

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

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

**Petition No. 88/2004**

**In the matter of**

Clarification regarding levy/refund of development surcharge by NTPC and PGCIL for the period 1.4.2001 to 31.3.2004.

**And in the matter of**

Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001

**And in the matter of**

Gujarat Electricity Board

...**Petitioner**

**Vs**

1. National Thermal Power Corporation Limited, New Delhi
2. Power Grid Corporation of India Limited, Gurgaon .....**Respondents**

**ORDER**

The petitioner, Gujarat Electricity Board, has sought a clarification for exemption from payment of development surcharge and a direction to the respondents for refund or not to levy development surcharge for the period 2001 to 2004.

2. Development Surcharge was ordered to be levied at the rate of 5% of the fixed charges claimed by a generating company in respect of generation at regional level under the terms and conditions for determination of tariff applicable from 1.4.2001 to 31.3.2004. Similarly, the transmission utility was entitled to evelopment

surcharge at the rate of 10% of the transmission charges at regional level. The levy of development surcharge was subject to the following conditions, namely:

- (a) Surcharge collected by the utilities was to be kept in a separate bank account and could be invested in securities of recognised infrastructure funds like IDFC or IDBI Tax free bonds and income therefrom was to be credited to that bank account;
- (b) The generating company/transmission utility was required to maintain separate accounts in its books and reflect the balance in the Development Surcharge Reserve Account and the investment represented against the same in the balance sheet;
- (c) On the purchase of the undertaking or on any other such contingency the reserve and the corresponding investments were to be transferred to the successor undertaking to subserve the same objective of fresh capacity addition;
- (d) The fund could be made use of to the extent of 1/3<sup>rd</sup> of the equity requirement for any capacity addition in the respective region, the balance 2/3<sup>rd</sup> being provided by the generating company/transmission utility;
- (e) To the extent to which the fund was used as equity in any new capacity addition, *pro rata* reduction for the return on equity in the determination of tariff of the new project was to be allowed;
- (f) A certificate in the prescribed form regarding the use of these funds is to be filed with the Commission every year, duly verified by the statutory auditors of the generating company/transmission utility; and
- (g) The use of these funds in any other manner can be only with the prior approval of the Commission either on petition or suo motto for which the due process is to be followed.

3. The terms and conditions for determination of tariff applicable from 1.4.2004 have already been notified by the Commission. Levy of development surcharge has been discontinued from the date new terms and conditions have come into effect. The present petition has been filed against the above background since, according to the petitioner, the respondents have not submitted any concrete plan for utilisation of development surcharge recovered.

4. In the aforesaid circumstances and in particular discontinuance of development surcharge from 1.4.2004, the question of utilisation of the development surcharge applicable during the period 1.4.2001 to 31.3.2004 is to be considered in its entirety and a final view taken after ascertaining the views of all concerned. We, therefore, direct that notice be issued to the concerned Central Power Sector Utilities and the state utilities directing them to file their views on utilisation of development surcharge levied during the tariff period 1.4.2001 to 31.3.2004, latest by 20.10.2004.

5. List this petition for hearing of all concerned on the issue on 26.10.2004.

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

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

**New Delhi dated the 15<sup>th</sup> September, 2004**