

# CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

## Review Petition No. 15/2001 in Petition No. 86/2000 Coram

1. Shri D.P. Sinha, Member
2. Shri G.S. Rajamani, Member
3. Shri K.N. Sinha, Member

### **In the matter of**

Review of order dated 8.12.2000 passed by the Commission in Petition No.86/2000.

### **And in the matter of**

Power Grid Corporation of India Ltd.

**-Petitioner**

Vs Rajasthan Rajya Vidyut Prasaran Nigam Ltd. & Others -

### **Respondents**

The following were present:

1. Dr. Surat Singh, Advocate for Power Grid
2. Shri Pawan Khatana, Advocate
3. Shri V.K. Gupta, Power Grid

### **ORDER (Date of Hearing : 9-7-2001)**

In this application for review, the petitioner, Power Grid Corporation of India Limited has sought modification of the Commission's directions contained in the order dated 8-12-2000 in Petition No.86/2000, on the question of normative availability and has also sought clarifications on the directions regarding sharing of transmission charges for inter-regional assets and other issues, interest on

working capital, late payment surcharge, date of commercial operation and the norms for auxiliary power consumption in the sub-stations. The application for review is listed for admission.

2. The norms for inter-state transmission tariff were decided by the Commission in its order dated 8.12.2000 in Petition No. 86/2000. The Commission had, *inter alia*, directed that the normative availability for recovery of full fixed charges shall be fixed at 98% and the transmission utility shall be entitled to incentive or be liable for disincentive if actual availability is higher or lower than the normative availability. The Commission further directed that sharing of transmission charges for inter-regional assets shall be on 50:50 basis by the contiguous regions irrespective of the nature of power flow and that the transmission charges shall be recovered from the beneficiaries by pooling 50% of the transmission charges for inter-regional transmission lines with the transmission charges for transmission system of respective regions with a view to facilitating further recovery from the beneficiaries in the region. The aspect of sharing of wheeling charges for inter-state transmission was also considered by the Commission. It was, *inter alia*, directed that in case of exporting region, the monthly transmission charges payable shall be shared by its constituents and beneficiaries outside the region in proportion of energy drawn as per Regional Energy Accounting. Certain aspects of the inter-state transmission tariff were not considered by the Commission in its order dated 8.12.2000. Therefore, the Commission directed that the residuary matter not covered by that order or any

other order issued by the Commission, shall be governed in terms of GOI notification dated 16<sup>th</sup> December, 1997, as amended.

3. In the application for review, the petitioner has, in the first instance, taken objection to the jurisdiction of the Commission to prescribe the norms for inter-state transmission tariff, though no such issue was raised by the petitioner when Petition No.86/2000 was heard. According to the petitioner, the jurisdiction of the Commission is restricted to regulation of tariff based on the norms framed by the Central Government.

4. We have heard Dr. Surat Singh, Advocate for the petitioner. He argued that in view of provisions of Section 38 of the Electricity Regulatory Commissions Act, 1998, the Commission should follow the norms prescribed by the Central Government. We have carefully considered the submissions made by learned counsel for the petitioner. The issue of Commission's jurisdiction to prescribe norms and parameters for fixation of tariff was earlier raised in review petition No. 13/2000 (NTPC Vs UOI & Others), wherein the present petitioner was one of the respondents. After detailed consideration of the matter in its various aspects, the Commission had turned down the contention of lack of jurisdiction raised in the said petition. The relevant portion from the Commission's order of 15<sup>th</sup> December, 2000 in review petition No. 13/2000 is extracted below for facility of reference:

"On examination of the matter in its various aspects, we are of the considered opinion that the Commission can fix norms and parameters,

which are of the nature of step-in-aid to exercise of its regulatory functions under the ERC Act, but subject to the tariff policy framed by the Central Government under Clause (e) of Section 13. Any other interpretation shall render the provisions of clauses (a), (b), (c) and (g) of Section 13 and Section 28 of the ERC Act otiose. We, therefore, reject the contention of lack of jurisdiction raised on behalf of the petitioner."

5. A reference to Section 38 of the Electricity Regulatory Commissions Act, 1998, by learned counsel for the petitioner is completely out of context. The said section provides that in the discharge of its functions, the Commission shall be guided by the directions of the Central Government in matters of policy involving public interest. However, nothing has been brought to our notice that any directions under Section 38 have been issued by the Central Government.

6. For the above reasons, we do not find any merit in the contentions raised by the petitioner that the Commission lacks jurisdiction to prescribe norms for determination of tariff.

7. As we have noted above, the Commission in its order dated 8.12.2000, presently sought to be reviewed, had directed that the fixed charges shall be recovered at the normative availability of 98% and in case the normative availability exceeds 98%, the transmission utility shall be entitled to incentive. According to the petitioner, the achievement of 98% availability of the system on continuous basis and linking the recovery of fixed charges to this level is too harsh. It is the contention of the petitioner that in view of the aging of the transmission system belonging to it, the number and duration of outages is likely

to increase, as a consequence of which the system shall be required to be shut down for maintenance more often. Under these circumstances, the petitioner has suggested that recovery of full fixed charges be allowed at 95% availability and the entitlement for incentive may be considered when availability exceeds 98%. The suggestion made by the petitioner implies that neither incentive nor disincentive shall apply in case the availability is within the dead band of 95% to 98%.

8. The Commission had prescribed the level of availability for recovery of fixed charges at 98% on consideration of the studies made by the experts, including the Central Electricity Authority and after proper application of mind. Opening of the issue at this stage shall amount to reconsideration of the matter on its merits, which is not permissible in the guise of review since the review is to be confined to the grounds stated in Order 47 Rule 1 of the Civil Procedure Code. We, therefore, are of the opinion that the remedy of review is not available to the petitioner on this count. In any case, the petitioner has already filed an appeal before the High Court of Delhi on various grounds, including the ground of fixation of normative availability and thus the superior court is already seized of the matter. Therefore, the prayer for review of the direction on the question of fixation of normative availability at 95% for the purpose of recovery of fixed charges cannot be allowed and is rejected.