

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

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

**Review Petition No. 115/2005
In
Petition No. 33/2003**

In the matter of

Review of Order dated 22.8.2005 in Petition No. 33/2003 for approval of tariff in respect of Assam Gas Based Power Station for the period from 1.4.2001 to 31.3.2004.

And in the matter of

North Eastern Electric Power Corporation Ltd. **.....Petitioner**

Vs

1. Assam State Electricity Board, Guwahati
2. Meghalya State Electricity Board, Shillong
3. Department of Power, Govt. of Tripura, Agartala
4. Power & Electricity Department, Govt. of Mizoram, Aizawl
5. Electricity Department, Govt. of Manipur, Imphal
6. Department of Power, Govt. of Arunachal Pradesh, Itanagar
7. Department of Power, Govt. of Nagaland, Kohima
8. North-Eastern Regional Electricity Board, Shillong
9. North-Eastern Regional Load Despatch Centre, Shillong.

.....Respondents

The following were present :

1. Shri P.K. Bora, NEEPCO
2. Ms. C. Ranee, NEEPCO
3. Shri D. Dey, SM (E/M), NEEPCO
4. Shri R. Kapoor, ASEB
5. Shri H.M. Sarma, ASEB
6. Shri Ng. Sarat Singh SE (Com), Electricity Department, Manipur

ORDER
(Date of Hearing : 18.4.2006)

The petitioner seeks review of the Commission's Order dated 22.8.2005 in Petition No. 33/2003.

2. Petition No. 33/2003 was filed by the petitioner for approval of tariff for Assam Gas Based Power Station (hereinafter referred to as "the generating station") for the period 1.4.2003 to 31.3.2004. The annual fixed charges for the year 2003-04 were approved by the Commission by its Order dated 22.8.2005 as under :-

		(Rs. in lakh)
	Particulars	2003-2004
1	Interest on Loan	5659
2	Interest on Working Capital	673
3	Depreciation	6990
4	Advance Against Depreciation	0
5	Return on Equity	11613
6	O & M Expenses	2520
	TOTAL	27454

3. The application for review of order dated 22.8.2005 was made by the petitioner on various counts. However, by order dated 14.12.2005, the application was admitted for review of capital cost considered for the purpose of computation of tariff in the said order dated 22.8.2005, and on computation of O & M expenses.

Review of Capital Cost

4. Originally, the investment approval for the generating station was accorded by Ministry of Power under its letter dated 2.11.1987 at an estimated cost of Rs.20317 lakh based on 1985 price level. The approved cost was subsequently revised on three occasions. Lastly, Ministry of Power accorded its approval for capital cost of Rs.153232 lakh, including IDC of Rs.15281 lakh and WCM of Rs.1675 lakh, under letter dated 14.2.2000. The scheduled date of commercial operation of the generating station was March, 1992. The generating station was, however, declared under commercial operation on 1.4.1999.

5. The petitioner had claimed tariff for the year 2003-04 based on capital cost of Rs.153232 lakh as on 31.3.2003. However, tariff has been allowed by order dated 22.8.2005 at a capital cost of Rs.145163 lakh. The petitioner, vide affidavit dated 10.2.2006, has submitted that it had incurred total expenses of Rs.149758 lakh as on 31.3.2003 as per the details given below :-

	(Rs. In lakh)
Gross Block	145450
Constructions stores & spares (Recommended spares)	3584
Construction stores & spares (Others)	135
Capital Work-in-progress	547
Advances	42
Total Capital Expenditure as on 31.03.2003	149758

6. The petitioner has further submitted that at the time of capitalization of the assets of the generating station, the petitioner had calculated the net commissioning income of Rs.173 lakh from sale of infirm power, which was deducted from the capitalized amount as on the date of commercial operation. However, the Commission has deducted the net revenue of Rs.287 lakh earned from the sale of infirm power from the capitalized cost. The petitioner has submitted that since it had already deducted an amount of Rs.173 lakh from the capital cost on account of sale of infirm power, further reduction should have been restricted to Rs.114 lakh only.

7. In the original petition, the petitioner had claimed tariff on the capital cost of Rs.153232 lakh as on 31.3.2003, which included IDC and FC of Rs.15281 lakh and working capital margin of Rs.1675 lakh as approved by the Central Government, Ministry of Power vide letter dated 14.2.2000. It was, however, noticed that there was a time over-run of 84 months in the execution of the project which was found to be beyond the control of the petitioner. While approving tariff vide order dated 22.8.2005, the Commission did not consider Working Capital Margin of Rs.1675 lakh. The Commission arrived at the capital cost of Rs.145163 lakh as on 1.4.2003 for the purpose of computation of tariff as per the details given hereunder:-

Sl. No.	Cost Component	(Rs. In lakh)
1.	Project cost as per original approval including IDC (RCE-I)	101407 .
2.	Project cost as per original approval including IDC (RCE-II)	133216
3.	Project cost as per original approval including IDC (RCE-III)	151557
4.	Increase between RCE-I and RCE-III	50150
5.	Less variation unexplained in the cost over run analysis submitted in the petition	132
6.	Allowable increase in prices up to actual date of commercial operation (4-5)	50018
7.	Completion capital cost (1+6)	151425
8.	Actual capital expenditure as on 31.3.2003 reconciled from books of accounts	145450
9.	Less net revenue earned from sale of infirm power up to actual date of commercial operation	287
10.	Actual Capital expenditure less net revenue from sale of infirm power up to actual date of commercial operation (8-9)	145163
11.	Capital cost as on 1.4.2003 for the purpose of tariff	145163

8. The admitted cost includes initial capital spares of Rs.1996 lakh.

9. It is to be noticed that the Commission has considered the actual capital cost as on 31.3.2003 after adjusting for the revenue of Rs.287 lakh earned from sale of infirm power. From the submission of the petitioner, it is evident that the recommended spares of Rs.3584 lakh and other spares worth Rs.135 lakh were kept in construction stores and were not capitalized. The consumption of these spares amounting to Rs.2219 lakh was capitalized during the period 1999-2000 to 2002-2003. The generating station had been in operation for a period of four years as on 1.4.2003 and the actual expenditure was less by Rs.6262 lakh in comparison

to the capital cost found reasonable by the Commission. Therefore, the Commission was guided by the actual capital expenditure indicated by the petitioner. The expenditure on capital works in progress has not yet been capitalized in the books of accounts of the petitioner and, therefore, these expenses cannot be presently considered towards capital cost for the purpose of determination of tariff. It is also to be noted that the fact that the petitioner had already adjusted an amount of Rs.173 lakh was not brought to the notice of the Commission in the original proceedings. It is perhaps because of the mistake of the petitioner. The mistake of the parties is an accepted ground for review. In this context, the observations of Madhya Pradesh High Court in State Of Madhya Pradesh And Another Vs. Jaswant Puri and Others, Air 1989 Madhya Pradesh 115, extracted below are relevant :

“A review may be granted because of mistakes of parties or of their attorneys as well as for mistakes of the Court, Clerk of Court or of the Commissioner in particular proceedings. Mistake consisting an error of computation, or a mistake which is the result of accident or misfortune may well afford a ground for review. Review may also be granted on the ground of newly discovered evidence or when there is error apparent on the face of the record. Such an error may exist ”if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record. “ See AIR 1980 SC 674. The Supreme Court in Aribam Tuleswar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047 pointed out that the power of review inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.”

10. We, therefore, allow review of capital cost considered in the order dated 22.8.2005.

Review of O &M expenses

11. In the order dated 22.8.2005, the Commission had allowed O &M expenses of Rs.2520 lakh by applying norm of Rs.8.66 lakh/MW as applicable for the year 1.4.2004 to 31.3.2005. The petitioner has submitted that application of norm of Rs.8.66 lakh/MW is erroneous as it was calculated based on O &M expenses incurred during the period 1998-99 to 2000-2001. The petitioner's contention is that the expenses incurred during 1998-99 when the generating station was not having the Combined Cycle Operation should have been ignored as these expenses are not representative of the expenses for the subsequent years when the generating station was actually operating in Combined Cycle mode. It has been submitted that for a Combined Cycle generating station, O & M expenses get stabilised after four to five years of operation. Accordingly, the petitioner has prayed that the actual expenses of Rs.5359 lakh incurred during the year 2003-04 ought to have been allowed by the Commission. In the alternative, the petitioner has argued that the Commission ought to have decided O & M expenses @ 2.5% of the capital cost considered in terms of the Commission's notification dated 26.3.2001, on terms and conditions for determination of tariff applicable from 1.4.2001 to 31.3.2004. The petitioner has contended that the norms laid down in

the tariff regulations applicable from 1.4.2004 and onwards cannot be applied retrospectively for the purpose of computation of O & M expenses.

12. The Commission, while awarding tariff for the year 1.4.2003 to 31.3.2004 in its order dated 22.8.2005 had noticed as under :-

“46. As per the notification dated 26.3.2001, operation and maintenance expenses , including insurance for the stations belonging to the petitioner, in the case of new thermal stations which have not been in existence for a period of five years, the Base O&M expenses shall be fixed at 2.5 percent of the actual capital cost as approved by the Authority or an appropriate Independent agency, as the case may be, in the year of commissioning and shall be escalated at the rate of 10 percent per annum for subsequent years to arrive at O&M expenses for the base year 1999-2000 level. Thereafter the Base O&M expenses shall be further escalated at the rate of 6 percent per annum to arrive at permissible O&M expenses for the relevant year.

47. In this particular case there was a time and cost-overrun which has been found beyond the control of the petitioner. Working on the above principle the O&M expenses for the year 2003-04 work out as 45.59 Crs. But the mere cost-overrun does not lead to increase in O&M expenses of the station. Commission, vide its order dt 16.1.2004. in petition no.67/2003 (suo-motu), while deciding the normative O&M expenses for small gas/combined cycle power stations in Terms and Conditions of the tariff for the period 2004-09, worked out an normalised figure of Rs. 8.66 lakhs/MW for the year 2003-04 for the instant station based on the actual expenses of the station upto 2000-01. It should be justified to allow O&M expenses for the station in 2003-04 as 8.66 lakhs/MW. This would translate in O&M expenses of Rs. 25.20 Crores. for the period 2003-04.”

13. The Commission while allowing expenses for the generating station for the year 2003-04 has not considered the provisions of the notification dated 26.3.2001 on the terms and conditions of tariff applicable from 1.4.2001 to 31.3.2004 and this

is considered to be a fit case for review of the order on the grounds laid down under Rule 1 of Order 47 of the Code of Civil Procedure.

14. Accordingly, review of the order dated 22.8.2005 is allowed on two counts, namely, the consideration of the capital cost and computation of O & M expenses.

15. We direct that the original petition (No. 33/2003) be set down for hearing on 19th September, 2006.

16. The present application for review accordingly stands disposed of.

Sd/-

Sd/-

Sd/-

(A.H. JUNG)
MEMBER

(BHANU BHUSHAN)
MEMBER

(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 2nd August, 2006

