BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT AHMEDABAD

PETITION NO. 1022 OF 2010

In the matter of:

Clarificatory Petition under section 94 of the Electricity Act,2003 read with Regulations 80, 81, 82 and 83 of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking clarifications/ rectifications of the Order dated 31st March,2010 in Case No.988/2010 filed for Annual Performance Review (APR) of FY 2009-10 and estimation of Aggregate Revenue Requirement (ARR) for FY 2010-11.

Petitioner : Torrent Power Limited (TPL)
Torrent House, Ashram Road,
Ahmedabad.

Coram :

Dr P.K. Mishra, Chairman
Shri Pravinbhai Patel, Member (Tech)
Dr.M.K.Iyer, Member(Fin)

ORAL ORDER

1. The matter was kept for hearing on 12.10.2010. When the matter was called out, Shri Samir Shah along with Shri Chetan Bundela was present on behalf of the petitioner.

2. Shri Samir Shah, on behalf of the petitioner, submitted that the present petition is filed under Section 94 of the Electricity Act,2003 read with Regulations 80, 81, 82 and 83 of the Conduct of Business Regulations,2004 notified by the Commission. He submitted that the petitioner prayed for clarification on some issues and rectification in some of the decisions taken by the Commission in the Order dated 31st March,2010 in petition No.988/2010 which are as under:

Prayer for clarification:

(i) Any variation in employee expenses due to wage revision and variation in R&M expenses due to deferment of expenses and other factors will be treated as uncontrollable at the time of truing-up.

(ii) During the truing-up, the interest will be re-calculated based on the working capital requirement arrived on actual values of variable cost, power purchase expenses, revenue, etc. as per the Regulations of the Commission.

(iii) Gains/Losses on account of variation in performance of auxiliary consumption and secondary fuel oil consumption will be allowed with respect to the values approved in the MYT order during the truing-up.

(iv) During the truing-up, non-tariff income will be allowed as per actual.

(v) During the truing-up, actual sales and revenue will be considered.

(vi) Gains/Losses on account of Station Heat Rate will be allowed as proposed by the petitioner.

Prayer for Rectification in Order dated 31st March, 2010 in Petition No.988/2010.

(i) Rectification of Income tax calculation on the grossed up RoE to earn post tax RoE of 14%.

(ii) Allow higher transit losses.

(iii) To correct the errors pertaining to the loan requirements and interest cost thereon for financial year 2009-10 and 2010-11.

(iv) Re-determine the wheeling charges in terms of capacity reserve and allocating the charges between HT and LT in accordance with the methodology provided by the petitioner to specify the provisions for delayed payment charges in the Tariff Schedule of TPL, the distribution licensee of Ahmedabad.

2.1 He submitted that there were some errors in the order dated 31st March, 2010 passed by the Commission in Petition No.988/2010, which will affect the petitioner in their Annual Revenue Requirement. Moreover, some of the claims made by the petitioner were not clarified properly in the order passed by the Commission. Therefore, the petitioner desires to get clarified and rectified the order of the Commission to that extent.

2.2 He submitted that as per section 94(1)(f) of the Electricity Act,2003, the Commission is empowered to review the order passed by the Commission. Regulation 80, 81 and 82 of the Conduct of Business Regulations provide inherent power to the Commission to make such order which is necessary for end of justice. Regulations 83 of the Conduct of Business Regulations provide power to the Commission to rectify any defect or error in any proceedings before it. Thus, the

Commission has power to clarify and rectify the defects of the order passed by the Commission in Petition No.988/2009.

2.3 He further submitted that the issue regarding rectification of calculation of income tax and allowing transit loss at higher percentage were also challenged in Appeal by them which was filed after filing this petition. He submitted that the aforesaid issues were already decided by the Hon'ble Appellate Tribunal for Electricity in Appeal No.68/2009 vide its order dated 22nd March, 2010. The Commission had also filed a review petition against the same but the petitioner was unaware of the same when this petition was filed by them.

3 The Commission has received a letter from Shri Amarsinh Chavda, stating that he came to know from the website that the petitioner has filed a petition against the order passed by the Commission in Petition No.988/2010. He was one of the objectors in the said tariff petition. He requested the Commission that all objectors should be allowed to join the hearing of the said petition.

4 We have carefully considered the submissions made by the petitioner. The petitioner has filed the present petition under Section 94 of the Electricity Act, 2003 and during the hearing, he relied on section 94(1)(f) which reads as under:

94. Powers of Appropriate Commission *– (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a Civil Court*

under the Code of Civil Procedure,1908 (5 of 1908) in respect of the following matters, namely:-

(f) reviewing its decisions, directions and orders;

The above section does not contemplate clarification and rectification of the order.

4.1 Regulations 80, 81 and 82 of the Conduct of Business Regulations are pertaining to inherent powers of the Commission to pass orders, as may be necessary to meet the ends of justice. Regulation 83 of the Conduct of Business Regulations provides power to the Commission to rectify any defect or error in any proceedings before it which pertains to the proceedings which is going on. Once the proceeding in any case/ petition is completed, and final orders and directions are issued the petitioner can file a review petition under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the Conduct of Business Regulations, 2004 or the same can be challenged under section 111 of the Electricity Act, 2003 before the Hon'ble Appellate Tribunal. The current petition filed by the petitioner do not explicitly state the sections and facts to qualify as a review petition.

4.2 However, the petitioner, has, during the hearing, submitted that there is some error on the face of record and they want some clarification which was not dealt by the Commission in its order. Hence, they want review of the order passed by the Commission dated 31st March, 2010 to get justice.

4.3 During the hearing of the petition, the petitioner brought out certain errors as stated in para 2 above for rectification of the order and

sought the petition to be treated as a review petition. Hence, we decide to admit the petition.

4.4 It is a fact that any order passed by the Commission in the present petition will affect the ARR and APR decided by the Commission in Order dated 31st March, 2010, which is a part of the tariff exercise. It is therefore in the interest of justice that a chance of being heard is given to the objectors who had filed objections in petition No 988 of 2010. We, therefore, direct the petitioner to make such objectors party to the petition.

4.5 We also observe that the petitioner has filed the petition in the general category under serial no.24 under Fees, Fines and Charges Regulations notified by the Commission and paid fee of Rs.10,000/-. Now, the petitioner desires a review of the tariff order passed by the Commission. They have to pay fee as per Serial No.17 of Fees, Fines and Charges Regulations which is 10% of the fees paid at the time of original application for determination of tariff. We, therefore, direct the petitioner to pay necessary fee for rectifying the mistakes within 10 days from the date of receipt of this order.

5. We order accordingly.

6. The next date of hearing will be intimated in due course of time.

Sd/-	Sd/-	Sd/-
[**Dr. P.K. MISHRA**]	**[PRAVINBHAI PATEL]**	**[Dr.M.K.IYER]**
Chairman	**Member (Tech)**	**Member (Fin)**

Place: Ahmedabad
Dated: 22/10/2010