

**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. 64/2006
in
Petition No. 39/2005**

In the matter of

Review of order dated 9.5.2006 in Petition No. 39/2005, for approval of tariff in respect of Chamera Hydroelectric Project Stage I for the period 1.4.2004 to 31.3.2009.

And in the matter of

National Hydroelectric Power Corporation Limited.

-----Petitioner

Vs

1. Punjab State Electricity Board, Patiala,
2. Haryana Vidyut Prasaran Nigam Limited, Panchkula,
3. Delhi Transco Limited, New Delhi,
4. Uttar Pradesh Power Corporation Limited, Lucknow,
5. Jaipur Vidyut Vitran Nigam Ltd, Jaipur,
6. Rajasthan Rajya Vidyut Prasaran Nigan Ltd, Jaipur,
7. Power Transmission Corporation of Uttaranchal Ltd, Dehradun,
8. Jodhpur Vidyut Prasaran Vitaran Nigam Ltd, Jodhpur,
9. Ajmer Vidyut Vitaran Nigam Ltd, Ajmer,
10. Himachal Pradesh State Electricity Board, Shimla,
11. Chief Engineer & Secretary, Engineering Department, Chandigarh,
12. Principal Secretary, Power Development Department, Srinagar ---Respondents

The following were present

1. Shri S.D.Tripathi, NHPC
2. Shri Prashant Kaul, NHPC
3. Shri S.K.Meena, NHPC
4. 5. 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)**

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.39/2005, determining tariff in respect of Chamera Hydroelectric Project Stage-I (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.

ALLOCATION OF ADDITIONAL CAPITALIZATION TOWARDS DEBT AND EQUITY

3. The Commission in its order dated 9.5.2006 considered additional capitalization of Rs.301.25 lakh for the period 1.4.2001 to 31.3.2004 on account of FERV and de-capitalisation of Rs.1445.11 lakh on works and Rs.289.35 lakh on account of assets not in use. For the purpose of tariff, de-capitalisation/additional capital expenditure was divided into debt and equity so as to bring over all debt-equity ratio closer to the approved debt-equity ratio of 70.28:29.72. In this manner, the entire amount of de-capitalisation was adjusted against equity and additional capitalisation on account of FERV against loan. Therefore, for the purpose of tariff, equity of Rs.61344.59 lakh was considered. The petitioner has claimed equity of Rs.62634.56 lakh.

4. The petitioner has stated that the allocation of de-capitalisation/additional capitalisation for the years 2001-02 to 2003-04 towards debt and equity by the Commission is arbitrary and inconsistent with Regulations 34 and 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as “the 2004 regulations”).

5. It is to be noted that the tariff norms applicable during 2001-04 did not contain any provisions for apportionment of de-capitalisation/additional capital expenditure

between debt and equity. Therefore, the Commission, as a matter of principle decided to divide de-capitalisation/additional capitalization amount into debt and equity so as to bring the overall debt-equity ratio closer to the approved ratio. Therefore, the Commission, in the order dated 9.5.2006 decided to divide additional capitalization and de-capitalisation amounts in a manner to bring the overall debt-equity closer to the approved debt-equity ratio of 70.28:29.72. Regulation 34 of the 2004 regulations on which reliance has been placed by the petitioner, has no application where the capital expenditure pertains to period prior to 1.4.2004 since these regulations have come into effect on 1.4.2004. It is further noted that additional capitalization pertaining to the period 2001-04 was not considered for revision of tariff for that period. Therefore, Regulation 36 which also forms the basis of the petitioner's claim for review, has no application to apportionment of additional capital expenditure between debt and equity. In the instant case, while approving tariff for the period 2004-09, debt-equity ratio of 68.99:31.01 as considered by the Commission for tariff for the period up to 31.3.2004 was considered in accordance with Regulation 36 of the 2004 regulations. However, as stated above, the entire amount of additional capitalization was considered against debt and de-capitalisation against equity, to bring debt-equity ratio close to the approved ratio. As a result, debt-equity ratio considered for the tariff period 2001-04, came to 69.63:30.37. This methodology has been uniformly followed by the Commission in all similar cases and, therefore, there is no justification for review of apportionment of additional capitalization and de-capitalisation, as the decision has been arrived at after proper deliberation of the facts on record. The issue raised does not fall within the scope of review of order when tested on the touchstone of the provisions of Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure.

6. The petitioner has further pointed out that in case of Salal Hydroelectric Project, Tanakpur Hydroelectric Project, etc., debt-equity ratio considered for the purpose of tariff during the period 2001-04, has been adopted for the purpose of additional capitalization during the period 2004-09. It is clarified in case of these two generating stations, the Commission had considered the approved debt-equity ratio for the tariff period 2001-04. For the tariff period 2004-09, additional capitalization was also considered in the approved ratio, which incidentally happens to be same as considered in 2001-04. There is thus, no difference in the methodology followed in those cases, with that followed in the present case.

RETURN ON EQUITY AND INTEREST ON LOAN

7. The petitioner's prayer for review of return on equity and interest on loan flow from its prayer for review apportionment of de-capitalisation/additional capitalization between debt and equity. Since review on that count has been held to be not maintainable, as a consequence, review of return on equity and interest on loan, as claimed by the petitioner are also unwarranted.

DEPRECIATION

8. 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 24.10.2006, review of depreciation approved by order dated 9.5.2006 is also not called for.

9. The petitioner has further averred that the Commission erred in calculation of depreciable value of the generating station. It has been stated that for computation of depreciation, the Commission has deducted an amount of Rs.3894.13 lakh as cost of

land whereas the amount of Rs.2308.01 lakh representing the cost of unclassified land, as given in the original petition, ought not to have been deducted.

10. In the petition for approval of tariff for the period 2001-04, the petitioner had claimed an amount of Rs.3894.14 lakh on account of cost of freehold land. However, as noticed in the preceding para, while seeking approval for tariff for the period 2004-09, the petitioner submitted the cost of land, as Rs.2308.01 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 land as considered for the tariff period 2001-04 should continue as the basis for computation of gross depreciable value and the petitioner's entitlement to depreciation in tariff. Accordingly, review of order on account of change of status of land by reason of change of accounting policy is not permissible.

ADVANCE AGAINST DEPRECIATION

11. Advance Against Depreciation is directly relatable to repayment of loan and depreciation recoverable. In view of our decision not allow review of interest on loan and depreciation components of the annual fixed charges, review of Advance Against Depreciation too is not maintainable.

O&M EXPENSES

12. 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.

13. 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 “Consumption of Stores and Spares”, “Administrative Expenses”, “Employees Cost for VRS”, “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

Consumption Of Stores and Spares

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

	(Rs. In lakh)				
	1998-99	1999-00	2000-01	2001-02	2002-03
As claimed	69.33	87.09	52.05	52.29	133.74
As considered by Commission	69.33	87.09	52.05	52.29	5.20

15. 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 entire amount of 133.74 lakh claimed under the head for the year 2002-03, but has considered only an amount of Rs.5.20 lakh which pertains to actual spares consumed during the year 2002-03.

16. The Commission allowed an amount of Rs.5.20 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.5.20 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.5.20 lakh on stores and spares considered by the Commission in the order dated 9.5.2006, stores and spares worth to Rs.128.54 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.

Administrative Expenses - Diminution in the value of stores and spares

17. The petitioner has submitted that the Commission has excluded an expenditure of Rs.2303.39 lakh under the head 'Diminution in the value of stores and spares during 1998-99 under 'Administrative expenditure' while averaging O&M expenses for the years 1998-99 to 2002-03. The petitioner states that while submitting the additional details and break up of O&M expenses under affidavit dated 12.12.2005, the amount of Rs.2303.39 lakh for the year 1998-99 was inadvertently shown as "diminution in value of stores and spares" whereas actually it should have been shown as (i) Expenses written off amounting to Rs.2280 lakh, and (ii) diminution in value of stores/losses on assets of Rs.23.39 lakh. It has been further elaborated by the petitioner that the expenses written off represent cumulative expenditure up to 1997-98 pertaining to certain works of Chamera Hydroelectric Stage-II Project (but included in Chamera Hydroelectric Project Stage-I), which were shown as 'abnormal O&M expenses' amounting to Rs.2370 lakh (Rs.2280 lakh up to 31.3.98 and Rs.90 lakh for the period 1.4.1998 to 30.6.1998)

and already deducted in Petition No.39/2005. This fact was taken in to consideration by the Commission in the tariff order dated 23.2.2005 in Petition No.60/2001 of Chamera Hydroelectric Project Stage-I for the period 1.4.2001 to 31.3.2004. Since this amount of Rs.2280 lakh has already been deducted as an item of 'abnormal O&M expenditure' in the Petition No.39/2005, deduction from administrative expenditure amounts to double deduction of the same amount. The petitioner's plea for review of the order dated 9.5.2006 on this count also is found to be in order.

Expenditure on VRS

18. 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

19. 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

20. 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.

21. 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. We have also found that on account of discrepancy in consideration of diminution in value of stores, O&M expenses need to be reviewed. However, for these

reasons we do not consider it necessary to re-hear the original petition, after review, particularly when the parties have been heard on merits of the claims. Therefore, we take this opportunity to rectify the discrepancies in computation of O&M expenses for tariff for the period 2004-09. Accordingly, 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)

	1998-99	1999-00	2000-01	2001-02	2002-03
O&M expenses	5934	6171	6418	6675	6942

22. 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)

	2004-05	2005-06	2006-07	2007-08	2008-09
Maintenance Spares	3327.87	3527.54	3739.19	3963.54	4201.36
O & M expenses	494.50	514.25	534.83	556.25	578.50
Receivables	3363.16	3181.88	3227.80	3275.65	3325.44
Total	7185.53	7223.67	7501.82	7795.44	8105.30
Interest	736.52	740.43	768.94	799.03	830.79

23. The revised summary of Annual Fixed Charges to which the petitioner is entitled to, is appended below:

(Rs. in lakh)

Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
Depreciation	4918.00	3591.61	3591.61	3591.61	3591.61
Interest on loan	2.22	0.00	0.00	0.00	0.00
Return on Equity	8588.24	8588.24	8588.24	8588.24	8588.24
Advance against Depreciation	0.00	0.00	0.00	0.00	0.00
Interest on Working capital	736.52	740.43	768.94	799.03	830.79
O&M expenses	5934.00	6171.00	6418.00	6675.00	6942.00
TOTAL	20178.98	19091.28	19366.79	19653.88	19952.65

IMPACT OF ADDITIONAL CAPITALIZATION FOR THE YEARS 2001-04

24. The petitioner has submitted that the Commission has erred in considering debt-equity ratio for the additional capitalisation for the years 2001-04 and seeks review of the calculations of impact thereof on interest on loan and return on equity for

the years 2001-04. According to the petitioner, financing of additional capitalisation in the manner claimed by it will change debt-equity ratio and consequently its entitlement/liability to interest on loan and return on equity.

25. As debt-equity ratio considered has not been interfered with, its impact on return on equity and interest on loan for the period 2001-04 too does not need any correction in the tariff. Therefore, the question of review does not arise.

PUBLICATION EXPENSES

26. The petitioner has filed an affidavit in Petition No.158/2004 on 22.5.2006 (after issue of the order sought to be reviewed) in support of expenditure amounting to Rs.2,33,512/- incurred on publication of notices therein and has claimed reimbursement of the expenditure. The Commission as a matter of policy has in the past 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

27. As regards refund of filing fee of Rs.25 lakh claimed by the petitioner, the matter has already been considered at para 92 of the order dated 9.5.2006. No fresh order in this regard is necessary.

28. With the above, the present applications for review stands disposed of.

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

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

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

New Delhi dated the 5th February, 2007