered to be created and retained as a Regulatory Asset from the date of Tariff Order and till it is amortised and to

reimburse all expenses and incidental charges incurred in this behalf by the Discoms."

Thus, the Commission is of the view that there is no apparent error on the face of the record and therefore the said issue is not admitted for review.

K. Reactive Energy

The Review Petitioner had submitted an additional affidavit on 21st November 2006, wherein the Petitioner raised an additional point for the payment for 'Reactive Energy Charges'. The Review Petitioner submitted that they have provided adequate reactive compensation in the system by installing HT & LT capacitor banks. The same has been installed keeping in view the peak load of the Petitioner. The Petitioner states that it strictly follows NREB guidelines for switching of the capacitor banks etc. It is further submitted that the frequent operation of the Under Frequency Relays (UFR) in the system throws off the bulk loads. The capacitor banks trip at such instances leading to reactive power drawl from the system at lower loads as the loads increase gradually after the supply is restored and the capacitor bank is switched 'ON'. In view of the above, the Petitioner has requested that the legitimately incurred reactive energy expenses amounting to Rs 0.74 crore for FY2005-06 and Rs 0.77 crore for FY 2006-07, may be allowed to the Petitioner.

Commission's Analysis

The Commission reiterates its earlier stand on the reactive energy charges paid by them to DTL. The Commission has elaborately dealt with the treatment of reactive power charges in the Review Order issued in the month of November 2003 which is reproduced below:

"...The Tariff cannot be used to fund drawl of reactive power from Grid due to non-availability of requisite capacitors in their own system. The Commission is of the opinion that the reactive power drawl from the Grid from the Discom would not be required if the Discoms ensure that the requisite capacitor banks as per NREB are installed and kept operational. The Commission would also like to highlight the fact that if the additional capacitor expenditure is required to be incurred by the Discoms towards the installations of requisite capacitor banks, the Discoms may approach the Commission for the approval of capital expenditure and the corresponding expenditure as considered prudent by the Commission would be considered in the ARR."

Further, in the Tariff Order for FY 2006-07 the Commission has mentioned the following for reactive power:

"As regards the reactive energy charges the Petitioner has considered the reactive energy charges as a part of power purchase

expenses. The Commission has elaborated the issue in detail in the Review Order issued in the month of November 2003 on the Review Petition filed by the Petitioner. Based on the same philosophy, the Commission has not considered any expense towards the reactive energy charge imposed by the TRANSCO."

Thus, the Commission is of the view that there is no apparent error on the face of the record and therefore, the said issue is not admitted for review.

On the basis of the records produced before the Commission during the processing of the ARR and Tariff Petition of the Petitioner, in the present Review Petition and the averments made before the Commission, the Review Petitioner has not been able to make out any case which would endorse a case for review of the Commission's Order dated September 22, 2006 issued for the purpose of determining the Tariff of the Petitioner.

However, the Commission in this Order has reiterated its Order of 22nd September 2006 and has further clarified the Commission's stand on issues raised in this Review Petition. The Commission would consider issues pertaining to employees cost, interest on notional loans, expenses on legal charges, provisions written back with respect to non-tariff income and capital expenditure based upon the requisite details to be submitted by the Licensee by means of truing up in the next Tariff Order, as has been done in the earlier Review Orders and Tariff Orders. It would, therefore, be seen that the Petitioner has not been able to make out a case for the review of the impugned Order. The Review Petition is accordingly dismissed.

The Commission orders accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN

LIST OF RESPONDENTS/STAKEHOLDERS OF NDPL FOR
REVIEW PETITION FOR FY 2006-07

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7.	Citizens	-
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12	S.S. Malhotra General Secretary	Jan Kalyan Samiti (Regd.) C-4/80, Yamuna Vihar, Delhi-110053.
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14.	Rajan Gupta	Bharatiya Mazdoor Sangh 5239 Ajmeri Gate, Delhi.
15.	O.P. Kapoor President	Mayapuri Industrial Welfare Association (Regd.) Miwa Bhawan, Central Park Block "B", Mayapuri Phase-I, New Delhi-110064.
16.	Anand Dev Chief Elect. Dist. Engineer	Northern Railway Hd. Qrs. Office, Baroda House, New Delhi-110001.
17.	K.V. Panicker	Flat No. 449, Pocket- Q, Dilshan Garden, Delhi-96.
18.	Krishan Gulati Lt. Col. (Retd.) Hon. Secretary	Indian Red Cross Society Red Cross Bhawan, Golf Links, New Delhi-110003.
19.	Satish Kumar	Delhi Metro Rail Corporation Ltd. 3 rd floor, NBCC Place, Pragati Vihar, Bhishma Pitamah Marg, New Delhi-110003.

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22.	Rajinder Singh	S-171/132, Rangpuri Pahari, New Delhi-110037.
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24.	J.C. Rajput	C-9, MIG Flats, Prasad Nagar, New Delhi-110005.
25.	Milap Choraria National Convenor	Movement for Accountability to Public (MAP), B-5/52, Sector-7, Rohini, Delhi.
26	G.C. Goyal	A-695, Sarita Vihar, New Delhi-110076.
27	Neeta Gupta	A-17, Antriksh Apartments, New Town Co-op. Group Housing Society Ltd., Plot No. D-3, Sector –14 –Extn., Rohini, Delhi-110085.
28.	Ram Bhaj General Secretary	Raja Garden Residents Welfare Association (Regd.) 129, Raja Garden, New Delhi-110015.
29.	Sandeep Kapoor Gen. Secretary	Narela Relocation Industrial Welfare Association (Regd.) B-2595, DSIDC Complex, Narela, Delhi-110040.
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31.	S.R. Abrol	L-II-91B, DDA, LIG, Kalkaji, New Delhi-110019.
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33.	R.N. Gupta	Federation of Delhi Small Industries Association, Munshi Ram Gupta Marg, A-72, Naraina Industrial Area, Phase-I, New Delhi-110028.
34.	M.L. Mohanty Chairman	Delhi Citizens Front 92, Pocket –3, Sector-2, Rohini, Delhi-85.
35.	Mallika Singh Sr. Assistant Secretary	PHD Chamber of Commerce and Industry PHD House, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016.
36.	G.D. Gupta G. Secretary	Delhi State Villages Development & Welfare Sangh, B-8/4, Phase-I, Badli Industrial Area, Bawana Road,

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