

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

Appeal No. 72 of 2012

Dated: 21st September, 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**North Eastern Electric Power Corporation ...Appellant (s)
Ltd., Shillong
Brookland Compound
Lower New Colony Shillong
Meghalaya - 793 114**

Versus

- 1. Central Electricity Regulatory Commission ...Respondent (s)
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi - 110 001**

- 2. Assam State Electricity Board, Guwahati
Bijulee Bhawan, Paltan Bazaar,
Guwahati - 1, Assam**

- 3. Meghalaya State Electricity Board, Shillong
Meter Factory Area, Short Round Road,
Integrated Office Complex,
Shillong - 793 001, Meghalaya**

- 4. Department of Power
Govt. of Tripura
North Banamalipur
Aaartala - 799 001**

5. **Electricity Department, Govt. of Manipur
Keishampat, Imphal – 795 001**
6. **Department of Power, Govt. of Arunachal Pradesh
Zero Point, Tinali, Itanagar – 791 111**
7. **Department of Power
Govt. of Nagaland
Kohima – 797 001**
8. **Department of Power
Govt. of Mizoram
Aizawl – 796 001**
9. **North Eastern Regional Power Committee, Shillong
Meghalaya State Housing Fin. Cooperative
Society Ltd Building, Nongrim Hills
Shillong – 793 003**
10. **North Eastern Regional Load Dispatch
Centre, Shillong
Dongtieh, Lower Nongrah, Lapalang
Shillong – 793 006**

Counsel for the Appellant (s) : Mr. Sanjay Sen
Mr. Anurag Sharma
Mr. Hemant Singh
Ms. Shikha Ohri
Mr. Debjani Dey (Rep.)

Counsel for the Respondents (s): Mr. Buddy A. Ranganadhan
Ms. Sakie Jakharia for R-2
Ms. Richa Bhardwaja
Mr. Hemant Sharma
Ms. Tania Sharma
Mr. H.N. Sharma,
Resident Engineer, APDC Ltd.

JUDGMENT

MR. RAKESH NATH, TECHNICAL MEMBER

The present Appeal has been preferred by North Eastern Electric Power Corporation Limited against the order dated 10.5.2011 passed by the Central Electricity Regulatory Commission (“Central Commission”) in the matter of fixation of tariff for sale of power from Ranganadi Hydro Electric Project of the Appellant from 1.4.2009 to 31.3.2014.

2. The Appellant is a generating company engaged in the generation of electricity. The Appellant has a Hydro Electric Project viz, Ranganadi Hydro Electric Project.
3. The Central Commission is the Respondent no.1. The Respondent nos. 2 to 8 are the beneficiaries of the power from Ranganadi Hydro Electric Project.
4. The facts of the case are as under.

4.1 The Appellant on 19.11.2009 filed a petition before the Central Commission for fixation of tariff for sale of power from Ranganadi Hydro Electric Project for the period 1.4.2009 to 31.3.2014. In the aforesaid petition, the Appellant sought for normative Operation and Maintenance Expenses (O&M) based on O&M expenditure actually incurred including repair and maintenance during the period 2003-04 to 2007-08. However, the Central Commission disallowed the expenditure relating to rectification work of water conductor system viz, surge-shaft and head race tunnel, to the tune of Rs.531.35 lakhs on the ground that the said work undertaken by the Appellant was a onetime activity and accordingly not considered while deciding the normalized O&M expenses for the purpose of annual fixed charges of the generating station. Aggrieved by the determination of the Operation and Maintenance expenses, the Appellant has filed this Appeal.

6. The Appellant has raised the following issues in the Appeal.

6.1 Disallowance of additional expenditure:

i) The Appellant had sought normative O&M expenses based on the O&M expenditure actually incurred including expenditure on repair and maintenance during the period 2003-04 to 2007-08. As per the books of accounts of the Appellant, the repair and maintenance expenditure incurred during the aforesaid period was as follows:

FINANCIAL YEAR	2003-04	2004-05	2005-06	2006-07	2007-08
(RUPEES IN LAKHS)	724.71	642.67	511.94	731.77	830.82

ii) The enhancement in Repair and Maintenance expenditure during the FY 2006-07 and 2007-08 in comparison to previous FY was on account of repair and rectification work of the water conductor

system of the generating station. In order to avoid the possibility of the collapse of water conductor system due to increasing volume of water leakages the rectification work had to be carried out for which the total expenditure incurred was to the tune of Rs.531.35 lakhs. The Central Commission erred by holding that the rectification and repair work on the surge-shaft and the head race tunnel was only a onetime activity.

- iii) In fact, the leakages were on account of distinct and peculiar topography of the area in which the plant is located. The Expert Committees appointed by the Appellant also indicated that the repair work undertaken during 2006-07 and 2007-08 to control the water leakages was necessary and attributable to the adverse geological conditions at the project site. Such expenses duly incurred by the Appellant for saving the project ought to be considered while determining normative O&M

expenses based on relevant O&M expenditure actually incurred during the period 2003-04 to 2007-08.

- iv) Therefore, the total expenditure of Rs.531.35 lakhs incurred by the Appellant for repair of water conductor system ought to have been allowed while determining the normalised O&M expenses for arriving at the permissible O&M expenses for the period from 2009-14.

6.2 O&M Expenses:

- i) The Central Commission has considered the average of employees cost and average of total O&M expenses for the period 2003-04 to 2007-08 for the purpose of giving effect to the employees salary hike. This resulted in lower normative O&M expenses being allowed for the period 2009-14, which in turn resulted into reduced annual fixed

charges. It is in deviation from the formula as provided in the Tariff Regulation 2009.

- ii) The Central Commission while computing normative O&M expenses for the period 2009-10 has not followed the relevant provisions of the Tariff Regulations which provided that Operation and Maintenance expenses for the year 2009-10 have to be further rationalized considering 50% increase in employees cost on account of pay revision of employees of the Public Sector Undertakings to arrive at the permissible O&M expenses for the year 2009-10.
7. Assam State Electricity Board (Respondent no.2) filed reply and written submissions supporting the impugned order which we will be discussing while considering the issues raised by the Appellant.

8. We heard the Ld. Counsel for the Appellant and Ld. Counsel for Respondent no.2. On the basis of the rival contentions of the parties, the following questions would arise for our consideration:

- (i) Whether the Central Commission has erred in excluding the expenditure incurred during the period 2006-08 in rectification of the water conductor system for controlling water leakages at the hydro project of the Appellant to determine the normalized O&M expenses in arriving at the permissible O&M expenses for the year 2009-10?
- (ii) Whether the Central Commission has erred in computing the normative O&M expenses for the FY 2009-10 in contravention to its own Tariff Regulations?

9. Let us examine the first issue regarding exclusion of expenditure on rectification and repair of leakage in water conductor system.

9.1 According to Ld. Counsel for the Appellant, the State Commission erred by holding that the rectification and repair work of water conductor system was a onetime activity as the repair undertaken during the years 2006-07 and 2007-08 to control leakage was necessary and the same was attributable to adverse geological conditions at the project site.

9.2 According to Ld. Counsel for the Respondent no.2, such failures do not occur normally and, therefore, the expenditure incurred in rectification of leakage of tunnel was a onetime activity. The Regulation 19(f)(i) also stipulates exclusion of abnormal O&M expenses for the period 2003-08. It is not the case of the Appellant that the said expense was a normal expense.

9.3 Let us now examine the relevant Tariff Regulation.

Regulation 19(f) is the relevant Regulation and is reproduced below:

- “(i) Operation and maintenance expenses, for the existing generating stations which have been in operation for 5 years or more in the base year of 2007-08, shall be derived on the basis of actual operation and maintenance expenses for the years 2003-04 to 2007-08, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission.*
- (ii) The normalized operation and maintenance expenses after prudence check, for the years 2003-04 to 2007-08, shall be escalated at the rate of 5.17% to arrive at the normalized operation and maintenance expenses at the 2007-08 price level respectively and then averaged to arrive at normalized average operation and maintenance expenses for the 2003-04 to 2007-08 at 2007-08 price level. The average normalized operation and maintenance expenses at 2007-08 price level shall be escalated at the rate of 5.72% to arrive at the operation and maintenance expenses for year 2009-10:*

Provided that operation and maintenance expenses for the year 2009-10 shall be further rationalized considering 50% increase in employee cost on account of pay revision of the employees of the Public Sector Undertakings to arrive at the permissible operation and maintenance expenses for the year 2009-10.

- (iii) The operation and maintenance expenses for the year 2009-10 shall be escalated further at the rate of 5.72% per annum to arrive at permissible operation and maintenance expenses for the subsequent years of the tariff period.”*

9.4 The Regulation 19(f)(i) clearly states that the abnormal operation and maintenance expenses have to be excluded from the actual operation and maintenance expenses for the years 2003-04 to 2007-08.

9.5 The State Commission has given the following finding while disallowing the expenses incurred on the rectification work of tunnel.

“36 It is observed that R&M expenditure has increased significantly during the years 2006-07 and 2007-08, on account of the rectification work of curtain grouting of surge shaft of the Ranganadi main tunnel which was undertaken in order to control leakages in tunnel. The petitioner has submitted that the said work was on account of geographical failure, since such situations do not occur normally. As the said work undertaken by the petitioner was a onetime activity, the said expenditure incurred for rectification work of tunnel has not been considered for the purpose of normalization of O&M expenses.”

9.6 We feel that the Central Commission has correctly decided that the said situations due to geographical failure do not occur normally and, therefore, expenses

incurred on rectification work to control the leakages in tunnel has to be treated as onetime activity and to be excluded for the purpose of normalization of O&M expenses.

9.7 The Appellant has only emphasized that undertaking the repair and rectification work was essential to control the leakages in the tunnel. It is not the case of the Appellant that the said repair and rectification work was not an abnormal activity and the same was normal in nature.

9.8 Ld. Counsel for the Appellant argued that they could not recover the expenses incurred on the above rectification work during the year 2006-07 and 2007-08 as the O&M expenses allowed did not cover these expenses. In fact one of the prayers of the Appellant in the Appeal is to allow reimbursement of the expenditure to the tune of Rs.531.35 lakhs incurred by the Appellant in the FY 2006-07 and 2007-08 for rectification of the surge shaft and tunnel. We feel that the Appellant can not claim

reimbursement of expenditure incurred during the period 2006-08 in the petition for fixation of tariff for the period 2009-14.

9.9 Ld. Counsel for the Appellant has referred to the orders of the Central Commission in Power Grid Corporation of India Ltd. Vs Rajasthan Rajya Vidyut Prasaran Nigam Ltd. dated 19.1.2010 in petition no. 250 of 2009, and Power Grid Corporation of India Ltd. Vs Bihar State Electricity Board dated 7.3.2012 in Petition no. 13 /MP/2012 to emphasize that the Central Commission has allowed abnormal security expenses to POWERGRID, the transmission licensee. In these cases POWERGRID had sought reimbursement of additional expenditure towards security arrangements in J&K and North Eastern region respectively. The Central Commission in exercise of its powers of relaxation under the Regulation allowed the additional expenses to be recovered from the beneficiaries. The present case is different where the Central Commission has determined the tariff of the

Appellant for the period 2009-14 and in determining the normative O&M expenses for the period 2009-14, it has computed normalized O&M expenses for the period 2003-04 to 2007-08 as per the Tariff Regulation, 2009. In the petition before the Central Commission, in the present case the Appellant had not sought for reimbursement of the expenses incurred on rectification work of the tunnel.

9.10. Admittedly, the Appellant did not file any petition for reimbursement of the expenses incurred on the rectification work during the period 2004-2009 under the power to relax as per the Tariff Regulation, 2004 prevailing in the relevant period. These expenses can not be recovered by enhancing the base O&M expenses for the FY 2007-08 and consequently enhancing the normative O&M expenses for the period 2009-14.

9.11 In view of above the first issue is decided as against the Appellant.

10. The second issue is regarding computation of normative O&M expenses for the period 2009-14.

10.1 According to Ld. Counsel for the Appellant, the Central Commission has wrongly considered the average of 'Employee Cost' and average of total O&M expenses for the period 2003-04 to 2007-08 for the purpose of giving effect to the employees' salary hike in contravention to the Tariff Regulation. This has resulted in lower normative O&M expenses being allowed for the period 2009-14.

10.2 According to the Ld. Counsel for the Respondent no.2, the computation of O&M expenses has been correctly carried out by the Central Commission as per the Regulations.

10.3 Let us first consider the computation of O&M expenses as specified in the Tariff Regulation. The specific procedure for the Appellant's power station which has been in operation for the 5 years or more is summarized as under.

- (i) The O&M expenses for the base year 2007-08 shall be derived on the basis of the actual O&M expenses for the years 2003-04 to 2007-08 as per the audited accounts excluding the abnormal O&M expenses, if any, after prudence check.
- (ii) The normalized O&M expenses for the years 2003-04 to 2007-08 shall be escalated @ 5.17% to arrive at the normalized O&M expenses at 2007-08 price level respectively.
- (iii) The normalized O&M expenses for the years 2003-04 to 2007-08 computed at 2007-08 price level shall be averaged to arrive at normalized average O&M

expenses for the period 2003-04 to 2007-08 at 2007-08 price level.

- (iv) The average normalized O&M expenses at 2007-08 price level shall be escalated @5.72% to arrive at O&M expenses for the year 2009-10.
- (v) O&M expenses for the year 2009-10 shall be further rationalized considering 50% increase in employees cost on account of pay revision of employees to arrive at permissible O&M expenses for the year 2009-10.
- (vi) The O&M expenses for the year 2009-10 shall be escalated further @ 5.72% per annum to arrive at permissible O&M expenses for the subsequent years of the tariff period, (2009-14).

10.4 We find that the Central Commission has computed the permissible O&M expenses following the above steps, in accordance with the Tariff Regulation.

10.5 The computation as carried out by the Central Commission in the impugned order is as under.

“

(Rs. in lakh)						
ITEMS	2003-04	2004-05	2005-06	2006-07	2007-08	Average
Total Employee Cost	1875.58	1923.12	1931.55	2112.77	2832.66	
Employee Cost at 2007-08 Base Rate	2294.58	2242.90	2136.43	2222.00	2832.66	2345.71
O&M considered	3334.41	3241.48	3209.92	3416.28	3979.36	
O&M at 2007 Base Rate	4079.31	3770.67	3550.41	3592.91	3979.36	3794.53

(Rs. in lakh)		
	2008-09	2009-10
O&M with escalation @ 5.72%	4011.58	4241.04
Employee cost with 5.72% escalation	2479.89	2621.74

71. *O&M Expenses in 2009-10 considering 50% increase in employee cost is as under:*

(Rs. in lakh)

	2009-10
<i>O&M expenses</i>	4241.04
<i>Employee cost (50%)</i>	1310.87
Total	5551.091

”

10.6 The Central Commission has allowed 50% escalation on account of employees cost on the projected employees cost for 2009-10 computed at Rs. 2621.74 lacs with 5.72% escalation on the average employees cost for the period 2003-04 to 2007-08 at 2007-08 price level i.e. Rs.2345.71 lacs. On the other hand, the Ld. Counsel for the Appellant argued that the 50% escalation on the employees cost should be computed as under, as per the explanation given in the statement of objects and reasons for 2009 Tariff Regulation.

- i) Compute %age of employees cost of total O&M cost for the FY 2007-08

$$\text{that is } \frac{2832.66}{3979.36} \times 100 = 71.1\%$$

- ii) Apply 50% escalation on 71.1% of O&M cost of Rs. 4241.04 lacs for FY 2009-10 and add to O&M expenses as under.

$$4241.04 + 4241.04 \times 0.711 = \text{Rs. } 5750.51 \text{ lakhs}$$

Thus according to the Appellant the O&M expenses of Rs.5750.51 lakhs should be allowed instead of Rs.5551.09 lakhs allowed by the Central Commission for FY 2009-10.

10.7 We notice that the statement of objects and reasons for the 2009 Tariff Regulation gives illustration of working out the O&M expenses as per the Regulation assuming some figures of O&M expenses. While computing the impact of provision of 50% increase in employees cost on account of pay revision, it states as under:

“Impact of provision of 50% hike in salary shall be considered as follows:-

Assuming contribution of 'Employee cost' in the total O&M expenses in the year 2007-08 amounts to 35%,

Employee cost shall be = $3845 \times 0.35 = \text{Rs. } 1346 \text{ lakh}$

Increase in employee cost after allowing 50% hike due to pay revision shall be – $1346 \times 0.5 = \text{Rs. } 673 \text{ lakh}$

Thus, total O&M expenses to be considered for the year 2009-10 shall be = $3845 + 673 = \text{Rs. } 4518 \text{ lakh}$

10.8 The Statement of object and reasons only give an illustration. As employees cost was not computed in the illustration, some assumption has been made for the employees cost as a %age of O&M expenses. In the actual tariff calculation the actual employees expenses are available and, therefore, the same need to be used.

10.9 Here, the limited question to be decided is whether the employees cost should be computed with escalating the average employees cost for the period 2003-04 to 2007-08 at 2007-08 price level or it should be computed on the basis of actual employees cost for the FY 2007-08.

10.10. When O&M expenses for FY 2009-10 itself has been worked out on the basis of average O&M cost for the period 2003-04 to 2007-08 at 2007-08 price level, the employees cost should also be on the basis of average.

10.11 Thus, we do not find any infirmity in the order of the Central Commission. This issue also is decided as against the Appellant.

11. **Summary of findings**

- i) **The Central Commission has correctly disallowed the expenses incurred in repair and rectification work carried at Ranganadi Hydro Electric Project during 2006-07 and 2007-08 holding it as onetime activity while determining the normalize O&M expenses for arriving at the permissible O&M expenses for the period 2009-14, as per its Tariff Regulations. The Appellant can not claim reimbursement of the abnormal**

O&M expenses incurred during the period 2004-09 in the form of enhanced O&M charges for the period 2009-14, as the Tariff Regulations do not permit the same.

ii) The Central Commission has correctly computed the O&M expenses for the FY 2009-10 to FY 2013-14 as per the Regulations.

12. In view of our above findings, we do not find any merit in this Appeal. Accordingly, the Appeal is dismissed. No order as to costs.

13. Pronounced in the open court on this **21st day of September, 2012.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

√
REPORTABLE/~~NON-REPORTABLE~~
mk