

**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.100/2003  
In  
Petition No.23/2002**

**In the matter of**

Petition for approval of tariff for Jeypore-Talcher Transmission System in Eastern Region for the period 1.4.2001 to 31.3.2004

**And in the matter of**

Review of order dated 22.10.2003 in Petition No.23/2002

**And in the matter of**

Power Grid Corporation of India Ltd.

.... **Petitioner**

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Kolkatta
3. Grid Corporation of Orissa Ltd., Bhubneshwar
4. Damodar Valley Corporation, Kolkatta
5. Power Dept., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Raipur

.....**Respondents**

**The following were present**

1. Shri M.G. Ramachandaran, Advocate, PGCIL
2. Shri U.C. Misra, Dir (Pers/Comml), PGCIL
3. Shri Umesh Chandra, ED (Comml), PGCIL
4. Shri S.K. Sinha, GM, PGCIL
5. Shri P.C. Pankaj, AGM (Comml), PGCIL
6. Shri Prashant Sharma, PGCIL
7. Shri U.K. Tyagi, Chief Manager, PGCIL
8. Shri C. Kannan, PGCIL
9. Shri M.M. Patnaik, PGCIL
10. Shri D.D. Dhayaseelan, PGCIL

**ORDER**  
**(DATE OF HEARING: 16.3.2004)**

Petition No.23/2002 was filed by the petitioner for approval of tariff for the period from 1.4.2001 to 31.3.2004 for Jeypore-Talcher Transmission System in the Eastern Region, based on the terms and conditions of tariff contained in the Commission's notification dated 26.3.2001 (the notification dated 26.3.2001). The tariff was approved by the Commission vide its order dated 22.10.2003. The petitioner seeks review of the said order dated 22.10.2003 limited to consideration of capital cost and computation of O&M charges. The petition was listed for hearing on admission. We heard Shri M.G. Ramachandaran, Advocate on admission.

**CAPITAL COST**

2. In accordance with the notification dated 26.3.2001, the project cost as approved by CEA or an appropriate independent agency other than Board of Directors of the petition forms the basis for computation of tariff. The tariff for the transmission system for the period from 1.4.1995 to 31.3.1997 was earlier notified by Ministry of Power by considering the capital of Rs.15378 lakh. The petitioner in Petition No.23/2002 had claimed tariff based on the capital cost considered by Ministry of Power. It was pointed out by the respondents that the approved capital cost of the transmission system was Rs.12040 lakh and that the approved capital cost should form the basis of computation of tariff. The petitioner had clarified that prior to 1.4.1992, the transmission charges were billed by NHPC and thereafter consequent to transfer of the transmission system to the petitioner the billing was continued on the same basis as followed by NHPC. This, according to the petitioner, resulted in less payments to the petitioner and arrears accumulated thereby. Therefore, while

approving tariff, the Ministry had capitalised amount of arrears to compensate the petitioner. As a result, the base capital cost of Rs.15378 lakh was considered by the Ministry while approving tariff from 1.4.1995 to 31.3.1997.

2. The rival contentions were considered by the Commission in its order dated 22.10.2003. The Commission noted that capitalisation of arrears of transmission charges for the period from 1.4.1992 to 31.3.1995 allowed by the Ministry was not permissible in accordance with the notification dated 26.3.2001 which laid down that the project cost as approved by CEA would be the basis for computation of tariff. The amount of arrears capitalised was not approved as a part of the project cost which remained Rs.12040 lakh. Accordingly, the Commission considered the approved capital cost of Rs.12040 lakh for the purpose of computation of tariff for the period from 1.4.2001 to 31.3.2004.

3. In the present application for review, the petitioner has submitted that an amount of Rs.15378 lakh considered by Ministry of power for approval of tariff ought to have been considered by the Commission. In the alternative, it has been requested that the Commission may direct the beneficiaries to pay balance amount of Rs.857 lakh along with the surcharge at the rate of 18%.

4. We have considered the submission made by the petitioner. The consideration of capital base for the purpose of computation of tariff was deliberated upon by the Commission in its order dated 22.10.2003 and after proper discussion, the Commission decided to consider the capital cost of Rs.12040 lakh for computation of tariff. The facts now urged by the petitioner were taken note of by the Commission in

its order. Therefore, the grounds relied upon by the petitioner in the application for review do not qualify for review of the order since they do not constitute an error on the record. Neither can these be considered as new evidence brought on record. The alternative prayer made by the petitioner that the respondents be directed to pay the amount of Rs.857 lakh on account of arrears, also does not fall within the scope of review since it was not an issue before the Commission when the petitioner sought approval for tariff earlier. In case the petitioner has any claim on account of the arrears from the respondents, it is at liberty to pursue the remedies available to it in law. We are clear in our mind that no direction for payment of arrears claimed by the petitioner can be given in exercise of review jurisdiction. Therefore, the plea of the petitioner for review of the capital cost considered by the Commission in the order of 22.10.2003 fails.

### **O&M EXPENSES**

5. The notification dated 26.3.2001 lays down the following procedure for calculation of O&M expenses:

- (i) Where O&M expenses, excluding abnormal O&M expenses, if any, on sub-station (OMS) and line (OML) are separately available for each region, these shall be normalised by dividing them by number of bays and line length respectively. Where data as aforesaid is not available, O&M expenses in the region are to be apportioned to the sub-station and lines on the basis of 30:70 ratio and these are to be normalised as below:

O&M expenses per Unit of the line length in Kms (OMLL) =  
Expenses for lines (OML)/Average line length in Kms (LL)

O&M expenses for sub-stations (OMBN) = O&M expenses for substations (OMB)/Average number of bays (BN)]

- (ii) The five years average of the normalised O&M expenses for lines and for bays for the period 1995-96 to 1999-2000 is to be escalated at 10%

per annum for two years (1998-99 and 1999-2000) to arrive at normative O&M expenses per unit of line length and per bay for 1999-2000.

- (iii) The normative O&M per unit length and normative O&M per bay for the year 1999-2000 for the region derived in the preceding paragraph is to be escalated @ 6% per annum to obtain normative values of O&M expenses per unit per line length and per bay in the relevant year. These normative values are to be multiplied by line length and number of bays (as the case may be) in a given system in that year to compute permissible O&M expenses for the system.
- (iv) The escalation factor of 6% per annum is to be used to revise normative base figure of O&M expenses. Any deviation of the escalation factor computed from the actual inflation data that lies within 20% of the notified escalation factor of 6% shall be absorbed by utilities/beneficiaries.

6. Among others, the following elements of O&M expenses considered by the Commission in the order dated 22.10.2003, of which the petitioner has sought reconsideration:

- (a) Employee cost,
- (b) Repair and maintenance expenses, and
- (c) Other expenses including lost and legal expenses.

### **Employee Cost**

7. The petitioner had claimed incentive and ex-gratia payments made to its employees, including the top management, as a part of O&M expenses for the purpose of normalisation. It was clarified by the petitioner that incentive and ex-gratia payments were not the minimum statutory bonus payable under the Payment of Bonus Act. The Commission in the order dated 22.10.2003 decided that the payments of incentive, other than statutory minimum bonus was at the discretion of the petitioner and should be borne out of its profit or incentive earned by it from the respondents for achieving higher productivity in the form of higher availability of the

transmission system. Accordingly, incentive and ex-gratia payments made by the petitioner to its employees were excluded from consideration for computation of employee cost.

8. The petitioner has submitted that payments on account of incentive and ex-gratia are obligatory payments since the petitioner had given a commitment to the employees who came on transfer from NTPC and NLC to continue protection of the incentive payment earlier available to them before their transfer to the petitioner company. It is submitted that the Hon'ble Supreme Court had also held that the employees of the petitioner would be entitled to incentive and ex-gratia at par with NTPC/NHPC employees.

9. All the facts were available on record in the original proceedings in Petition No.23/2002. However, the Commission took a conscious view to exclude the payments on account of incentive and ex-gratia for the purpose of computation of employee cost component of O&M charges. For this short reason, review of the order is not made out. It goes without saying that payment of incentive and ex-gratia results in higher productivity by enhancing the level of availability of the transmission system. Accordingly, the petitioner becomes entitled to claim incentive from the respondents for the increased availability of tariff. The petitioner's return in the form of incentive from the respondents far exceeds the amount of incentive and ex-gratia paid by it to its employees. Therefore, we are of the considered view that the expenditure on this account should be met by the petitioner out of incentive which is earned by ensuring higher level of availability in the transmission system. For this reason the incentive and ex-gratia payments were kept out of employee cost. We do not find any reasons

to take a different view on merits. Even in case of NTPC and NHPC, incentive and ex-gratia are not considered for calculation of employee cost. There is thus no justification for review of the order on this account.

### **Repair and Maintenance Expenses**

10. It was found that there was an increase of 81% in "repair and maintenance expenditure" during 1997-98 over that for the year 1996-97. It was explained by the petitioner that variation was on account of the fact that a major repair had to be undertaken at Kahalgaon-Bihar Sharif line because of the collapse of the tower. The Commission on consideration of the explanation rendered by the petitioner, had observed that major repairs could not be recurring feature and hence expenses on that account were excluded from the process of normalisation. Accordingly, in terms of the notification dated 26.3.2001, the repair and maintenance expenses for 1997-98 were limited to Rs.399.68 lakh, representing 20% increase over the repair and maintenance expenses for the year 1996-97. The Commission had further observed that if any major repairs were undertaken during the tariff period covered by the order, that is, 1.4.2001 to 31.3.2004, the petitioner could approach the Commission to claim the actual expenses as part of O&M expenses.

11. The petitioner has submitted that an amount of Rs.202.36 lakh on account of repair and maintenance for the year 1997--98 disallowed by the Commission should be allowed as per the actuals necessary to undertake preventive maintenance of the aging equipment. Further, it is stated that the petitioner is using modern technologies maintenance cost of which is much higher and this results in higher O&M expenses. It is submitted that the expenses approved by the Commission for the period from

1.4.2001 to 31.3.2004 are insufficient to meet these requirements, repair and maintenance charges being in the range of 35% of the asset base.

12. The Commission in its order dated 22.10.2003 had not allowed the entire amount under the head "repair and maintenance" for the year 1997-98 on the ground that a substantial part of expenditure was incurred on major repair of Kahalgaon-Bihar Sharif line due to collapse of tower which cannot be a regular phenomenon for the future years. However, a liberty was granted to the petitioner to approach the Commission with proper justification to claim actual expenses, if incurred during the tariff period on major repairs. The decision of the Commission arrived at after careful consideration of the material on record, cannot be a ground for review of the order. The other submission made by the petitioner is that the actual O&M expenses during the period from 1.4.2001 to 31.3.2004 are likely to exceed the O&M expenses approved by the Commission in order dated 22.10.2003 and, therefore, the petitioner seeks a review. It goes without saying that this also cannot be a ground for review of the order since O&M expenses have been allowed in accordance with the provisions of the notification dated 26.3.2001, reproduced above. It is not the case of the petitioner that the notification dated 26.3.2001 has not been properly applied. Accordingly, we do not find merit in the submissions made by the petitioner for review of "repair and maintenance expenses".

### **Other Expenses**

13. In regard to "other expenses" the Commission in its order dated 22.10.2003 had directed as under:

"In case of ERTS, the petitioner has stated that the provisions are made for the losses and shortage of store materials and for the doubtful advances paid to



contractors. Since all these items are controllable by the petitioner and reflect the managerial efficiency of the petitioner, the provisions made in case of ERTS on this account have not been considered as admissible for reimbursement. In case of Corporate Office, the following expenses have not been admitted for reimbursement:

- (a) Donation of Rs. 0.05 lakh, Rs. 30 lakh, Rs. 34.78 lakh and Rs. 600.03 lakh for the years 1995-96, 1996-97, 1898-99 and 1999-2000, as these donations are not related to transmission business. The expenditure on account of the donations need be borne by the petitioner out of other profits of the corporation.
- (b) Provisions of Rs. 1107.61 lakh, Rs. 385.8 lakh and Rs. 0.27 lakh for the year 1996-97, 1997-98 and 1999-2000. These provisions were made for the loss of stores in Eastern Region and North Eastern Region, for bad and doubtful debt in Northern Region and for shortage of store in North Eastern Region. The petitioner has stated that provision of loss of store in Eastern Region (Rs 863.16 lakh in 1996-97) and provision of bad and doubtful debt in Northern Region (Rs 385.80 lakh in 1997-98) were written back during subsequent years in the regional books of account. In view of this, the petitioner has submitted that these expenses need not be considered while fixing the O&M of the respective regions. As all these items are controllable by the petitioner and reflect the managerial efficiency. However, an amount of Rs. 11.14 lakh on account of fire at the corporate office in 1998-99 has been considered as admissible under the head provisions.
- (c) Legal expenses amounting to Rs. 2.65 lakh in the Corporate Office on legal opinion on CERC matters have not been allowed in line with the Commission's policy of allowing only the fees for the petitions filed in the Commission. However, other legal expenses for disputes related to compensation, contracts, service matters and labour cases have been admitted."

14. The petitioner has prayed that an amount of Rs.163.52 lakh disallowed on account of losses, shortage of stores material, etc and sum of Rs.2.65 lakh disallowed on account of legal expenses should be considered. According to the petitioner, the loss of stores and material is a normal feature in an infrastructure project involving huge capital cost, approved by the Central Government. Further, it is submitted that as part of the commercial activity and filing of petitions, pleadings, arguments on legal matters, the petitioner is required to engage professionals and pay for the services

availed of. Based on this logic, the petitioner has sought consideration of the above noted amount towards O&M expenses.

15. The Commission in its order dated 22.10.2003 has given its reasons for treating the sum of Rs.163.52 lakh, stated to be on account of bad and doubtful debts in Northern Region and for shortage of stores in North-Eastern Region. The Commission had disallowed the amount since, in its view, the loss could be prevented by applying proper management techniques by skilful deployment of security expenses on which account are borne by the beneficiaries. Therefore, a decision taken on merits, after careful consideration of full facts cannot be agitated in the review proceedings. According to the petitioner, the amount disallowed is meagre. The mere fact that the amount involved is insignificant, should itself be a ground for rejection of review. At the hearing, learned counsel for the petitioner did not press for consideration of legal expenses of Rs.2.65 lakh for computation towards O&M expenses and as such we are not recording any reasons for disallowing the review on this ground.

16. The result of foregoing discussion is that the application for review is dismissed at admission stage.

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

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

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

**New Delhi dated the 11<sup>th</sup> May 2004**