

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

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

**IA No. 41/2006  
in Petition No.63/2001**

**In the matter of**

Approval of tariff in respect of Rangit Hydroelectric Project for the period 1.4.2001 to 31.3.2004.

**And in the matter of**

National Hydroelectric Power Corporation Ltd

. .... **Petitioner**

**Vs**

1. West Bengal State Electricity Board, Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. Grid Corporation of Orissa, Bhubaneswar
5. Damodar Valley Corporation, Kolkata
6. Power Department, Govt of Sikkim, Gangtok

....**Respondents**

**The following were present**

1. Shri Prashan Kaul, NHPC
2. Shri P Kumar, NHPC
3. Shri Anjuman Roy, NHPC
4. Shri C Vinod, NHPC
5. Shri TK Mohanty, NHPC

**ORDER  
(DATE OF HEARING 12.9.2006)**

The petitioner, National Hydroelectric Power Corporation Ltd (NHPC), has filed this petition for revision of O & M expenses for Rangit Hydroelectric Project for the period from 1.4.2001 to 31.3.2004 allowed by the Commission in its common order dated 19.5.2004 in Petitions No. 3/2000 and 63/2001, based on the Appellate Tribunal of Electricity order dated 3.1.2006 in Appeal No. 103 of 2005

(National Thermal Power Corporation Vs Central Electricity Regulatory Commission and others).

2. By its common order dated 19.5.2004 in Petitions No. 3/2000 and 63/2001, the Commission had, inter alia, approved O & M expenses for the period 1.4.2001 to 31.3.2004, based on actual escalation factors. The details of O & M expenses approved are as under:

<b>Particulars</b>	<b>(Rs in lakh)</b>		
	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
O&M Expenses	744	767	795

3. The Commission in its notification dated 26.3.2001 had specified the terms and conditions for determination of tariff, applicable from 1.4.2001 to 31.3.2004. In accordance with the notification, operation and maintenance charges (O&M charges) for the generating stations in operation for five years or more in the base year 1999-2000 were derived on the basis of actual O&M expenses, excluding abnormal O&M expenses, if any, for the years 1995-96 to 1999-2000. The average of actual O&M expenses was considered as O&M expenses for the year 1997-98. In order to arrive at O&M expenses for the base year of 1999 - 2000, O&M expenses for the year 1997-98 arrived in the manner indicated above were escalated twice @ 10% per annum. Thereafter, the base O&M expenses for the year 1999-2000 were escalated successively @ 6% per annum to arrive at notional O&M expenses for the year 2000-01 and O&M expenses payable for the years 2001-02, 2002-03 and 2003-04. The notification also provided that in case the actual escalation factor computed from the observed data was within 20% of the notified escalation factor of 6%, that is, when the actual escalation factor was within the range of 4.8% to 7.2%, the variation was to be absorbed by the Central Power

Sector Utilities and the beneficiaries and no revision of O&M expenses claimed/paid by applying escalation factor of 6%, was necessary. However, when the deviation was beyond these specified limits, adjustment was required to be made by applying the actual escalation factor arrived at in the specified manner.

4. The year-wise inflation rates (escalation factor) for the years 2000-01 to 2003-04 computed in accordance with the methodology specified in the notification were circulated among all the stakeholders, the Central Power Sector Utilities and the state utilities for their views and suggestions thereon. After consideration of the views and suggestions received, the Commission in its order dated 28.2.2005 in petition No. 196/2004 concluded that the notification dated 26.3.2001 provided that there would be no adjustment when the escalation factor was between 4.8% to 7.2% and where the escalation factor was beyond these limits, O & M expenses were to be worked out by applying the actual escalation factor and not the marginal adjusted factor. The final year-wise escalation factors approved under order dated 28.2.2005 are extracted below:

	(in percentage)			
	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Thermal Power Generating Stations	4.45	3.49	2.70	4.62
Hydro Power Generating Stations	4.29	3.69	3.02	4.43
Inter-state Transmission System	4.36	3.62	3.11	4.41

5. The Commission in the order dated 28.2.2005 had directed that O&M expenses for the period 1.4.2001 to 31.3.2004 would be revised by applying the actual escalation factors given above. Accordingly, O&M charges for the period 1.4.2001 to 31.3.2004 were to be worked out afresh by applying the actual

escalation factors year-wise. The Commission had further directed that the excess amount, if any, was to be adjusted or refunded to the State utilities concerned.

6. However, the order of the Commission dated 28.2.2005 in Petition No. 196/2004 was challenged by NTPC in Appeal No. 103 of 2005 filed before the Appellate Tribunal. The Appellate Tribunal by its order dated 3.1.2006 allowed the appeal with the following directions :

*“13. ....In fact CERC ought to have deducted the actual deviation from the limit of 4.8%. In order to give effect to the real meaning of the Regulation 2.7(d) (iv), i.e. CERC should have made the calculations in the following manner in respect of say for the year 2000-2001 :-*

$$\begin{aligned} &6X-0.35X \\ &= X(6 - 0.35) = 5.65X \end{aligned}$$

*{ where*

*X = signifies normalized O & M expenses for the year 2000-2001*

*4.45 is the actual escalation factor;*

*4.8 is the terminal limit*

*0.35 has been arrived at by deducting 4.45 from 4.8; and*

***all figures represent percentages** }*

*14. Similar treatment has also to be given in the event of the actual escalation factor going beyond 7.2%. In case the aforesaid construction is not given to the Regulation 2.7 (d) (iv), the words “**any deviation beyond the limit shall be adjusted on the basis of actual escalation factor**” shall be rendered futile. Each word of the Regulation has to be taken into account and no word is to be considered as surplus.*

*15. In the view of the matter, we allow the appeal and set aside the impugned orders dated Feb 28, 2005 and June 7, 2005 of the CERC. The adjustment for the year 2001-2004 shall be made by the appellant in line with the aforesaid example.”*

7. The petitioner has, therefore, filed the present application for revision of O & M charges expenses for Rangit HEP for the period 1.4.2001 to 31.3.2004 in terms of the order of the Appellate Tribunal. The details of O M expenses claimed are :

(Rs in lakh)

<b>Particulars</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
O&M Expenses	754.28	786.12	830.37

8. Respondent No. 1, WBSEB, in its reply has stated that Civil Appeals No. 2149 of 2006 and 2352 of 2006 have been filed by Tamil Nadu State Electricity Board and UP State Electricity Board respectively before the Hon'ble Supreme Court against the Appellate Tribunal's order dated 3.1.2006 in Appeal No. 103 Of 2005.. These appeals have been admitted by the Hon'ble Supreme Court. There is no interim stay or any order restraining the operation of the order of the Appellate Tribunal by the Hon'ble Supreme Court, though notices on the stay applications have also been issued.

9. In view of the foregoing, in partial modification of the order dated 19.5.2004, we direct that the petitioner shall be entitled to claim O & M charges for the period 1.4.2001 to 31.3.2004 as claimed by the petitioner in the present application in terms of order dated 3.1.2006 of the Appellate Tribunal, subject to the decision of the Hon'ble Supreme Court in the pending appeals. In all other respects, the tariff approved by the said order dated 19.5.2004 shall be valid.

10. Accordingly IA No. 41/2006 stands disposed of.

Sd/-  
**(A.H.Jung )**  
**Member**

Sd/-  
**(Bhanu Bhushan)**  
**Member**

Sd/-  
**(Ashok Basu)**  
**Chairman**

New Delhi dated the 29<sup>th</sup> September 2006