

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Dr. Pramod Deo, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri R. Krishnamoorthy, Member**

**Petition No.129/2005
(suo motu)**

In the matter of

Reimbursement of application fee and publication charges to Central Power Sector Utilities.

STATEMENT OF REASONS

The Central Power Sector Utilities (CPSUs) were demanding re-imbusement of the application filing fee paid by the CPSUs while seeking approval of tariff for the tariff block 2004-09 on the analogy that the beneficiaries had reimbursed, on the directions of the Commission, such fee paid for approval of tariff during tariff block 2001-04. They also insisted upon re-imbusement of the expenses incurred on publication of notices in the newspapers, pursuant to the regulations framed under Section 64 of the Electricity Act, 2003. However, the beneficiaries opposed this demand by pointing out that the fee paid by the CPSUs during 2001-04, got merged in O&M expenses being allowed during 2004-09 and, therefore, there was no occasion to reimburse the application filing fee additionally.

2. The Commission vide its order dated 22.11.2005 had invited suggestions from the stakeholders on these two issues. The Commission is already allowing reimbursement of expenditure on publication of notices and, therefore, the issue is settled. The other residual issue, therefore, is reimbursement of the application filing fee. The comments of the stakeholders in response to the order dated 22.11.2005

on the issue of reimbursement of the application filing fee are on predictable lines, which are summarized and discussed in the succeeding paras.

3. The CPSUs have strongly pleaded for reimbursement of the expenditure by the beneficiaries. It has been pointed out by NTPC that the data of actual O&M expenses for the period 1995-96 to 1999-2000 based on which norms for O&M expenses, applicable for the tariff block 2004-09 were fixed, did not include the application filing fee. It has been further stated that the application filing fee was considerably increased subsequent to finalization of norms for O&M expenses. NHPC in particular has urged that since the application filing fee was made 'pass through' during the period 2001-04, the expenditure on the application filing fee was not included in the 'legal expenses' forming part of actual O&M expenditure and so the expenditure has not been captured in O&M expenses being allowed by the Commission.

4. The beneficiaries, on the other hand, have opposed reimbursement of the application filing fee. They have reiterated that this expenditure has already been captured in the norms for O&M expenses. It is further urged that under the present regime of tariff determination based on norms, reimbursement of actual expenditure cannot be considered, since under certain heads expenditure may increase while it may decrease under some other heads. Therefore, it is the case of the beneficiaries that the question of reimbursement of the application filing fee cannot be allowed. It has also been argued that increase in expenditure has been covered under annual escalation @4% being allowed in O&M expenses. The beneficiaries have stated that all expenses, including fees paid by the CPSUs for appeals, etc, filed in higher courts

against the Commission's orders form part of historical data base of actual O&M expenses and have been factored in the norms.

5. Before proceeding with the analysis, it may be worthwhile in the first instance to have a look at the methodology considered for arriving at allowable O&M expenses, starting from the tariff block 2001-04. In case of Power Grid Corporation of India Limited (PGCIL), norms of O&M expenses were based on the actual O&M expenses for the five years 1995-96 to 1999-2000. In case of thermal and hydro generating stations, no norms for O&M expenses were framed, but allowable O&M expenses were fixed for each generating station on case-by-case basis, after applying the prudence check on the past data of actual O&M expenses pertaining to the period 1995-96 to 1999-2000. As regards the new generating stations, O&M expenses were allowed as percentage of the capital cost. Legal expenses incurred during the relevant periods formed part of the actual O&M expenses considered for arriving at norms for O&M expenses for the regional transmission systems in case of PGCIL, and allowable O&M expenses for the generating companies, such as, NTPC Ltd., National Hydro Power Corporation Ltd. (NHPC), etc. However, a fact to be borne in mind is that very few applications for approval of tariff were made in the historical period (1995-96 to 1999-2000) as no applications were filed before the Commission prior to May 1999. Therefore, the application filing fee was thinly represented in the data for actual O&M expenses for the period 1995-96 to 1999-2000. Perhaps, against this background, the Commission had allowed reimbursement of the filing fee for the applications made for approval of tariff during the tariff period 2001-04.

6. Against the above background, the issue as to whether or not allowable O&M expenses for the period 2004-09 capture the application filing fee is to be examined now.

7. For framing of norms for O&M expenses for inter-State transmission system for the period 2004-09, the data base was actual O&M expenses incurred during the period 1998-99 to 2002-03. This data base included expenses on account of the application filing fee paid up to 31.3.2003 as well. A vast majority of the applications for approval of tariff for the block 2001-04 had been filed before 31.3.2003. Therefore, there is no room for doubt that allowable O&M expenses for the tariff block 2004-09 take into consideration the expenses incurred on the application filing fee by PGCIL.

8. For the hydro generating stations, operating for a period exceeding 5 years, allowable O&M expenses are determined on case-by-case basis, using the past data of actual O&M expenses for the period 1998-99 to 2002-03. The claim of NHPC that historical data did not include expenditure on the application filing fee does not seem to be correct. Any expenditure made by the company has to find its way into the books of accounts. If NHPC's comments received in response to the order dated 22.11.2005 are to be believed, the expenditure may not have been booked as 'legal expenses' but must have figured under some other head of O&M expenses in the books of accounts, since otherwise the accounts will not reflect the true picture of the financial state of NHPC. The bald statement by NHPC that the expenditure on account of the application filing fee is not included under the head 'legal expenses', does not explain as to how the expenditure actually incurred on this account was adjusted in the books of accounts. While approving O&M expenses in the tariff, the expenditure on account

of the application filing fee has not been specifically excluded by the Commission. Therefore, in our judgment, this expenditure is deemed to have formed part of the historical data. In case of new hydro stations, with operating life up to 5 years, O&M expenses allowed in the year of commissioning are @1.5% of capital cost, which are escalated @4% per annum. This is an all inclusive norm, without considering actual expenditure, so it is not open to argument that the norm did not include the application filing fee.

9. In case of the thermal generating stations, norms for the tariff block 2004-09 were based on actual O&M expenses for the period 1995-96 to 1999-2000. While arriving at norms, the average of the prudent actual expenditure for the aforesaid period was considered as normalized expenditure for the mid-year, that is, 1997-98. This average normalized expenditure so arrived at was escalated @ 10% for 1998-99 and 1999-2000 and @ 6% for 2000-01. Thereafter, annual escalation @ 4% was applied to arrive at norms for O&M expenses for each year of the period 2004-09. The norms so arrived at on per MW basis were proposed in the draft regulations published by the Commission to invite suggestions, etc, from the stakeholders. It is thus seen that considerable benefit in the form of escalation, is available for thermal generating stations. The draft O&M norms initially published by the Commission were contested by NTPC by submitting data of actual O&M expenses for the period 1998-99 to 2002-03. In the order dated 29.3.2004, which in fact is the statement of reasons in support of the tariff regulations applicable during 2004-09, the Commission considered this contention of NTPC and concluded, after due analysis, that the norms proposed were far more liberal than those to be arrived at even after considering fresh data for the period 1998-99 to 2002-03 as per NTPC's contention. Thereby, the Commission

confirmed the draft O&M norms proposed. The expenditure on the application filing fee could be said to have been fairly well-represented in the fresh data of O&M expenses submitted by NTPC for the period 1998-99 to 2002-03, in view of the Commission's findings that the norms proposed for O&M expenses were liberal. These findings have remained uncontested and uncontroverted. It can thus safely be concluded that in case of thermal generating stations too, the norms for O&M expenses fixed by the Commission covered expenditure on the application filing fee.

10. Thus, unlike for the tariff block 2001-04, it is beyond any cavil or doubt that the allowable O&M expenses for the tariff block 2004-09 are adequate to take care of the expenses on the application filing fee. We may point out that none of the CPSUs has placed on record any data or quantitative analysis in support of their claim and to prove otherwise. For this reason also, we consider ourselves justified in arriving at the conclusion that the allowable O&M expenses cover the application filing fee.

11. We have concluded that the expenditure on the application filing fee is part of the allowable O&M expenses. The insistence of the CPSUs for reimbursement on the ground that the application filing fee was hiked during the period 2004-09 amounts to seeking review of the norms. The norms for O&M expenses are composite norms covering every foreseeable head of expenditure. When norms are made, it is very well presumed that the expenditure under different heads will conform to the past trends. But, as rightly contended by the beneficiaries, there may be some heads under which actual expenditure might have been lower than the past trend. We find force in the argument of the beneficiaries. In our view, expenditure under one particular head cannot be considered for reimbursement, in isolation. Therefore, the

demand for reimbursement of actual expenditure on the application filing fee has lost much of its significance. If the settled norms are to be reopened for every increase or decrease in expenditure under individual heads, the purpose of fixing a norm in advance gets defeated. It has to be left to the CPSUs to manage their affairs in a manner so as to regulate their expenses under various heads to even out the actual expenditure *qua* allowable O&M expenses. Except for scale of operations, the situation is no different than a household managing several expenses of varying magnitude in the situation of the limited availability of resources. The Commission has taken a view similar to that being taken herein certain cases in the past where reimbursement of additional expenditure was sought for the reason of increase under a particular head. To wit, in Petition No 144/2004 relating to approval of tariff for Talcher Super Thermal Power Station Stage-I (1000 MW) for the period from 1.4.2004 to 31.3.2009, NTPC had sought reimbursement of water charges over and above the allowable O&M expenses, on the ground that water charges had been revised and increased manifold by the State Govt. The Commission, while rejecting the contention, in its order dated 9.5.2006, observed thus:

“38. The normative O&M expenses were finalized by the Commission after going through the transparent process of hearing and consulting all concerned and were based on the data furnished by the concerned utilities for different components of O&M, including water charges. Further, an escalation of 4% per year is inbuilt in the normative O&M expenses specified by the Commission. There may be other heads in O&M expenses where actual expenses may be less than the normative expenses specified by the Commission. Therefore, we do not consider it to be justified to allow increase under one head, that is, water charges in isolation. As such, recovery of additional O&M expenses on account of any increase in the rates of water charges / royalty etc. during tariff period cannot be allowed. However, the petitioner is at liberty to approach the Commission in accordance with law for recovery of additional water charges with proper justification and details of actual expenses recovered under other heads, if State Governments resort to abnormal increase in the rates of water charges / royalty during the tariff period.”

12. We deem it proper to once again refer to the plea of the CPSUs that there has been a steep hike in the application filing fee during 2004-09. Recently, the CPSUs have furnished to the Commission past data of O&M expenses. On analysis of the data it has been found that the application filing fee constitutes less than 0.5% of the actual O&M expenses. The proportion of the application filing fee will be infinitesimally small when compared to overall tariff for the generating station or the transmission system. Year-wise, escalation being allowed in whole lot of O&M expenses, seems to take care of the enhanced application filing fee. For this reason also, the case for reimbursement of the application filing fee cannot be said to have been made out. We may, however, add that in case there is any change in the circumstances in future, the Commission may devise an appropriate and equitable methodology for reimbursement of such expenses *ibid*.

13. The filing fee is the cost of, or is incidental to, the proceedings for determination of tariff. It is well settled that award of costs cannot be claimed as matter of right (*Janardhan Mohandas Rajan Pillai Vs Madhubhai Patel – AIR 2003 Bombay 490*). The Commission in its discretion may allow such costs in appropriate cases, depending upon facts and circumstances of each case. In the case before us, it is not that the applications are being filed for any deficiency on the part of the beneficiaries. The CPSUs in furtherance of their business interest, are statutorily required to approach the Commission for determination and approval of tariff. In the facts and circumstances of the present case, we do not consider it appropriate to exercise our discretion so as to allow reimbursement of the application filing fee.

14. In the light of above analysis, we decline the claim of the CPSUs to allow reimbursement of expenditure on the application filing fee. This decision will, however, not be quoted as a precedent for any decision on similar issue arising in future.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON

New Delhi dated 11th September 2008