

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**CORAM:**

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri A.H. Jung, Member**

**Review Petition No.55/2005**

**In**

**Petition No. 196/2004**

**(Suo motu)**

**In the matter of**

Review of order dated 28.2.2005 in Petition No.196/2004 (suo motu) - Revision of O&M expenses for the years 2001-02 to 2003-04

**And in the matter of**

National Hydro Power Corporation Ltd.

.....**Petitioner**

**Vs**

1. The Chairman, Punjab State Electricity Board, Patiala
  2. The Chairperson, Haryana Vidyut Prasaran Nigam Ltd, Panchkula
  3. The Chairman & Managing Director, Delhi Transco Limited, New Delhi
  4. The Chairman & Managing Director, Uttar Pradesh Power Corporation Ltd., Lucknow
  5. The Chief Executive Officer, BSES Rajdhani Power Ltd., New Delhi
  6. The Chairman, Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
  7. The Chief Executive Officer, BSES Yamuna Power Ltd., New Delhi
  8. The Chief Executive Officer, North Delhi Power Ltd., Delhi
  9. The Managing Director, Jaipur Vidyut Vitaran Nigam Limited, Jaipur
  10. Chairman-cum-Managing Director, Power Transmission Corpn. of Uttaranchal Ltd., Dehradun
  11. The Managing Director, Jodhpur Vitaran Nigam Limited, Jodhpur
  12. The Chairman, Himachal Pradesh State Electricity Board, Shimla
  13. The Managing Director Ajmer Vidyut Vitaran Nigam Limited, Ajmer
  14. Chief Engineer & Secretary, Chandigarh Administration, Chandigarh
  15. The Principal Secretary, Power Development Department, J&K Govt., Srinagar
  16. The Chairman, West Bengal State Electricity Board, Kolkata
  17. The Chairman, Bihar State Electricity Board, Patna
  18. The Chairman, Damodar Valley Corporation, Kolkata
  19. The Chief Secretary, Deptt. Of Power, Govt. of Sikkim, Gangtok
  20. The Chairman, Jharkhand State Electricity Board, Ranchi
  21. The Chairman, Grid Corporation of Orissa Ltd., Bhubaneswar
  22. The Chairman, Assam State Electricity Board, Guwahati
  23. The Chairman, Meghalaya State Electricity Board, Shillong
  24. The Chief Engineer (Power), Deptt. Of Power, Govt. of Arunachal Pradesh, Itanagar
  25. The Chief Engineer (Power), Electricity Deptt. Govt. of Manipur, Imphal
  26. The Chief Engineer (Power), Electricity Deptt., Govt. of Mizoram, Aizawl
  27. The Chief Engineer (Power), Electricity Deptt., Govt. of Nagaland, Kohima
  28. The Chief Engineer (Electricity), Electricity Deptt., Govt. of Tripura, Agartala..
- Respondents**

**The following were present:**

1. Er. P. Kumar, NHPC
2. Shri Anjuman Ray, NHPC
3. Shri S.K. Meena, Engineer, NHPC
4. Shri S.D. Tripathi, NHPC
5. Shri P.Kaul, CE (Comml), NHPC
6. Shri T.K. Mohanty, NHPC

**ORDER  
(DATE OF HEARING : 7.6.2005)**

The petitioner seeks review of the order dated 28.2.2005 passed in suo motu petition No.196/2004 so far as it relates to working out O&M charges by applying actual escalation factor and also determination of base level amount for the year 2000-01 and has also made certain other incidental prayers.

2. The Commission in its notification dated 26.3.2001 (hereinafter referred to as "the notification") had specified the terms and conditions for determination of tariff, applicable from 1.4.2001 to 31.3.2004. In accordance with the notification, operation and maintenance charges (O&M charges) for the generating stations in operation for five years or more in the base year 1999-2000 were derived on the basis of actual O&M expenses, excluding abnormal O&M expenses, if any, for the years 1995-96 to 1999-2000. The average of actual O&M expenses was considered as O&M expenses for the year 1997-98. In order to arrive at O&M expenses for the base year of 1999-2000, O&M expenses for the year 1997-98 arrived in the manner indicated above were escalated twice @ 10% per annum. Thereafter, the base O&M expenses for the year 1999-2000 were escalated successively @ 6% per annum to arrive at notional O&M expenses for the year 2000-01 and O&M expenses payable for the years 2001-02, 2002-03 and 2003-04. The notification also provided that in case the actual escalation factor computed from the observed data was within 20% of the notified escalation

factor of 6%, that is, when the actual escalation factor was within the range of 4.8% to 7.2%, the variation was to be absorbed by the Central Power Sector Utilities and the beneficiaries and no revision of O&M expenses claimed/paid by applying escalation factor of 6%, was necessary. However, when the deviation was beyond these specified limits, adjustment was required to be made by applying the actual escalation factor arrived at in the specified manner.

3. The year-wise inflation rates (escalation factor) for the years 2000-01 to 2003-04 computed in accordance with the methodology specified in the notification were circulated among all the stakeholders; the Central Power Sector Utilities and the state utilities for their views and suggestions thereon. After consideration of the views and suggestions received, the escalation factors as circulated were confirmed. The final year-wise escalation factors approved under order dated 28.2.2005 are extracted below:

	(in percentage)			
	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Thermal Power Generating Stations	4.45	3.49	2.70	4.62
Hydro Power Generating Stations	4.29	3.69	3.02	4.43
Inter-state Transmission System	4.36	3.62	3.11	4.41

4. The Commission in the order dated 28.2.2005 had directed that O&M expenses for the period 1.4.2001 to 31.3.2004 would be revised by applying the actual escalation factors given above. Accordingly, O&M charges for the period 1.4.2001 to 31.3.2004 were to be worked out afresh by applying the actual escalation factors year-wise. The Commission directed that the excess amount, if any, was to be adjusted or refunded to the state utilities concerned.

5. The petitioner has contended that adjustment for actual escalation for the year 2000-01 is unwarranted because the notification was applicable for determination of tariff for the period 2001-02 to 2003-04. According to the petitioner, the direction for revision of notional O&M expenses for 2000-01 needs to be reviewed and the escalation factor of 6% as initially considered should continue to apply.

6. A contention similar to that raised in the application for review was raised by the petitioner and other Central Power Sector Utilities in the original proceedings in petition No.196/2004 (suo motu). The Commission in its order dated 28.2.2005 had considered the submission and after detailed analysis held that on overall reading of the relevant provision, the only conclusion that could be arrived at was that “the notional O&M expenses for the year 2000-01 which form the basis for computation of O&M charges for tariff period have also to be revised on the basis of actual escalation factor for that year”. Thus, the review of the order on this count is not maintainable in terms of Rule 1, Order 47 of the Code, in view of the specific finding recorded by the Commission after considering the submissions of the parties, including those of the petitioner.

7. The notification for the purpose of computation of O&M expenses referred to the year 1999-2000 as the base year, and provided that base O&M expenses, that is, O&M expenses for the base year 1999-2000, were to be escalated successively @ 6% per annum to arrive at permissible O&M expenses for the relevant year. The notification further specified that a deviation of the escalation factor computed from the actual inflation data lying within 20% of the escalation factor of 6%, was to be absorbed by the utilities/beneficiaries. Any deviations beyond these limits were to be adjusted on the basis of actual escalation factor arrived at in the manner specified. It

implies that O&M expenses were to be adjusted based on actual escalation factor wherever the notional escalation factor of 6% had been considered, when deviations were beyond the specified range. The escalation factor of 6% was initially applied to arrive at the notional O&M expenses for the year 2000-01, which was the base for computation of admissible O&M expenses for the tariff period 2001-02 to 2003-04. Considering the terms of the notification, the notional O&M expenses for the year 2000-01 need necessarily to be revised as the actual escalation factor lies beyond the permissible specified limits. Thus, the earlier decision of the Commission cannot be faulted on merits also.

8. The petitioner has next contented that its submissions made in petition No.196/2004 (suo motu) have been misconstrued as regards application of adjustment factor for revision of O&M expenses for the period 1.4.2001 to 31.3.2004. According to the petitioner, as per the notification the adjustment is to be carried out only for deviations beyond the limit of  $\pm 20\%$ . It is illustrated by the petitioner that if escalation based on actual data is 4.43% in the year 2003-04, the adjustment factor will be 0.37% (4.80%-4.43%), and thus the escalation factor applicable would be 5.63% instead of 6%. Thus, according to the petitioner, the Commission while ordering re-computation of O&M expenses based on actual inflation rates has proceeded on wrong interpretation of clause 3.5(1)(d) (iv) of the notification which is in pari materia with clause 2.7(d) (iv) thereof considered in the order dated 28.2.2005.

10. The Commission in its order dated 28.2.2005 had in para 11 thereof referred to the contention raised by NTPC and the Central Power Sector Utilities in general terms. After taking note of the submission, the Commission directed that O&M expenses would have to be re-calculated by applying actual inflation factor. For this conclusion,

the Commission did not draw any support from the submission by the Central Power Sector Utilities, including the petitioner. Thus, the conclusion is arrived at independent of the submission by the petitioner and others and on consideration of the provisions of the notification. Thus, there is no error apparent on the face of record necessitating review of the direction to apply the actual inflation rate for the purpose of computation of O&M expenses.

11. Clause 3.5 (1)(d)(iv) of the notification specified that in case the escalation factor computed from the observed data was within the range of 4.8% to 7.2%, the variation was to be absorbed by the utilities concerned. In other words, the provision favoured the *status quo* as regards the claim for O&M charges, even for deviations within the specified range. This was perhaps to avoid retrospective adjustments as far as possible. However, when revision of O&M charges has become necessary on the ground that actual escalation factor was beyond the specified limits, petitioner's entitlement to O&M expenses gets opened up. Therefore, re-computation cannot be limited to the adjusted escalation factor, as contended. O&M charges are to be revised by considering the actual escalation factor. The petitioner's contention that re-computation is to be considered only on the basis of adjusted escalation factor is devoid of any commonsense logic and, therefore, cannot be accepted.

12. It is also contended by the petitioner that it has already incurred O&M expenses during the tariff period 1.4.2001 to 31.3.2004, in excess and is thus incurring loss under this head. It is projected that during 2000-01 to 2003-04, the petitioner has incurred O&M expenses of Rs.872.34 crore whereas in accordance with order dated 28.2.2005, it would recover an amount of Rs.731.18 crore only. The representative of the petitioner pleaded for re-opening of the issue. We are afraid the order cannot be

reviewed on this account, when the directions given therein are otherwise supported by the provisions of the notification. The notification does not hold out any promise that the petitioner will recover the entire expenditure on account of O&M in tariff. While implementing the provisions of law, we should not be carried away by emotions.

13. On the above considerations, the grounds urged by the petitioner for review of order dated 28.2.2005 fail. Therefore, the application is dismissed at admission stage.

Sd/-  
**(A.H. JUNG)**  
**BASU)**  
**MEMBER**

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

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

**New Delhi dated the 9<sup>th</sup> June, 2005**