

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

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

Petition No.43/2006

In the matter of

Revision of O & M expenses for the years 2001-02 to 2003-04.

And in the matter of

Power Grid Corporation of India Ltd

....Petitioner

VS

- 1(a) Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
- (b) Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
- (c) Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur
- (d) Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
2. Himachal Pradesh State Electricity Board, Shimla
3. Punjab State Electricity Board, Patiala
- 4(a) Haryana Vidyut Prasaran Nigam Ltd., Panchkula
- (b) Haryana Power Generation Corporation Limited, Panchkula
5. Power Development Department, Govt of Jammu & Kashmir, Jammu
- 6(a) Uttar Pradesh Power Corporation Limited, Lucknow
- (b) Uttaranchal Power Corporation Limited, Dehradun
7. Delhi Power supply Company Ltd, Delhi
8. Chandigarh Administration, Chandigarh
- 9(a) Bihar State Electricity Board, Patna
- (b) Jharkhand State Electricity Board, Ranchi
10. West Bengal State Electricity Board, Kolkata
11. Grid Corporation of Orissa, Bhubaneshwar
12. Damodar Valley Corporation, Kolkata
13. Power Department, Govt of Sikkim, Gangtok
- 14(a) Karnataka Power Transmission Corporation Ltd., Bangalore
- (b) Bangalore Electricity Supply Company Ltd, Bangalore
- (c) Mangalore Electricity Supply Company Ltd, Mangalore
- (d) Chamundeshwari Electricity Supply Corporation Ltd, Mysore
- (e) Gulbarga Electricity Supply Company Ltd, Gulbarga
- (f) Hubli Electricity Supply Company Ltd, Hubli
- 15(a) Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
- (b) A P Central Power Distribution Company Ltd, Hyderabad
- (c) A P Eastern Power Distribution Company Ltd, Vishakhapatnam

- (d) A P Northern Power Distribution Company Ltd, Warangal
 - (e) A P Southern Power Distribution Company Ltd, Tirupathi
 - 16. Kerala State Electricity Board, Thiruvananthapuram
 - 17. Tamil Nadu Electricity Board, Chennai
 - 18. Electricity Department, Govt. of Pondicherry, Pondicherry
 - 19. Electricity Department, Govt. of Goa, Panaji
 - 20(a) Madhya Pradesh State Electricity Board, Jabalpur
 - (b) Chhattisgarh State Electricity Board, Raipur
 - 21. Maharashtra State Electricity Distribution Company, Mumbai
 - 22. Gujarat Electricity Board, Baroda
 - 23. Electricity Deptt., Administration of Daman & Diu, Daman
 - 24. Electricity Deptt., Administration of Dadra Nagar Haveli, Silvassa
 - 25. Assam state Electricity Board, Guwahati
 - 26. Meghalaya State Electricity Board, Shillong
 - 27. Govt of Arunachal Pradesh, Itanagar
 - 28. Power and Electricity Department, Govt of Mizoram, Aizwal
 - 29. Electricity Department, Govt of Manipur, Imphal
 - 30. Department of Power, Govt of Nagaland, Kohima
 - 31. Department of Power, Govt of Tripura, Agartala
-Respondents**

The following were present

- 1. Shri A K Nagpal, PGCIL
- 2. Shri M M Mondal, PGCIL
- 3. Shri U K Tyagi, PGCIL
- 4. Shri P C Pankaj, PGCIL
- 5. Shri Prashant Sharma, PGCIL
- 6. Shri C Kannan, PGCIL
- 7. Shri TPS Bawa, PSEB
- 8. Shri A K Garg, MPSEB
- 9. Shri Deepak Shrivastava, MPSEB
- 10. Shri S K Khiyani, MPSEB
- 11. Shri Sowmyanarayanan, TNEB
- 12. Shri R Krishnaswami, TNEB
- 13. Shri U K Mukherjee, WBSEB

**ORDER
(DATE OF HEARING :17.8.06)**

The petitioner Power Grid Corporation of India Limited has filed this petition for revision of O & M expenses for the years 2001-02 to 2003-04 after making adjustments for escalation in terms of the order dated 3.1.2006 passed by the Hon'ble Appellate

Tribunal of Electricity in Appeal No. 103 of 2005 (National Thermal Power Corporation Vs Central Electricity Regulatory Commission and others).

2. The Commission in its notification dated 26.3.2001 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. A similar methodology was specified for computation of O&M charges for the transmission system, except that normalisation of O&M expenses

was considered with reference to sub-stations and line-length of the transmission lines instead of the generating stations.

3. The year-wise inflation rates (escalation factor) for the years 2000-01 to 2003-04 for the generating stations and transmission systems 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 Commission came to the conclusion that the notification dated 26.3.2001 provided that there would be no adjustment when the escalation factor lies between 4.8% to 7.2% and where the escalation factor was beyond these limits, O & M expenses were to be worked out by applying the actual escalation factor and not the marginal adjusted factor. The final year-wise escalation factors approved under order dated 28.2.2005 are extracted below:

(in percentage)

	2000-01	2001-02	2002-03	2003-04
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 said 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 had further directed that the excess amount, if any, was to be adjusted or refunded to the State utilities concerned.

5. The aforesaid order of the Commission was challenged by NTPC in Appeal No. 103 of 2005 filed before the Hon'ble Appellate Tribunal for Electricity. The Hon'ble Appellate Tribunal by its order dated 3.1.2006 allowed the appeal with the following conclusions and directions :

"13.In fact CERC ought to have deducted the actual deviation from the limit of 4.8%. In order to give effect to the real meaning of the Regulation 2.7(d) (iv), i.e. CERC should have made the calculations in the following manner in respect of say for the year 2000-2001 :-

$$\begin{aligned} &6X-0.35X \\ &= X(6 - 0.35) = 5.65X \end{aligned}$$

{ where

X = signifies normalized O & M expenses for the year 2000-2001

4.45 is the actual escalation factor;

4.8 is the terminal limit

0.35 has been arrived at by deducting 4.45 from 4.8; and

***all figures represent percentages** }*

*14. Similar treatment has also to be given in the event of the actual escalation factor going beyond 7.2%. In case the aforesaid construction is not given to the Regulation 2.7 (d) (iv), the words "**any deviation beyond the limit shall be adjusted on the basis of actual escalation factor**" shall be rendered futile. Each word of the Regulation has to be taken into account and no word is to be considered as surplus.*

15. In the view of the matter, we allow the appeal and set aside the impugned orders dated Feb 28, 2005 and June 7, 2005 of the CERC. The adjustment for the year 2001-2004 shall be made by the appellant in line with the aforesaid example."

6. The petitioner has filed the present petition for adjustment of escalation factor for O & M expenses for the period 2001-02 to 2003-04 in respect of the inter-State transmission system owned by it, in accordance with the order of the Hon'ble Appellate Tribunal and consequently for recovery of the amount already refunded by the petitioner to the beneficiaries in terms of the Commission's order dated 28.2.2005. The petitioner has also prayed that this recovery should not be deemed to be tariff for the charge on the

respondents in excess of tariff determined by the Commission as provided in sub-section (6) of section 62 of Electricity Act, 2003.

7. It has been submitted by the respondents that Civil appeals No.2149 of 2006 and 2352 of 2006 have been filed by Tamil Nadu State Electricity Board and UP Power Corporation Ltd respectively before the Hon'ble Supreme Court. These appeals have been admitted by the Hon'ble Supreme Court. As yet, there is no interim stay or any order restraining the operation of the order of the Hon'ble Appellate Tribunal by the Hon'ble Supreme Court, though notices on the stay applications have also been issued. The respondents have, therefore, opposed the application, during the pendency of the appeals before the Hon'ble Supreme Court.

8. We have considered the rival contentions. We direct that the petitioner shall be entitled to claim O & M charges for the period 1.4.2001 to 31.3.2004 in terms of order dated 3.1.2006 of the Hon'ble Appellate Tribunal, subject to the decision of the Hon'ble Supreme Court in the pending appeals. As regards the second prayer it is clarified this question does not arise for clarification since it is not a case where the petitioner charged tariff exceeding that determined or approved by the Commission.

Sd/-
(A.H.JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi, dated 28th August 2006.