

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Review Petition No.100/2005  
in Petition No 31/2001**

**In the matter of**

Review of order dated 7.4.2005 in petition No.31/2001 - Approval of tariff in respect of Kawas Gas Power Station for the period from 1.4.2001 to 31.3.2004.

**Review Petition No.101/2005  
in Petition No 33/2001**

**In the matter of**

Review of order dated 1.4.2005 in petition No.33/2001 - Approval of tariff in respect of Gandhar Gas Power Station for the period from 1.4.2001 to 31.3.2004.

**And in the matter of**

Madhya Pradesh State Electricity Board, Jabalpur

.... **Petitioner**

**Vs**

1. National Thermal Power Corporation Ltd., New Delhi
2. Maharashtra State Electricity Board, Mumbai
3. Gujarat Electricity Board, Vadodara
4. Chhattisgarh State Electricity Board, Raipur
5. Electricity Department, Govt of Goa, Panaji, Goa
6. Electricity Department, Admn. Of Daman & Diu, Daman
7. Electricity Department, Admn. of Dadra and Nagar Haveli, Silvassa...**Respondents**

**The following were present**

1. Shri Sakesh Kumar, Advocate, MPSEB
2. Shri D. Khandelwal, Addl. CE, MPSEB
3. Shri A.K. Garg, SE (Comml.), MPSEB
4. Shri V.B.K. Jain, GM, NTPC
5. Shri I.J. Kapoor, GM, NTPC
6. Shri A.S. Pandey, NTPC
7. Shri S.K. Johar, NTPC
8. Shri N.N. Sadasivan, NTPC
9. Shri S.B. Khyalia, GUVNL
10. Shri Shri K.P. Jangid, GUVNL

**ORDER**  
**(DATE OF HEARING 7.2.2006)**

In these applications for review, the petitioner has sought review of the tariff orders dated 7.4.2005 and 1.4.2005 in respect of Kawas Gas Power Station (Kawas GPS) and Gandhar Gas Power Station (Gandhar GPS) for the period 1.4.2001 to 31.3.2004 in petitions No. 31/2001 and 33/2001 respectively. The grounds for review in both these applications are identical. Therefore, both these applications have been heard together and are being disposed of through this common order.

**Review Petition No.100/2005**

2. The terms and conditions for determination of tariff applicable for the period 1.4.2001 to 31.3.2004 were notified by the Commission on 26.3.2001 under of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001. The Central Power Sector Utilities were required to file their applications for approval of tariff for the period commencing 1.4.2001. As approval of tariff through the transparent process of hearing was likely to take time, the Commission by its notification dated 4.4.2001 directed that with effect from 1.4.2001, the billing of charges would continue to be done on the same basis as on 31.3.2001 for a period of 6 months, that is, up to 30.9.2001. It was further directed that the charges recovered by the Central Power Sector Utilities were subject to adjustment after final determination of tariff by the Commission in accordance with the terms and conditions notified on 26.3.2001. The term of the notification dated 4.4.2001 was extended from time to time.

3. Petition No.31/2001 was filed by National Thermal Power Corporation Ltd., (NTPC), the first respondent herein for approval of tariff for Kawas GPS for the period

1.4.2001 to 31.3.2004. For the reasons beyond control, the tariff was approved by order dated 7.4.2005 and till then the beneficiaries were paying tariff as applicable on 31.3.2001 based on the notification dated 4.4.2001, as extended. We have been informed that the charges recovered by NTPC provisionally, have been adjusted after final determination of tariff by order dated 7.4.2005, which is lower than the provisional tariff charged.

4. The petitioner through this application sought review of the order dated 7.4.2005 on the grounds that it was entitled to claim interest on the excess amount recovered; alleged non-consideration by the Commission of CEA's letter dated 28.7.1998 on the question of target availability for recovery of fixed charge and non-application of actual escalation factor for working out O&M expenses. After hearing, by order dated 7.12.2005, the review petition was admitted on the limited ground of liability of NTPC to pay interest on the excess amount recovered in provisional tariff. Notice was accordingly issued to NTPC.

5. We have heard Shri Sakesh Kumar, Advocate with Shri D.K. Khandelwal for the petitioner and Shri V.B. K. Jain for the first respondent. We have also heard Shri S.B. Khyalia for GUVNL, the third respondent.

6. The petitioner has submitted that the Commission vide order dated 7.4.2005 decided tariff after lapse of a long time resulting in recovery of extra sum of Rs.254.48 crore by NTPC through provisional tariff. It has been stated that an amount of Rs.1006.431 crore was recovered as the provisional fixed charges for the period 1.4.2001 to 31.3.2004, against NTPC's entitlement of Rs.751.95 crore decided in the

order dated 7.4.2005. The year-wise details given by the petitioner in this regard are as under:

(Rs. in crore)

Year	2001-02	2002-03	2003-04	Total
Provisional Fixed charges/recovered by NTPC based on notification dated 4.4.2001 (A)	335.477	335.47	335.477	<b>1006.431</b>
Fixed charges approved by the Commission vide order dated 7.4.2005 (B)	247.97	250.57	253.41	<b>751.95</b>
Extra recovery by NTPC (A)-(B)	87.507	84.907	82.067	<b>254.481</b>

7. The petitioner has submitted that it had filed an application vide affidavit dated 12.3.2004 to allow interest charges on the over-charged amount as the State Electricity Boards were forced to pay provisional tariff which NTPC was not entitled to. The petitioner has based its claim for interest on sub-section (6) of Section 62 of the Electricity Act, 2003 (the Act) which reads as under:

*“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.*

8. The second and third respondents have supported the claim of the petitioner based on the principles of restitution contained in Section 144 of the Code of Civil Procedure (the Code).

9. NTPC has contested the petitioner’s claim for interest on the ground that such a question should not arise when tariff charged and realized was based on an authorization from the Commission. It has been submitted that subsequent downward or upward revision of tariff and consequent adjustment/refund cannot lead to payment of interest on the excess/shortfall in the amounts already recovered. Shri V.B.K. Jain stated that it has been the industry practice not to charge any interest on the differential amount consequent to retrospective revision of tariff at a later date. Shri

Jain submitted that in the past there have been many instances since 1992 where the tariff was increased retrospectively, but no interest was charged by NTPC.

10. We have considered the rival submissions. The question to be considered is the applicability of sub-section (6) of Section 62 of the Act to the facts in the present case. In our considered view, sub-section (6) of Section 62 of the Act is attracted when a generating company unauthorisedly charges any amount in excess of the amount decided by the Appropriate Commission. In the present case, NTPC has recovered the tariff provisionally based on a notification by the Commission. Such an authorization amounts to provisional determination of tariff by the Commission. Therefore, sub-section (6) of Section 62 of the Act is not attracted.

11. We do not find any formal application made by the petitioner to claim interest charges on the excess amount recovered. No fee for making of interlocutory application was paid by the petitioner. Even if, the prayer made in the affidavit dated 12.3.2004 is deemed to be an application, as contended by the petitioner, the prayer for interest was not granted in the tariff order dated 7.4.2005, and is accordingly deemed to have been declined by extending the principle contained in Explanation V below Section 11 of the Code. Even the principles enshrined in Section 144 of the Code are not attracted because there is no reversal of judgement or order in the present case. In any case, this matter is not relevant when we are considering the present application in exercise of review jurisdiction.

12. On consideration of the facts on record, we are satisfied that none of the conditions laid down in Rule 1 Order 47 of the Code for review of order is satisfied. Therefore, the question of review of the order dated 7.4.2005 does not arise.

13. In view of the foregoing discussion, the application for review is dismissed as not maintainable.

**Review Petition No.101/2005**

14. The facts of this case are similar to case in Review petition No. 100/2005. In this case, the petitioner has averred that NTPC has recovered an excess amount of Rs.460.538 crore during the period 2001-02 to 2003-04 for Gandhar GPS based on tariff order dated 1.4.2005, in Petition No.33/2001, the review of which has been sought. The grounds urged by the petitioner are similar to those urged in Review Petition No.100/2005 and discussed above. For the reasons already recorded, the present review petition also fails and is dismissed.

15. No order as to costs.

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

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

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

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

**New Delhi dated the 16<sup>th</sup> February, 2006**