

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.149/2009 with I.A. No.35/2009

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S.Jayaraman, Member**
- 4. Shri V.S. Verma, Member**

Date of Hearing: 17.9.2009

Date of Order: 8 .1.2010

And in the matter of

Approval of revised fixed charges after considering the impact of additional capital expenditure incurred during 2006-07, 2007-08 and 2008-09 for Simhadri Thermal Power Station (1000 MW).

And in the matter of

NTPC Ltd, New Delhi

...Petitioner

vs

1. Transmission Corporation of Andhra Pradesh, Hyderabad
2. A.P. Eastern Power Distribution Company Ltd., Visakhapatnam
3. A.P. Southern Power Distribution Company Ltd., Tirupathi
4. A. P. Northern Power Distribution Company Ltd., Warangal
5. A.P Central Power Distribution Company Ltd., Hyderabad

... Respondents

The following were present:

1. Shri A.K.Chaudhury, NTPC
2. Shri S.K.Samui, NTPC
3. Shri A.K.Juneja, NTPC
4. Shri B.Bhanu Prasad, APCPDCL
5. Shri C. Mohan Chander, APCPDCL

ORDER

The petitioner NTPC, has made this application for approval of revised fixed charges for the period 2004-09, after considering the impact of additional capital expenditure incurred during 2006-07, 2007-08 and 2008-09 for Simhadri Thermal Power Station (1000 MW), (hereinafter referred to as "the generating station") in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 regulations"). The petitioner has made the following specific prayers:

(a) Approve the revised annual fixed charges 2004-09 for Simhadri (2x500 MW) as enclosed at Annexure-I due to:

(i) Additional capital expenditure for the period 1.4.2006 to 31.3.2009.

(ii) Revision of capital base for the FY 2004-05 and 2005-06, based on ATE judgment dt. 16.3.2009 as per para 9 above.

(b) allow recovery of filing fee from beneficiaries;

(c) allow reimbursement of Income Tax as per Tariff Regulations, 2004.

(d) pass any other order in this regard as the Hon'ble Commission may find appropriate in the circumstances pleaded above.

2. The Commission by its order dated 18.6.2008 in Petition No.28/2007 determined the annual fixed charges for the generating station after accounting for the additional capital expenditure for the years 2004-05 and 2005-06, based on the capital cost as under:

(Rs in lakh)

| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|
| Opening capital cost | 345207.36 | 347677.09 | 348620.88 | 348620.88 | 348620.88 |
| Additional capital expenditure | 2469.73 | 943.79 | 0.00 | 0.00 | 0.00 |
| Closing capital cost | 347677.09 | 348620.88 | 348620.88 | 348620.88 | 348620.88 |

3. Subsequently by order dated 24.12.2008, the Commission revised the calculation of interest on loan after rectifying the ministerial errors in order dated 18.6.2008. As there was no change in the interest on loan already approved, the annual fixed charges remained unaltered in order dated 18.6.2008.

4. The annual fixed charges approved by order dated 18.6.2008 is as under:

(Rs. in lakh)

| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|------------------------------|--------------|--------------|--------------|--------------|--------------|
| Interest on Loan | 7484 | 7156 | 6797 | 6422 | 6045 |
| Interest on Working Capital | 2921 | 2949 | 2976 | 3009 | 3034 |
| Depreciation | 11535 | 11592 | 11607 | 11607 | 11607 |
| Advance Against Depreciation | 0 | 0 | 0 | 0 | 0 |
| Return on Equity | 14551 | 14622 | 14642 | 14642 | 14642 |
| O & M Expenses | 9360 | 9730 | 10120 | 10520 | 10950 |
| TOTAL | 45851 | 46049 | 46142 | 46200 | 46278 |

INTERLOCUTORY APPLICATION

5. The petitioner has filed interlocutory application (I.A No.35/2009) for amendment of Annexure-I to the petition taking into account the revised calculations for fixed charges based on the principles laid down in the tariff orders dated 22.9.2006 and 18.6.2008 of the Commission and the judgment dated 13.6.2007 in Appeal Nos.139 to142 etc of 2006 and judgment dated

16.3.2009 in Appeal Nos. 133,135 etc of 2008 of the Appellate Tribunal passed against the various tariff orders of the Commission for the period 2004-09 in respect of the generating stations of the petitioner.

6. The first respondent APTRANSCO, on behalf of other respondents objected to the prayer of the petitioner in the interlocutory application and submitted that there has been huge variation in the computation of interest on term loans and prayed that the interest payable year after year to the petitioner should be reduced. The respondent also submitted that it has been making repayments of loan by way of depreciation recovered for all the years and that the total interest payable to the petitioner, as worked out in the application, was not in line with the accounting principles.

7. Though the interlocutory application was taken on record, the Commission observed that tariff would be determined in accordance with law. We now proceed to discuss as to whether the prayer of the petitioner for determination of tariff based on the revised calculations on the principles laid down in the judgments of the Appellate Tribunal dated 13.6.2007 in Appeal Nos. 139 to142 etc of 2006, and judgment dated 16.3.2009 in Appeal Nos.133,135 etc of 2008 can be considered.

8. The petitioner filed Appeal Nos. 139 to142 etc of 2006 before the Appellate Tribunal challenging the various orders of the Commission determining tariff for its generating stations during the period 2004-09. The Appellate Tribunal by its judgment dated 13.6.2007 allowed the said appeals

and remanded the matters for re-determination by the Commission. Against the said judgment the Commission has filed 20 appeals before the Hon'ble Supreme Court (in C.A. Nos. 5434/2007 to 5452/2007 and 5622/2007) on issues such as:

- (a) Consequences of refinancing of loan;*
- (b) Treating of depreciation as deemed repayment of loan;*
- (c) Cost of maintenance spares related to additional capitalization;*
- (d) Depreciation availability up to 90% in the event of disincentive; and*
- (e) Impact of de-capitalization of assets on cumulative repayment of loan*

9. The Hon'ble Supreme Court on 26.11.2007 granted interim order of stay of the operation of the order dated 13.6.2007 of the Appellate Tribunal. However, on 10.12.2007, the Hon'ble Supreme Court modified the interim order as under:

"Learned Solicitor General appearing on behalf of the National Thermal Power Corporation stated that pursuant to the remand order, following five issues shall not be pressed for fresh determination:

- (a) Consequences of refinancing of loan;*
- (b) Treating of depreciation as deemed repayment of loan;*
- (c) Cost of maintenance spares related to additional capitalization;*
- (d) Depreciation availability up to 90% in the event of disincentive; and*
- (e) Impact of de-capitalization of assets on cumulative repayment of loan*

The Commission may, however, proceed to determine other issues.

It is clarified that this order shall apply to other cases also.

In view of this, the interim order passed by the Court on 26th November, 2007, is vacated. The interlocutory applications are, accordingly, disposed of."

10. The petitioner in its application has submitted that it has been advised that the statement of the Solicitor General of India (SGI) before the Hon'ble Supreme Court resulting in the interim order dated 10.12.2007 does not restrict it from claiming additional capitalization based on the principles laid down by the Appellate Tribunal in its judgment dated 13.6.2007 and that the effect of the

statement of SGI was that it would not seek fresh determination pursuant to the remand order. The petitioner has also submitted that the Hon'ble Supreme Court has not stayed further proceedings before the Commission for determination of additional capitalization and even if it was construed as stay, the decision of the court (Appellate Tribunal) does not become *non est*.

11. The Hon'ble Supreme Court in its interim order dated 26.11.2007 had granted stay on the operation of the judgment dated 13.6.2007 of the Appellate Tribunal. In view of the undertaking given by the Solicitor General of India on behalf of the petitioner that "the five issues shall not be pressed for fresh determination", the Hon'ble Supreme Court vacated the interim order dated 26.11.2007 and directed that "the Commission may proceed to determine the other issues". It was clarified that "this order shall apply to other cases also". It is the contention of the petitioner that the undertaking before the Hon'ble Supreme Court does not restrict it from claiming additional capitalization based on the principle laid down by the Appellate Tribunal. In our view, the undertaking given by the petitioner before the Hon'ble Supreme Court that "the five issues shall not be pressed for fresh determination" is binding on the petitioner and the petitioner is estopped from seeking fresh determination of these issues. Moreover, the petitioner seems to create a distinction between the main tariff petition and the petition for additional capitalization by stating that while the undertaking is confined to the remand order pertaining to the main petition, the additional capitalization can be considered as per the principles laid down by the Appellate Tribunal. Such an approach will lead to

dichotomous situations wherein tariff for the main petition and petition for additional capitalization are determined on the basis of the different principles. The tariff for the period 2004-09 is a complete package which needs to be determined on the same principle. From the point of view of regulatory uniformity and continuity and also in line with the spirit of the interim order of the Hon'ble Supreme Court, we are of the view that the implementation of the judgment of the Appellate Tribunal on the five issues should be deferred till the final disposal of the Civil Appeals by the Hon'ble Supreme Court. Accordingly, tariff for additional capitalization is determined on the basis of the existing principles, subject to the final outcome of the Civil Appeals pending before the Supreme Court.

12. One more prayer of the petitioner in the application is for revision of capital cost of the generating station considering the undischarged liabilities, in terms of the judgment of the Appellate Tribunal dated 16.3.2009 in Appeal Nos. 133,135 etc of 2008.

13. The Commission in some of the petitions filed by the petitioner (Rihand and Ramagundam generating stations) revised the tariff for the period 2004-09 based on additional capital expenditure incurred, after deducting undischarged liabilities, on the ground that "*the expenditure for the liability incurred for which payment was not made would not come under the category 'actual expenditure incurred'*". Against the orders, appeals were filed by the petitioner before the Appellate Tribunal (Appeal No 151&152/2007) and the

Appellate Tribunal by its judgment dated 10.12.2008 held as under:

“25. Accordingly, we allow both the appeals in part. We direct that the appellant be allowed to recover capital cost incurred including the portion of such cost which has been retained or has not yet been paid for. We also direct that in case the Commission attributes any loan taken at the corporate level to a particular project under construction and considers any repayment out of it before the date of commercial operation the sum deployed for such repayment would earn interest as pass through in tariff.

26. The Commission is directed to give effect to the directions given herein in the truing up exercise and consequent subsequent tariff orders.”

14. Similar appeals (Appeal Nos.133, 135,136 and 148/2008) were filed by the petitioner before the Appellate Tribunal against the orders of the Commission in respect of other generating stations by the petitioner on the question of deduction of undischarged liabilities, IDC etc. The Appellate Tribunal, following its judgment dated 10.12.2008 *ibid*, allowed the claim of the petitioner and directed the Commission to give effect to the directions contained in the said judgments.

15. Against the judgments of the Appellate Tribunal dated 10.12.2008 and 16.3.2009 above, the Commission has filed Civil Appeal Nos. 4112-4113/2009 and Civil Appeal Nos. 6286 to 6289/2009 before the Hon'ble Supreme Court. These Civil Appeals are pending and there is no stay of the operation of the judgments of the Appellate Tribunal. Accordingly, it has been decided to revise the tariff of the generating station in terms of the directions contained in the judgment *ibid* subject to the final outcome of the appeals before the Supreme Court.

16. The Appellate Tribunal in its judgment dated 10.12.2008 had directed

that the capital cost incurred in respect of the generating station including the portion of such cost which has been retained or has not been paid for shall be recovered in tariff. In other words, un-discharged liability in respect of works which have been executed but payments deferred for future date has to be capitalized. As regards IDC, if the loan amount has been repaid out of the internal resources before the date of commercial operation, such repayments would earn interest. The Commission has been directed by the Appellate Tribunal to give effect to the directions contained in the judgment in the truing up exercise and subsequent tariff orders.

17. The directions of the Appellate Tribunal pertain to additional capitalization for the tariff period 2004-09 which has come to an end on 31.3.2009 and the exercise for implementation of the directions have been undertaken after the expiry of the said tariff period. Accordingly, tariff of the generating station is revised after considering the additional capital expenditure, capitalization of undischarged liabilities and IDC after truing up of the expenditure as on 31.3.2009. While truing up, the liabilities discharged, liabilities reversed on account of de-capitalization of assets during the tariff period have been accounted for.

18. The interlocutory application No. 35/2009 is disposed of as above. We proceed to consider the petition on merits.

Additional Capitalization

19. Clause (2) of Regulations 18 of the 2004 regulations provide for considering the additional capital expenditure for tariff purposes as under:

(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after cutoff date may be admitted by the commission, subject to prudence check:

(i) Deferred liabilities relating to works/services within the original scope of work;

(ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(iii) On account of change in law;

(iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost; and

(v) Deferred works relating to ash pond or ash handling system in the original scope of work.

20. The details of additional capitalization claimed by the petitioner as per the books of accounts are as follows:

| | (Rs. in lakh) | | | |
|---|---------------|---------------|----------------|-----------------|
| | 2006-07 | 2007-08 | 2008-09 | Total |
| Total additional expenditure as per books of accounts (A) | 682.52 | (-) 2.53 | 25459.18 | 26139.17 |
| Exclusions claimed by the petitioner (B) | 229.81 | (-) 316.28 | 22796.01 | 22709.54 |
| Net additional capital expenditure claimed (A-B) | 452.71 | 313.75 | 2663.17 | 3429.63 |

21. The difference in the amount of additional capital expenditure as per books of accounts and the claim as above is on account of exclusion of certain positive and negative entries in the books of accounts.

22. The summary of exclusions from the books of accounts claimed is as under:

| (Rs. in lakh) | | | | |
|-----------------------------|---------------|-------------------|-----------------|-------------------|
| Particulars | 2006-07 | 2007-08 | 2008-09 | TOTAL |
| FERV | 0.00 | 161.80 | 22810.93 | 22972.73 |
| Inter-unit transfers | (-)1.12 | 22.70 | 0.00 | 21.58 |
| Capitalisation of spares | 230.93 | 0.00 | 63.03 | 293.96 |
| De-capitalisation of spares | 0.00 | (-) 500.78 | (-) 77.95 | (-) 578.73 |
| Total | 229.81 | (-) 316.28 | 22796.01 | 22709.54 |

Exclusions

23. In the first instance, we consider the exclusions under different heads in the claim.

(a) FERV: The claim for exclusion of an amount of Rs.22972.73 for the years 2007-09 {Rs.161.80 lakh in 2007-08 and Rs.22810.93 lakh in 2008-09} on account of impact of FERV is allowed, as the petitioner has billed the said amount directly to the beneficiaries in accordance with the 2004 regulations.

(b) Inter-unit transfers: An amount of Rs. 21.58 lakh for the year 2006-08 {(-) Rs 1.12 lakh for 2006-07 and Rs.22.70 lakh for 2007-08} has been excluded under this head on account of transfer of transformers and office equipments to other generating stations of the petitioner. The petitioner has submitted that the Commission in the past had permitted exclusion of such temporary transfers for tariff purposes and allowed it to be retained in the capital base of the originating station. Accordingly, the petitioner has excluded the amounts as per the entries in the books of accounts for its claim for additional capitalization. The Commission

while dealing with applications for additional capitalization in respect of other generating stations of the petitioner has decided that both positive and negative entries arising out of inter-unit transfers of temporary nature shall be ignored for the purposes of tariff. In consideration of the said decisions, the exclusion of the amount of Rs.21.58 lakh on account of inter-unit transfer of equipments is allowed.

(c) Capitalisation of spares: The petitioner has procured spares amounting to Rs.230.93lakh for 2006-07 and Rs.63.03 lakh for 2008-09 for maintaining the stock of necessary spares. Since capitalization of spares over and above initial spares procured after cut-off date are not allowed for the purpose of tariff, as they form part of O&M expenses when consumed, the petitioner has excluded the said amounts. The exclusion of the said amounts under this head is allowed.

(d) De-capitalization of capital spares: The petitioner has de-capitalized capital spares in books amounting to Rs. 578.73 lakh for 2007-09, on account of it being unserviceable. The petitioner has submitted that the spares have been de-capitalized for accounting purposes only and are not to be de-capitalized for the purpose of tariff. The petitioner's request for exclusion of de-capitalization of spares is justified if these de-capitalized spares are the ones which were not allowed to be capitalised by the Commission during the previous tariff period or the replacement of the de-capitalized spares/ components (unserviceable) are met from the

spares disallowed for the purpose of tariff which are booked under O&M on consumption. As the date of commercial operation of the generating station is 1.3.2003, the spares procured up to the year 2005-06 has been allowed to form part of the capital cost for the purpose of tariff. The petitioner vide letter dated 2.12.2009 has submitted the details in respect of de-capitalization spares sought under exclusions, as under:

| Description | (Rs. in lakh) | | | |
|---|----------------|----------------|----------------|----------------|
| | 2006-07 | 2007-08 | 2008-09 | Total |
| Capitalization of spares | 231 | 0 | 63 | 294 |
| De-capitalization of spares | 0 | (-)501 | (-)78 | (-) 579 |
| Spares included in exclusions out of spares not claimed for capitalization in 2006-07 and 2008-09 | 0 | (-)4 | (-)19 | (-) 23 |
| De-capitalization of spares earlier allowed for capitalization as initial spares. | 0 | (-)497 | (-)59 | (-) 556 |

In view of the above submission, the exclusion of (-) Rs.23 lakh as against exclusion of (-) Rs.579 lakh as sought by the petitioner, is allowed since de-capitalization of spares/components amounting to (-) Rs.556 lakh out of spares earlier allowed for capitalization, cannot be allowed to remain in the capital base on becoming unserviceable, for the purpose of tariff. Also, exclusion of (-) Rs.23 lakh is allowed since the de-capitalisation is a result of consumption out of spares not allowed for the purpose of tariff and subsequently booked under O&M.

24. The year-wise and category-wise break-up of the additional expenditure claimed by petitioner is as under:

(Rs.in lakh)

| Nature of Capitalisation | 2006-07 | 2007-08 | 2008-09 | Total |
|--|----------------|----------------|----------------|----------------|
| Deferred liabilities relating to works/services within the original scope of work- Regulation 18 (2) (i) | 318.18 | (-) 27.65 | 288.90 | 579.43 |
| Liabilities to meet award of arbitration or for compliance of order or decree of a court- Regulation 18(2)(ii) | 0.00 | 0.00 | 266.28 | 266.28 |
| On account of change in law- Regulation 18 (2) (iii) | 1.04 | 0.00 | 16.50 | 17.54 |
| Any additional works/ services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost- Regulation 18(2) (iv) | 133.48 | 341.40 | 608.87 | 1083.75 |
| Deferred works relating to ash pond or ash handling system in the original scope of work- Regulation 18 (2) (v) | 0.00 | 0.00 | 1482.63 | 1482.63 |
| Total | 452.70 | 313.75 | 2663.18 | 3429.63 |

Deferred Liabilities relating to works within original scope of work {(Regulation 18 (2) (i)}

25. The petitioner has claimed an expenditure of Rs. 579.43 lakh for 2006-09 (Rs. 318.18 lakh for 2006-07, (-) Rs 27.65 lakh for 2007-08 and Rs 288.90 lakh for 2008-09) under this head, towards plant works, township works like construction of auditorium, civil works like construction of roads etc. and towards balance payments against works/assets which have been approved by the Commission up to 31.3.2006. The Commission in its order dated 18.6.2008 in Petition No. 28/2007 while considering additional capitalization expenditure for the period 2004-06 for the generating station had relaxed the cut-off date till 31.3.2006. Hence, the claims of the petitioner for works/assets for which order has been placed before 31.3.2006 has been considered under this head. However,

expenditures of Rs 5.35 lakh for 2006-07 and Rs 4.82 lakh for 2007-08 towards hospital equipments like breathing apparatus, pulse oximeter, ECG machine, etc ordered after the relaxed cut-off date has been allowed to be capitalised as these equipments are required for the benefit of employees working in the remote areas. The petitioner has claimed an amount of Rs. 50.04 lakh during the year 2008-09 on account of inter-unit transfer of "33KV SFC breaker" from Barh generating station which is under construction. This asset has been used at Barh generating station for three years and as such the depreciation for the three years has been recovered as IEDC. Hence, capitalization of this asset is allowed after deducting 10.8% of gross value of the asset i.e. depreciation for three years @ 3.6% per annum. Accordingly, an amount of Rs.44.63 lakh is allowed to be capitalised for the purpose of tariff. In view of the above, the total amount of Rs 574.03 lakh is allowed to be capitalised for the period 2006-09.

Liabilities to meet award of arbitration or for compliance of order or decree of a court- {Regulation 18 (2) (ii)}

26. The petitioner has claimed an amount of Rs. 266.28 lakh for the year 2008-09 under this head, towards payment of an Arbitration award relating to the work of "make-up water system" favouring HSCL. Hence, expenditure under this head is allowed.

On account of change in law-{Regulation 18 (2)(iii)}

27. The petitioner has claimed an amount of Rs.1.04 lakh for 2006-07 towards construction of "Ash brick making shed". As the expenditure incurred is on account of compliance with the statutory provisions, the expenditure of Rs 1.04

lakh is allowed to be capitalised. Similarly, an expenditure of Rs. 16.50 lakh for 2008-09 towards purchase of equipments towards "Energy management system" for measurement of energy consumption is allowed under this head.

Additional works/ services which have become necessary for efficient and successful operation of the generating station but not included in the original project cost - {Regulation 18 (2)(iv)}

28. The petitioner has claimed an amount of Rs. 1083.75 lakh for the period 2006-09 under this head which is examined as under:

2006-07

29. The petitioner's claim for Rs. 6.01 lakh towards purchase of fire extinguishers for CISF is allowed considering the safety and security of the generating station.

30. The petitioner's claim for an expenditure of Rs.48.15 lakh towards procurement of hydrogen drier, portable diesel driven de-watering pump, generator rotor stand, lab equipment like dead weight tester, SEMS make electronic tri-vector meter, oxygen sensor for portable flue gas analyzer, high temperature oxygen probe zirconia sensor, digital multimeter, humidity control chamber/oven, 1.0 KVA sine wave inverter, hand held digital thermometer, ultrasonic thickness gauge etc, is allowed as these assets are considered necessary for the successful operation of the generating station. However, the expenditure towards digital multi meter, inverter, thermometer, weighing scale, sequential timer, balance 10 Kg., weighing scale, oxygen sensor etc are not allowed to be capitalised in terms of Regulation 18(3) being minor assets.

Accordingly, only an amount of Rs 46.26 lakh has been allowed for the purpose of tariff.

31. The petitioner has claimed an amount of Rs.41.57 lakh towards IT equipment including servers, computers, software, internal communication systems for generating station, SMS and IVRS based communication systems and printers. As the expenditure is considered necessary for efficient communication and successful operation of the generating station, the expenditure on the assets are allowed. However, in terms of Regulation 18(3), the expenditure incurred on personal computers and printers are not allowed to be capitalized, being minor assets. Hence, only an amount of Rs.21.77 lakh has been allowed.

32. The petitioner has claimed an amount of Rs.37.75 lakh towards procurement of office equipments like chairs etc on account of transfer of office equipments from/to the generating station. As capitalization of minor assets brought after the cut-off date is not permissible in terms of Regulation 18(3) the said amount is disallowed. The de-capitalization of negative entry of Rs 0.50 lakh on account of transfer of office equipments to other generating station on permanent basis is allowed as the assets are not in use in the generating station. Hence, only an amount of (-) Rs.0.50 lakh has been allowed.

33. In view of the above discussions, capitalization of Rs.73.54 lakh has been allowed during 2006-07 under the head against the claim of Rs.133.48 lakh.

2007-08

34. The petitioner has claimed expenditure of Rs.171.28 lakh for procurement of SAP user licenses and router for Enterprise Resource Planning (ERP). As these items/facilities are required for efficient functioning of the generating station, the amount is allowed.

35. The petitioner has claimed expenditure of Rs.27.72 lakh on procurement/creation of safety assets, recreational and communication facilities for employees. The assets include safety grills in permanent stores building, miscellaneous works for sports council in township, solar water heating system in guest house, civil works at auditorium, alternate approach road for chlorination and DM plant, provision for drain to discharge decanted water, recreation centre equipments, telephone exchange etc. The Commission during the period 2001-04 had allowed such expenditure for the generating station on the grounds of safety and recreational facilities. However, an expenditure of Rs. 4,800 on minor assets like recreation centre equipments and Rs.11,964 for alternate approach road for chlorination and DM plant has not been considered. Hence, only an amount of Rs.27.55 lakh has been allowed.

36. The petitioner's claim for an amount of Rs.1.48 lakh towards purchase of fire extinguishers for CISF is allowed considering the safety and security of the generating station.

37. The petitioner's claim for Rs.25.52 lakh towards procurement of telemetering equipment is for the effective implementation of Availability Based Tariff (ABT) at the generating station. As the asset is considered necessary for successful operation of the generating station under ABT regime, the said amount is allowed.

38. The petitioner has claimed an amount of Rs.46.70 lakh for procurement of T&P items like digital resistance meters, oxygen analyzer sensors, hydraulic crimping tool, flow indicator cum switch for generator, digital electronic variable test voltage insulation tester, four wheeled battery operated platform truck, 2000kgs capacity etc. The petitioner has switched over its claim under "deferred liabilities relating to works/services within the original scope of work" (Regulation 18(2)(i)), which indicate that these assets form part of the original scope of work. However, the date of the purchase orders mentioned against each asset indicates that the orders for the assets have been placed after the relaxed cut-off date i.e 31.3.2006. Hence, capitalization of these assets amounting to Rs 46.70 lakh is not allowed.

39. The petitioner's claim for an amount of Rs.52.50 lakh towards procurement of IT equipment like computers, UPS, printers, modem, software etc. is not allowed, in terms of Regulation 18(3), being minor assets. However, an expenditure of Rs. 1.26 lakh towards procurement of software is allowed.

40. The petitioner's claim for Rs.14.96 lakh towards procurement of office equipments like chairs, tables, A.Cs etc, has not been considered for capitalization in terms of Regulation 18(3), being minor assets.

41. The petitioner's claim for Rs. 1.25 lakh towards procurement of attendance recording system is allowed as the item is required for maintaining discipline and efficiency at the place of work, leading to successful operation of the generating station.

42. In view of the above discussions, capitalization of Rs.228.35 lakh has been allowed during 2007-08 under the head against a claim of Rs.341.40 lakh.

2008-09

43. The petitioner has claimed an amount of Rs.586.07 lakh towards replacement of cast basalt pipes of ash handling system. The petitioner has also furnished the corresponding de-capitalization amounting to Rs.293.06 lakh. Note-2 under Regulation 18 allows capitalization of expenditure on replacement of old assets after writing off the gross value of the original assets. Hence, the capitalization of Rs. 586.07 lakh along with the de-capitalization of Rs. 293.06 lakh, is allowed.

44. The petitioner has claimed Rs.92.02 lakh towards items like acoustic treatment of auditorium, construction of patrolling track at sweet water pump house, portable cabins, car etc. Though these items are within original scope of

works, capitalization has not been permitted as the items have been procured beyond the relaxed cut-off date for the generating station.

45. The petitioner has claimed an amount of Rs.27.75 lakh towards procurement of laboratory equipments like compression testing machine, argon cylinders, ultrasonic flaw detector, ultrasonic thickness gauge and 6 ton capacity diesel operated fork lift truck. Ass these assets are necessary for efficient and successful operation of the generating station, the said amount is allowed.

46. The petitioner has claimed an amount of Rs.146.38 lakh towards procurement of IT equipments, which consists of high valued software (like MS office license, primavera planner and scheduler, Project-pro, 2007, AutoCad, cost estimation software "Auto cost"), video conferencing equipments and personal computers. As the expenditure is considered necessary for successful operation of the generating station, the expenditure of Rs.61.88 lakh is allowed after disallowing the expenditure of Rs. 84.49 lakh incurred towards personal computers.

47. The petitioner has claimed an amount of Rs.49.72 lakh towards procurement of office equipments like chairs, tables and filing cabinets and on de-capitalization of office equipments. Capitalization of minor assets after the cut-off date is not permitted in terms of Regulation 18(3). Hence expenditure not allowed. The de-capitalization of negative entry of Rs 6.69 lakh on office

equipment is allowed as the assets are no longer in use. Hence, an amount of (-) Rs.6.69 lakh is allowed to be capitalized against a claim of Rs.49.72 lakh.

48. In view of the above, the capitalization of Rs.375.95 lakh is allowed during 2008-09 under the head against a claim of Rs.608.87 lakh.

Deferred works relating to ash pond or ash handling system in original scope of work – {Regulation 18 (2)(v)}

49. The petitioner has claimed Rs.1482.63 lakh under this head for raising of Ash dyke. As the expenditure is based on environmental considerations, the capitalisation of the amount is allowed.

50. Based on the above discussions, the additional capital expenditure allowed for the purpose of tariff for the period 2006-09 is as under:

| (Rs. in lakh) | | | | |
|---|----------------|----------------|----------------|---------------|
| Nature of Capitalization | 2006-07 | 2007-08 | 2008-09 | Total |
| Deferred liabilities relating to works/services within the original scope of work- 18 (2) (i) | 318.18 | (-) 27.65 | 283.50 | 574.03 |
| Liabilities to meet award of arbitration or for compliance of order or decree of a court- 18 (2) (ii) | 0.00 | 0.00 | 266.28 | 266.28 |
| On account of change in Law- 18 (2)(iii) | 1.04 | 0.00 | 16.50 | 17.54 |
| Any additional works/ services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost- 18 (2)(iv) | 73.54 | 228.35 | 375.95 | 677.84 |
| Deferred works relating to ash pond or ash handling system in the original scope of work- 18 (2)(v) | 0.00 | 0.00 | 1482.63 | 1482.63 |
| Total (A) | 392.76 | 200.70 | 2424.86 | 3018.32 |
| Exclusions not allowed (B) | 0.00 | (-) 497.26 | (-) 58.92 | (-) 556.18 |
| ACE allowed before adjustment of un-discharged liabilities (A+B) | 392.76 | (-) 296.56 | 2365.94 | 2462.14 |
| Less: Un-discharged liabilities included | 54.91 | 11.08 | 96.05 | 162.04 |
| Add: Discharge of liabilities disallowed | | 173.86 | 0.00 | 173.86 |

| | | | | |
|---|---------------|------------------|----------------|----------------|
| Add: Discharge of liabilities disallowed | | 12.36 | 25.05 | 37.41 |
| Net additional capital expenditure allowed | 337.85 | (-)121.42 | 2294.94 | 2511.37 |

Capital cost

51. As stated above, the Commission had admitted a capital cost of Rs.348620.88 lakh as on 31.3.2006, by order dated 18.6.2008, in Petition No.28/2007. This has been considered as the opening gross block as on 1.4.2006, for revision of tariff for the period 2006-07 to 2008-09.

52. Taking into account the capital cost of the generating station as on 1.4.2006 and the additional capital expenditure for the years 2006-07, 2007-08 and 2008-09 approved by para 50 above, the capital cost for the period 2004-09 is worked out as under:

| | (Rs in lakh) | | |
|--------------------------------|------------------|------------------|------------------|
| | 2006-07 | 2007-08 | 2008-09 |
| Opening capital cost | 348620.88 | 348958.73 | 348837.31 |
| Additional capital expenditure | 337.85 | (-)121.42 | 2294.94 |
| Closing capital cost | 348958.73 | 348837.31 | 351132.25 |
| Average capital cost | 348789.81 | 348898.02 | 349984.78 |

Debt-Equity ratio

53. Clause (1) of Regulation 20 of the 2004 Regulations provides that:

'(i) In case of the existing project, debt-equity ratio Considered by the Commission for the period ending 31.3.2004 shall be considered for determination of tariff with effect from 1.4.2004.

Provided that in cases where the tariff for the period ending 31.03.2004 has not been determined by the Commission, debt equity ratio shall be as may be decided by the Commission:

Provided further that in case of the existing generating stations where additional capitalization has been completed on or after 1.4.2004 and admitted by the Commission under regulation 18, equity in the additional capitalization to be considered shall be:-,

(a) 30% of the additional capital expenditure admitted by the Commission; or

(b) Equity approved by the competent authority in the financial package, for additional capitalization; or

(c) Actual equity employed, whichever is the least:

Provided further that in case of additional capital expenditure admitted under the second proviso, the Commission may consider equity of more than 30% if the generating company is able to satisfy the Commission that deployment of such equity of more than 30% was in the interest of general public.

54. The petitioner has furnished that no loan has been drawn and allocated to the generating station during the period 2006-09 and the loan has been financed from internal resources. Since the equity component of additional capitalization is more than 30%, the debt-equity ratio of 70:30 has been considered for additional capitalization in terms of sub-clause (a) of clause (1) of Regulation 20 of the 2004 regulations. Accordingly, additional notional equity of the generating station on account of capitalization approved, works out as under:

| | (Rs in lakh) | | |
|----------------------------|--------------|-----------|---------|
| | 2006-07 | 2007-08 | 2008-09 |
| Additional notional equity | 101.35 | (-) 36.43 | 688.48 |

Return on Equity

55. Return on equity is allowed @ 14% on the average normative equity after

accounting for additional capital expenditure as under:

(Rs in lakh)

| | 2006-07 | 2007-08 | 2008-09 |
|---|--------------|--------------|--------------|
| Equity opening | 104586 | 104687 | 104651 |
| Equity due to additional capitalization | 101.35 | (-) 36.43 | 688.48 |
| Equity closing | 104687 | 104651 | 105339 |
| Average equity | 104637 | 104669 | 104995 |
| Return on equity | 14649 | 14654 | 14699 |

Interest on loan

56. Interest on loan has been worked out as mentioned below:

(a) Gross opening loan on normative basis on 1.4.2006 as considered in order dated 24.12.2008 (corrigendum) in Petition No. 28/2007 was Rs.244034.62 lakh corresponding to the capital cost of Rs.348620.88 lakh.

(b) Cumulative repayment of loan on 1.4.2006 as considered in the said order dated 24.12.2008 was Rs.23126.52 lakh.

(c) Net opening loan on normative basis on 1.4.2006 in the said order dated 24.12.2008 was Rs.220908.10 lakh.

(d) There is addition of notional loan amounting to Rs.236.49 lakh and Rs.1606.45 lakh on account of additional capital expenditure during the years 2006-07 and 2008-09, respectively. Further, there is negative addition of notional loan amounting to Rs.84.99 lakh during 2007-08.

(e) Actual loans as considered in order dated 18.6.2008 have been used to work out the normative repayment applicable during the period/year, as under.

$$\text{Normative repayment} = \frac{\text{Actual Repayment} \times \text{Normative Loan}}{\text{Actual Loan}}$$

(f) Interest rates as considered in order dated 18.6.2008 are considered for the purpose of calculating weighted average rate of interest. As no IDC has been capitalized in the additional capital expenditure no adjustment of capitalized interest is made in calculation of interest on normative loan.

(g) Normative repayment of loan considered is equal to the admissible depreciation for the year or normative repayment whichever is higher, as considered in the determination of the tariff for other generating stations of the petitioner for the period 2004-09. This is however subject to the final decision of the Hon'ble Supreme Court in Civil Appeal No. 5434/2007 and other related appeals.

57. The computation of interest on loan by applying the weighted average interest rate is as under:

| Details | (Rs. in lakh) | | |
|--|---------------|-------------|-------------|
| | 2006-07 | 2007-08 | 2008-09 |
| Gross Loan Opening | 244035 | 244271 | 244186 |
| Cumulative repayment of deemed loan upto previous year | 23127 | 34740 | 46356 |
| Net loan opening | 220908 | 209532 | 197830 |
| Addition of loan due to additional capital expenditure | 236 | (-) 85 | 1606 |
| Repayment of loan during the year | 11613 | 11617 | 11653 |
| Net loan Closing | 209532 | 197830 | 187784 |
| Average Loan | 215220 | 203681 | 192807 |
| Wt. Average rate of Interest | 3.1598% | 3.1557% | 3.1501% |
| Interest on Loan | 6801 | 6428 | 6074 |

Depreciation

58. The depreciation rate of 3.3295% as considered in the order dated 18.6.2008 in Petition No. 28/2007, has been considered in the present computation as under:

| | (Rs. in lakh) | | |
|---------------------------|---------------|--------------|--------------|
| | 2006-07 | 2007-08 | 2008-09 |
| Opening capital cost | 348621 | 348959 | 348837 |
| Closing capital cost | 348959 | 348837 | 351132 |
| Average capital cost | 348790 | 348898 | 349985 |
| Depreciable value @ 90% | 306924 | 307021 | 308000 |
| Balance depreciable value | 267328 | 255813 | 245254 |
| Depreciation | 11613 | 11617 | 11653 |

Advance Against Depreciation

59. The petitioner has not claimed Advance Against Depreciation. Therefore, the petitioner's entitlement to Advance Against Depreciation is "nil".

Interest on Working capital

60. For the purpose of calculation of working capital the operating parameters including the price of fuel components considered in the original tariff order has been kept unaltered. The "receivables" component of the working capital has been revised for the reason of revisions of return on equity interest on loan etc. The necessary details in support of calculation of interest on working capital are as under:

| | (Rs in lakh) | | |
|-----------------------|--------------|---------|---------|
| | 2006-07 | 2007-08 | 2008-09 |
| Coal Stock-2 months | 8027 | 8049 | 8027 |
| Oil Stock -2 months | 305 | 306 | 305 |
| Maintenance spares | 843 | 877 | 913 |
| O & M expenses | 3837 | 4068 | 4312 |
| Receivables | 16025 | 16060 | 16068 |
| Total Working Capital | 29038 | 29359 | 29624 |

| | | | |
|------------------------------------|-------------|-------------|-------------|
| Rate of Interest | 10.25% | 10.25% | 10.25% |
| Interest on Working Capital | 2976 | 3009 | 3036 |

61. The revised annual fixed charges for the generating station for the period from 1.4.2006 to 31.3.2009 are summarized as under:

| Particulars | (Rs. in lakh) | | |
|------------------------------|-----------------|-----------------|-----------------|
| | 2006-07 | 2007-08 | 2008-09 |
| Interest on Loan | 6800.51 | 6427.60 | 6073.67 |
| Interest on Working Capital | 2976.42 | 3009.28 | 3036.45 |
| Depreciation | 11613.01 | 11616.62 | 11652.80 |
| Advance Against Depreciation | 0.00 | 0.00 | 0.00 |
| Return on Equity | 14649.17 | 14653.72 | 14699.36 |
| O & M Expenses | 10120.00 | 10520.00 | 10950.00 |
| TOTAL | 46159.11 | 46227.22 | 46412.28 |

62. The target availability of 80% considered by the Commission in the order dated 18.6.2008 remains unaltered. Similarly other parameters viz. specific fuel consumption, Auxiliary Power consumption and Station Heat rate etc considered in the order dated 18.6.2008 have been retained for the purpose of calculation of the revised fixed charges.

63. The petitioner shall claim the difference in respect of the tariff determined by order dated 18.6.2008/24.12.2008 and the tariff determined by this order, from the beneficiaries in three equal monthly installments.

64. In addition to the charges approved above, the petitioner is entitled to recover other charges like incentive, claim for reimbursement of Income-tax, other taxes, cess levied by statutory authority, in accordance with the 2004 regulations, as applicable.

65. The petitioner's claim for reimbursement of filing fees is not allowed in

terms of the Commission's general order dated 11.9.2008 in Petition No. 129/2005.

66. The annual fixed charges determined in this order is subject to the outcome of Civil Appeal Nos. 4112-4113/2009 and Civil Appeal Nos. 6286 to 6289/2009 and other connected appeals pending before the Hon'ble Supreme Court.

67. Petition No. 149/2009 is disposed of as above.

**Sd/-
(V.S.VERMA)
MEMBER**

**Sd/-
(S.JAYARAMAN)
MEMBER**

**Sd/-
(R.KRISHNAMOORTHY)
MEMBER**

**Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON**