

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

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

**Petition No 129/2005
(Suo Motu)**

In the matter of

Reimbursement of application fee and publication charges to Central Power Sector Utilities.

ORDER

Under Section 64(1) of the Electricity Act, 2003, an application for determination of tariff made by a generating company or a licensee is to be accompanied by such fee as may be determined by the Commission by regulations. Sub-section (2) of Section 64 further lays down that every applicant shall publish the application in such abridged form and manner as may be specified by the Commission.

2. Under Regulation 5 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff), Regulations, 2004, the generating company or the transmission licensee, as the case may be, is required to make an application for fixation of tariff in respect of the completed units of the generating station or the lines or the sub-station of the transmission system. The regulation further provides that the generating company or the transmission licensee may make an application for determination of provisional tariff in advance of the anticipated date of completion of the project based on capital expenditure actually incurred up to the date of making of

the application of a date prior to the making of the application, duly audited and certified by the statutory auditors. This regulation further provides that in case of a generating station or the transmission system declared under commercial operation on or after 1.4.2004, a generating company or the transmission licensee shall make a fresh application for determination of final tariff based on actual expenditure incurred up to the date of commercial operation of the generating station or the transmission system. Every application made under Regulation 5 by a generating company is to be accompanied by a fee of Rs.25 lakh and a fee of Rs.5 lakh when made by the transmission licensee.

3. The Commission has, by regulations, specified the manner of publication of application made for approval of tariff. In accordance with these regulations, the proposals for approval of tariff are required to be published by the applicant in the newspapers having circulation in the beneficiary States.

4. In the proceedings before the Commission, the question of reimbursement of fee paid for making the application for approval of tariff, is often raised. The question of reimbursement of expenditure incurred on publication of notices is also raised. The Commission feels that a view on these matters need to be taken after an opportunity of hearing to all concerned, that is, Central Power Sector Utilities as also the beneficiary States.

5. The fee for making an application for approval of tariff for the period 1.4.2001 to 31.3.2004 as specified by the Commission was Rs.10 lakh and Rs.2 lakh for generation tariff and transmission tariff respectively. While disposing of the application

made for approval of tariff, the beneficiary States were directed to reimburse the amount of filing fee to the Central Power Sector Utilities. On that analogy, the Central Power Sector Utilities are demanding reimbursement of the fee for making application for approval of tariff made after 1.4.2004. Per contra, it has been pointed out that the fee paid by the Central Power Sector Utilities during 1.4.2001 to 31.3.2004 was included in O&M expenses for the relevant period, as a part of “legal expenses”. While formulating norms for the period 1.4.2004 to 31.3.2009, O&M expenses incurred by the Central Power Sector Utilities during the period 1.4.1998 to 31.3.2003 were considered as an input. While arriving at normative O&M expenses applicable for the period 1.4.2004 to 31.3.2009, the average of actual O&M expenses for the period 1.4.1998 to 31.3.2003 was escalated by applying an escalation factor. In view of the procedure adopted for arriving at normative O&M expenses applicable during the current tariff period, from 1.4.2004 to 31.3.2009, an opinion has been expressed that the fee paid for making of applications during the current tariff period automatically gets reimbursed. Against this, the Central Power Sector Utilities have argued that there has been substantial increase in fee applicable for the period 1.4.2004 to 31.3.2009 over the fee specified for the earlier period from 1.4.2001 to 31.3.2004 and, therefore, entire fee payable during 1.4.2004 to 31.3.2005 does not get reimbursed.

6. On the question of reimbursement of publication charges, it has been pointed out on behalf of the Central Power Sector Utilities that this is fresh expenditure payable after 1.4.2004 since prior to coming into force of the Electricity Act, 2003, the tariff proposals were not required to be published in the newspapers. Therefore, normative O&M expenses approved by the Commission do not include any fraction of publication charges. They have, therefore, been insisting on their reimbursement.

7. As has been noted above, Regulation 5 ibid envisages making of application for approval of tariff at two stages, initially for approval of provisional tariff, and subsequently for approval of final tariff. Presently the proposals for approval of provisional tariff as well as final tariff are being published by the utilities who also deposit the specified fee along with the application. This invariably involves expenditure at two stages. The expenditure at one stage could be avoided, if otherwise permissible under the law. Accordingly, a view has been expressed that the proposals for approval of provisional tariff need not be published in the newspapers since the final tariff is approved after following the specified procedure, it takes effect from the date of commercial operation of the generating station or the transmission system, as the case may be, and replaces the provisional tariff already approved. For same reason it has also been proposed that an application for approval of provisional tariff need to be treated as a non-tariff petition, attracting fee of Rs.1 lakh.

8. Through these proceedings, we direct that the suggestions/comments be invited from the stakeholders on different aspects of the matter discussed in the preceding paragraphs. The Commission will take a final view on receipt of the suggestions/comments from the stakeholders, an oral hearing for which may or may not be held. The suggestions/comments be awaited latest by 31.12.2005.

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

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

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

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi dated the 22nd November 2005