

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

CORAM:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**
4. **Shri A.H. Jung, Member**

Review Petition No.37/2005
In
Petition No. 196/2004
(Suo motu)

In the matter of

Review of order dated 28.2.2005 in Petition No.196/2004 (suo motu) - Revision of O&M expenses for the years 2001-02 to 2003-04

And in the matter of

National Thermal Power Corporation Ltd.

.....**Petitioner**

Vs

1. Delhi Transco Limited, New Delhi
2. Uttar Pradesh Power Corporation Ltd., Lucknow
3. Punjab State Electricity Board, Patiala
4. Haryana Vidyut Prasaran Nigam Ltd, Panchkula
5. Himachal Pradesh State Electricity Board, Shimla
6. Power Development Department, Govt. of J&K, Srinagar
7. Chief Engineer-cum-Secretary, Chandigarh Administration, Chandigarh
8. Uttaranchal Power Corporation Ltd., Dehradun
9. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
10. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
11. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
12. Madhya Pradesh Electricity Board, Jabalpur
13. Maharashtra State Electricity Board, Mumbai
14. Gujarat Electricity Board, Vadodara
15. Chhattisgarh State Electricity Board, Raipur
16. Chief Engineer(Electricals), Government of Goa, Panaji, Goa
17. Secretary (Power), Admn of Daman & Diu, Daman
18. Secretary (Power), Admn. of Dadra Nagar Haveli, Silvassa
19. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
20. Karnataka Power Transmission Corporation Ltd., Bangalore
21. Tamil Nadu Electricity Board, Chennai
22. Kerala State Electricity Board, Thiruvananthapuram
23. Superintendent Engineer, Government of Pondicherry, Pondicherry,
24. Gird Corporation of Orissa Ltd., Bhubaneswar
25. Damodar Valley Corporation, Kolkata

26. Bihar State Electricity Board, Patna
 27. West Bengal State Electricity Board, Kolkata
 28. Commissioner & Secretary, Deptt. Of Power, Govt. of Sikkim, Gangtok
 29. Jharkhand State Electricity Board, Ranchi
- ...**Respondents**

The following were present:

1. Shri V.B.K. Jain, NTPC
2. Shri I.J. Kapoor, NTPC
3. Shri S.K. Samvi, NTPC
4. Shri C.S. Gupta, NTPC
5. Shri S. Saran, NTPC
6. Shri D.G. Salpekar, NTPC
7. Shri Pranav Kapoor, NTPC
8. Shri R. Singhal, NTPC
9. Shri S.D. Jha, NTPC

**ORDER
(DATE OF HEARING : 19.5.2005)**

The petitioner seeks review of the order dated 28.2.2005 passed in suo motu petition No.196/2004 so far as it relates to escalation factor to be applied for revision of O&M expenses and also determination of base level amount.

2. Before considering the issues raised, we proceed to consider the background against which the order dated 28.2.2005 was made. The Commission in its notification dated 26.3.2001 (hereinafter referred to as 'the notification') 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.

3. 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 escalation factors as circulated were confirmed. The final year-wise escalation factors approved under order dated 28.2.2005 are extracted below:

	(in percentage)			
	2000-01	2001-02	2002-03	2003-04
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

4. The Commission 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 directed that the excess amount, if any, was to be adjusted or refunded to the state utilities concerned.

5. The petitioner seeks review of the direction contained in the order dated 28.2.2005 on two grounds, namely,

- (a) Notional O&M charges for the year 2000-01 were not required to be revised.
- (b) Instead of actual escalation factor approved by the Commission, the adjusted escalation factor is to apply for re-computation of O&M charges.

6. Under Section 94 (1) of the Electricity Act, the Commission is vested with same powers as are vested in a civil court under the Code of Civil Procedure as regards review of its decisions, directions and orders. Section 114 read with Order 47 of the Code relate to power of a civil court on review of orders. Under Rule 1, Order 47 of the Code, any person considering himself aggrieved by a decree or order may apply for review of the judgment or order, under the following circumstances:

- (a) Upon discovery of new and important matter or evidence, which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order was made, or
- (b) On account of some mistake or error apparent on the face of the record, or
- (c) For any other sufficient reason.

7. The grounds for review raised by the petitioner are to be examined on the touchstone of the provisions of Rule 1, Order 47 of the Code and noted above.

8. The petitioner has contended that adjustment for actual escalation for the year 2000-01 is unwarranted because the notification was applicable for determination of tariff for the period 2001-02 to 2003-04. It is further submitted that revision of notional O&M expenses for the year 2000-01 amounts to retrospective application of the notification though the notification, in its terms, specifically applies to tariff determination for the period 1.4.2001 to 31.3.2004. According to the petitioner, the direction for revision of notional O&M expenses for 2000-01 needs to be reviewed and the escalation factor of 6% as initially considered should continue to apply.

9. A contention similar to that raised in the application for review was raised by the petitioner and other Central Power Sector Utilities in the original proceedings in petition No.196/2004 (suo motu). The Commission in its order dated 28.2.2005 had considered the submission and after detailed analysis held that on overall reading of the relevant provision, the only conclusion that could be arrived at was that “the notional O&M expenses for the year 2000-01 which form the basis for computation of O&M charges for tariff period have also to be revised on the basis of actual escalation factor for that year”. Thus, the review of the order on this count is not maintainable in terms of Rule 1, Order 47 of the Code, in view of the specific finding recorded by the Commission after considering the submissions of the parties, including those of the petitioner.

10. We do not agree with the submission that revision of notional O&M expenses for the year 2000-01 amounts to retrospective application of the notification. The

question of giving retrospective effect to the notification in the instant case does not arise since the order only lays down a principle for computation of O&M expenses for the period 1.4.2001 to 31.3.2004. The petitioner has already recovered tariff for the year 2000-01 by applying the escalation factor of 10% over O&M expenses for the year 1999-2000. O&M expenses already recovered by the petitioner are not being disturbed. Further, the petitioner has argued for applying escalation factor of 6%. In case of computation of the notional O&M expenses for the year 2000-01 by applying escalation factor of 6% does not amount to retrospective application of the notification, the application of actual inflation rate also for this purpose cannot be termed as retrospective application. We are, therefore, not inclined to accept the petitioner's contention in this respect.

11. The petitioner has next contented that its submissions made in petition No.196/2004 (suo motu) have been misconstrued as regards application of adjustment factor for revision of O&M expenses for the period 1.4.2001 to 31.3.2004. According to the petitioner, as per the notification the adjustment is to be carried out only for deviations beyond the limit of $\pm 20\%$. It is illustrated by the petitioner that if escalation based on actual data is 4.62% in the year 2003-04, O&M expenses need to be recalculated by applying adjustment factor of 0.18% (4.80%-4.62%), though the Commission in its order dated 28.2.2005 has directed to apply adjustment factor of 4.62%. Similarly, according to the petitioner, if the actual escalation factor is 7.5%, the Central Power Sector Utilities will not have the benefit of the adjustment up to 7.2% and will have the benefit only in regard to escalation above 7.2%, that is, only of 0.3% (7.5%-7.2%). Thus, according to the petitioner, the Commission while ordering re-computation of O&M expenses based on actual inflation rates has proceeded on wrong interpretation of clause 2.7(d) (iv).

12. The Commission in its order 28.2.2005 had, in para 11 thereof, reproduced the petitioner's contention as contained in the affidavit sworn on 10.2.2005 verbatim and more or less in the words of the petitioner itself. After taking note of the submission made by the petitioner, the Commission directed that O&M expenses would have to be recalculated by applying actual inflation factor. The decision was arrived at on consideration of the provisions of the notification, and the submission made by the petitioner was not the basis for the decision. To us, it appears that there is no error apparent on the face of record necessitating review under Section 114 read with Order 47 of the Code, as regards the Commission's direction to apply the actual inflation rate for the purpose of computation of O&M expenses.

13. As the order dated 28.2.2005 was passed by the Commission of its own motion, we take this opportunity to have a fresh look on the decisions arrived at earlier. The notification for the purpose of computation of O&M expenses referred to the year 1999-2000 as the base year, and provided that base O&M expenses, that is, O&M expenses for the base year 1999-2000, were to be escalated successively @ 6% per annum to arrive at permissible O&M expenses for the relevant year. The notification further specified that a deviation of the escalation factor computed from the actual inflation data lying within 20% of the escalation factor of 6%, was to be absorbed by the utilities/beneficiaries. Any deviations beyond these limits were to be adjusted on the basis of actual escalation factor arrived at in the manner specified. It implies that O&M expenses were to be adjusted based on actual escalation factor wherever the notional escalation factor of 6% had been considered, when deviations were beyond the specified range. The escalation factor of 6% was initially applied to arrive at the notional O&M expenses for the year 2000-01, which was the base for

computation of admissible O&M expenses for the tariff period 2001-02 to 2003-04. Considering the terms of the notification, the notional O&M expenses for the year 2000-01 need necessarily to be revised as the actual escalation factor lies beyond the permissible specified limits. Thus, the earlier decision of the Commission cannot be faulted on merits also.

14. We have given our thought to the other issue also on merits of the petitioner's contention. Clause 2.7 (d) (iv) of the notification specified that in case the escalation factor computed from the observed data was within the range of 4.8% to 7.2%, the variation was to be absorbed by the utilities concerned. In other words, the provision favoured the *status quo* as regards the claim for O&M charges, even for deviations within the specified range. This was perhaps to avoid retrospective adjustments as far as possible. However, when revision of O&M charges has become necessary on the ground that actual escalation factor was beyond the specified limits, petitioner's entitlement to O&M expenses gets opened up. Therefore, re-computation cannot be limited to the adjusted escalation factor, as contended by the petitioner. O&M charges are to be revised by considering the actual escalation factor. The petitioner's contention that re-computation is to be considered only on the basis of adjusted escalation factor is devoid of any commonsense logic and, therefore, cannot be accepted.

15. It is also contended by the petitioner that it has already incurred O&M expenses during the tariff period 1.4.2001 to 31.3.2004, in excess and is thus incurring loss under this head. The representative of the petitioner pleaded for re-opening of the issue. We are afraid the order cannot be reviewed on this account, when the directions given therein are otherwise supported by the provisions of the

notification. While implementing the provisions of law, we should not be carried away by emotions.

16. On the above considerations, the grounds urged by the petitioner for review of order dated 28.2.2005 fail. Therefore, the application is dismissed.

IA No.9/2005

17. The petitioner has prayed for extension of time for compliance of the order 28.2.2005 pending hearing on the application for review. The review application has been dismissed. However, in the interest of justice, we feel it necessary to allow more time to the petitioner for compliance of the direction contained in the order dated 28.2.2005, as in a similar request made by Power Grid Corporation of India Limited for extension of time, we have allowed time up to 15.7.2005 for compliance of the directions contained in the order dated 28.2.2005. Accordingly, the petitioner is also granted time up to 15.7.2005 for compliance of the directions. A compliance report shall be filed by the petitioner latest by 25.7.2005. With these directions, IA stands disposed of.

Sd/-
(A.H. JUNG)
BASU)
MEMBER
CHAIRMAN

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK)

New Delhi dated the 7th June, 2005