

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Ashok Basu, Chairman**
- 2. Shri G.S. Rajamani, Member**
- 3. Shri K.N. Sinha, Member**

**Review Petition No.4/2003  
In  
Petition No. 59/2001**

**In the matter of**

Review of order dated 1.11.2002 in Petition No.59/2001 for approval of Generation Tariff of Loktak HE Project

**And in the matter of**

Assam State Electricity Board

**Petitioner**

**Vs**

1. National Hydroelectric Power Corporation Ltd., Faridabad
2. Meghalaya State Electricity Board, Shillong
3. Department of Power, Govt. of Tripura, Agartala
4. Govt of Arunchal Pradesh, Itanagar,
5. Electricity Department, Govt. of Manipur, Imphal
6. Power & Electricity Department., Govt. of Mizoram, Aizawal
7. Department of Power, Govt. of Nagaland, Kohima

**Respondents**

The following were present:

1. Shri D.N. Deka, ASEB
2. Shri K. Goswami, ASEB
3. Shri V.K. Kanjlia, Executive Director, NHPC
4. Shri S.K. Agarwal, GM (Comml.), NHPC
5. Shri A.K. Srivastava, NHPC
6. Shri T.K. Mohanty, NHPC
7. Shri Sachin Datta, Advocate, NHPC

**ORDER  
(DATE OF HEARING 14.2.2003)**

This application for review filed under Section 12 of Electricity Regulatory Commissions Act, 1998 arising out of Commission's order dated 1.11.2002, is placed before us for admission.

2. National Hydroelectric Power Corporation Ltd. (NHPC), Respondent No.1 herein had filed Petition No.59/2001 for approval of generation tariff for Loktak Hydroelectric Project for the period from 1.4.2001 to 31.3.2004 based on terms and conditions of tariff notified by the Commission on 26.3.2001. The Commission in its order dated 1.11.2002 (sought to be reviewed) has approved generation tariff of Loktak HEP. The petitioner herein, ASEB, seeks review of some of the directions contained in the Commission's said order dated 1.11.2002.

### **O&M Expenditure**

3. The petitioner, ASEB has claimed that the Commission in its order dated 1.11.2002 in Petition No. 59/2001 allowed very high O&M expenses to Respondent No.1. The O&M expenses allowed by the Commission for different years of the tariff period are given here under:

<b>Year</b>	<b>O&amp;M Expenses (Rs. in crores)</b>
2001-2002	21.45
2002-2003	22.74
2003-2004	24.10

4. The petitioner submitted that O&M expenses, particularly those for the year 1996-97 and 1997-98 which form the basis for authorisation of above O&M expenses are abnormal and, therefore, should not have been allowed. The petitioner has submitted four case studies. In each of the case study, O&M expenses calculated by the petitioner on the data of alternative sets of basic norms considered by the petitioner, are less than the O&M expenses awarded by the Commission in its order of 1.11.2002. It is contended that, in view of this, O&M expenses authorised

need to be reconsidered. The petitioner further submitted that one of the reasons for steep hike in O&M expenses was very large employee cost, as the Respondent No.1 deployed excess manpower on this project. It has been stated that as per the settled norms of manpower planning, the power station should have about 210 employees both executives and non-executives. However, in the instant case, the Respondent No.1 deployed in total of 988 employees. It is submitted on behalf of the petitioner that O&M expenses ordered by the Commission would cast an additional burden of 2-3 crores per annum and has the effect of increasing the tariff from 57 Paisa/kWh to 87 Paisa/kWh.

5. We heard Shri D.N. Deka, on behalf of the petitioner at length on the above mentioned points during the hearing. The Commission's order dated 1.11.2002 extensively covered the points now raised in the review petition. O&M expenses allowed are based on norms decided by the Commission as contained in the notification dated 26.3.2001, after hearing all the stakeholders, including the petitioner herein. The petitioner has not pointed out any discrepancy in calculation of O&M expenses based on the said norms. The four alternative methods for calculation of O&M expenses suggested by the petitioner in the application for review have no legal basis and as such cannot be acted upon. Further, in accordance with notification dated 26.3.2001, the O&M expenses are considered to be abnormal when increase in a particular year is more than 20% over those of the previous year. In the course of proceedings before the Commission in Petition No. 59/2001, it was submitted on behalf of Respondent No.1, NHPC, that increase in O&M expenses during these two years was mainly on account of increase in employee cost, as a consequent to implementation of recommendations of 5<sup>th</sup> Pay

Commission in respect of its employees governed under Central DA pattern and also revision of wages of other employees governed by Industrial DA pattern with effect from 1.1.1997. The increase under the head Employee Cost was also on account of liberalised retirement benefits due to upward revision of gratuity limit to Rs.3.5 lakhs and implementation of medical scheme in the post-retirement period etc. These issues have been adequately examined by the Commission in its order of 1.11.2002 and increases were found to be justified as beyond the control of the Respondent No.1, though the Commission had also disallowed a part of employee cost claimed. The petitioner could not support its averment of deployment of excess manpower, by any data or empirical study. The representative of the petitioner could not point out that the surge in manpower deployment was of recent past.

6. In view of the above, we do not find any merit for review of the order on these counts since the prayer made is not within the purview of statutory framework prescribed under the Code of Civil Procedure for review of an order.

#### **Variation in Monthwise Design Energy**

7. The petitioner further submitted that in para 34 of order dated 1.11.2002, the month-wise design energy was not matching with the annual design energy of 448 MU. According to the petitioner, the total of month-wise design energy added up to 427 MU only, which required clarification/correction. We have perused the relevant data available on record and find that there are certain discrepancies in the month-wise details of design energy incorporated in the table, which are attributable to typographical errors. The representatives of the Respondent No.1, NHPC, who were

present, though without notice, accepted this position. The actual month-wise design energy, therefore, is given hereunder:

MONTH	ACTUAL DESIGN ENERGY (Gwh)
April	30.00
May	31.00
June	30.00
July	52.00
August	52.00
September	50.00
October	52.00
November	30.00
December	31.00
January	31.00
February	28.00
March	31.00
Total	448.00

8. The above details of design energy shall be substituted in the order of 1.11.2002, with all consequential implications, like the impact on payment of secondary energy charge, etc.

#### **Date of Effect of the Order**

9. The petitioner submitted that the Commission vide its order dated 1.11.2002 had granted tariff retrospectively for the year 2001-02 to 2003-04 which would impose additional financial burden on the petitioner, for the past period, and the additional tariff increased from 1.4.2001 could not be recovered from the retail consumers under the existing tariff policy. As such the petitioner, would face an irreparable loss. The petitioner requested to review the order dated 1.11.2002 to apply it prospectively.

10. As we have already noted tariff has been allowed based on the terms and conditions of tariff notified by the Commission on 26.3.2001, applicable with effect from 1.4.2001. The proposal in the petition itself sought approval of tariff for the tariff period beginning 1.4.2001. The Commission allowed in the past the Respondent No.1 to charge tariff on provisional basis, subject to adjustment after final determination of tariff in the petition(s) filed before the Commission. Thus, the said order dated 1.11.2002 cannot be said to be retrospective in operation in the strict sense, as the parties were fully in know that the tariff approved by the Commission was to take effect from 1.4.2001. Under these circumstances, the mere fact that tariff approved by the Commission is to apply from 1.4.2001, cannot be a cause for review of order dated 1.11.2002.

11. With the above observations, the application for review stands disposed at the admission stage.

**Sd/-**  
**(K.N. SINHA)**  
**MEMBER**

**Sd/-**  
**(G.S. RAJAMANI)**  
**MEMBER**

**Sd/-**  
**(ASHOK BASU)**  
**CHAIRMAN**

New Delhi dated the 24<sup>th</sup> February, 2003