

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

**Review Petition No. 2 of 2008
in Appeal No. 81 of 2007**

Dated: May 9, 2008

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

Indraprastha Power Generation Co. Ltd. -Review Petitioner(s)

Versus

Delhi Electricity Regulatory Commission & Ors. -Respondent(s)

Counsel for the Review Petitioner(s) : Mr. M.G. Ramachandran with
Mr. Anand K. Ganesan and
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Mohit Jolly for NDPL
Mr. R.K. Mehta with Mr. Mragank for
DERC
Mr. V.P. Singh and Mr. Anuj Berry for
BRPL &BYPL
Ms. Shradha Jain for DTL

ORDER

1. The petitioner, who is the appellant in the appeal no. 81 of 2007, has filed an application under section 122(2) of the Electricity Act, 2003 seeking to review and clarification of the order dated 10.1.08 passed by this Tribunal in respect of the following:

(a) The directions in the operative part of the order at paragraph 15 concerning station heat rate and in paragraph 16 relating to rebate for timely payment are to be made applicable not only for the FY 2006-07 but also for truing up for FY 2005-06 and all earlier years.

(b) The applicant has claimed that the impugned order does not address the issue related to PLF target for recovery of fixed cost in respect of Indraprastha Power Station, Rajghat Power Station and Indraprastha Gas Power Station. The petitioner states that the Commission's tariff order has fixed the station wise generating target and calculated the fixed cost and variable cost per unit based on the above generation target. It is further stated that in the concluding paragraphs of the tariff order, the Commission had wrongly taken the fixed cost recovery equivalent to higher target availability fixed for payment of incentive. It says that the Commission's tariff order is inconsistent in its concluding paragraphs as the Commission had taken for the purpose of fixed cost recovery target availability at a higher level though the State Commission itself has fixed the target for recovery of fixed cost at a lower level. The Petitioner requests for removal of discrepancy.

2. We have heard the learned counsel on behalf of petitioner and the respondents. In respect of issue 1(a) stated above, it is clarified that the appeal has challenged the impugned order dated 22.9.06 vide which the Commission had decided the ARR and tariff applicable to the appellant (the present petitioner) for generation and sale of electricity from its three power plants for the FY 2006-07. The petitioner had also filed a review petition before the Commission being no. 54 of 2006 which was dismissed vide the impugned order dated 30.3.2007. It is made clear here that the appeal was confined to the tariff for the FY 2006-07 and truing up of the financial for the previous year i.e. 2005-06. The impugned order approving the Annual Review Requirements (ARR) and approval of tariff for the period 2006-07 by the Commission necessarily involved truing up exercise of the tariff order for the previous year. The Commission has

undertaken truing up using the provisional accounts for the year 2005-06 and in various technical sessions with the petitioner had validated the data submitted.

3. The analysis of ARR against the tariff petition 02 of 2006 for FY 2006-07 was carried out by the Commission. The Commission stated to have held various technical sessions with the petitioner to validate the data submitted and was asked to submit the actual data for FY 2005-06 based on audited account. The Petitioner had submitted actual's for FY 2005-06 based on provisional accounts of 1st April, 2005 to September, 2005. The six month's data was taken as the basis for working out the revised estimate for the FY 2005-06. The truing up exercise involved reviewing the revised estimates with prudence check by the Commission and would lead to re-fixation of some of the expenses and revenue for FY 2005-06. The appeal is related to the tariff order for FY 2006-07 and truing up for 2005-06 . The Tariff Order for 2005-06 had already attained finality as it was not challenged by the Petitioner and only the truing up of the revenue and the expenses based on the actual data as well as its scrutiny by the Commission remained to be done.

4. In view of the above in our judgment and order dated 10.01.2008 the consideration of issues concerning the Heat Rate and Rebate on timely payment was limited only to the tariff order for FY 2006-07 and not for 2005-06 or earlier years. The judgment and order has made reference to 2005-06 only for analyzing the issues raised for 2006-07. We therefore, reject the contentions of the petitioner for applicability of our decision on station heat rate and rebate for timely payment for FY 2005-06 or for earlier years.

5. As regards the issue raised in para 1(b) above it is clarified that full fixed recovery is only to be tagged to target availability whereas the payment of incentive is related to targeted PLF as per the relevant regulations and the operations norms. The PLF derived from the gross generation from the station cannot be treated as target PLF. The issue raised is covered in paras 18 and 19 of our order.

6. The Appellant had stated that the total fixed costs estimates as per the Petitioner's submissions and as allowed by Commission has been summarized in table 3.20 of para 3.13.7 of the impugned tariff order. The said table reflecting the total fixed costs estimates is based on the PLF accepted by the Commission based on gross generation from tables 3.4, 3.7 and 3.10 of the impugned order for three generating stations. The petitioner further points out that the aforesaid fixed cost estimates are inconsistent with the Commission's decision to provide recovery of fixed costs based on target availability of 50% for IP Stations and 70% for GTPS etc. The Petitioner has also pointed out that it has in its Appeal that it has already sought clarification from the Commission for this mismatch and no response has been received so far. The learned counsel for the Commission Mr. R.K. Mehta has undertaken to ensure consideration and disposal of the aforesaid clarification.

8. Let the Commission dispose of the prayer for clarification made by the appellant. We hope that the appellant will be satisfied by the Commission's clarification. We dispose of the Review Petition no. 2 of 2008 while providing the appellant with yet another opportunity to make an appropriate application before us in case it is not satisfied with the Commission's clarification.

(Manju Goel)
Judicial Member

(A.A. Khan)
Technical Member