

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri A.H. Jung, Member**

Review Petition No.46/2006  
in  
Petition No. 197/2004

**In the matter of**

Review of order dated 9.5.2006 in Petition No.197/2004, for approval of tariff in respect of Salal Hydroelectric Project for the period 1.4.2004 to 31.3.2009.

**And in the matter of**

National Hydroelectric Power Corporation Ltd. ... **Petitioner**

**Vs**

1. Punjab State Electricity Board, Patiala
  2. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
  3. Delhi Vidyut Board, New Delhi
  4. Uttar Pradesh Power Corporation Ltd., Lucknow
  5. Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
  6. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
  7. Power Transmission Corporation of Uttaranchal Ltd., Dehradun
  8. Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur
  9. Himachal Pradesh State Electricity Board, Shimla
  10. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
  11. Chief Engineer & Secy, Engineering Deptt. Chandigarh
  12. Power Development Deptt. Govt of Jammu & Kashmir, Jammu
- ...**Respondents**

Review Petition No.47/2006  
in  
Petition No. 47/2005

**In the matter of**

Review of order dated 9.5.2006 in Petition No.47/2005, for approval of tariff in respect of Uri Hydroelectric Project, for the period 1.4.2004 to 31.3.2009.

**And in the matter of**

National Hydroelectric Power Corporation Ltd. ... **Petitioner**

**Vs**

1. Punjab State Electricity Board, Patiala
2. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
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9. Himachal Pradesh State Electricity Board, Shimla
10. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer

11. Chief Engineer & Secy, Engineering Deptt. Chandigarh
12. Power Development Deptt. Govt of Jammu & Kashmir,  
Jammu ...**Respondents**

Review Petition No.68/2006  
in  
Petition No. 30/2005

**In the matter of**

Review of order dated 9.5.2006 in Petition No.30/2005, for approval of tariff in respect of Tanakpur Hydroelectric Project, for the period 1.4.2004 to 31.3.2009.

**And in the matter of**

National Hydroelectric Power Corporation Ltd. ... **Petitioner**

**Vs**

1. Punjab State Electricity Board, Patiala
2. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
3. Delhi Vidyut Board, New Delhi
4. Uttar Pradesh Power Corporation Ltd., Lucknow
5. Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
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10. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
11. Chief Engineer & Secy, Engineering Deptt. Chandigarh
12. Power Development Deptt. Govt of Jammu & Kashmir,  
Jammu ...**Respondents**

**The following were present:**

1. Shri S.D.Tripathi, NHPC
2. Shri Prashant Kaul, NHPC
3. Shri S.K.Meena, NHPC
4. Shri R.P.Goyal, NHPC
5. Shri R.S.Batra, NHPC
6. Shri T.K Mohanty, NHPC
7. Shri Naveen Samriya, NHPC
8. Shri C.Vinod, NHPC
9. Shri Ansuman Ray, NHPC
10. Shri T.P.S.Bawa, PSEB
11. Shri. R. K.Arora, HPGCL

**ORDER**  
**(DATE OF HEARING : 28.12.2006)**

**REVIEW PETITION NO.46/2006**

This application has been made by the petitioner, National Hydroelectric Power Corporation Ltd, (NHPC), a generating company, for review of order dated 9.5.2006 in Petition No. 197/2004, determining tariff in respect of Salal

Hydroelectric Project (hereinafter referred to as “the generating station”), for the period 1.4.2004 to 31.3.2009.

2. The petitioner has contended that there are certain fundamental errors in the said order dated 9.5.2006 and accordingly has sought review of the order on certain aspects, discussed in the succeeding paras.

### **INTEREST ON LOAN**

3. The Commission in its order dated 9.5.2006 held that when depreciation recovered in a year exceeded the amount of repayment during that year, the entire amount of depreciation was to be considered as repayment of loan for computation of interest on loan component of tariff. According to the petitioner, the conclusion arrived at by the Commission in this regard is in derogation of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004 (hereinafter referred to as “the 2004 regulations”).

4. We have considered the submission made by the petitioner. The Commission in the said order dated 9.5.2006, after elaborate discussion of the historical background, the provisions of the 2004 regulations including the regulations relied upon by the petitioner, as discussed in paras 8 to 22 of the said order dated 9.5.2006, concluded that the entire amount of depreciation was considered as repayment of loan for tariff computation when depreciation recovered in a year was more than the amount of repayment during that year. This methodology has been applied uniformly in all cases of tariff determination for the period 2004-09.

5. While the petitioner laid much stress on the Commission having deviated from its own Regulation in the above respect, we find that in this particular case, there is no such deviation. As per the submissions of the petitioner, there is zero loan repayment during the year 2005-06. Thus, it is a case of moratorium, for which situation the Regulation clearly provides that depreciation amount for the year should be taken as the loan repayment, for the purpose of tariff. This is exactly what the Commission has actually done.

6. It is also seen that the anomalous situation (for the petitioner) has arisen because of loan repayments in the previous tariff periods much faster than what has been contemplated in the tariff notifications/orders for those periods. We are not aware about the compulsions, if any, on the petitioner for having contracted loans of short tenures resulting in loan repayments much in excess of provisions regarding depreciation and AAD is tariff. In any case, it would not be appropriate to try to compensate the petitioner in the present tariff period for difficulties faced due to past decisions of his own.

7. The Commission has the powers of review as conferred on a civil court under the Code of Civil Procedure under Section 114 read with Order 47 thereof. As laid down in Rule 1, Order 47, the conditions precedent for review of an order are:

- (a) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when the order was made; or
- (b) On account of some mistake or error apparent on the face of record, or

(c) Any other sufficient reason.

8. The petitioner's prayer for review, when seen in the light of facts discussed above, is not maintainable, since it does not fall in any of the statutory grounds, for the decision has been arrived at through the deliberate process of decision-making on consideration of the provisions of the 2004 regulations.

### **DEPRECIATION**

9. The petitioner has sought review of depreciation on the ground that there was an error in computation of the balance useful life of the generating station. As review of the methodology for computation of the balance useful life of the generating station has been already turned down by the Commission in its order dated 30.8.2006, review of depreciation approved by order dated 9.5.2006 is also not called for.

### **ADVANCE AGAINST DEPRECIATION**

10. Advance Against Depreciation is directly relatable to repayment of loan and depreciation recoverable. In view of our decision not to allow review of interest on loan and depreciation components of the annual fixed charges, review of Advance Against Depreciation too is not maintainable, even though the petitioner's claim under this head is less than Advance Against Depreciation allowed by order dated 9.5.2006.

### **O&M EXPENSES**

11. The 2004 regulations provide that O&M expenses for the existing generating stations, in operation for five years or more in the base year of 2003-04 are to be derived based on actual expenses for the years 1998-99 to 2002-03,

excluding abnormal expenses, if any. The normalized expenses so arrived at are taken as expenses for the year 2000-01 and are escalated successively @ 4% every year to arrive at O&M expenses for the relevant year. This methodology was followed while allowing O&M expenses by order dated 9.5.2006 and certain expenses, considered to be abnormal were excluded for computation of normalized O&M expenses.

12. The petitioner has submitted that the Commission, while working out the normative O&M expenses to be allowed in the tariff for 2004-09, has excluded the actual expenditure under the category “Administrative Expenses”, “Employees Cost”, “Productivity Linked Incentive” and “Corporate Office Expenses” incurred during the years 1998-99 to 2002-03, thereby putting the petitioner to loss. It is averred that Commission has ignored the fact that the disallowed expenditure pertains to the previous period and has already been incurred by the petitioner, as certified by the statutory auditors. The petitioner has, therefore, sought review of the O & M expenses.

**Administrative Expenses- Materials Written Off**

13. The petitioner has submitted that losses due to obsolescence of stores and sale of assets are normal business processes and should be included in O&M expenses. In our opinion, any losses of stores and other assets can be avoided by exercise of due diligence and proper care. The petitioner has not established that the losses occurred despite the necessary care and attention. Therefore, the losses of stores and other assets on the part of the petitioner cannot be considered for normalization. These losses are not to be charged to the beneficiaries. The exclusion of the expenses on this count during 1998-99 to 2002-03 for normalization does not warrant review.

### **Expenditure on VRS**

14. The expenditure on VRS has not been allowed for normalisation because these expenses are not of recurring or regular nature and vary from year to year. Accordingly, we are of the considered view that the expenditure on VRS incurred during 1998-99 to 2002-03 cannot be taken into account for working out the normative O&M expenses for 2004-09 and review sought on this ground is ruled out. The petitioner is not in a position to give the details of likely expenses on account of VRS during the period in question because it is not certain about the number of employees likely to take VRS. The petitioner has, therefore, prayed that the actual expenses incurred during 1998-99 to 2002-03 may be reimbursed. The present prayer does not flow from the petition filed for approval of tariff for the period 2004-09. However, the petitioner may approach the Commission post facto with complete details of expenditure and savings on account of VRS, if so advised, for the period 2004-09, in accordance with law, for appropriate decision.

### **Productivity Linked Incentive**

15. The petitioner has submitted that Productivity Linked Incentive being a perquisite, is part of wages and, therefore, qualifies for consideration as “employee cost” for the purpose of normalisation. The Commission has consistently taken the view that that the expenses on account of Productivity Linked Incentive cannot be allowed as part of O&M expenses for tariff purposes. The incentive paid by the petitioner to its employees for maintaining higher availability of the generating station and thereby achieving higher productivity, is not considered towards employee cost since it entitles the petitioner to earn incentive in the form of secondary energy and improved capacity index. These expenses should, therefore, be met by the petitioner

from the incentive earned and cannot be overloaded. Review of the order 9.5.2006 on this count is also not maintainable.

### **Corporate Office Expenses - Ex Gratia**

16. The petitioner has submitted that ex gratia expenditure is on account of Productivity Linked Incentive paid to employees of Corporate Office and same should be included in averaging of O & M expenses. As already observed by us, incentive paid to employees for maintaining higher availability of the generating station cannot form part of O & M expenses. On parity of reasoning, productivity linked incentive paid to the employees of Corporate Office too cannot be considered as part of O&M expenses for the purpose of tariff.

17. The reasons considered above have been duly taken note of in the order dated 9.5.2006, presently sought to be reviewed. Accordingly, the petitioner's prayer for review of O&M expenses is disallowed.

### **PUBLICATION EXPENSES**

18. The petitioner has filed an affidavit in Petition No.197/2004 on 22.5.2006 (after issue of the order sought to be reviewed) in support of expenditure amounting to Rs.2,08,620/- incurred on publication of notices therein and has claimed reimbursement of the expenditure. The Commission as a matter of policy has allowed recovery of such expenditure. Therefore, without going into the technicalities, this expenditure incurred by the petitioner, is allowed to be recovered from the beneficiaries in one instalment in proportion of the Annual Fixed Charges payable by them for the year 2004-05 for the generating station.



## **FILING FEE**

19. As regards refund of filing fee of Rs.25 lakh claimed by the petitioner, the matter has already been considered at para 113 of the order dated 9.5.2006. No fresh order in this regard is necessary.

## **REVIEW PETITION NO. 47/2006**

20. The Commission by its order dated 9.5.2006 in Petition No.47/2005 had approved tariff in respect of Uri Hydroelectric Project for the period 2004-09. The petitioner seeks review of the said order on the similar grounds as urged in Review Petition No.46/2006. For the reasons discussed above, review of order dated 9.5.2006 in Petition No.47/2005 is not maintainable. However, the petitioner shall be entitled to recover an amount of Rs.2,00,430/- incurred on publication of notices in newspapers in Petition No.47/2005 in keeping para 18 above.

## **REVIEW PETITION NO.68/2006**

21. The Commission by its order dated 9.5.2006 in Petition No.30/2005 had approved tariff in respect of Tanakpur Hydroelectric Project for the period 2004-09. The petitioner seeks review of the said order also, generally on the similar grounds as urged in Review Petition No.46/2006, as regards interest on loan, depreciation, Advance Against Depreciation. For the reasons discussed above, review of order dated 9.5.2006 on these counts in Petition No.30/2005 is not maintainable.

22. In addition, the petitioner has sought review of depreciation and O&M expenses, with some additional grounds.

## **O&M EXPENSES**

23. For the reasons discussed in paras 13 to 16 above, review of O&M expenses, under the heads “Administrative Expenses”, “Expenditure on VRS”, “Productivity Linked Incentive” and “Corporate Office Expenses – ex gratia Payments”, is not maintainable. As regards the other two heads, the position is discussed in the succeeding paras:

## **Consumption Of Stores and Spares**

24. The amounts claimed towards consumption of stores and spares by the petitioner during the years 1998-99 to 2003 and that considered by the Commission for normalisation of O&M expenses are as follows:

(Rs. In lakh)

|                             | <b>1998-99</b> | <b>1999-00</b> | <b>2000-01</b> | <b>2001-02</b> | <b>2002-03</b> |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|
| As claimed                  | 66.28          | 83.32          | 99.55          | 121.63         | 119.33         |
| As considered by Commission | 66.28          | 83.32          | 99.55          | 121.63         | 39.56          |

25. The petitioner has submitted that there is an error in computing O&M expenses on account of consumption of stores and spares as the Commission has not considered the amount of 119.33 lakh claimed under the head for the year 2002-03, but has considered only an amount of Rs.39.56 lakh which pertains to actual spares consumed during the year 2002-03.

26. The Commission allowed an amount of Rs.39.56 lakh against the total claim of Rs.119.33 lakh because while submitting information regarding actual consumption of stores and spares vide affidavit dated 17.4.2006, the petitioner gave details of spares consumed for an amount of Rs.39.56 lakh only. Thus, this amount was considered for computation of O&M expenses. However, in view of

the fact that in addition to amount of Rs.39.56 lakh of stores and spares considered by the Commission in the order dated 9.5.2006, stores and spares worth to Rs.79.77 lakh were also consumed during the year and needed to be taken into account. For this reason, case for review of O&M expenses on this count is made out.

### **Interest On Settlement Of Old Contracts**

27. The petitioner claimed an amount of Rs.379.27 lakh during the year 1999-2000 towards interest on settlement of old contracts. The petitioner has stated that this type of expenses have been claimed and allowed earlier while approving additional capitalisation for the period 2001-04. This amount was not considered towards normalisation of O&M expenses as these expenses, by their very nature are not recurring expenses. At the hearing, the petitioner explained that in keeping with its corporate accounting policy, interest on settlement of old contracts was not claimed while seeking approval for additional capitalisation. However, it was agreed that the above expenditure is not in nature of revenue expenses. The petitioner, therefore, pleaded that since the expenditure has actually been incurred, its reimbursement may be allowed as one time payment/settlement. This stand taken by the petitioner obviates the need for review of O&M expenses.

28. We have found above that review of order dated 9.5.2006 of O&M expenses on account of discrepancy in amount of consumption of stores and spares during 2002-03 is called for. However, for this reason, we do not consider it necessary to re-hear the original petition particularly when the parties have been heard on merits of the claim. Therefore, we take this opportunity to rectify

the discrepancy in computation of O&M expenses to be considered for tariff for the period 2004-09. In supersession of O & M expenses allowed in the order dated 9.5.2006, the petitioner shall be entitled to claim O & M expenses as given hereunder:

(Rs. In lakh)

| Year         | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|--------------|---------|---------|---------|---------|---------|
| O&M expenses | 2164    | 2250    | 2340    | 2434    | 2531    |

### **DEPRECIATION**

29. The petitioner has sought review of depreciation on the ground that there was an error in computation of the balance useful life of the generating station. As review of the methodology for computation of the balance useful life of the generating station has been already turned down by the Commission in its order dated 17.10.2006, review of depreciation approved by order dated 9.5.2006 is also not called for.

30. The petitioner has further averred that for computation of depreciation, the Commission has deducted an amount of Rs.273.73 lakh as cost of land against Rs.230.65 lakh claimed by it and thereby the Commission has erred in calculation of gross depreciable value of the generating station. According to the petitioner, for calculating depreciable value, an amount of Rs.230.65 lakh ought to have been deducted.

31. In the petition for approval of tariff for the period 2001-04, the petitioner had claimed Rs.275 lakh on account of cost of freehold land, but the Commission considered the cost of land as Rs.273.73 lakh. However, as noticed in the preceding para, while seeking approval for tariff for the period 2004-09, the

petitioner submitted the cost of freehold land as Rs.230.65 lakh. It has been explained that change in value of freehold land, is because of change in accounting policy of the petitioner company. We are not convinced with the petitioner's submission. We feel that status should not change with the change in accounting policy of petitioner. Therefore, the cost of free hold land as considered for the tariff period 2001-04 should continue as the basis for computation of gross depreciable value and depreciation. Accordingly, review of order on account of change of status of land is not permissible.

32. As a consequence of revision of O & M expenses, the petitioner's entitlement to interest on working capital shall also stand revised. The revised entitlement, in this regard, shall be as under:-

(Rs. In lakh)

|                    | <b>2004-05</b> | <b>2005-06</b> | <b>2006-07</b> | <b>2007-08</b> | <b>2008-09</b> |
|--------------------|----------------|----------------|----------------|----------------|----------------|
| Maintenance Spares | 678.98         | 719.72         | 762.91         | 808.68         | 857.20         |
| O & M expenses     | 180.33         | 187.50         | 195.00         | 202.83         | 210.92         |
| Receivables        | 788.90         | 790.18         | 794.90         | 762.90         | 780.33         |
| Total              | 1648.22        | 1697.40        | 1752.80        | 1774.42        | 1848.45        |
| Interest           | 168.94         | 173.98         | 179.66         | 181.88         | 189.47         |

33. The revised summary of annual fixed charges is appended below:

(Rs. in lakh)

|                              | <b>2004-05</b> | <b>2005-06</b> | <b>2006-07</b> | <b>2007-08</b> | <b>2008-09</b> |
|------------------------------|----------------|----------------|----------------|----------------|----------------|
| Depreciation                 | 872.85         | 872.85         | 872.85         | 610.34         | 610.34         |
| Interest on Loan             | 176.41         | 93.05          | 25.69          | 0.00           | 0.00           |
| Return on Equity             | 1351.20        | 1351.20        | 1351.20        | 1351.20        | 1351.20        |
| Advance Against Depreciation | 0.00           | 0.00           | 0.00           | 0.00           | 0.00           |
| Interest on Working Capital  | 168.94         | 173.98         | 179.66         | 181.88         | 189.47         |
| O&M Expenses                 | 2164.00        | 2250.00        | 2340.00        | 2434.00        | 2531.00        |
| <b>Total</b>                 | <b>4733.40</b> | <b>4741.08</b> | <b>4769.39</b> | <b>4577.41</b> | <b>4682.00</b> |

33. Further, we allow one-time settlement of expenditure of Rs.379.27 lakh incurred by the petitioner on account of interest on settlement of old contracts. The petitioner shall claim this amount in eight quarterly instalments commencing from 1.4.2007 in the ratio of annual fixed charges payable by the respondents.

34. The petitioner shall also be entitled to recover from the respondents an amount of Rs.2,34,316/- incurred on publication of notice in the newspapers in Petition No.30/2005 in one instalment for the reasons discussed in para 18 above.

35. With the above, the present applications for review stand disposed of.

**Sd/-  
(A.H.JUNG)  
MEMBER**

**Sd/-  
(BHANU BHUSHAN)  
MEMBER**

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

**New Delhi dated the 5<sup>th</sup> February, 2007**