

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

Appeal No. 138 of 2006

Appeal No. 274 of 2006

Appeal No. 60 of 2008

**Dated: December 23, 2009.**

**Present:- Hon'ble Mrs. Justice Manju Goel, Judicial Member  
Hon'ble Shri H.L. Bajaj, Technical Member**

**IN THE MATTER OF:**

**Appeal No. 138 of 2006.**

National Hydroelectric Power Corporation Ltd.

NHPC Office Complex

Sector-33

Faridabad (Haryana) 121003

....Appellant(s)

vs

1. The Chairman  
West Bengal State Electricity Board  
Bidyut Bhawan, Bidhan Nagar  
Block-DJ, Sector-II  
Kolkata-700091 (WB)
2. The Chairman  
Damodar Valley Corporation  
DVC Towers, VIP Road  
Kolkata-700054 (WB)
3. The Chairman  
Jharkhand State Electricity Board  
Doranda, Ranchi, Jharkhand-834002

4. The Chairman  
Bihar State Electricity Board  
Vidyut Bhawan, Bailey Road  
Patna-800021(Bihar)
5. The Chief Secretary  
Department of Power  
Government of Sikkim, Kazi Road  
Gangtok-737101(Sikkim)
6. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> floors, Chanderlok Building  
38, Janpath,  
New Delhi-110001 .....Respondents

**Appeal No. 274 of 2006.**

National Hydroelectric Power Corporation Ltd.  
NHPC Office Complex  
Sector-33  
Faridabad (Haryana) 121003 .....Appellant(s)

Vs

1. The Chairman  
Assam State Electricity Board  
Bijuli Bhawan, Paltan Bazar  
Guwahati-781001 (Assam)
2. The Chief Engineer (Power)  
Department of Power  
Government of Arunachal Pradesh  
C-Sector, Itanagar-791111  
(Arunachal Pradesh)

3. The Chief Engineer (Power)  
Electricity Department  
Government of Mizoram  
Aizawal-796001 (Mizoram)
  4. The CMD  
Tripura State Electricity Corporation Ltd.  
(Formerly Electricity Department, Govt. of Tripura)  
Vidyut Bhawan, North Banamalipur  
Agartala-799001 (Tripura)
  5. The Chairman  
Meghalaya State Electricity Board  
Meter Factory Area  
Short Round Road  
Shillong-793003(Meghalaya)
  6. The Chief Engineer (Power)  
Electricity Department  
Government of Manipur  
Imphal- 795001 (Manipur)
  7. The Chief Engineer (Power)  
Electricity Department  
Government of Nagaland  
Kohima-798001 (Nagaland)
  8. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> floors, Chanderlok Building  
38, Janpath,  
New Delhi-110001
- ....Respondents

**Appeal No. 60 of 2008**

National Hydroelectric Power Corporation Ltd.  
NHPC Office Complex  
Sector-33  
Faridabad (Haryana) 121003

.....Appellant(s)

Vs

1. The Chairman  
Punjab State Electricity Board  
The Mall, Near Kali Badi Mandir  
Patiala-147001 (Punjab)
2. The Chairperson  
Haryana Power Generation Corporation Ltd.  
Haryana Civil Secretariat  
Chandigarh
3. The Chairman & Managing Director  
Delhi Transco Ltd., Shakti Sadan  
Rouse Avenue Kotla Road  
New Delhi-110002
4. The Chairman  
Uttar Pradesh Power Corporation Ltd.  
Shakti Bhawan, 14, Ashok Marg  
Lucknow-226001 (UP)
5. The Managing Director  
Jaipur Vidyut Vitaran Nigam Ltd.  
Vidyut Bhawan, Janpath  
Jaipur-302005
6. The Chairman  
Rajasthan Rajya Vidyut Prasaran Nigam Ltd.(PRVPNL)  
Jaipur Vidyut Vitran Nigam Ltd.(JPVVNL)  
Jodhpur Vidyut Vitaran Nigam Ltd. (JDVVNL)  
Ajmer Vidyut Vitaran Nigam Ltd.(AVVNL)  
Jyoti Nagar, Jaipur-302005(Rajasthan)
7. Chairman-cum-Managing Director  
Power Transmission Corporation of  
Uttaranchal Ltd.  
(Erstwhile UPCL) Urja Bhawan  
Dehradun-248001 (Uttarakhand))

8. The Managing Director  
Jodhpur Vidyut Vitaran Nigam Ltd.  
New Power House Industrial Area  
Jodhpur-342003 (Rajasthan)
  9. The Chairman  
Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House  
Shimla-171004 (Himachal Pradesh)
  10. The Managing Director  
Ajmer Vidyut Vitaran Nigam Ltd.  
Old Power House, Hatthi Bhatta  
Jaipur road,  
Ajmer-305001 (Rajasthan)
  11. Chief Engineer & Secretary  
Engineering Deptt. Ist floor,  
UT Secretariat Sector-9-D  
Chandigarh-160009
  12. The Principal Secretary  
Power Development Department  
New Secretariat  
Jammu (J&K)
  13. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> floors, Chanderlok Building  
38, Janpath,  
New Delhi-11000
- ....Respondents

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Mr. N.Kumar  
Mr. R.Chowdhri  
Mr. S. Sanyal  
Mr. C.L. Kalia  
Ms Seema Sharma  
Mr. K. Biswas

## **J U D G M E N T**

**Per Hon'ble Mr. H.L. Bajaj, Technical Member**

### **Appeal No. 138 of 2006**

This Appeal challenges order dated May 09, 2006 passed by the Central Electricity Regulatory Commission (CERC or the Commission in short) in petition No. 175 of 2004 whereby the Commission has determined the tariff in respect of Rangit Hydroelectric Station for the period from April 01, 2004 to March 31, 2009.

### **Appeal No. 274 of 2006.**

2. This Appeal is directed against the order dated October 04, 2006 passed by the CERC in petition No. 171 of 2004 whereby the Commission has determined the tariff in respect of Loktak Hydroelectric Project for the period from April 01, 2004 to March 31, 2009.

### **Appeal No. 60 of 2008**

3. This Appeal is directed against the order dated December 13, 2007 passed by CERC in petition No. 107 of 2006 whereby the Commission has determined the tariff in respect of Dhauli Ganga Hydroelectric Project for the period from October 01, 2005 to March 31, 2009.

### **Decision with Reasons**

### **Appeal No. 138 of 2006.**

4. In this Appeal the appellant has raised the following three issues:

- (i) The Commission has erred in reaching the conclusion that when depreciation in a year is more than the amount of repayment during that year, the entire amount of depreciation has to be considered as repayment of loan for tariff computation.
- (ii) Computation of correct amount of O&M expenses
- (iii) Computation of correct amount of maintenance spares.



5. We proceed to discuss and decide each of the above three issues in this Appeal.

**Issue No. (i) The Commission has erred in reaching the conclusion that when depreciation in a year is more than the amount of repayment during that year, the entire amount of depreciation has to be considered as repayment of loan for tariff computation.**

6. This issue has been decided by this Tribunal in its judgment dated December 10, 2009 at para 36 in Appeal No. 130 of 2006, reproduced as under:-

*“36. We are unable to agree with the view of the Commission that when depreciation exceeds the actual repayment the difference between depreciation and repayment amount be taken as normative repayment of loan as regulations only state that whenever the repayment amount exceeds the depreciation recovered, excess amount is to be allowed as Advance Against Depreciation. In our earlier judgment cited above this Tribunal has ruled that depreciation is an expense and not an item allowed for repayment of loan. In our view the Commission, in the absence of any Regulation to this effect, has erred in coming to the conclusion that when depreciation recovered in an year is more than the*

*amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation.”*

7. As our decision in Appeal No. 130 of 2006 squarely applies to the issue in hand, the same is decided accordingly holding that the Commission has erred in coming to the conclusion that when depreciation recovered in a year is more than the repayment during the year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation.

**Issue No. (ii) Computation of correct amount of O&M expenses.**

8. This issue has been decided by the Commission in its review order dated July, 28, 2008 in respect of Dhauli Ganga Hydroelectric Project. The decision of the Commission is set out hereunder:

***“Calculation of O&M Expenses.***

*In accordance with sub-clause (c) of Clause (iv) of Regulation 38 of the 2004 Regulations, O&M expenses in respect of the hydroelectric generating stations commissioned on or after April 01, 2004 are to be determined at 1.5% of the actual capital cost admitted by the*

*Commission in the year of commissioning and for the subsequent years. O&M expenses determined for the year of commissioning are to be annually escalated @ 4% per annum. Sub-clause (c) ibid is reproduced as under:*

*“ (c) In case of the hydro electric generating stations declared under commercial operation on or after April 01, 2004, the base operation and maintenance expenses shall be fixed at 1.5% of the actual capital cost as admitted by the Commission, in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent year”.*

*The Commission while approving tariff by order dated December 13, 2007 arrived at capital cost of Rs.163,139.66 lakh as on the date of commercial operation. For the year 2005-06, O&M expenses were allowed @ 4% of this capital cost for the period of operation on pro rata basis. Further, while arriving at O&M expenses for the year 2006-07, the Commission considered pro rata escalation over O&M expenses allowed for the year 2005-06 though the applicant in its claim had escalated O&M expenses for the year 2005-06 @ 4% for full year. The applicant has submitted that in accordance with the relevant provisions of the 2004 regulations annual escalation @ 4% per annual is to be allowed for the years subsequent to the year of commercial operation and has argued that O&M expenses for the year 2006-07 could not be prorated. In support of its claim, the applicant has relied upon the definition of the term ‘year’ given in the 2004 regulations and also the illustration given at Form 17 annexed to the 2004 regulations, specifying details of computation of O&M*

expenses. The utilities in the state of Rajasthan have supported the Commission's order.

The term "year" is defined in the 2004 regulations as the financial year. The 2004 regulations contain the following illustration as regards computation of O&M expenses for hydro generating stations. For example if the capital cost of the plant commissioned in 2000-01 is Rs. 1000 crore then the base for 2003-04 is computed as follows:

Base O&M for 2003-04 = Rs.  $(0.015 \times 1000) \times (1.04)^3$  crore".

In the order dated December 13, 2007, the Commission in para 51 of the order observed as under:

" 51. We observe that the petitioner has claimed the O&M expenses @ 1.5% of the admitted capital cost as on the date of commercial operation as per the Tariff Regulations, 2004. However, for the year 2006-07, the O&M expenses have been escalated @ 4% for the full year instead of considering pro rata escalation after completion of one year of DOCO. After considering pro rata escalation during 2006-07, the O&M expenses allowed for calculation of tariff for the tariff period are as under:

(Rs. In lakh)

Period	1.10.2005 to 31.10.2005	1.11.2005 to 31.3.2006	2006-07	2007-08	2008-09
O&M Expenses	51.48	1012.36	2487.59	2587.09	2690.58

*It is thus seen that there has not been adequate discussion on the statutory provisions made in the 2004 regulations and their effect before arriving at the conclusion as per para 51, reproduced above. This prima facie, in our opinion amounts to an error of law, apparent on the face of record. Therefore, we allow review of the order dated December 13, 2007 as regards computation of O&M expenses.”*

9. The above decision of the Commission in Dhauli Ganga squarely applies to the issue in hand in this Appeal. Accordingly we direct the Commission to allow the O&M expenses as per the approach followed in its review order dated July 28, 2008.

**Issue No.(iii) Computation of correct amount of maintenance spares.**

10. The Commission in its review order dated July 28, 2008 in respect of Dhauli Ganga Hydroelectric Station has decided as under:

**“Calculation of cost of maintenance spares for Working Capital**

*Clause (v) of Regulation 38 of the 2004 regulations provides as under:*

***“(v) Interest on Working Capital***

*(a) Working Capital shall cover:*

- (i) Operation and Maintenance expenses for one month*
- (ii) Maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation; and*
- (iii) Receivables equivalent to two months of fixed charges for sale of electricity calculated on normative capacity index.*

*(b) Rate of interest on Working Capital shall be the short-term Prime Lending Rate of State Bank of India as on April 01, 2004 or on April 01 of the year in which the generating unit/station is declared under commercial operation, whichever is later. The interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken Working Capital loan from any outside agency”.*

*In its claim for tariff, the applicant escalated maintenance spares for the year 2005-06 @ 6% for the full year, over 1% of the capital cost to arrive at cost of maintenance spares for the year 2006-07. The Commission, however, considered pro rata escalation of 6% for the year 2006-07 over the cost of maintenance spares considered for the year 2005-06. The applicant has contended that the methodology considered by*

*the Commission is contrary to the 2004 regulations since it is argued these do not provide that annual escalation of 6% per annum is to be allowed on pro rata basis, for the year subsequent to the year of commercial operation.*

*We do not find this contention of the applicant as sufficient ground for review. "Annum" means a year, that is, a period of 365 or 366 days in a leap year. Therefore, per annum would naturally mean per year, that is, completion of cycle of 365 or 366 days, as the case may be (P.N. Chopra vs Kuldip Raj Gupta AIR 1971 J&K 140). As per the provisions of clause (v) of Regulation 38 reproduced above, period of one year or 365 days was to be counted from the date of commercial operation of the generating station from the year of commercial operation. Accordingly, 6% escalation for the year 2006-07 was applicable only after completion of one year from October 01, 2005/November 01, 2005. Therefore, cost of maintenance spares has been allowed on pro rata basis. This has been done strictly in accordance with the 2004 regulations. Therefore, the applicant's prayer for review on this ground is not maintainable."*

11. The issue lies in a narrow compass. The station has been commissioned on February 15, 2000. An escalation @ 6% per annum is provided for as per Clause (v) (a)(ii) of Regulation 38 of

the 2004 Regulations. Regulations provide for escalation @ 6% for the full year. As the unit has been commissioned during the year 1999-2000 on February 15, 2000, effect of pro rata escalation @ 6% can be given by considering pro rata escalation for the period February 16, 2000 to March 31, 2000 and then allowing 6% escalation in the following full year i.e. from April 01, 2000 to March 31, 2001. In this regard Sub Section 4 of Section 62 of The Electricity Act, 2003 requires that “ No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year except in respect of any changes expressly permitted in the terms of any fuel surcharge formula as may be specified”. In view of this requirement of the Act it is not prudent to give effect to the annual escalation only after period of one year is completed as it would result in revision of the tariff in the middle of the tariff year. We, therefore, consider that pro rata escalation at the stipulated rate of 6% may be allowed for the period February 16, 2000 to March 31, 2000. With effect from April 01, 2000 a further escalation @ 6% per annum is payable. We order accordingly.



**Appeal No. 274 of 2006.**

12. In this Appeal also the appellant has agitated the issue of computation of cost of maintenance spares which has been dealt in Appeal No. 138 of 2006 and decided at para 11 above.

13. We, therefore, direct the Commission to follow the approach suggested by us in Appeal 138 of 2006 at para 11 above.

**Appeal No. 60 of 2008**

14. In this appeal the following three issues have been raised:

- (i) Depreciation considered as deemed normative repayment of loan.
- (ii) Correct computation of cost of maintenance spares..
- (iii) Correct computation of O&M expenses.

15. We now proceed to discuss and decide each issue:

**(i) Depreciation considered as deemed normative repayment of loan.**

16. The Commission has decided in the impugned order that when depreciation, including Advance Against Depreciation,

recovered in a year is more than the amount of loan repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for computation. This has been challenged by the appellant.

17. This issue has been decided by this Tribunal in its judgment dated December 10, 2009 at para 36 in Appeal No. 130 of 2006 reproduced as under:-

*“36. We are unable to agree with the view of the Commission that when depreciation exceeds the actual repayment the difference between depreciation and repayment amount be taken as normative repayment of loan as regulations only state that whenever the repayment amount exceeds the depreciation recovered, excess amount is to be allowed as Advance Against Depreciation. In our earlier judgment cited above this Tribunal has ruled that depreciation is an expense and not an item allowed for repayment of loan. In our view the Commission, in the absence of any Regulation to this effect, has erred in coming to the conclusion that when depreciation recovered in an year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation.”*

18. As our earlier decision cited above squarely applies to the issue in hand, the same is decided accordingly and, therefore, the appeal in this regard succeeds.

**(ii) Correct computation of cost of maintenance spares.**

19. The issue lies in a narrow compass. The station has been commissioned on October 01, 2005. An escalation @ 6% per annum has is payable as per the Clause (v) of Regulation 38 of the 2004 Regulations. As the unit has been commissioned during the year 2005-2006 pro rata escalation from October 01, 2005 to March 31, 2006 has to be allowed. With effect from April 01, 2006, a further escalation @ 6% per annum has to be permitted as per the Regulations as found by us in para 11 above. We order accordingly

**(iii) Correct computation of O&M expenses**

20. The Commission in its Review Order dated July 28, 2008 in respect of Dhauli Ganga Hydroelectric Project in petition No. 107 of 2006 has conceded this issue.

21. In the result the Appeals are allowed to the extent indicated hereinabove in paras 7,9,11,13,18,19 and 20.

22. No order as to costs.

23. Pronounced in the open court on December 23, 2009.

(H.L. Bajaj)  
Technical Member

(Mrs.Justice Manju Goel)  
Judicial Member

Reportable/non-reportable