

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri A. H. Jung, Member**

**Review Petition No.132/2005  
in  
Petition No.32/2003**

**In the matter of**

Review of order dated 9.9.2005 in Petition No.32/2003 for approval of tariff in respect of Agartala Gas Turbine Power Project for the period from 1.4.2001 to 31.3.2004.

**And in the matter of**

North Eastern Electric Power Corporation Ltd.

.....**Petitioner**

**Vs**

1. Assam State Electricity Board, Guwahati
2. Meghalaya State Electricity Board, Shillong
3. Department of Power, Govt. of Arunachal Pradesh, Itanagar
4. Electricity Department, Govt. of Manipur, Imphal
5. Power & Electricity Department, Govt. of Mizoram, Aizawl
6. Department of Power, Govt. of Nagaland, Kohima
7. Department of Power, Govt. of Tripura, Agartala
8. North-Eastern Regional Electricity Board, Shillong
9. North-Eastern Regional Load Despatch Centre, Shillong. **Respondents**

**The following were present**

1. Shri P.K. Borah, NEEPCO
2. Shri D. Dey, SM(E/M), NEEPCO
3. Ms C. Ranee, NEEPCO
4. Shri Ng. Sarat Singh, SE(Comm), ED, Manipur
5. Shri H.M. Sarma, ASEB
6. Shri R. Kapoor, ASEB

**ORDER  
(DATE OF HEARING : 18.4.2006)**

The application has been filed to seek review of the order dated 9.9.2005 in Petition No.32/2003.

2. The petitioner had made application for approval of tariff in respect of Agartala Gas Turbine Power Project, hereinafter referred to as “the generating station” for the period from 1.4.2003 to 31.3.2004. The Commission had approved the following Annual Fixed Charges by order dated 9.9.2005:

		(Rs. in lakh)
	<b>Particulars</b>	<b>2003-2004</b>
1	Interest on Loan	445
2	Interest on Working Capital	219
3	Depreciation	1765
4	Advance against Depreciation	0
5	Return on Equity	2553
6	O & M Expenses	1035
	<b>TOTAL</b>	<b>6017</b>

3. The petitioner sought review of the order dated 9.9.2005 on various grounds. The application for review was, however, admitted by order dated 9.12.2005 limited to the review of capital cost considered for determination of tariff and review of calculation of depreciation, if necessary, as a consequence to review of the capital cost.

4. Originally, investment approval for the generating station was accorded by Ministry of Power under its letter dated 9.12.1994 at an estimated cost of Rs.29405 lakh, including IDC of Rs.2697 lakh. The total cost for the generating station was revised by Ministry of Power under its letter dated 28.12.2004, to Rs.32255 lakh, that is, capital cost of Rs.31760 lakh plus WCM of Rs.495 lakh. The generating station comprises of four units. GT-I of the generating station was declared under commercial operation on 1.4.1998 and GT-IV on 1.8.1998, which is also the date of commercial operation of the generating station as a whole, against the scheduled date from February 1996 to May 1996.

5. The Commission in the order dated 9.9.2005 had considered capital cost of Rs.31910 lakh (including impact of FERV upto 31.3.2003) as on 1.4.2003 for computation of tariff against the petitioner's claim of Rs.32488 lakh. The petitioner has submitted that it had actually incurred an expenditure of Rs.32488 lakh and, therefore, under the terms and conditions for determination of tariff as applicable from 1.4.2001 to 31.3.2004, the actual expenditure should form the basis for determination of tariff so long as the expenditure is within the approved capital cost. Further, the Commission had found that delay and time over-run of 26 months in the execution of the project was not for the reasons beyond the control of the petitioner. The Commission arrived at the capital cost of Rs.31910 lakh as per details given hereunder:

<b>Sl. No.</b>	<b>Cost Component</b>	<b>Rs. in lakh</b>
1.	Project cost as per original approval, including IDC	29169
	Less IDC	2697
2.	Project cost as per original approval, excluding IDC &WCM	26472
3.	Allowable increase in prices up to scheduled date of commercial operation	3170
4.	Allowable IDC up to scheduled date of commercial operation	417
5.	Reasonable Capital cost as in May 1996 (Scheduled date of commercial operation)	30059
6.	Add FERV for the period between Scheduled date of commercial operation and the actual date of commercial operation	1061
7.	Reasonable Capital cost as on actual date of commercial operation	31120
8.	Add FERV from actual date of commercial operation to 31.3.2003	790
9.	<b>Capital cost as on 31.3.2003</b>	<b>31910</b>
10.	<b>Actual Capital Expenditure as on 31.3.2003</b>	<b>32488</b>
11.	<b>Less Net revenue from sale of infirm power up to actual date of commercial operation</b>	<b>271</b>
12.	<b>Actual Capital expenditure Less Net revenue from sale of infirm power up to actual date of commercial operation</b>	<b>32217</b>
13.	<b>Capital cost as on 1.4.2003 for the purpose of tariff (Restricted to the Capital cost worked out at serial 9. Above)</b>	<b>31910</b>

6. The petitioner has submitted that time over-run of 26 months was explained in detail in the petition and during the course of hearing. In the view of the petitioner, the Commission ought to have allowed the entire expenditure of Rs.32488 lakh, by regularising the delay or time over-run.

7. The petitioner in its affidavit dated 10.2.2006 has further submitted that the Commission ought to have considered the capital cost of at least Rs.31983 lakh, as per the details given hereunder:

	Rs. in lakh
Project Cost as per original approved estimate (excluding IDC & WCM)	26472
Add: Price increases allowed	1498
Add: Foreign Exchange Variation upto 31.03.99	2753
Add: Interest During Construction	470
Add: Foreign Exchange Variation from 31.3.99 to 31.3.2003	790
<b>Total Project Cost Estimate</b>	<b>31983</b>

8. The justification for time over-run given by the petitioner was taken into consideration by the Commission before concluding that the delay in completion of the project was attributable to the petitioner and impact thereof could not be passed on the beneficiaries in following terms:

QUOTE

13. The capital cost as on the date of commercial operation (1.8.1998) has been indicated as Rs.308.56 crore (including works in progress). However, closing gross block figure reconciled from books of accounts by the petitioner stands at Rs.298.10 crore as on 31.3.1999. The following table indicates the opening gross block figures, additional capital expenditure, FERV and closing gross block figures for various years subsequent to the date of commercial operation as claimed by the petitioner and as reconciled from books of accounts.

(Rs. in crore)

Year	Opening Gross Block	FERV	Additional capitalisation	Closing gross block
1998-99	-	-	-	298.10
1999-2000	298.10	(-)9.06	8.19	297.23
2000-01	297.23	(-)2.18	6.14	301.19
2001-02	301.19	3.86	(-)0.01	305.04
2002-03	305.04	15.27	4.57	324.88
2003-04	324.88	3.83	1.83	330.54
Total		11.72	20.72	

14. The closing gross block of Rs. 298.10 crore as on 31.3.1999 includes initial capital spares of Rs.13.41 crore which is considered to be reasonable. The additional capital expenditure of Rs. 20.72 crore has been claimed on account of balance works/payments. The petitioner had submitted the Revised Cost Estimates for Rs. 322.55 crore, including IDC of Rs.10.57 crore and WCM of Rs.4.95 crore as on 31<sup>st</sup> July 1998 to the Central Government, which were approved by Ministry of Power letter dated 28.12.2004.

#### **Time overrun**

13. There is a time overrun of 26 months between the actual and the scheduled dates of commercial operation as per original approval. According to the petitioner, the delay is attributable to the following factors, namely:-

- (i) Delay due transportation bottlenecks.
- (ii) Delay in award of contract for switchyard package.
- (iii) Adverse law and order situation prevailing in the State of Tripura

#### **Delay due to transportation bottlenecks**

14. As per original schedule the gas turbines and generators should have reached the project site in December 1995. However, these were actually delivered at project site in June 1997, after a delay of 18 months. The petitioner has explained that the delay of 18 months was because of transportation bottlenecks, the details of which are given hereunder.

- (i) It is stated that transportation of eight Heavy Lift packages (4 generators and 4 gas turbines, each weighing above 90MT) from Kolkata port to Badarpurghat in Assam was carried out by barges through the inland waterways via Bangladesh. The first consignment of 4(Four) packages (Two GTs and Two Turbines) left Kolkata port on 10.9.1995. It was delayed en-route by a week due to the general strike in Bangladesh, (which affected Customs Deptt. also) from 14.9.1995 to 21.9.1995. The Heavy Lift packages were to be unloaded at Badarpurghat by "Roll-on-Roll-off Operation" for which a jetty was built. However, by the time all the barges carrying Heavy Lift packages reached Badarpurghat in

October 1995, there was an untimely receding of water level, much below the jetty mark and consequently, it was not possible to unload the packages by "Roll-on-Roll-off Operation". Therefore, a special ramp way had to be constructed for unloading of the packages. The last consignment could be unloaded by the end of November 1995. The Heavy Lift consignments were then to be transported from Badarpurghat to the project site by road, covering a distance of 287 KM.

- (ii) Route survey was carried out by the petitioner in 1994 and also by the prospective bidders well in advance (since 1992 by GEC Alstom) and it was envisaged that construction of permanent bridges and strengthening of bridges where necessary would be completed by March 1995. Therefore, construction of bypass was envisaged at only one place, that is, across the river Manu. The issue was taken up by the petitioner with BRTF, Setuk, Shillong on 28.3.1995 for construction of bypass and strengthening of bridges for smooth transportation of the consignments. However, these bridges were not completed even till December 1995. Therefore, works had to be taken up at last minute for construction of bypasses at Ram Nagar and Pichartal also.
- (iii) In December 1995, 70 R Class bridge at Powamara and 9 (nine) culverts between Badarpurghat and Powamara were declared weak by BRTF (the agency responsible for maintenance of roads between Badarpurghat and Agartala). A load restriction of upto 55 MT only was imposed by BRTF for the Bowamara bridge. In order to facilitate transportation of Heavy Lift consignments, works had to be undertaken for strengthening of the culverts and construction of a bypass at Powamara for which permission of BRTF was required. After obtaining permission from BRTF, construction of bypasses at Powamara, Ramnagar, Pichartal and Manu (construction of bypass at Manu was as per original plan) commenced in December 1995 and were completed in January 1996. Unfortunately, unseasonal showers during January end washed away the Manu bypass. The Manu bypass was reconstructed by the end of February 1996. However, the transportation could not start in absence of security for which Govt. of Tripura agreed only on 10.3.1996. Because of unseasonal rains in the months of February and March 1996, the bypass constructed in Powmara was affected and was not in a position to be utilized for transportation of the heavy lifts. Subsequently, in the last week of March 1996, the bypasses constructed in Powmara, Pichartal and Manu were washed away by unprecedented rains. Since the water level in Powamara had not receded till the end of April 1996, with the approaching monsoons, the equipment had to be kept stored at Karimganj. As per the advice of BRTF, the petitioner had to initiate action to remove the bypasses already constructed and the idea of transporting the equipment prior to monsoon of 1996 was aborted. After the monsoons of 1996, the transportation was re-scheduled according to which the equipment was to reach site by 10.2.1997. With a view to avoiding any hurdle experienced in the previous year, the petitioner wrote to BRTF on 17.8.1996 for construction of bypass at River Manu, so that the equipment could be transported as per programme. The re-

construction of bypass at Powamara began on 25.10.1996. However, due to sudden rainfall, the bypass construction had to be stopped. There was a rise in water-level of the river. By the end of November 1996, the Heavy lifts had crossed Powamara bypass and the consignment was moving towards the Manu river, across which BRTF was to construct the bypass. The packages were stored at Nalkata School Grounds and Suprakandi Storage site. However, due to severe pressure from local populace, the transportation contractors required Police Escort for moving the packages to Manu storage. In view of the local resistance faced in transportation of the heavy lifts, the Commissioner (Power), Govt. of Tripura wrote to the Inspector General of Police to provide full security to the convoy on 25.1.1997. On 14.2.1997, BRTF intimated the petitioner that crossing places at Sardhuchera bridge, Kamalachera bridge and Nilophchera bridge had been completed.

15. It has been submitted that for these reasons, the heavy consignments were delivered at site during the period between April 1997 to June 1997 against the scheduled delivery in December 1995, after a delay of 18 months.

16. Responding to the above reasons explained by the petitioner, the respondents pointed out that originally air transportation was envisaged in place of sea-cum-road transportation actually carried out by the petitioner, leading to delay in commissioning of the generating station. As per the clarifications furnished by the petitioner vide affidavit dated 6.5.2005, the change in mode of transport was envisaged even before the project cost approval by the Central Government in 1994 in order to save on cost of transportation. The petitioner has brought out that a feasibility study of the transportation by sea-cum-road route was carried out based on the assurance of M/S BHEL that they had successfully achieved substantial reduction in the weight and dimension of consignment of Frame-5 GTG sets and it would be possible to transport the same to the site by road. According to the feasibility study report furnished by the petitioner, the cost of road transport was assessed to be substantially lower than the total cost associated with the air transport and improvement in runway of Agartala airport. Accordingly, air lifting was deleted from the scope of revised project report placed before the Public Investment Board. In view of the above, the petitioner has urged that the issue raised by the respondents is not considered to be relevant.

17. As per the above statements of the petitioner, it took up the issue of construction of permanent bridges and strengthening of en-route bridges with BRTF on 28.3.1995 for the first time. However, it has not been made clear as to what action was taken during April 1995 to December 1995 in view of the approaching scheduled delivery of the equipment at site in December 1995. Going by the submission of the petitioner, it appears that the delay in commissioning of the project could have been avoided, had the petitioner been diligent in pursuing the matter with BRTF and State Government/Central Government for the speedy construction/strengthening of en-route bridges/bypasses. The petitioner was expected to foresee the eventualities and ought to have taken advance action or chalked out contingency plans for timely completion of the generating station. The petitioner was well aware of

the law and order situation and weather conditions prevailing in the State of Tripura. Further delay has been caused by cascading effects of heavy rain and adverse law and order situation en-route. As such, the delay of 18 months due to transportation bottlenecks cannot be held to be beyond the control of the petitioner.

**Delay in award of contract for switchyard package**

18. In an earlier affidavit dated 23.11.2004, the petitioner attributed further delay to the litigation problems in completion of the switchyard package. The petitioner maintains that the tenders for the switchyard package were opened in October 1995. However, one of the unsuccessful bidders went into litigation and the court cleared the decks in favour of the petitioner only in July 1996. The tenders of the switchyard package were opened in October 1995 leaving only 4 months time for the completion of switchyard before the scheduled date of commissioning (Feb. 1996) of GT-1 considering that the order was placed in the same month. This indicates that there was delay in initiating the tendering process by the petitioner. Further, this being a parallel activity, delay in execution of switchyard package was on petitioner's own volition.

**Adverse law and order situation prevailing in the State of Tripura**

19. The petitioner in its earlier submissions had not mentioned any thing about the adverse law and order situation to explain the delay in execution of project. However, the petitioner vide its latest affidavit dated 6.5.2005 has submitted that the further delay of 8 months (over and above the delay of 18 months attributed to transportation bottlenecks) was on account of adverse law and order situation prevailing in the State of Tripura at the time of the erection and commissioning. The petitioner has submitted that the law and order situation in the State turned from bad to worse during the project construction period. The petitioner has placed on record a copy of request from Embassy of Federal Republic of Germany mentioning of such incidents and seeking security for the German Engineers during their stay at Agartala. As such, for security reasons, these engineers had to be provided accommodation in Agartala City, and they commuted daily from Agartala City to the project site (about 12 km away). The engineers were to travel during daytime and night travel was totally restricted. There was an atmosphere of fear amongst the engineers and workers affecting the working hours at site. Therefore, the erection and commissioning, which was originally scheduled to be completed within 6 months, took 14 months, causing a delay of 8 months and the construction of the generating station was completed by the end of July 1998.

20. From the above reasons cited by the petitioner it is clear that petitioner was not in position to commission the project because of delay on account of non-transportation of plant and equipment and delay in commissioning of the switchyard. The deterioration in law and order was only the cascading effect of delay in transportation of equipment to site and construction of switchyard. Had the petitioner maintained the original schedule by organising its affairs properly, the adverse law and order situation might not have been encountered. In view of above, any implication on project cost because of delay of 26 months cannot be passed on to the beneficiaries. UNQUOTE



9. It is evident that it was a conscious decision of the Commission not to rely upon the approved cost of the generating station and to restrict the capital cost of Rs.31910 lakh for tariff determination in view of delay in execution of the project. The Commission had considered FERV of Rs.2733 lakh and pro rata reduction in IDC for the period up to 31.3.1999 based on the submissions made by the petitioner. The petitioner has now claimed that FERV works out to Rs.2753 lakh. No reasons are explained in the application for review for now claiming FERV of Rs.2753 lakh and earlier Rs.2733 lakh. As regards IDC, the petitioner has contended that proportionate IDC should be Rs.470 lakh instead of Rs.417 lakh considered by the Commission. The petitioner has computed pro rata IDC with reference to actual IDC of Rs.1191 lakh. The Commission, however, in its order dated 9.9.2005 computed pro rata IDC corresponding to IDC of Rs.1057 lakh approved by the Central Government.

10. The Commission in its order dated 9.9.2005 had taken note of an amount of Rs.271 lakh as revenue earned for sale of infirm power. The petitioner has submitted that deduction from the capital cost for the revenue earned from sale of infirm power was considered and, therefore, no deduction ought to have been made by the Commission on this count. We may point out that we had restricted the capital cost to Rs.31910 lakh as on 31.3.2003 for the reasons already recorded in the order dated 9.9.2005. No deduction on account of revenue earned for sale of infirm power was expressly made from the capital cost. Therefore, even after considering the prayer made by the petitioner on this count, there will be no upward revision of capital cost. Further, the petitioner had not brought to the notice of the Commission in the proceedings in Petition No.32/2003 that it had already deducted any amount from the capital cost on account of sale of infirm power.

11. In totality of the circumstance, case for review of capital cost has not been made out.

12. In view of the above decision, review of depreciation charged in tariff is also not necessary.

13. For the reasons recorded above, no case for review has been made out as the petitioner's prayer does not fall within the prescriptions laid down under Rule I of Order 47 of the Code of Civil Procedure. The application for review is accordingly dismissed. No order as to costs.

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

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

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

**New Delhi dated the 6<sup>th</sup> June 2006**