

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Appeal No. 82 of 2007

Dated : 10th Jan. '08

**Present : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

In the matter of:

Pragati Power Corporation Limited

Himadri

Rajghat Power House Complex,

New Delhi

... Appellant

Versus

1. **Delhi Electricity Regulatory Commission**
VINIYAMAK Bhawan, C Block,
Shivalik, Malviya Nagar,
New Delhi – 110 017.
2. **Delhi Transco Ltd.**
Shakti Sadan,
Kotla Road,
New Delhi.
3. **BSES Rajdhani Power Ltd.**
BSES Bhawan,
Nehru Place,
Delhi – 110 019.

4. **BSES Yamuna Power Ltd.**
Shakti Kiran Vihar,
Karkardooma,
Delhi – 110 092.
 5. **North Delhi Power Ltd.**
Lines, Kingsway Camp,
Delhi – 110 009.
 6. **P. L. Tuli**
Bijli Consumer Society,
113, Old Gupta,
Delhi – 110 009.
 7. **Mallika Singh**
Sr. Assistant Secretary
PHD Chamber of Commerce and Industry
PHD House,
4/2, Siri Institutional Area,
August Kranti Marg,
New Delhi – 110 016.
 8. **Vijay Kumar Gupta**
BN 75, (W)
Shalimar Bagh,
Delhi – 110 088.
 9. **Ravi Dev Gupta**
President (Delhi State Unit),
Akhil Bhartiya Grahak Panchyat
- ... Respondents

Counsel for the Appellant : Mr. M. G. Ramachandran, Advocate
Mr. Anand K. Ganeshan, Advocate
Ms. Swapna Seshadri, Advocate

Counsel for the Respondents: Mr. S. B. Upadhyaya, Sr. Advocate
Mr. S. M. Sharma, Advocate
Mr. K. M. Verma, Jt. Director (Law),
DERC

Mr. Anuj Berry, Adv. and
Mr.V.P.Singh, Advocate for BRPL &
BYPL

Mr. Amit Kapur, Advocate
Mr. Mansoor Ali Shoket, Advocate
Mr. Rahul Dhawan, Advocate
Mr. Avijeet K. Lala, Advocate for
NDPL

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

The appeal is directed against the order dated 22.09.06 passed on the ARR tariff petition filed by the appellant for the year 2006-07 and the order dated 14.03.07 passed in Petition No. 52 of 2006 filed by the appellant seeking review of the tariff order dated 22.09.2006.

2. The appellant is a generating company having a combined cycle power project with installed capacity of 330 MV comprising of two gas turbines each of 104 MW and one steam turbine of 122 MW. The appellant has been generating electricity and selling the same to the respondent No.2 namely Delhi Transco Limited under

the power purchase agreement dated 30.03.2007. After the tariff order dated 22.09.06 was passed the appellant asked for review of the tariff order so far as it related to (i) heat rate norm, (ii) rebate on prepayment allowed to respondent No.2 and (iii) interest on loan. The review petition, being No. 52 of 2006, sought reconsideration of these three aspects. The review having been declined the present appeal has been preferred..

(i) Heat Rate:

The Commission fixed the heat rate for the power project of the appellant at 2000 Kcal/kWh for the financial years 2005-06 and 2006-07 for the combined cycle operation and 2900 Kcal/kWh for the open cycle operation. The appellant claims that it should have been 2018 Kcal/kWh for 2005-06 and 2052 Kcal/kWh for 2006-07 for combined cycle operation and 2986 Kcal/kWh for open cycle operation. The appellant alleges that the plant was facing fuel shortage and several trippings due to grid disturbance which lowered the performance plant load factor and increase in the heat rate of the plant.

(ii) Rebate on timely payment:

The appellant is required to give rebate of 2% per month to the respondent No.2 in case of timely payment for purchase of electricity. The grievance of the appellant is that the respondent

No.1, Commission, in the order dated 22.09.06 did not allow a rebate as a final outflow in the calculation of revenue requirement of the appellant on the ground that the same was being compensated by interest allowed on working capital. In the review petition the appellant had pointed out that the interest on working capital allowed for two months receivables is @ 10.25% p.a. with monthly rest which works out effectively to 20.5% p.a. whereas a rebate on 2% per month works out to 24% p.a. and that there was a significant difference between the two interests. The appellant wants the rebate given to the respondent No.2 to be recognized as part of revenue requirement.

(iii) Interest on loan:

The Commission has calculated interest paid on loan obtained from Power Finance Corporation at Rs.52.12 Crores. The appellant says that the interest actually paid, as per audited accounts, was Rs.55.58 Crores. The appellant claims that Rs.55.58 Crores and not Rs.52.12 Crores be considered as the amount required to be recovered as expenditure on account of interest on loan.

3. The Commission defends the two orders although no formal reply to the appeal has been filed.

4. We have heard the counsel for the two sides as well as counsel for North Delhi Power Limited (NDPL), BSES Yamuna Power Limited (BYPL) and BSES Rajdhani Power Limited (BRPL) who were added as respondents in the appeal.

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. 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 trueing up exercise and in the subsequent tariff orders.

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.

7. So far as interest on loan is concerned, the Commission has assured the appellant to consider the matter in the next tariff filing under the MYT framework. The Commission has stated in the review order that the appellant could not submit the detailed break up of the financial charges, the premium on re-structuring of loan and the rebate allowed by Power Finance Corporation and accordingly the revised figure of interest paid could not be taken into account. The Commission said as under:

“However, if it has caused undue under recovery of interest expenses the petitioner is at liberty to provide necessary details in support of his claims to the satisfaction of the Commission during the subsequent tariff filing under MYT framework. The Commission would consider the variation in interest expenses, if any, after verification of the necessary details during the truing up of expenses.”

8. We, therefore, need not make any further orders so far as interest paid on loans is concerned.

9. In view of the above findings, the appeal is allowed in part with directions in paragraph 5 to 7 above.

Pronounced in open court on this **10th day of January, 2008.**

**(Ms. Justice Manju Goel)
Judicial Member**

**(A. A. Khan)
Technical Member**

The End