

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

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

**Review Petition No. 103/2003  
In Petition No. 41/2001**

**In the matter of**

Review of order dated 24.10.2003 in Petition No. 41/2001 (Tariff for Feroze Gandhi Unchahar TPS) for the period 1.4.2001 to 31.3.2004

**Review Petition No. 104/2003 in  
Petition No. 44/2001**

**In the matter of**

Review of order dated 24.10.2003 in Petition No. 44/2001 (Tariff for Dadri GPS) for the period 1.4.2001 to 31.3.2004

**And in the matter of**

National Thermal Power Corporation Ltd.

.... **Petitioner**

Vs

1. Uttar Pradesh Power Corporation Ltd
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
3. Delhi Transco Ltd
4. Haryana Vidyut Prasaran Nigam Ltd.,
5. Punjab State Electricity Board
6. Himachal Pradesh State Electricity Board
7. Power Development Department (J&K)
8. Electricity Department, Chandigarh
9. Uttaranchal Power Corporation Ltd.

.... **Respondents**

**The following were present:**

1. Shri G.M. Agarwal, DCE(Comml.), RVPNL
2. Shri Balaji Dubey, Sr. Law Officer, NTPC
3. Shri S.K. Samui, SM(C), NTPC
4. Shri Guryog Singh, DGM(C), NTPC
5. Shri R. Dar, NTPC
6. Shri D.K. Salpekar, NTPC
7. Shri D.D. Chopra, Advocate, UPPCL
8. Shri R.K. Arora, XEN, HVPN
9. Shri T.K. Srivastava, UPPCL
10. Shri A.K. Dhar, NTPC

11. Shri A. Sardana, NTPC
12. Ms. Alka, NTPC
13. Shri V.B.K. Jain, GM(C), NTPC
14. Shri M.G. Ramachandran, Adv. NTPC
15. Shri M.S. Chawla, AGM(C), NTPC
16. Shri S.K. Johar, DGM(C) NTPC
17. Shri T.R. Sohal, AGM(C), NTPC
18. Shri S.K. Sharma, Sr. Mgr (C), NTPC
19. Shri N.N. Sadasivan, NTPC
20. Shri Manoj Mathur, DGM(C), NTPC
21. Shri Ajay Dua, Manager (C), NTPC
22. Shri A.K. Juneja, DGM(C), NTPC
23. Shri Jayant Verma, UPPCL

**ORDER**  
**(DATE OF HEARING: 17.6.2004)**

The petitioner, National Thermal Power Corporation Ltd has sought review of the tariff orders issued by the Commission for its two stations, namely, Feroze Gandhi Unchahar TPS and Dadri GPS. In view of the fact that the issues raised are generally common in both these applications for review, these were heard together and are being disposed of through this composite order.

**Review Petition No 103/2003**

2. For sake of convenience, we are considering the facts relating to review petition No 103/2003 in Petition No. 41/2001 and the issues raised therein. The petitioner had originally filed petition No 41/2001 for approval of tariff in respect of Feroze Gandhi Unchahar Thermal Power Station (FGUTPS) for the period from for 1.4.2001 to 31.3.2004. The tariff was determined in terms of the Commission's order dated 24.10.2003. The petitioner feels aggrieved on account of the following aspects of the said order dated 24.10.2003 (hereinafter referred to as "the impugned order"):

- (a) Quantum of spares taken into consideration while determining the working capital requirement for the purpose of tariff;
- (b) Calculation of interest on loan based on actual annual repayment or normative annual repayment, whichever is higher;
- (c) Non-consideration of incentive and ex gratia payments made to the employees in calculation of O&M expenses; and
- (d) Error in amounts considered for arriving at “professional charges” in O&M expenses.

3. Accordingly, the petitioner has sought review of the specific directions on the above-noted four issues. The petition was listed for hearing on admission. We heard Shri MG Ramachandaran Advocate for the petitioner and the representative of respondent 1, Shri T.K. Srivastava.

4. The Commission was established under Section 3 of the Electricity Regulatory Commissions Act, 1998 (the 1998 Act) to discharge functions under Section 13 thereof, which, inter alia, included regulation of the tariff of the generating companies owned or controlled by the Central Government – the petitioner being one such generating company. Section 28 of the 1998 Act laid down that the Commission shall frame regulations to determine the terms and conditions for fixation of tariff under Section 13 of the Act. The Commission in exercise of powers under Section 28 had notified the terms and conditions of tariff under Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001, by notification dated 26.3.2001 (hereinafter referred to

as “the notification dated 26.3.2001”), effective from 1.4.2001. The tariff in respect of FGUTPS for the period from 1.4.2001 to 31.3.2004 was determined under these regulations vide the impugned order.

5. We now proceed to consider the specific issues on which the application for review has been made.

### **Consideration of Quantum of Spares**

6. In accordance with the notification dated 26.3.2001, maintenance spares at actuals subject to a maximum of 1% of the capital cost but not exceeding one year’s requirement less value of 1/5<sup>th</sup> of initial spares already capitalised for first 5 years are required to be considered for computation of the working capital for the purpose of tariff. Accordingly, actual spares consumption/1 year’s requirement was worked out. However, the amount was limited to 1% of the capital cost as on 1.4.2001 in view of the above provisions of the notification dated 26.3.2001.

7. The petitioner has contended that for calculating the working capital, the requirement of spares need to be calculated on the basis of average consumption over the last five years and not merely on the basis of specified percentage (1%) of the historical capital cost, since the Commission in its order dated 21.12.2000 had recognised the need for calculation of spares based on current capital cost. It has been further stated that the petitioner had claimed the working capital on account of spares for one year equivalent to 40% of O&M cost

for that year in view of the Commission's order dated 14.9.2002. It is argued that the decision of the Commission to restrict the spares to 1% of the historical cost is contrary to the principles set out in the order dated 21.12.2000 and the Form 14 of the order dated 14.9.2001, according to which the spares for one year are to be considered as 40% of O&M cost.

8. This issue was earlier raised by the petitioner in a number of other review petitions. The Commission in its order dated 8.3.2004 in Review Petition No. 74/2003 had rejected the petitioner's contention for review on this ground. For the reasons recorded in the said order dated 8.3.2004, the petitioner's prayer for review in the present Petition is not maintainable.

9. Learned Counsel for the petitioner argued before us that since the issue of order dated 8.3.2004, there has been a material change in the position. It was submitted that the Commission has notified on 29.3.2004, the terms and conditions for determination of tariff applicable from 1.4.2004, which provide that the maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation form part of the working capital for computation of interest thereon. It was urged that the Commission has already recognised the need for escalation of maintenance spares. Therefore, according to the learned counsel, for the purpose of computation of working capital for the period 1.4.2001 to 31.3.2004, the escalation should be provided on the maintenance spares. We do not find any force in the submission. The working

capital for the period from 1.4.2001 to 31.3.2004 is to be computed in accordance with the terms and conditions applicable at the relevant time. No provision for escalation of maintenance spares was made in the terms and conditions applicable from 1.4.2001 to 31.3.2004. The provisions made in the terms and conditions for determination of tariff applicable from 1.4.2004 cannot be applied retrospectively. Therefore, the prayer of the petitioner for review of the impugned order on this count is rejected, the ground urged being alien to the terms and conditions of tariff applicable during the period.

#### **Interest on working capital**

10. The methodology adopted for computation of interest on loan for the purpose of tariff in the impugned order, *inter alia*, provided that:

The annual repayment amount for the years 2001-02 to 2003-04 has been worked out based on actual repayment during the year or as worked out as per the following formula, whichever is higher:

Actual repayment during the year x normative net loan at the beginning of the year / actual net loan at the beginning of the year,

11. The grievance of the petitioner relates to adoption of the principle reproduced above. It has been submitted by the petitioner that the Commission should have implemented one formula for calculating repayment of loan for the purpose of calculating interest loan, namely, it should either be based on actual loan repayment or on the basis of normative repayment. According to the petitioner, the principle of "whichever is higher" is inappropriate and inequitable

since it would put the petitioner to loss in all situations. The petitioner has pointed out that by applying the principle it would be put to loss. Learned Counsel submitted that in the terms and conditions applicable from 1.4.2004, notional loan has been allowed to be considered. The petitioner accordingly seeks review of the principle followed.

12. The principle for computation of interest on loan as reproduced above has been applied in a series of orders of the Commission through a deliberate decision. The petitioner had in a number of cases filed review petitions on similar grounds as it has now urged. The review petitions were dismissed by the Commission in all the cases. It is sufficient to reproduce order dated 2.5.2003 in one of the review petitions (No. 126/2002 in Petition No. 29/2002), which is in the following terms:

“14. On the issue of interest on loan, the annual repayment amount has been arrived at in accordance with the given formula or as given in the petition, whichever is higher, through a conscious decision of the Commission. In our opinion, the review of this decision does not lie, as it does not fall within any of the grounds prescribed by law. It was argued on behalf of the petitioner that the adoption of the principle by the Commission has caused hardship. **The application for review of order on the ground of hardship is not justified, unless it falls within the four walls of the conditions prescribed under Rule 1, Order 47 of the Code.** (Emphasis added)

13. In view of the decision on the issue in earlier review petitions, the principle adopted for computation of interest on loan cannot be allowed to be reopened. The matters settled through the decisions of the Commission cannot be allowed to be unsettled either by taking plea of the revised regulations applicable from

1.4.2004 or by filing successive applications for review on the subsequent orders, which follow the principles laid down in the earlier orders as precedent. Therefore, we are inclined to follow the view taken in earlier review petitions. Accordingly, we turn down the prayer for review of the impugned order on this count as well.

**Non-consideration of incentive and ex-gratia payments in calculation of O&M expenses:**

14. In accordance with the Commission's notification dated 26.3.2001 laying down terms and conditions for determination of tariff for the period from 1.4.2001 to 31.3.2004, operation and maintenance expenses for the stations in operation for five years or more in the base year of 1999-2000 are derived on the basis of actual O&M expenses, excluding abnormal O&M expenses, if any, for the years 1995-1996 to 1999-2000. The average of actual O&M expenses for the years 1995-1996 to 1999-2000 are considered as the O&M expenses for the years 1997-1998, which are escalated twice @ 10% per annum to arrive at base O&M expenses for the year 1999-2000. Thereafter the base O&M expenses for the year 1999-2000 are further escalated @ 6% per annum to arrive at permissible O&M expenses for the relevant year.

15. The petitioner while seeking fixation of tariff had claimed O&M expenses under different heads, which included the "employee cost". Under the "employee cost", the petitioner had also claimed incentive and *ex-gratia* paid to the employees. It was clarified on behalf of the petitioner that the incentive and *ex-*

*gratia* payments were made under the productivity linked bonus scheme applicable to the employees of the petitioner, including the senior management. The Commission, in the impugned order had excluded the expenses on account of incentive and *ex-gratia* paid for computing the employee cost. It was noted that in accordance with its policy, the Commission allowed only the obligatory minimum bonus payable under the payment of Bonus Act as a part of the employee cost.

16. According to the petitioner, the payment on account incentive and *ex-gratia* are actual amounts paid to the employees for effective and efficient discharge of their duties and are, therefore, normal business expenditure, necessarily incurred by the petitioner in connection with generation of power. It is further submitted that under the tariff notifications issued by Ministry of Power prior to establishment of the Commission, such payments were allowed to be included in the employee cost and accordingly there should be no case for making a departure from the established practice and disallowing such an expenditure.

17. We have considered the submissions made on behalf of the petitioner in this regard. As we have already noted, the incentive and *ex-gratia* payments have been made under productivity-linked bonus scheme and are not the statutory minimum bonus payable under the Payment of Bonus Act. As a matter of policy, in all cases the Commission has been allowing computation of statutory

minimum bonus towards “employee cost” since the expenditure is considered to be obligatory. So far as the productivity-linked bonus is concerned, the payments made ultimately result in higher productivity. On account of the higher productivity, the petitioner earns higher profits in the form of incentive from the state beneficiaries. Therefore, in our view, the incentive and *ex-gratia* payments should be made out of the incentive earned by the petitioner on account of higher productivity. We are not bound by the earlier practice followed by the Central Government, since safeguarding the interest of the ultimate consumer is one of the main objectives of the Commission under the statute. We are of the opinion that considering the facts and circumstances of the case, the prayer of the petitioner for review of the order on this count does not fall within the scope of Order 47 Rule 1 of the Code of Civil Procedure, by which the Commission is bound. Accordingly, we have decided not to allow review on this issue.

### **Professional Charges**

18. The petitioner has submitted that the amount allowed by the Commission in the impugned order dated 24.10.2003 under the head “ Professional Charges” are Rs.0 lakh, Rs.4.68 lakh and Rs.5.62 lakh against the claimed figures of Rs.9.25 lakh, Rs.9.88 lakh and Rs.8.48 lakh lakh in the years 1995-1996, 1998-1999 and 1999-2000 respectively. According to the petitioner, the Commission has observed that the amount indicated by the petitioner under the head “Professional Charges” have been considered to arrive at normalised O&M

expenses. It is argued by the petitioner that this is a case of an error apparent in the order and should be rectified through the process of review.

19. On re-verification of computation of O&M charges under the head “professional charges”, it has been observed that the actual professional charges as claimed by the petitioner under this head have been considered. However, in the computation table given under para 55 of the impugned order, which contains the complete details of O&M charges, there are some typographical errors. The errors are purely of ministerial nature and do not affect the actual computation of O&M expenses earlier allowed. Therefore, the review of the impugned order is not called for. For sake of record, the correct details are appended below:

		1995-96		1996-97		1997-98		1998-99		1999-2000		1995-96 to 1999-2000	
		As per NTPC	As per CERC	As per NTPC	As per CERC	As per NTPC	As per CERC	As per NTPC	As per CERC	As per NTPC	As per CERC	Average as per NTPC	Average as per CERC
1	<b>Employee cost</b>	1221.15	<b>1052.00</b>	1314.32	<b>1133.00</b>	1526.71	<b>1409.00</b>	2247.94	<b>1857.00</b>	2984.50	<b>2764.00</b>	1858.92	<b>1643.00</b>
2	Repair and Maintenance	1229.72	<b>1229.72</b>	2273.88	<b>1475.64</b>	1849.99	<b>1770.79</b>	1873.12	<b>1873.12</b>	2487.54	<b>2247.74</b>	1942.85	1719.40
3	Stores consumed	35.51	35.51	42.50	42.50	53.16	53.16	34.80	34.80	17.14	17.14	36.62	36.62
4	Power charges	67.48		40.94	40.94	28.32	28.32	40.42	40.42	21.94	21.94	39.82	32.91
5	Water Charges	21.31	<b>21.31</b>	30.47	<b>30.47</b>	49.39	<b>49.39</b>	134.52	<b>104.98</b>	68.46	<b>68.46</b>	60.83	54.92
6	Communication expenses	15.38	15.38	19.80	19.80	22.94	22.94	41.05	41.05	37.46	37.46	27.33	27.33
7	Travelling expenses	103.99	<b>103.99</b>	99.71	<b>99.71</b>	91.66	<b>91.66</b>	132.14	<b>109.99</b>	178.45	<b>131.99</b>	121.19	107.47
8	Insurance	90.15	90.15	84.26	84.26	103.10	103.10	114.17	114.17	119.42	119.42	102.22	102.22
9	Rent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
10	Security expenses	284.96	284.96	252.70	252.70	206.26	206.26	390.59	390.59	404.52	404.52	307.81	307.81
11	Professional expenses	9.25	<b>9.25</b>	6.35	<b>6.35</b>	3.90	<b>3.90</b>	9.88	<b>9.88</b>	8.48	<b>8.48</b>	7.57	7.57
12	Printing & Stationary	13.12	13.12	14.84	14.84	23.13	23.13	22.62	22.62	6.75	6.75	16.09	16.09
13	Other Expenses	260.45	260.45	220.67	220.67	194.95	194.95	287.01	287.01	320.93	320.93	256.80	256.80
14	<b>Corporate office expenses</b>	325.59	<b>313.75</b>	327.94	<b>311.49</b>	376.01	<b>366.14</b>	408.28	<b>383.20</b>	588.36	<b>481.36</b>	405.24	<b>371.19</b>
15	Total O&M	3678.06	3429.59	4728.38	3732.37	4529.52	4322.74	5736.54	5268.83	7243.95	6630.19	5183.29	<b>4683.33</b>
16	<b>O &amp;M without water Charges</b>	3656.75	<b>3408.28</b>	4697.91	<b>3701.90</b>	4480.13	<b>4273.35</b>	5602.02	<b>5163.85</b>	7175.49	<b>6561.73</b>	5122.46	<b>4628.40</b>
<b>Rs. Lakhs</b>													
	<b>Base O&amp;M for 1997-98</b>	<b>With 10% escalation</b>		<b>With 6% escalation</b>									
	Average of (1995-96 to 1999-00)	1998-99	1999-2000	2000-01	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>						
<b>O&amp;M</b>	<b>4683.33</b>	5151.66	5666.83	6006.83									
	<b>O&amp;M with average Water Charges</b>				<b>6367.24</b>	<b>6749.28</b>	<b>7154.24</b>						

20. In the light of above discussion, the review petition No. 103/2003 is not maintainable and is dismissed.

**Review Petition No. 104/2003**

21. The Commission in its order dated 24.10.2003 in Petition No. 44/2001 had approved tariff in respect of Dadri Gas Power Station for the period from 1.4.2001 to 31.3.2004 based on the notification dated 26.3.2001. The petitioner has sought review of the order dated 24.10.2003 in Petition No. 44/2001 (Tariff for Dadri GPS) on the following grounds:

- (a) Quantum of spares taken into consideration while determining the working capital requirement for the purpose of tariff;
- (b) Calculation of interest on loan based on actual annual repayment or normative annual repayment, whichever ever is higher;
- (c) Non-consideration of incentive and ex gratia payments made to the employees in calculation of O&M expenses; and
- (d) Error in the computation of O&M expenses due to different capacity in operation during the period 1995-1996 to 1999-2000.

22. So far as the grounds at (a), (b), (c) above are concerned, these are similar to those raised in Review Petition No. 103/2003. These have been considered and dealt with in the earlier part of this order. It has been found that review on these grounds is not admissible. For the reasons already recorded we do not find the present petition to be a fit case for review of the order dated 24.10.2003 on these three grounds. This leads us to be remaining ground on which review has been prayed for.

### **Error in computation of O&M**

23. The methodology for computation of O&M expenses of the generating stations in existence for five years or more on 1999-2000 as contained in the notification dated 26.3.2001 has been adverted to at para 14 above. In case of new thermal stations not in existence for a period of five years in 1999-2000, the base O&M expenses are fixed at 2.5% of the actual capital cost in the year of commissioning. The base O&M expenses are to be escalated further in accordance with the prescribed escalation factors.

24. It has been submitted by the petitioner that it had claimed O&M expenses on the basis of averaged O&M cost per MW during the years 1996-1997 to 2000-2001. The averaged O&M cost per MW was escalated in accordance with the escalation factors specified in the notification dated 26.3.2001. It is stated that this methodology had been followed because the station was declared partially commercial during 1996-1997 and the period prior to that. According to the petitioner, the Commission has arrived at O&M expenses on the basis of O&M expenses applicable for reduced capacity of the generating station during 1995-96 and 1996-97. It is averred that computation of O&M expenses admissible during the period 1.4.2001 to 31.3.2004 on the basis of O&M charges for reduced capacity during the years 1995-1996 and 1996-1997 are not true representatives of the actual O&M expenses for later years which are on the higher side, and thus has caused injustice to the petitioner and therefore, O&M charges allowed need to be suitably revised otherwise it would put the petitioner to a loss.

25. The methodology contained in the notification dated 26.3.2004 for computation of O&M charges is reproduced above. There is no provision in the notification dated 26.3.2001 that O&M charges are to be fixed based on O&M cost per MW. Therefore, the claim of the petitioner was unjustified. The review of the order to claim O&M expenses based on O&M cost/MW is not maintainable, since it will be in violation of the notification dated 21.3.2001. In accordance with the notification dated 26.3.2001, O&M charges are to be fixed based on average of actuals for the years 1995-1996 to 1999-2000 in case the generating station was in operation for a period of 5 years or more during 1999-2000 and in other cases, these are to be fixed as a percentage of capital cost. Some units of Dadri GPS were in operation for a period of more than 5 years during the base year 1999-2000. The Commission while allowing O&M expenses in the order dated 24.10.2003 had considered the fact that the full capacity of the station was not operational in the years 1995-1996 and 1996-1997. The partial expenses for these years were not taken into account while normalising O&M expenses and thus was limited to the years 1997-98 to 1999-2000. In view of the above, the case for review of order for re-computation of O&M charges is not made out and the prayer is dismissed.

26. For the reasons recorded above, Review Petition No. 104/2003 is dismissed at admission stage.

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

New Delhi dated the 1<sup>st</sup> July, 2004

Sd/-  
**(K.N. SINHA)**  
**MEMBER**

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