

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri K.N. Sinha, Member**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri A.H. Jung, Member**

**Petition No. 69/2005**

**In the matter of**

Revision of O&M expenses for the period 1.4.2001 to 31.3.2004 in respect of Anta Gas Power Station (419.33 MW).

**And in the matter of**

National Thermal Power Corporation Ltd. .... **Petitioner**

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
3. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
4. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
5. Delhi Transco Ltd., New Delhi
6. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
7. Punjab State Electricity Board, Patiala
8. Himachal Pradesh State Electricity Board, Shimla
9. Power Development Deptt. (J&K), Srinagar
10. Power Deptt., Union Territory of Chandigarh, Chandigarh
11. Uttranchal Power Corporation Ltd., Dehradun..... **Respondents**

**Petition No. 71/2005**

**In the matter of**

Revision of O &M expenses for the period 1.4.2001 to 31.3.2004 in respect of Farakka Super Thermal Power Station.

**And in the matter of**

National Thermal Power Corporation Ltd. .... **Petitioner**

Vs

1. West Bengal State Electricity Board, Kolkata
2. Bihar State Electricity Board, Patna
3. Jharkhand State Electricity Board, Ranchi
4. Grid Corporation of Orissa Ltd., Bhubaneshwar
5. Damodar Valley Corporation, Kolkata
6. Power Deptt. Govt. of Sikkim, Gangtok
7. Tamil Nadu Electricity Board, Chennai
8. Union Territory of Pondicherry, Electricity Deptt., Pondicherry
9. Uttar Pradesh Power Corporation Ltd., Lucknow
10. Power Development Deptt., Govt. of J&K, Srinagar
11. Delhi Transco Ltd., New Delhi
12. Power Deptt. Union Territory of Chandigarh, Chandigarh
13. Madhya Pradesh State Electricity Board, Jabalpur

14. Maharashtra State Electricity Board, Mumbai
15. Gujarat Electricity Board, Baroda
16. Electricity Deptt., Administration of Daman & Diu, Daman
17. Electricity Deptt., Administration of Dadra & Nagar Haveli,  
Silvassa

**Respondents**

**Petition No. 77/2005**

**In the matter of**

Revision of O & M expenses for the period 1.4.2001 to 31.3.2004 in respect of National Capital Thermal Power Station, Dadri

**And in the matter of**

National Thermal Power Corporation Ltd. .... **Petitioner**  
Vs

1. Uttar Pradesh Power Corporation Limited, Lucknow
  2. Delhi Transco Limited, New Delhi
- .... **Respondents**

**Petition No. 78/2005**

**In the matter of**

Revision of O&M expenses for the period 1.4.2001 to 31.3.2004 in respect of Auraiya Gas Power Station.

**And in the matter of**

National Thermal Power Corporation Ltd. .... **Petitioner**  
Vs

1. Uttar Pradesh Power Corporation Limited, Lucknow
  2. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
  3. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
  4. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
  5. Delhi Transco Ltd., New Delhi
  6. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
  7. Punjab State Electricity Board, Patiala
  8. Himachal Pradesh State Electricity Board, Shimla
  9. Power Development Deptt. (J&K), Srinagar
  10. Power Deptt., Union Territory of Chandigarh, Chandigarh
  11. Uttranchal Power Corporation Ltd., Dehradun
- .... **Respondents**

**Petition No. 89/2005**

**In the matter of**

Revision of O&M expenses for the period 1.4.2001 to 31.3.2004 in respect of Dadri Gas Power Station.

**And in the matter of**

National Thermal Power Corporation Ltd. .... **Petitioner**  
Vs

1. Uttar Pradesh Power Corporation Limited, Lucknow
2. Jaipur Vidyut Vitran Nigam Ltd., Jaipur

3. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
  4. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
  5. Delhi Transco Ltd., New Delhi
  6. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
  7. Punjab State Electricity Board, Patiala
  8. Himachal Pradesh State Electricity Board, Shimla
  9. Power Development Deptt. (J&K), Srinagar
  10. Power Deptt., Union Territory of Chandigarh, Chandigarh
  11. Uttranchal Power Corporation Ltd., Dehradun
- .... **Respondents**

**The following were present:**

1. Shri V.B.K. Jain, NTPC
2. Shri I.J. Kapoor, NTPC
3. Shri S. D.Jha, NTPC
4. Shri Manoj Saxena, NTPC
5. Shri S.K. Sumui, NTPC
6. Shri S.K.Johar, NTPC
7. Shri S.N.Goel, NTPC
8. Shri S.K. Sharma, NTPC
9. Ms. Alka Saigal, NTPC
10. Shri Balaji Dubey, Dy. Manager (Law), NTPC
11. Shri Ajay Dua, Sr. Manager, NTPC

**ORDER**  
**(DATE OF HEARING: 27.9.2005)**

The petitioner, National Thermal Power Corporation Ltd. (NTPC) has sought revision of O&M expenses for the period 1.4.2001 to 31.3.2004 for its different stations. In view of the fact that the issues raised are generally common in all these applications, these were heard together and are being disposed of through its composite order. We briefly discuss the facts giving rise to these petitions.

**Petition No. 69/2005**

2. The petitioner has sought revision of O&M expenses for the period 1.4.2001 to 31.3.2004 in respect of Anta Gas Power Station. The petitioner had filed Petition No. 45/2001 for approval of tariff for Anta Gas Power Station for the period 1.4.2001 to 31.3.2004 on 8.6.2001. This petition was based on the terms and conditions for determination of tariff contained in Ministry of Power notification dated 30.3.1992. Subsequently, the petitioner filed the

amended petition on 7.2.2002, based on the terms and conditions notified by the Commission under Section 28 of the Electricity Regulatory Commissions Act, 1998. The application was disposed of by order dated 30.4.2004 when the Commission determined the final tariff for the period in question. The petitioner has pleaded that it had actually incurred an expenditure of Rs.11679 lakh under O&M during the period 1.4.2001 to 31.3.2004, though the Commission has approved O&M expenses amounting to Rs.7051 lakh, leaving an uncovered gap of Rs.4628 lakh. Accordingly, the petitioner has sought revision of O&M expenses allowed by the Commission.

**Petition No. 71/2005**

3. The petitioner had filed Petition No. 36/2001 for approval of tariff for Farakka Super Thermal Power Station for the period 1.4.2001 to 31.3.2004 on 1.6.2001. This petition was based on the terms and conditions for determination of tariff contained in Ministry of Power notification dated 30.3.1992. Subsequently, the petitioner filed the amended petition on 31.1.2002, based on the terms and conditions notified by the Commission under Section 28 of the Electricity Regulatory Commissions Act, 1998. The application was disposed of by order dated 19.7.2004 when the Commission determined the final tariff for the period in question. The petitioner has pleaded that it had actually incurred an expenditure of Rs.54352 lakh under O&M during the period 1.4.2001 to 31.3.2004, though the Commission has approved O&M expenses amounting to Rs.47113 lakh, leaving an uncovered gap of Rs.7239 lakh. Accordingly, the petitioner has sought revision of O&M expenses allowed by the Commission.

**Petition No. 77/2205**

4. The petitioner had filed Petition No. 40/2001 for approval of tariff for NCTPS, Dadri for the period 1.4.2001 to 31.3.2004 on 6.6.2001. This petition

was based on the terms and conditions for determination of tariff contained in Ministry of Power notification dated 30.3.1992. Subsequently, the petitioner filed the amended petition on 31.1.2002, based on the terms and conditions notified by the Commission under Section 28 of the Electricity Regulatory Commissions Act, 1998. The application was disposed of by order dated 20.7.2004 when the Commission determined the final tariff for the period in question. The petitioner has pleaded that it had actually incurred an expenditure of Rs.31545 lakh under O&M during the period 1.4.2001 to 31.3.2004, though the Commission has approved O&M expenses amounting to Rs.27175 lakh, leaving an uncovered gap of Rs.4370 lakh. Accordingly, the petitioner has sought revision of O&M expenses allowed by the Commission.

**Petition No. 78/2005**

5. The petitioner had filed Petition No. 46/2001 for approval of tariff for Auraiya Gas Power Station for the period 1.4.2001 to 31.3.2004 on 8.6.2001. This petition was based on the terms and conditions for determination of tariff contained in Ministry of Power notification dated 30.3.1992. Subsequently, the petitioner filed the amended petition on 7.2.2002, based on the terms and conditions notified by the Commission under Section 28 of the Electricity Regulatory Commissions Act, 1998. The application was disposed of by order dated 19.11.2004 when the Commission determined the final tariff for the period in question. The petitioner has pleaded that it had actually incurred an expenditure of Rs.15746 lakh under O&M during the period 1.4.2001 to 31.3.2004, though the Commission has approved O&M expenses amounting to Rs.7830 lakh, leaving an uncovered gap of Rs.7880 lakh. Accordingly, the petitioner has sought revision of O&M expenses allowed by the Commission.

### **Petition No.89/2005**

6. The petitioner had filed Petition No. 44/2001 for approval of tariff for Dadri Gas Power Station for the period 1.4.2001 to 31.3.2004 on 8.6.2001. This petition was based on the terms and conditions for determination of tariff contained in Ministry of Power notification dated 30.3.1992. Subsequently, the petitioner filed the amended petition on 7.2.2002, based on the terms and conditions notified by the Commission under Section 28 of the Electricity Regulatory Commissions Act, 1998. The application was disposed of by order dated 24.10.2003 when the Commission determined the final tariff for the period in question. The petitioner has pleaded that it had actually incurred an expenditure of Rs.15935 lakh under O&M during the period 1.4.2001 to 31.3.2004, though the Commission has approved O&M expenses amounting to Rs.10424 lakh, leaving an uncovered gap of Rs.5511 lakh. Accordingly, the petitioner has sought revision of O&M expenses allowed by the Commission.

### **General Submissions**

7. According to the petitioner, the difference between the expenses actually incurred and those allowed is on account of the fact that the base “employee cost” considered for the generating station and the corporate office was inadequate. It has been further pointed out that certain expenses incurred during 1995-96 to 1999-2000, have been disallowed for the purposes of normalisation. The petitioner has cited the instances of the expenditure under the heads “repair and maintenance”, “insurance”, “communication expenses” and “water chargers”, etc. The petitioner has also submitted that the “security expenses” allowed were much less than the expenditure actually incurred under this head.

8. The petitioner in support of its claim for revision of O&M expenses has relied upon the observations made in the order dated 21.12.2000, which according to the petitioner granted it liberty to approach the Commission for reimbursement of actual expenses with proper justification.

9. The petitioner has stated that salary revision of the public sector employees was made with effect from 1.1.1997, though actually implemented in July 2000 and thereafter. It has been submitted that when the applications for approval of tariff were made, the salary revision arrears paid for the years 1997-98, 1998-99 and 1999-2000 were not included in the data submitted before the Commission. Therefore, the petitioner has suggested that the normalized cost arrived at by the Commission should have excluded the actual employee cost data for the years 1995-96 and 1996-97 as it did not represent the normal employee cost by reason of revision with effect from 1.1.1997 and the actual employee cost indicated in the present application for the years 1997-98, 1998-99 and 1999-2000 should be considered for the purpose of normalization. The petitioner has averred that less recovery of O&M expenses has caused great hardship to the petitioner as large amounts still remained unrecovered.

10. In the affidavits filed on 1.8.2005 and 4.8.2005 in the above-said petitions, the petitioner has submitted the following details, among others:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>	
(a)	Date on which revision of salary of the employees was notified	(i) Executives	6.7.2000
		(ii) Supervisor	19.4.2001
		(iii) Workmen	2.3.2001
(b)	Date on which the payment of arrears was made	(i) Executives	July'2000
		(ii) Supervisor	April'2001
		(iii) Workmen	March'2001
(c)	Month from which the revised salary was paid to the employees	(i) Executives	July'2000
		(ii) Supervisor	April'2001
		(iii) Workmen	March'2001

11. We heard Shri V. B. K. Jain for the petitioner on admission of these petitions.

### **Analysis**

12. The tariff for the period 1.4.2001 to 31.3.2004 was regulated in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 notified on 26.3.2001 (hereinafter referred to as “the notification”). As per the notification, O&M expenses for the generating stations in operation for five years or more in the base year of 1999-2000 were to be derived on the basis of actual O&M expenses, excluding abnormal O&M expenses, if any, for the years 1995-96 to 1999-2000 duly certified by the statutory auditors. The average of actual O&M expenses for the years 1995-96 to 1999-2000 was considered as O&M expenses for the year 1997-98. The expenses for 1997-98 were escalated twice @ 10% per annum to arrive at O&M expenses for the base 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. The notification further provides for adjustment of O&M expenses based on actual escalation factor, which is not relevant for the present proceedings and accordingly, the provision relating to adjustment of actual expenses is not being referred to.

13. The notification was preceded by the Commission’s order dated 21.12.2000 in Petition No.4/2000 and other petitions. In the said order dated 21.12.2000 it was provided that any abnormal expenses incurred by the utilities in operating and maintaining their plants should not get reflected in the norms but should be dealt with separately on case to case basis through separate petitions. The Commission felt that this would provide an opportunity to the stakeholders to assess the merit of claims and to ensure transparency.

14. It needs to be noted that in terms of the Commission's order dated 21.12.2000 fresh revision of O&M base charges after determination of tariff is not warranted based on the actual expenses. The said order dated 21.12.2000 only grants liberty to the utilities like the petitioner to seek reimbursement of actual expenses, with proper justification. In the present case, the petitioner has not sought re-imburement of actual expenses, but has prayed for revision of base O&M expenses.

15. From the details extracted at para 10 above, it can be seen that revision of salary of the employees, executives, supervisors and other workmen was notified during July 2000 to April 2001 and the arrears on that account were also paid during the same period. Therefore, the complete employee cost data on account of revision of pay and allowances was available with the petitioner during April 2001. When the application for determination of tariff were made filed on 8.6.2001, the data in this regard could be placed before the Commission by the petitioner. Further, the petitioner had filed amended petitions during January/February 2002 in all these cases. The petitioner did not incorporate the actual data of employee cost in the amended petitions as well. The petitioner could have taken further steps for amendment of the petitions during their pendency to place on record the actual data under the head "employee cost" till the issue of the tariff orders in respective petition. Thus, there were ample opportunities available to the petitioner to seek revision of employee cost under O&M expenses for the years 1997-98 to 1999-2000 which it did not avail of. The petitioner is, thus, deemed to have relinquished its claim for determination of normative O&M charges based on actual data for 1995-96 to 1999-2000 as regards the employee cost.

16. The petitioner filed petition No. 56/2005 to claim revision of O&M expenses for Korba Super Thermal Power Station for the period 1.4.2001 to 31.3.2004 under similar circumstances. This petition was dismissed by the order dated 11.8.2005. While ordering dismissal of the petition, the Commission observed:

“11. Under Order 2 Rule 2 of the Code of Civil Procedure (the Code) every suit is to include the whole of the claim to which the party is entitled to make in respect of the cause of action but a party may relinquish any portion of his claim. However, where the party omits to sue in respect of any claim or intentionally relinquishes any portion of his claim, he cannot afterwards sue in respect of the portion so omitted or relinquished. Further, under Section 11 of the Code, no court can try any suit in which the matter directly and substantially in issue was directly and substantially in issue in a former suit between the same parties in a court of competent jurisdiction and had been heard and finally decided by such court. Explanation IV below Section 11 of the Code further lays down that any matter, which might and ought to have been made ground of defence or attack in the former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The provisions of the Code referred to above are not limited to civil suits but are based on public policy that there should be finality to litigation and that no person should be vexed twice for the same cause of action. These principles have been applied by the Hon’ble Supreme Court and High Courts to the proceedings before the quasi-judicial authorities.

12. By extending the principles contained in Order 2 Rule 2 of the Code to the present case, the petitioner cannot now be permitted to claim revision of O&M expenses by filing a fresh application based on the actual O&M cost under the head “employee cost” for the purpose of normalisation. The present petition is also barred by the principle of constructive res judicata because approval of O&M expenses on the basis of actual employee cost for the years 1997-98, 1998-99 and 1999-2000 was deemed to have been decided by the order dated 6.8.2003 since the petitioner is deemed to have made it a ground for claim for O&M expenses as it could and ought to have placed before the Commission actual “employee cost” data for the years 1997-98 to 1999-2000.”

17. The above observations squarely apply to the facts of the cases in hand. After deciding the tariff, the Commission cannot revisit the matters covered in the tariff orders, which have acquired finality, unless otherwise authorized by law. The

petitioner has not brought to our notice any provision of law to support its claim for revision of O&M charges under the present circumstances.

18. For the amounts indicated under the head “employee cost”, the petitioner had given increase of more than 20% in the years 1997-98 and 1998-99. The petitioner on affidavits explained that increases were on account of provision for pay revision of employees. On consideration of this, the employee cost indicated by the petitioner for the years 1997-98 and 1998-99 (excluding incentive and ex-gratia), even though beyond the admissible limit of 20% was considered for normalisation. Against this background, the petitioner has contended that revision of O & M expenses is warranted in any case since O & M expenses approved by the Commission are provisional, based as they are on anticipated “employee cost” which is less than the actual expenses. No one else but the petitioner is responsible for this state of affairs. The petitioner gave certain details, which were accepted in toto. It is only the petitioner who is to own up the consequences for its actions. Therefore, no fault can be found with the tariff orders on this count and the case for revision of O&M charges is not made out.

19. The Commission has not considered a part of the expenses incurred under certain heads during 1995-96 to 1999-2000 for the purpose of normalization as these expenses were found to be “ abnormal” and did not qualify for normalization in accordance with the notification dated 26.3.2001. The Commission recorded the detailed reasons for their exclusion. Therefore, the question of exclusion of these expenses cannot be re-agitated in the present proceedings as they are barred by the principle of res-judicata. On the question of security expenses, the entire data for the years 1995-96 to 1999-2000 furnished by the petitioner was allowed for the purpose of normalization and no

part of the expenses incurred during the relevant period had been left out. Therefore, the petitioner's grievance on this account is unfounded.

20. The notification does not guarantee reimbursement of actual expenses in every case, but has specified the norms for computation of different components of tariff. There are situations where the petitioner has been paid in excess of the actual expenses, based on the norms specified in the notification. Thus, the tariff approved is the complete package.

21. The revision of O&M expenses on the ground of hardship is not maintainable since O&M expenses were computed in the tariff order in accordance with the methodology prescribed under the notification, and based on the information placed on record by the petitioner in the proceedings in the original Petitions.

22. As a result, all the above noted petitions fail and are dismissed at the admission stage.

Sd/-

**(A.H. JUNG)**  
**MEMBER**

Sd/-

**(BHANU BHUSHAN)**  
**MEMBER**

Sd/-

**(K.N.SINHA)**  
**MEMBER**

New Delhi dated the 19th October 2005