

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DLEHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**

**Review Petition No. 59/2003
In Petition No. 39/2001**

In the matter of

Review of order dated 23.7.2003, approving the tariff for Singrauli STPS for the period 1.4.2001 to 31.3.2004

And in the matter of

National Thermal Power Corporation Ltd.	Petitioner
Vs		
Uttar Pradesh Power Corporation Ltd. and others	Respondents

The following were present:

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Shri Ajay Dua, NTPC
3. Shri A.K. Poddar, NTPC
4. Shri S.D. Jha, NTPC
5. Shri S.K. Samui, SM(C), NTPC
6. Shri T.R. Sohal, NTPC
7. Shri V.B.K. Jain, GM(C), NTPC
8. Shri M.S. Chawla, AGM (C), NTPC
9. Shri S.K. Johar, DGM(C), NTPC
10. Shri K.V. Balakrishnan, NTPC
11. Shri Manoj Mathur, DGM, NTPC,
12. Shri S.K. Sharma, Sr. Manager (C), NTPC
13. Shri D.K. Salpekar, NTPC
14. Shri Sahdeep Mehta, NTPC

**ORDER
(DATE OF HEARING 2.12.2003)**

The petitioner seeks review of the order dated 23.7.2003 in Petition No. 39/2001, in so far as it deals with the following issues:

- (a) Quantum of spares to be included for determination of working capital requirement,
- (b) Calculation of interest on loan and
- (c) Disallowance of incentive and ex-gratia payments to the employees for computation of base O&M expenses

2. The petition was listed for admission.

3. We have heard Shri M.G. Ramachandran, Advocate for the petitioner. We direct that the review petition be admitted so far as the issues at (a) and (b) of para 1 above are concerned. We are not inclined to admit the issue listed at (c) of para 1 above for which we proceed to record our reasons.

4. 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.

5. 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 its order dated 23.7.2003, 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 allows only the obligatory minimum bonus payable under the payment of Bonus Act as a part of the employee cost.

6. 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.

7. At the hearing, Shri. M.G. Ramachandhran, learned counsel for the petitioner brought to our notice the observations made by the Hon’ble Supreme Court in its judgement in WBERC Vs CESC Limited to the effect that the payments made to the employees and governed by the terms of settlement are the actual amounts spent by the

company as “employee cost” which have to be allowed for the purpose of computation of tariff.

8. 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 is 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. In our view, the observations of the Hon’ble Supreme Court in WBERC Vs CESC Limited do not apply to the case before us since in that case WBERC had imposed ad hoc cuts from the actual expenditure, for which no reasons seemed to have been given. 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 admit review petition on this issue.

9. The petitioner is directed to serve copy of the petition on the respondents by 20.12.2003 along with a copy of this order, for further adjudication on the other two issues on which the review petition has been admitted. The respondents may file their replies by 20.1.2004 with advance copy to the petitioner who may file its rejoinder, if any, by 31.1.2004. An affidavit for service of the petition shall be filed by the petitioner by 26.12.2003.

10. List this petition on 24th February 2004.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 10th December 2003