

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:13th November, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal No. 118 of 2013
& IA-No.186 of 2013

UTTAR PRADESH POWER CORPORATION LTD.
SHAKTI BHAAN, 14, ASHOK MARG,
LUCKNOW-226001 THROUGH ITS
SUPERINTENDING ENGINEER

... Appellant

Versus

- 1. NHPC LIMITED,**
(A GOVT. OF INDIA ENTERPRISES)
NHPC OFFICE COMPLEX, SECTOR-33,
FARIDABAD (HARYANA)-121003
THROUGH ITS MANAGING DIRECTOR
- 2. PUNJAB STATE POWER CORPORATION LTD.**
(EARLIER KNOWN AS PUNJAB STATE ELECTRICITY
BOARD)
THE MALL, PATIALA0147001
THROUGH ITS CHAIRMAN
- 3. HARYANA POWER UTILITIES (DH BVNL & UH BVNL),**
SHAKTI BHAAN, SECTOR-6,
PANCHKULA (HARYANA) 134109
THROUGH ITS CHAIRMAN

4. **BSES RAJDHANI POWER LTD.
BSES BHAWAN, NEHRU PLACE,
NEW DELHI THROUGH ITS CEO**
5. **BSES YAMUNA POWER LTD.
SHAKTI KIRAN BUILDING, KARKARDOOMA,
NEW DELHI THROUGH ITS CEO110092**
6. **RAJASTHAN RAJYA VIDYUT PRASARAN NIGAM LTD.
(RRVPL)
VIDYUT BHAWAN, JANPATH, JYOTI NAGAR,
JAIPUR-302005 (RAJASTHAN)
THROUGH IS CHAIRMAN**
7. **NORTH DELHI POWER LTD.
33 KV SUB STATION BUILDING
HUDSON LANE, KINGSWAY CAMP,
DELHI-110009 THROUGH
ITS CHIEF OPERATING OFFICER**
8. **UTTARAKHAND POWER CORPORATION LTD.
URJA BHAWAN, KANWALI ROAD,
DEHRADUN-248001THROUGH
ITS MANAGING DIRECTOR**
9. **JAIPUR VIDYUT VITRAN NIGAM LTD.
VIDYUT BHAWAN, JANPATH JAIPUR-302005
THROUGH ITS CHAIRMAN**
10. **HIMACHAL PRADESH STATE ELECTRICITY BOARD,
VIDYUT BHAWAN, KUMAR HOUSE COMPLEX
BUILDING-II SHIMLA-171004
THROUGH ITS CHAIRMAN**
11. **JODHPUR VIDYUT VITARAN NIGAM LIMITED
NEW POWER HOUSE, INDUSTRIAL AREA,
JODHPUR-342003 (RAJASTHAN)**

12. **ENGINEERING DEPARTMENT, 1ST FLOOR,
UT SECRETARIAT, SECTOR 9-D,
CHANDIGARH-160009 THROUGH
ITS CHIEF ENGINEER**
13. **AJMER VIDYUT VITARAN NIGAM LIMITED
OLD POWER HOUSE, HATTHI BHATTA, JAIPUR ROAD,
AJMER-305001 (RAJASTHAN) THROUGH
ITS MANAGING DIRECTOR**
14. **POWER DEVELOPMENT DEPARTMENT,
NEW SECRETARIAT, JAMMU (J&K)-180001 THROUGH
ITS PRINCIPAL SECRETARY**
15. **CENTRAL ELECTRICITY REGULATORY COMMISSION,
4TH FLOOR, CHANDRALOK BUILDING, 36, JANPATH,
NEW DELHI-110001, THROUGH ITS CHAIRMAN**

.....Respondent(s)

**Counsel for the Appellant (s) : Mr. Pradeep Mishra
Mr. Shashank Pandit**

**Counsel for the Respondent (s) : Mr. Sachin Datta with
Mr. M.S. Ramalingam for CERC**

J U D G M E N T

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Uttar Pradesh Power Corporation Limited is the Appellant herein.

2. Aggrieved by the Order passed by the Central Commission on 01.10.2012 in the Review Petition revising the Operation Maintenance cost payable by the Appellant, the Appellant has filed this Appeal.

3. The short facts are as follows:

(a) The Appellant, Uttar Pradesh Power Corporation Limited is the successor in interest of the then U.P. State Electricity Board.

(b) National Hydro Power Corporation Ltd. (Hydro Power) is the first Respondent. It is a Government of India Undertaking engaged in generation of electricity. The other Respondents are beneficiaries of the power generated by the Hydro Power.

(c) The Hydro Power has filed a petition before the Central Commission in Petition No.66 of 2010 for approval of generation tariff of Chamera-II HE project for the period from 01.04.2009 to 31.03.2014. Accordingly the Central Commission determined the tariff of the said project by the order dated 27.01.2012.

(d) Since there were errors apparent on the face of record on some of the issues, the Hydro Power (R-1) filed a Review Petition in No.9 of 2012 before the Central Commission stating that there were errors

apparent on the face of record and therefore, praying for the review on these issues.

(e) The Central Commission ultimately passed the Impugned Order dated 01.10.2012 in the Review Petition allowing this petition by revising the operation maintenance cost payable to the Hydro Power. This Impugned Order is being challenged in this Appeal by the Appellant.

4. The Learned Counsel for the Appellant has raised the following issues for consideration:-

(i) Incorrect multiplication factor of 4.52 has been applied in the impugned order for converting the actual O&M expenses incurred during 2003-04 to the annual expenditure.

(ii) The adoption of the O&M expenses incurred during 2004-05 for the year 2003-04.

(iii) The employees cost has been wrongly computed while calculating the operation and maintenance expenses.

5. On these issues both the parties have argued at length.

6. The Learned counsel for the Appellant though did not pursue the first issue and made submission questioning the finding with regard to second and third issues only.

7. On the other hand, Learned Counsel for the Hydro Power as well as Central Commission in its impugned order have submitted that the Central Commission has correctly made the calculations and rectified the errors committed in calculating of O&M expensed by giving the correct figures and therefore, the impugned order does not call for intervention.
8. In the light of the above contention the main question which would arise for consideration;
 - (a) What is the true scope and ambit of Regulation 19(f) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 regarding Operation and Maintenance expenses for Hydro Generating Station?
 - (b) Whether the Central Commission was justified in revising the O&M expenses thereby taking the figures of O&M expenses for the year 2004-05 for the year 2003-04?
9. Since both the issues are interrelated, we shall take up both the issues together for discussion.
10. In regard to the first issue raised in the Appeal, the learned counsel for the Central Commission has replied that there is no dispute with regard to the provision of the 2009 Tariff Regulation which has been applied and under these circumstances, the procedure adopted by the Central

Commission is certainly beyond dispute because the dates of commercial operation of the 3 units and the total number of the days in the year 2003-04 are matter of record. Once the dates of commercial operation of the three units are beyond dispute, the multiplication factor is an arithmetic corollary and as such there cannot be any debate or dispute over the factor.

11. We find force in this reply made by the Central Commission.
12. In view of this reply, the learned Counsel for the Appellant did not the press this issue. Therefore, we do not incline to go into this issue further. Accordingly, the finding on this issue by the Central Commission is upheld.
13. The Second issue is with regard to the incorrect adoption of the O&M expenditure incurred in the year 2004-05 for the year 2003-04.
14. Let us now consider the prayer made in the Review Petition filed by the Hydro Power and the finding on these issues rendered by the Central Commission in the impugned order.
15. On perusal of the Revision Petition filed by the Hydro Power it is revealed that the Hydro Power pointed out that the original tariff order contained some errors which are as follows:-

(i) The Central Commission failed to take into account that 2003-2004 was a leap year and hence the Central Commission ought to have considered 366 days for that year instead of 365 days while calculating multiplying factor for yearly data.

(j) The Central Commission failed to take in to account that all the 3 units of generating station were in commercial operation for different periods for the year 2003-04 and therefore, multiplying factor should have been worked out considering the total number of machine days for all the machines.

16. On noticing these errors, the Central Commission through impugned order dated 01.10.2012 corrected these errors by making following observation and findings contained in Para 9 and 10 of the review order.

“9. The Petitioner has submitted that the date of commercial operation of the generating station is 31.03.2004 and only part year O&M expenses for 2003-04 were available. The petitioner has submitted that the Commission has converted the part year O&M expenses of 2003-04 in to full year O&M expenses by the multiplying factor of 2.42 (365/121) and allowed O&M expenses by order dated 27.01.2012. it has also pointed out that the year 2003-04 was a leap year and hence 366 days ought to have been considered instead of 365 days while calculating multiplying factor for early data. The petitioner has further submitted that the three units of the generating

station were in commercial operation for different periods of the year 2003-04 and the actual machine days during the said year was 243 days and accordingly, the multiplying factor of 4.52 (1098/243) should have been considered instead of 2.42 for proportioning the part year O&M expenses. This, according to the petitioner is an error apparent on the face of the order and the same needs to be corrected.

10. We have examined the matter. Units-I, II and III of the generating station was commissioned on 02.11.2003, 01.01.2004 and 31.03.2004, respectively. The actual operating machine days is 243 days for all three machines and since the year 2003-04 was a leap year, 366 days ought to have been considered instead of 365 days. Accordingly, the total machine days would have been 1098 days. Since, the actual machine days were 243 days, if the O&M expenses are increased on a proportionate basis for the full year, considering the multiplying factor of 4.52 the total O&M expenses during the year 2003-04 works out to Rs.5525.83 lakh (1098/243x1222.93). However, with the increase in number of machine days, expenditure on security expenses, certain items of administrative expenses and other expenses also do not undergo any proportionate changes. It is also observed that the O&M expenses of Rs.4091.55 lakh during 2004-05 and Rs.4191.93 lakh during 2005-06 has been considered. Being new units and the equipments under warranty period, the O&M expenses for the 2003-04 has been considered equal to the O&M expenses allowed for 2004-05 at the 2004-05 price level for the purpose of normalization”.

17. On perusal of the findings referred to above, the following factors would emerge:-

“O&M Charges for the year 2003-04 were calculated on the basis of the multiplication factor worked out to be Rs.5525.83 lakh. As this was exorbitantly high as compared to the O&M charges for the remaining years of the tariff block, the commission decided to adopt the expenditure for 2004-05 for the year 2003-04. It is significant that the O&M expenditure for 2004-05 was Rs.4091.55 lakh. The impugned action of the Central Commission has reduced the O&M charges for 2003-04 by about 25%. It is not understood as to what is the grievance of the Appellant over the reduction in tariff. In view of the fact that the adoption of the O&M expenditure incurred during 2004-05 for the year 2003-04 is beneficial to the Appellant and other beneficiaries because it resulted in less tariff than what would have emerged making the application of the multiplication factor. Hence, the contention on this issue urged by the learned counsel for Appellant is not tenable”.

18. Let us now go into the next issue with reference to the calculation of employees expenses component of O&M expenses:-

According to the Appellant, the employees cost component of O&M expenses has been wrongly calculated. Following table rendered to in this appeal under Ground E would be extracted here.

Details	2008-09	2009-10
Average normative employee cost	2865.69 (2710.64*1.0572)	3029.61 (2865.69*1.0572)
Average normative O&M	4800.33 (4540.61*1.0572)	5074.91 (4800.33*1.0572)

19. It is evident from the data that employee cost constitutes 59.70% of the O&M expenses. Applying the above factor, O&M expenses arrived at for the year 2009-10 comprises employee cost component of Rs.3029.72 lakh (i.e. 59.70%) and Rs.2045.19 lakh (i.e. 40.30%), attributable to other factors. As per the proviso to clause 19(f) (ii) of the 2009 regulations, employee cost is required to be escalated by 50%. Thus Rs.3029.72 lakh shall be escalated to Rs.4544.58 lakh. This escalated figure when added to Rs.2045.19 lakh (i.e. O&M expenses attributable to other factors) yields Rs.6589.78 lakh which is the O&M expenses component allowed in the tariff for the year 2009-10.
20. The Appellant however interpreted the provision to clause 19 (f) (ii) of the Regulation, 2009 differently.
21. This interpretation of the Appellant is misconceived for the reasons which are follows:-

(i) The construction urged by the Appellant is contrary to the basic rule for interpretation of statutes. The proviso to clause 19(f) (ii) of the 2009 regulations mandates rationalization of the O&M expenses of 2009-10. The rationalization requires increase in the employee cost component of the O&M expenses.

(ii) The quantum of increase is 50%. The calculations in the impugned order is perfectly in tune with the above stated literal construction of the proviso.

(iii) That the construction urged by the Appellant renders the phrase “employees cost” in the proviso to clause 19(f) (ii) of the 2009 regulations redundant. This is against the basic principles of interpretation of statutes.

(iv) Further, the Appellant has attempted to introduce the phrase of the sum of the difference between the initial and escalated figures of the O&M expenses for the years 2008-09 and 2009-10. This is also contrary to the basic principles of interpretation statutes.

(v) The statement of objects and reasons with 2009 regulation puts things beyond the pale of doubt that the Central Commission had provided for increase of 50% of increase on account of employees cost

because the pay hike on account of revision of pay was estimated to be between 56 to 70%.

(vi) The Appellant has misconceived the formula for computation of the employee cost component in the O&M charges. The Appellant as calculated the increase in employee cost by giving following figures:-

Details	2008-09	2009-10	Total increase	50% of total
Increase in employee cost	2865.69- 2710.64 =155.05	3029.60- 2710.64 =318.96	155.05+318.96 =474.01	237.00

22. The construction urged by the Appellant would not be increasing a number by 5.72% taking 50% of the total of the differences will always result in increasing the original number by 8.74%. In view of the above, interpretation projected by the Appellant is untenable.
23. In fact, the Central Commission allowed the O&M expenses as per regulation 19 (f) (ii) of the tariff regulation 2009.
24. In view of the above fact, we do not find any infirmity in the findings rendered by the Central Commission.
25. **SUMMARY OF OUR FINDINGS**

The Central Commission has correctly applied Regulation 19 (f) of the 2009 Tariff Regulation to

correct the O&M expenses in the Impugned Review Order dated 1.10.2012.

26. In the light of above findings, we do not find any merit in the Appeal. Hence, this Appeal is dismissed. No order as to costs.

27. Pronounced in the Open Court on this **13th day of November, 2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:13th November, 2014

√REPORTABLE/~~NON-REPORTABLE~~