

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 160/2009 with I.A. No.51/2009

Coram

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

DATE OF HEARING: 12.1.2010

DATE OF ORDER: 28.5.2010

In the matter of

Approval of revised fixed charges for the period 2004-09, after considering the impact of additional capital expenditure incurred during 2008-09 for Kawas GPS, (656.20 MW).

And in the matter of

NTPC Ltd, New Delhi

.....**Petitioner**

Vs

1. Madhya Pradesh Power Trading Company Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Company Ltd, Mumbai
3. Gujarat Urja Vikas Nigam Ltd, Vadodara
4. Chhattisgarh State Electricity Board, Raipur
5. Electricity Department, Govt. of Goa, Panaji, Goa
6. Electricity Department, Administration of Daman & Diu, Daman
7. Electricity Department, Administration of Dadra & Nagar Haveli, Silvassa

.....**Respondents**

The following were present:

1. Shri S.K.Sharma, NTPC
2. Shri A. Dua, NTPC
3. Shri A.S.Pandey, NTPC
4. Shri S.Dhieman, NTPC

ORDER

The petitioner, NTPC, has made this application for approval of the revised fixed charges, after considering the impact of additional capital expenditure

incurred during 2008-09, in respect of Kawas GPS (656.20 MW) (hereinafter referred to as "the generating station") based on 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:

(i) Approve the revision of fixed charges on account of ACE for the period 2008-09 as per details given in Annexure-I.

(ii) Allow the recovery of filing fee from the respondents/beneficiaries.

(iii) Allow normative FERV for 2001-04 as capital cost as on 1.4.2004 as detailed in para 12 of the petition.

(iv) Allow debt servicing on additional capital expenditure claimed as detailed in para 13 of the petition.

(v) Allow recovery of income tax as detailed in para 18 of the petition.

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

2. The generating station with a capacity of 656.20 MW comprises of four gas turbines of 106.00 MW each and two steam turbines of 116.10 MW each. The date of commercial operation of the generating station is 1.11.1993.

3. The tariff of the generating station for the period 1.4.2004 to 31.3.2009, was determined by the Commission by its order dated 16.11.2006 in Petition No.79/2005 based on the capital cost of Rs.151394.75 lakh as on 1.4.2004. Subsequently, by order dated 3.2.2009 in I.A. No.24/2008 (in Petition No.79/2005), the Commission revised the annual fixed charges for the tariff period 2004-09 after accounting for the enhanced O&M expenses of the generating station. Subsequently, by order dated 30.12.2009 in Petition No.44/2009, the Commission revised the annual fixed charges for the tariff period 2004-09, after accounting for additional capital

expenditure incurred during the period 2004-05, 2005-06, 2006-07 and 2007-08. The capital cost of the generating station approved by the Commission, is as under:

| (Rs. in lakh) | | | | | |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Opening Capital Cost | 151394.75 | 151347.59 | 151394.38 | 151424.71 | 151422.86 |
| Additional capital expenditure | (-) 47.16 | 46.79 | 30.34 | (-) 1.85 | - |
| Closing Capital Cost | 151347.59 | 151394.38 | 151424.71 | 151422.86 | 151422.86 |

4. The annual fixed charges allowed by the Commission by order dated 30.12.2009 is as under:

| (Rs in lakh) | | | | | |
|------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Interest on Loan | 1.08 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest on Working Capital | 4395.01 | 4414.68 | 4435.61 | 4467.66 | 4897.42 |
| Depreciation | 4944.32 | 4949.18 | 4955.17 | 4957.87 | 4958.61 |
| Advance Against Depreciation | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Return on Equity | 10596.64 | 10596.63 | 10598.25 | 10598.85 | 10598.81 |
| O & M Expenses | 5118.36 | 5321.78 | 5538.33 | 5754.87 | 5984.54 |
| TOTAL | 25055.41 | 25282.27 | 25527.36 | 25779.25 | 26439.38 |

INTERLOCUTORY APPLICATION

5. The petitioner has filed interlocutory application (I.A No.51/2009) for amendment of Annexure-I to the petition taking into account the revised calculations for fixed charges on the principles laid down in the tariff orders dated 16.11.2006 and 25.5.2007 of the Commission and the judgments dated 16.3.2009 (in Appeal Nos. 133, 135 etc of 2008) and 13.6.2007 (in Appeal Nos. 139 to142 etc of 2006) of the Appellate Tribunal against the various tariff orders of the Commission for the period 2004-09 in respect of the different generating stations of the petitioner.

6. 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 to 142 etc of 2006 can be considered on the following points:

- (i) Inclusion of additional capital expenditure in the historical cost for the purpose of calculating maintenance spares @ 1 percent of the historical cost;*
- (ii) Treating repayment of loan equivalent to normative repayment; and*
- (iii) Impact of de-capitalization of the assets on cumulative repayment of loan.*

7. The petitioner filed Appeal Nos. 139 to 142 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*

8. 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."

9. 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*.

10. 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.

11. 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.

12. 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."

13. 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.

14. 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.

15. 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.

16. 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 has been accounted for.

17. The interlocutory application No. 51/2009 is disposed of as above. We now proceed to consider the petition on merits.

18. The petitioner has claimed revised fixed charges based on additional expenditure as under:

| (Rs in lakh) | |
|--------------------------------|---------|
| Particulars | 2008-09 |
| Additional capital expenditure | 87.81 |

19. Reply to the petition has been filed by the respondent MPPTCL.

Additional Capitalization

20. Regulation 18 of the 2004 regulations provides for considering the additional capital expenditure for tariff as under:

"18. (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

- (i) Deferred liabilities;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17;*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
- (v) On account of change in law.*

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

(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.*

(3) Any expenditure on minor items/assets like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machine, heat-convectors, carpets, mattresses etc. brought after the cutoff date shall not be considered for additional capitalization for determination of tariff with effect from 1.4.2004.

(4) Impact of additional capitalization in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut off date.

Note 1

Any expenditure admitted on account of committed liabilities within original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt equity ratio specified in regulation 20.

Note 2

Any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost, except such items as are listed in clause (3) of this regulation."

Note 3

Any expenditure admitted by the Commission for determination of tariff on account of new works not in the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 20.

Note 4

Any expenditure admitted by the Commission for determination of tariff on renovation and modernization and life extension shall be serviced on normative debt-equity ratio specified in regulation 20 after writing off the original amount of the replaced assets from the original capital cost."

21. Before considering the petitioner's claim for additional capitalization, we deal with the following two preliminary issues raised by the first respondent, MPPTCL.

- (a) *The petition is not maintainable in view of the specific provision of sub-clause (4) of Regulation 18 of the 2004;*
- (b) *In terms of sub-section (5) of section 62 read with sub-section (3) of section 79 of the Electricity Act, 2003, the Commission should direct the petitioner to submit the actual expenditure incurred and profits earned in respect of the generating station before the determination of tariff;*

22. As regards the first issue above, the petitioner has submitted that the petition had been filed after finalization of accounts and in terms of the liberty granted by the Commission by order dated 29.9.2008 in Petition No.27/2007 in respect of Kahalgaon STPS. Clause (4) of Regulation 18 limits revision of tariff to two occasions during the tariff period 2004-09. The tariff in respect of the generating station for the period 2004-09 was revised based on additional capital expenditure incurred for the period 2004-06 by order dated 20.11.2008 and further revision of tariff based on additional capital expenditure for the period 2006-09 has been sought for in this petition in terms of the liberty granted by the Commission in order dated 29.9.2008 in Petition No. 27/2007, as under:

" However, if for reasons of non-finalization of accounts for the year 2008-09, it is not possible for the petitioner to make an application for revision of tariff as per 2004 regulations, the petitioner may approach the Commission for such revision for this reason, after finalization of accounts for the year 2008-09 including additional capitalization for earlier years of 2004-09 period, not claimed so far, latest by 30.9.2009."

We do not find any merit in the objection of the respondent on this issue.

23. As regards the second issue, the petitioner has submitted that the petition for additional capitalization had been filed in terms of the 2004 regulations and hence the prayer of the respondent MPPTCL for consideration in terms of sub-section (5) of section 62 of the Act, is not tenable. Section 62 (5) of the Act provides that " the Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover". The Commission has initiated the process of framing the regulation under Section 62 (5) by putting the draft regulation in public domain. The regulation is yet to be finalized and

notified. Till the regulations are notified, the petitioner cannot be directed to file its ARR as suggested by the respondent. In any case, the concerns of the respondent are taken care of, as the additional capital expenditure in this petition are allowed by the Commission after carrying out the prudence check in accordance with the 2004 regulations.

24. The additional capital expenditure claimed as per books of accounts is as under:

| (Rs in lakh) | |
|---|--------------|
| Particulars | 2008-09 |
| Total additional expenditure of the generating station as per books of accounts (A) | (-) 1471.41 |
| Exclusions for additional capitalization vis-à-vis books of accounts (B) | (-) 1559.23 |
| Total additional capitalization (A-B) | 87.81 |

25. The petitioner vide affidavit dated 22.1.2010 has revised the above claim submitting as under:

“That the petitioner had earlier filed a petition (Petition No.44/2009) in the matter of revision of Fixed charges due to additional capital expenditure incurred during 2004-08 at Kawas GPS. The various claims made by the Petitioner in the present petition (Petition No 160/2009) were in accordance with the claims made in respect of the earlier period. Now since the Hon’ble Commission has decided the Petition No. 44/2009 vide order 30.12.2009 and certain claims of the Petitioner has been disallowed, the corresponding entries of adjustment in the subsequent period i.e. 2008-09 are to be changed accordingly. Without prejudice to the rights and contentions of the Petitioner that the tariff should be allowed on “accrual basis”, the petitioner made oral submission during the hearing on 12.01.2010 on the above aspect, wherein the Hon’ble Commission was pleased to direct the Petitioner to place such changes being sought in the claim in the instant Petition No. 160/2009 through an affidavit, The petitioner respectfully submits as below:-

(i) At annexure-6 of the Petition regarding claim for the year 2008-09 at s.no. 1 the petitioner has sought de-capitalization of liability of (Rs.8262362.00) on account of judgment of Hon’ble High Court of Gujarat. It is submitted that petitioner maintains its books of accounts as per accrual system of accounting. It is submitted that a liability of Rs. 10113464.00 was provided in the books of accounts during the year 2005-06 based on arbitration award and was claimed for capitalization during the year 2005-06 in petition no 44/2009. Since Hon’ble Commission vide its order dated 30.12.2009 in

petition no. 44/2009 has not allowed capitalization of liabilities including the above said liability, it is therefore requested that this amount of (Rs. 8262362.00) may please be taken to "Exclusion" (Annexure-IV of the instant petition and not considered as part of the claim).

26. Accordingly, the revised claim for additional capital expenditure is as under:

| (Rs in lakh) | |
|---|----------------|
| Particulars | 2008-09 |
| Total additional expenditure of the generating station as per books of accounts (A) | (-) 1471.41 |
| Exclusions for additional capitalization vis-à-vis books of accounts (B) | (-) 1641.85 |
| Total additional capitalization (A-B) | 170.44 |

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

| (Rs in lakh) | |
|---------------------------------|--------------------|
| Description | 2008-09 |
| Capital spares (Capitalized) | 709.65 |
| Capital spares (De-capitalized) | (-) 2308.02 |
| Inter unit transfer | (-) 9.91 |
| Liabilities (De-capitalized) | (-) 82.62 |
| MBOA (Capitalized) | 49.06 |
| Total Exclusions | (-) 1641.85 |

Exclusions

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

(a) **Capitalization of spares:** The petitioner has procured spares amounting to Rs.709.65 lakh during the year 2008-09. 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 amount. The exclusion of the said amount under this head is allowed.

(b) **De-capitalization of spares:** The petitioner has de-capitalized capital spares amounting to (-) Rs.2308.02 lakh in the books of accounts on being un-serviceable.

The said de-capitalization is examined as under:

(i) The petitioner has excluded an amount of (-) Rs.755.22 lakh against de-capitalization of assets like Nozzle assembly (1st stage), bucket set (1st Stage), Kit of 48 shrouds (1st Stage), Kit of 48 shrouds (2nd stage), blades for rotor (3rd stage), blades for rotor (4th stage) and has submitted as under:

"Accident took place at Kawas GPS due to which several capital spares of GT-2A were scrapped. The scrapped capital spares has now been removed from books of accounts. These were supplied along with the Original Equipment as a mandatory & rotational spare item and were capitalized along with main plant. No procurement was made by the unit till date as the requirement was made out of the rotational spare available. Fresh procurement action is now initiated. Since procurement action has been initiated, the Hon'ble Commission may consider the de-capitalization as exclusion and not reduce the capital base."

In view of the fact that the spares which form part of capital cost for the purpose of tariff have been de-capitalized on being un-serviceable, the de-capitalization is not allowed to be excluded as they do not render any useful service.

(ii) The petitioner has excluded an amount of (-) Rs.1454.41 lakh against de-capitalization of assets like nozzle assembly (2nd stage), nozzle assembly (3rd stage), bucket (2nd stage), buckets set (3rd stage). The petitioner has submitted that these spares were earlier not allowed for the purpose of tariff and do not form part of the present capital cost. In view of the fact that these spares which were not allowed to be capitalized for the purpose of tariff have been de-capitalized on being un-serviceable, their de-capitalization is allowed to be excluded.

(iii) The petitioner has claimed exclusion of an amount of (-) Rs.98.39 lakh in respect of de-capitalization of assets like CCOT card for simulator UPS, CCOT card PCB, Kit of 32 shrouds (3rd Stage), coupling bolt, bearing liner, GT main shaft bearing no.3, undersized bearing liner, against capitalization of new spares amounting to Rs.121.47 lakh (included in the amount of Rs.709.65 lakh under the head "capitalization of spares" above). 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 capitalized 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. The petitioner vide affidavit dated 30.11.2009 has submitted as under:

"the capital spares de-capitalized at sl. no. 4, 7, 14, 16, 21, 25, 28, 33 and 35 of the Annexure-4 (included in exclusions) are on account of consumption of those spares which were not allowed in tariff".

In view of the justification submitted by the petitioner, the exclusion of de-capitalized spares for the purpose of tariff is allowed.

(c) **Inter-unit transfers:** An amount of (-) Rs. 9.91 lakh has been excluded under this head on account of transfer of MBOA and transformer, to and from the other generating stations of the petitioner. 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 should be ignored for the purposes of tariff. In consideration of this, the exclusion of the amount of (-) Rs.9.91 lakh on account of inter-unit transfer of assets is allowed.

(d) **De-capitalization of liabilities in books of accounts:** The petitioner has sought exclusion of an amount of (-) Rs.82.62 lakh on account of de-capitalization of liabilities as per the direction of the Hon'ble High Court. The justification provided by the petitioner is as under:

"Since capitalization of liability was not allowed by Hon'ble Commission in petition no. 44/09 vide order dt.30.12.09 this needs to be excluded from the claim."

The petitioner claim for capitalization of Rs.101.13 lakh in respect of cooling towers, during 2005-06 was not allowed to be capitalized vide order dated 30.12.2009 as the actual cash outlay was not made to M/s.Gammon India Ltd. In view of this, the petitioner's claim for exclusion of (-) Rs.82.62 lakh on account of de-capitalization of liabilities out of liabilities disallowed earlier is allowed to be excluded.

(e) **MBOA:** The petitioner has sought exclusion of Rs.49.06 lakh under this head. The petitioner has submitted as under:

"As per Tariff Regulation, 2004, the Hon'ble Commission has disallowed the capitalization of Capital spares and MBOA items. However, for smooth and efficient operation of the station these items are being replaced with new one after useful life. Since capitalization of these assets are not allowed, hence taken to exclusion."

Clause 3 to Regulation 18 of the 2004 Regulations, provides:

"Any expenditure on minor items/assets like normal tools and tackles, personal computers, furniture, air- conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machines, heat-convectors, carpets, mattresses etc. brought after the cut off date shall not be considered for additional capitalisation for determination of tariff with effect from 1.4.2004.

Note

The list of items is illustrative and not exhaustive. "

In view of the fact that the 2004 regulations does not allow capitalization of minor assets after the cut-off date, the petitioner's claim of

Rs.49.06 lakh is allowed to be excluded.

29. Based on the above discussions, the following amounts have been allowed under exclusions:

| (Rs in lakh) | |
|---------------------------------|-------------------|
| Description | 2008-09 |
| Capital spares (Capitalized) | 709.65 |
| Capital spares (De-capitalized) | (-) 1552.80 |
| Inter unit transfer | (-) 9.91 |
| Liabilities (De-capitalized) | (-) 82.62 |
| MBOA (Capitalized) | 49.06 |
| Total Exclusions | (-) 886.63 |

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

| (Rs in lakh) | |
|---|---------------|
| Nature of capitalization | 2008-09 |
| On account of change in law [18(2)(iii)] | 104.15 |
| 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) | 66.28 |
| Total | 170.44 |

31. After applying prudence check on the asset-wise details and justification of additional capitalization claimed by the petitioner under various categories for the year 2008-09, the admissibility of additional capitalization is discussed in the succeeding paragraphs:

On account of change in law [18(2)(iii)]

32. The petitioner has claimed an amount of Rs.104.15 lakh under this head in respect of Ambient Air Quality Monitoring System (AAQMS), AAQMS buildings and internal electrification for AAQMS building. The justification of petitioner for incurring such expenditure is as under:

“The AAQMS system installed at Kawas GPS is a proactive approach of NTPC to monitor the impact of air emissions discharged from the stacks of its power plant on the surrounding ambient air quality. The station will give the real time data of the emission levels of various pollutants in ambient air. As per the regulations of CERC any mandatory expenditure arising out of statutory obligation due to change of Law etc has been allowed. Ambient Air Quality Monitoring System comes under Statutory Compliance of Environmental Standards. This was also required to meet the requirements of Gujarat State Pollution Control Board. ”

33. In view of the fact that Ambient Air Quality Monitoring System is a statutory requirement in compliance with the environmental standards and in accordance with the directions of Gujarat State Pollution Control Board, the same is allowed to be capitalized for the purpose of tariff.

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

34. The petitioner has claimed amount of Rs.66.28 lakh under this head. The admissibility of the said amounts is discussed as under:

(a) **Expenditure on minor assets:** The petitioner has claimed an expenditure of Rs.13.21 lakh in respect of minor assets like A.C., refrigerators, modulator for cable TV System, water cooler, water purifier cum cooler, IP video camera for plant gate, decoders for cable TV and modem. Since clause 3 of Regulation 18 of the 2004 regulations do not allow capitalization of minor assets like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machines, heat-convectors, carpets, mattresses etc. brought after the cut-off date, the petitioner’s claim for capitalization of minor assets amounting to Rs.13.21 lakh is not allowed for the purpose of tariff.

(b) The petitioner has incurred an expenditure of Rs.4.49 lakh on procurement of AC ambassador car and the justification submitted by the petitioner for

incurring such expenditure is as under:

“New Ambassador car was required to facilitate the movement of officials and company guests at Kawas GPS. This purchase is in replacement to old vehicle which was rendered useless and de-capitalized in 2003-04 in at S No. 6 of our petition no. 110/2005.”

From the details submitted in Petition No. 110/2005, it has been observed that the de-capitalization of old car during the year 2003-04 was in lieu of capitalization of new car during 2002-03 and the same was allowed for the purpose of tariff along with the shifting of de-capitalization to the year 2002-03. In view of this, the petitioner's claim for new ambassador car in place of the car de-capitalized during 2003-04 is not allowed for the purpose of tariff.

(c) The petitioner has claimed an expenditure of Rs.12.15 lakh on procurement and fabrication of TATA LPT truck and the justification submitted by the petitioner for incurring such expenditure is as under:

“This truck was purchased to facilitate the movement of men and material. This is being utilized to carry out equipment etc. safely. This is purchased as replacement to old truck which has been rendered useless and de-capitalized in previous years.”

Further, the petitioner vide affidavit dated 22.1.2010 has submitted that the corresponding de-capitalization of the asset has been effected during 2004-05. The above statement of the petitioner could not be verified from the submissions made while considering Petition No.44/2009. Hence, in absence of reconciliation of the corresponding de-capitalization, the capitalization is not allowed under replacement, in terms of Note-2 under Regulation 18.

(d) The petitioner has claimed an expenditure of Rs.12.82 lakh for the procurement of vibration instrument-cum-analyser and the justification of the petitioner for such expenditure is as under:

"The old vibration analyser was supplied along with the main plan equipment, which was in use for more than 15 years (capitalized along with the main plant) it has now become irreparable. In order to replace it, new vibration analyser is procured. The value of the removed analyser as assessed by a committee of technical experts is Rs. 300000.00 and accumulated depreciation is Rs.270000.00. The same will be removed from the books of account during 2009-10."

In view of the justification submitted by the petitioner, the claim for capitalization is allowed in terms of Note – 2 under Regulation 18, after adjusting the corresponding de-capitalization of the replaced asset, amounting to Rs.3.00 lakh.

(e) The petitioner has claimed an expenditure of Rs.23.61 lakh towards the procurement of cell and battery lead acid 550 plastic and the justification of the petitioner for such expenditure is as under:

"The Battery Bank was supplied by M/s.Alsthom along with original machine. Battery Bank has completed the recommended life stipulated by Original equipment manufacturer. Therefore, to maintain the availability of machine these were procured as existing ones are not fit for use. The value of the battery bank replaced during the current Year is to be removed from Gross Block in the Year 2009-10. The estimated Value as per Committee of technical expert is Rs 384076.00 and the accumulated depreciation is Rs 345668.00."

As the replacement of batteries and battery bank is a routine feature covered under O&M expenses allowed to the generating station, the capitalization of the amount is not allowed.

35. Based on the above discussions, the additional capital expenditure for the year 2008-09 allowed for the purpose of tariff is as under:

| Nature of capitalization | (Rs in lakh) |
|---|--------------|
| | 2008-09 |
| On account of change in law [18(2)(iii)] | 104.15 |
| Additional works/services necessary for efficient and successful operation of the generating station, but not included in the | 9.82 |

| | |
|---|-------------------|
| original project cost- 18(2) (iv) | |
| Total before adjustments of exclusions(A) | 113.98 |
| Exclusions not allowed (B) | (-) 755.22 |
| Additional capital expenditure allowed (C=A+B) | (-) 641.25 |
| Less: Undischarged liabilities included above | 0.00 |
| Add: Discharge of liabilities disallowed earlier | 0.00 |
| Net additional capital expenditure allowed for the purpose of tariff | (-) 641.25 |

FERV (2001-04)

36. In respect of the petitioner's claim of Rs. 7593 lakh towards FERV for the period 2001-04, the Commission vide its order dated 16.11.2006 in Petition No.79/2005 had observed as under;

"As per the methodology followed by the Commission in other cases and for the reasons given in the order dated 18.8.2006 in Petition No.7/2006 (GUVNL Vs NTPC and others), FERV is to be restricted to normative loan. In this case normative loan was fully liquidated in the year 2000-01 and therefore, the question of capitalization of FERV does not arise."

37. Thus, no FERV was allowed by the Commission vide order dated 16.11.2006 for the period 2001-04.

38. Subsequently, by order dated 23.1.2008 in Petition No.31/2001 the Commission revised the tariff of the generating station for the period 2001-04 after applying the normative debt repayment methodology, in terms of the directions of Appellate Tribunal for Electricity (Appellate Tribunal). The revised net opening normative loan is as under:

| Particulars | (Rs in lakh) | | |
|--------------------------------|----------------|----------------|----------------|
| | 2001-02 | 2002-03 | 2003-04 |
| Normative loan opening balance | 15327 | 11766 | 8204 |

39. The petitioner, in the petition, has prayed that FERV amounting to Rs.2746 lakh corresponding to the revised normative loan should be added to the capital

cost as on 1.4.2004, in line with methodology adopted by the Commission in the tariff petitions for the period 2004-09.

40. The petitioner's claim of FERV on normative basis has been examined. Based on the revised normative loan outstanding, FERV works out to Rs.2745.70 lakh, as under and the same has been considered for the purpose of tariff.

| Particulars | (Rs in lakh) | | |
|---|----------------|---------|---------|
| | 2001-02 | 2002-03 | 2003-04 |
| Total actual loan opening balance (a) | 42385 | 32537 | 22689 |
| Revised Normative loan opening balance (b) | 15327 | 11766 | 8204 |
| FERV (actual) claimed by petitioner (c) | 1147 | 5162 | 1284 |
| FERV equivalent to Normative loan opening balance [(c x b) ÷ a] | 414.77 | 1866.66 | 464.27 |
| Total Normative FERV allowed | 2745.70 | | |

41. Thus, the differential FERV considered for the tariff period 2001-04 works out to Rs.2745.70 lakh.

Capital cost

42. The Commission by its order dated 7.4.2005 in Petition No. 31/2001 had approved the tariff for the period 1.4.1998 to 31.3.2001 by considering the capital cost of Rs. 151319.00 lakh as on 31.3.2001. This was adapted as the opening gross block as on 1.4.2001 for the purpose of tariff for the period 1.4.2001 to 31.3.2004. The Commission by its order dated 9.5.2006 in Petition No. 110/2005, allowed the additional capitalization of Rs. 75.75 lakh for the period 2001-04. This was considered by the Commission's in its order dated 16.11.2006 in Petition No. 79/2005, for working out the gross block of Rs. 151394.75 lakh (Rs 151319 lakh plus Rs 75.75 lakh) as on 1.4.2004, for determining the tariff of the generating station for the period 2004-09.

43. Taking into account the capital cost of the generating station as on 1.4.2004, the additional FERV amounting to Rs.2745.70 lakh as in para 41 above for the period 2001-04, the additional capital expenditure allowed for the years 2004-05, 2005-06, 2006-07 and 2007-08 (in Petition No. 44/2009) and the additional capital expenditure approved for the year 2008-09 in para 35 above, the revised capital cost for the period 2004-09 is as under:

| (Rs. in lakh) | | | | | |
|---|------------------|------------------|------------------|------------------|------------------|
| Financial Year | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Opening capital cost as on 1.4.2004 considered vide order dated 30.12.2009 in Petition No.44/2009 | 151394.75 | - | -- | - | - |
| Add: Additional FERV on normative basis for tariff period 2001-04 | 2745.70 | - | - | - | - |
| Opening capital cost considered | 154140.45 | 154093.29 | 154140.07 | 154170.41 | 154168.56 |
| Additional capital expenditure allowed vide order dated 30.12.2009 in Petition No.44/2009 | (-) 47.16 | 46.79 | 30.34 | (-) 1.85 | - |
| Additional capital expenditure allowed | - | - | - | - | (-) 641.25 |
| Closing Capital cost | 154093.29 | 154140.07 | 154170.41 | 154168.56 | 153527.32 |
| Average Capital cost | 154116.87 | 154116.68 | 154155.24 | 154169.49 | 153847.94 |

Debt-Equity ratio

44. *Regulation 20 of the 2004 Regulations provides that:*

“(1) 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.

45. The Commission by its order dated 7.4.2005 in Petition No. 31/2005, had considered the debt-equity ratio of 50:50 while determining the tariff for the period 1.4.2001 to 31.3.2004 and the same has been considered for the period 2004-09.

46. In respect of the capitalization of FERV, the Appellate Tribunal by its judgment dated 4.10.2006 in Appeal no. 135, 136, etc. of 2005 (PGCIL -v- CERC and others) has decided in para-16 as under:

"Once the fixed cost has been agreed to be financed in a certain ratio of debt and equity, the equity can be affected by FERV only if equity is in foreign exchange. The provision of FERV as a pass through has been kept to ensure that any liability or gain, if any, arising on account of any variation in foreign exchange rates (whether debt or equity) is passed on to the beneficiary. In case there is no FERV liability or gain, as the case may be, there will not be any FERV adjustment. In the instant case the additional liability arising on account of FERV shall have an impact only on the debt liability and not equity capital. In this view of the matter, we hold that FERV adjustment is to be made in respect of debt liability and not in respect of the equity. Accordingly, we hold that the CERC is only to make adjustment in respect of debt liability and not in respect of the equity.

In view of the aforesaid discussions, the appeal is partly allowed to the extent indicated above. The Central Electricity Regulatory Commission shall re-calculate the effect of FERV on the debt liability."

47. In terms of the above judgment, the differential FERV amounting to Rs.2745.70 lakh for the period from 1.4.2001 to 31.3.2004 (as worked out in para 41 above) has been fully allocated to debt, as on 1.4.2004.

48. As a result of the above, the gross opening loan (normative) as on 1.4.2004 has been revised from Rs.75697.38 lakh (as considered in order dated 30.12.2009) to Rs.78443.07 lakh. Further, as no adjustment is to be made to equity in respect of FERV allowed for the period 1.4.2001 to 31.3.2004, the normative equity as on 1.4.2004 remain unaltered as Rs.75697.38 lakh (as considered in order dated 30.12.2009).

49. Consequent upon the changes in the apportionment of FERV for the period 1.4.2001 to 31.3.2004 as above, the impact of FERV, if any, recovered by the petitioner from the beneficiaries would undergo revision and the same shall be mutually settled between beneficiaries and the petitioner.

50. The petitioner vide its affidavit dated 30.11.2009 has stated that the additional capital expenditure during the year 2008-09 has been funded from internal resources and no loan was drawn for the generating station. 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) | |
|----------------------------|------------|
| 2008-09 | |
| Additional Notional Equity | (-) 192.37 |

Return on Equity

51. Return on equity is allowed @ 14% on the average normative equity, as under:

| | (Rs. In lakh) | | | | |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Equity-Opening considered vide order dated 30.12.2009 in Petition No. 44/2009 | 75697.38 | - | - | - | - |
| Addition of Equity due to additional FERV on normative basis for tariff period 2001-04 & on account of allocating FERV to debt only | 0.00 | - | - | - | - |
| Equity - Opening considered | 75697.38 | 75683.23 | 75697.26 | 75706.36 | 75705.81 |
| Addition of Equity due to additional capital expenditure allowed vide order dated 30.12.2009 in Petition No. 44/2009 | (-) 14.15 | 14.04 | 9.10 | (-) 0.56 | - |
| Addition of Equity due to additional capital expenditure allowed | - | - | - | - | (-) 192.37 |
| Equity-Closing | 75683.23 | 75697.26 | 75706.36 | 75705.81 | 75513.44 |
| Average equity | 75690.30 | 75690.24 | 75701.81 | 75706.09 | 75609.62 |
| Return on Equity @ 14% | 10596.64 | 10596.63 | 10598.25 | 10598.85 | 10585.35 |

Interest on loan

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

(a) The gross opening loan (normative) as on 1.4.2004 has been revised from 75697.38 lakh to Rs.78443.07 lakh.

(b) The cumulative repayment of loan (normative) as on 1.4.2004 considered in order dated 16.11.2006 and 30.12.2009 was Rs.75659.00 lakh. However, the cumulative repayment of loan as on 1.4.2004, which was revised after applying normative debt repayment methodology (in terms of the directions of the Appellate Tribunal) from Rs.75659.00 lakh to Rs.71775.00 lakh by the Commission by its order dated 23.1.2008 in Petition No.31/2001, was inadvertently not considered in order dated 30.12.2009. Accordingly, the cumulative repayment

of loan (normative) amounting to Rs.71775.00 lakh on 1.4.2004 has been considered for the purpose of tariff.

(c) The revised net opening normative loan as on 1.4.2004 is Rs.6668.07 lakh.

(d) Addition of notional loan on account of additional capital expenditure incurred during the year 2008-09 is (-) Rs.448.87 lakh.

(e) The amount de-capitalized in a year has been segregated into negative loan and equity and wherever the sum total of net positive opening balance of loan (gross loan minus cumulative repayment of loan) and negative loan due to de-capitalization has resulted in negative balance, the negative loan due to de-capitalization has been restricted to the net positive opening balance of loan.

(f) Weighted average rate of interest as considered in order dated 30.12.2009 has been considered for calculation of interest on loan.

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

(h) 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 final decision of the Hon'ble Supreme Court in Civil Appeal No. 5434/2007 and other related appeals.

(i) Interest on loan has been computed as under:

(Rs. In lakh)

| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|--|---------------|-------------|-------------|-------------|-------------|
| Gross Opening Loan as considered in order dated 30.12.2009 | 75697.38 | - | - | - | - |
| Addition of loan due to additional FERV on normative basis for tariff period 2001-04 & on account of allocating FERV to debt | 2745.70 | - | - | - | - |
| Gross Opening loan | 78443.07 | 78410.06 | 78442.81 | 78464.05 | 78464.05 |
| Cumulative repayment of loan upto previous year | 71775.00 | 78410.06 | 78442.81 | 78464.05 | 78464.05 |
| Net Opening loan | 6668.07 | 0.00 | 0.00 | 0.00 | 0.00 |
| Addition of loan due to additional capital expenditure allowed vide order dated 30.12.2009 in Petition No.44/2009 | (-) 33.01 | 32.75 | 21.24 | 0.00 | - |
| Addition of loan due to additional capital expenditure approved | - | - | - | - | 0.00 |
| Repayment of loan during the year | 6635.06 | 32.75 | 21.24 | 0.00 | 0.00 |
| Net loan closing | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Average Loan | 3334.04 | 0.00 | 0.00 | 0.00 | 0.00 |
| Weighted Average rate of Interest on loan | 5.6462% | 8.0868% | 8.0873% | 8.1067% | 9.5800% |
| Interest on loan | 188.25 | 0.00 | 0.00 | 0.00 | 0.00 |

Depreciation

53. The balance depreciation recoverable as on 1.4.2004 as per order dated 30.12.2009 was Rs.41504.05 lakh, considering the gross depreciable value of Rs.135594.11 lakh and cumulative depreciation recovered as on 1.4.2004 amounting to Rs.94090.06 lakh (inclusive of Rs.15052.43 lakh in respect of depreciation for tariff period 2001-04).

54. The Commission vide its order dated 23.1.2008 in Petition No. 31/2001 revised the depreciation amount recovered from Rs.15052.43 lakh to Rs.23208.85 lakh for

the period 2001-04, pursuant to revision of tariff for on account of the change in debt repayment methodology , in terms of the directions of the Appellate Tribunal.

55. The cumulative depreciation recovered as on 1.4.2004 has been revised to Rs.102246.48 lakh and the corresponding balance depreciable value reduced to Rs.33347.63 lakh.

56. On account of additional FERV (normative) amounting to Rs.2745.70 lakh , the balance depreciation recoverable as on 1.4.2004 has been revised upwards to Rs.35610.83 lakh, after adjustment of Rs.207.93 lakh in respect of depreciation recovered/ to be recovered from beneficiaries on account of additional FERV for the period from 1.4.2001 to 31.3.2004. Thus, the cumulative depreciation as on 1.4.2004 is revised to Rs.102454.41 lakh.

57. Weighted average rate of depreciation of 5.33% as per order dated 16.11.2006 has been considered to arrive at the depreciation allowed for the tariff period 2004-09. However, as the normative opening loan balance as on 1.4.2005 is 'nil', the remaining depreciation has been spread over the balance useful life of 7.39 years of the generating station from the year 2005-06. Adjustment of cumulative depreciation on account of de-capitalization of assets has been considered in the calculations as carried out in the tariff orders for the period 2004-09 for other generating stations of the petitioner. The necessary calculations are as under:

| | (Rs. in lakh) | | | | |
|----------------------|---------------|-----------|-----------|-----------|-----------|
| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Opening capital cost | 154140.45 | 154093.29 | 154140.07 | 154170.41 | 154168.56 |
| Closing capital cost | 154093.29 | 154140.07 | 154170.41 | 154168.56 | 153527.32 |
| Average capital cost | 154116.87 | 154116.68 | 154155.24 | 154169.49 | 153847.94 |

| | | | | | |
|---------------------------|----------------|----------------|----------------|----------------|----------------|
| Depreciable value @ 90% | 138044.01 | 138043.85 | 138078.55 | 138091.37 | 137801.98 |
| Balance depreciable value | 35589.61 | 27411.10 | 23740.18 | 20039.50 | 16036.30 |
| Balance useful life | 8.39 | 7.39 | 6.39 | 5.39 | 4.39 |
| Depreciation | 8214.43 | 3709.21 | 3715.21 | 3717.90 | 3652.92 |

Advance Against Depreciation

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

O&M expenses

59. The O&M expenses as considered in order dated 30.12.2009 has been considered for revision of tariff.

Interest on Working capital

60. For the purpose of calculation of working capital the operating parameters including the price of fuel components as considered in the order dated 30.12.2009 have been kept unchanged. The "receivables" component of the working capital has been revised for the reason of revision of return on equity, interest on loan etc. The necessary details in support of calculation of interest on working capital are as under:

| Particulars | (Rs. in lakh) | | | | |
|--|---------------|----------|----------|----------|----------|
| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Fuel Cost (Gas) - 1 month | 10405.97 | 10405.97 | 10405.97 | 10434.48 | 11562.18 |
| Liquid Fuel Cost (Naptha) - 1/2 months | 4772.92 | 4772.92 | 4772.92 | 4786.00 | 5303.25 |
| O & M expenses | 426.53 | 443.48 | 461.53 | 479.57 | 498.71 |
| Maintenance Spares | 2284.92 | 2422.02 | 2567.34 | 2721.38 | 2884.66 |
| Receivables | 25574.06 | 24815.39 | 24856.24 | 24955.24 | 27307.25 |

| | | | | | |
|-----------------------------------|----------------|----------------|----------------|----------------|----------------|
| Total Working Capital | 43464.41 | 42859.78 | 43064.00 | 43376.67 | 47556.06 |
| Rate of Interest | 10.2500% | 10.2500% | 10.2500% | 10.2500% | 10.2500% |
| Total Interest on Working capital | 4455.10 | 4393.13 | 4414.06 | 4446.11 | 4874.50 |

61. The revised annual fixed charges for the period from 1.4.2004 to 31.3.2009 are summarized as under:

| Particulars | (Rs. in lakh) | | | | |
|------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Interest on loan | 188.25 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest on Working Capital | 4455.10 | 4393.13 | 4414.06 | 4446.11 | 4874.50 |
| Depreciation | 8214.43 | 3709.21 | 3715.21 | 3717.90 | 3652.92 |
| Advance Against Depreciation | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Return on Equity | 10596.64 | 10596.63 | 10598.25 | 10598.85 | 10585.35 |
| O & M Expenses | 5118.36 | 5321.78 | 5538.33 | 5754.87 | 5984.54 |
| Total | 28572.78 | 24020.75 | 24265.85 | 24517.73 | 25097.31 |

62. The target availability of 80% considered by the Commission in the order dated 30.12.2009 remains unchanged. Similarly other parameters viz. specific fuel consumption Auxiliary Power consumption and Station Heat rate etc considered in the order dated 30.12.2009 have been retained for the purpose of calculation of the revised fixed charges.

63. The reimbursement of the filing fee is not being allowed in view of the Commission's general order dated 11.9.2008 in Petition No.129/2005, wherein it was concluded by the Commission that the application filing fees was part of the allowable O&M expenses.

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 difference between the fixed charges approved vide order dated 30.12.2009 and those approved now, shall be adjusted in three equal monthly installments.

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.160/2009 stands disposed of in terms of the above.

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(S. JAYARAMAN)
MEMBER

Sd/-
(DR.PRAMOD DEO)
CHAIRPERSON