

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.54/2010

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri M.Deena Dayalan, Member

DATE OF HEARING: 19.8.2010

DATE OF ORDER: 7.10.2010

In the matter of

Approval of transmission tariff for combined elements of 50 MVAR Reactor along with associated equipment at Chandrapur sub-station in Western Region for the period from 1.4.2009 to 31.3.2014.

And in the matter of

Power Grid Corporation of India Limited, Gurgaon **..Petitioner**
Vs

1. Madhya Pradesh Power Transmission Company Ltd., Jabalpur
2. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
3. Gujarat Urja Vikas Nigam Ltd., Vadodara
4. Electricity Deptt., Govt., of Goa, Panaji
5. Electricity Department, Administration of Daman and Diu, Daman
6. Electricity Department, Administration of Dadra Nagar Haveli, Silvassa
7. Chhattisgarh State Electricity Board, Raipur
8. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd. Indore

.....Respondents

The following were present:

1. Shri U.K.Tyagi, PGCIL
2. Shri M.M. Mondal, PGCIL
3. Shri Rajiv Gupta, PGCIL
4. Shri S.K.Narayan, PGCIL
5. Shri Manoj Dubey, Advocate

ORDER

The petition has been filed for approval of tariff 50 MVAR Reactor along with associated equipment at Chandrapur sub-station (hereinafter referred to as "the transmission system") in Western Region for the period from 1.4.2009 to

31.3.2014 based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "the 2009 regulations"). The petitioner has made the following additional prayers:-

- (a) To invoke the provision of Regulation 44 of the 2009 regulations for relaxation of regulations 15 (3) of the 2009 regulations so that grossing up the base rate shall be considering the revised rate of MAT as per the Finance Act, 2009 for the year 2009-10 and as per the Finance Act, 2010 for the year 2010-11 and subsequent years and allow consequential impact on tariff for 2009-14 period accordingly;
- (b) To approve reimbursement of petition filing fee and publication of notices in the newspaper as per the 2009 regulations;
- (c) Allow to adjust impact on interest on loan due to floating rate of interest applicable during 2009-14;
- (d) Allow to recover the service tax on transmission charges separately from the respondents, if the petitioner is subjected to such service tax; and
- (e) Allow reimbursement of licence fee separately from the respondents.

2. The investment approval for the transmission system was accorded by the Board of Directors of the petitioner company in its 32nd meeting held on 18.3.1994 at an estimated cost of ₹630.00 lakh. The transmission system was declared under commercial operation 1.4.1997.

3. The annual transmission charges for the transmission system for the period from 1.4.2004 to 31.3.2009 decided by the Commission in its order dated 25.4.2006 in Petition No. 116/2004 were revised vide order dated 29.4.2008 at a gross block of ₹456.66 lakh and thereafter no additional capital expenditure is involved for the transmission asset.

4. The petitioner has claimed the transmission charges as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	12.13	12.13	12.13	12.13	12.13
Interest on Loan	8.13	7.12	6.10	5.09	4.08
Return on Equity	36.35	36.35	36.35	36.35	36.35
Interest on Working Capital	3.80	3.93	4.07	4.21	4.37
O & M Expenses	52.40	55.40	58.57	61.92	65.46
Total	112.81	114.93	117.22	119.70	122.39

5. The details submitted by the petitioner in support of its claim for interest on working capital are given hereunder:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	7.86	8.31	8.79	9.29	9.82
O & M expenses	4.37	4.62	4.88	5.16	5.46
Receivables	18.80	19.15	19.54	19.95	20.40
Total	31.03	32.09	33.21	34.40	35.68
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	3.80	3.93	4.07	4.21	4.37

6. No comments or suggestions have been received from the general public in response to the notices published by the petitioner under section 64 of the Electricity Act, 2003. MPPTCL in its reply affidavit dated 22.8.2010 has submitted that as per Regulation 15 (3) MAT @ 11.33% is constant for the tariff block 2009-14 and can not be charged during the tariff period in accordance with the changing MAT rates. MPPTCL has requested not to relax the provision of Regulation 15 (3) of the 2009 regulations, as tariff should be claimed in the next tariff period in accordance with the changing MAT rates.

MPPTCL has further submitted that the weighted average rate of interest on loan for the period 2008-09 was 5.8% and for the period 2009-14, it was 8.34% which is much higher than the last tariff period i.e. 2004-09. MPPTCL has also submitted that the petitioner should have taken timely action for hedging of the foreign exchange rate variation and also for swapping loan with lower interest rate so that the beneficiaries are not suffered from such increase of interest on the loan. In regard to wage revision w.e.f. 1.1.2007, MPPTCL has further submitted that there is no provision in 2009 regulations about considering more than 50% increase in employees cost and revision the O & M expenditure. As regards the Service Tax, MPPTCL has submitted that in accordance with the Ministry of Finance notification No. 11/2010-Service Tax, dated 27.2.2010 and notification No. 45/2010-Service Tax dated 20.7.2010, transmission of power has been exempted from the whole of service tax leviable. As regards the licence fee, MPPTCL has submitted that licence fee should be borne by the petitioner as the same does not form part of the project cost. The issues raised by the MPPTCL have been dealt with in the relevant paras of this order.

7. We have considered the objections of MPPTCL. MAT rate and weighted average rate of interest on loan have been dealt with in the order strictly in accordance with the provisions of the 2009 regulations. The issues relating to service tax and licence fee have been dealt with in later part of the order.

CAPITAL COST

8. As per clause (2) of Regulation 7 of the 2009 regulations, the project cost admitted by the Commission for determination of tariff prior to 1.4.2009 shall form the basis for determination of tariff.

9. The petitioner has claimed the capital expenditure of ₹456.66 lakh, which was admitted vide order dated 25.4.2006 read with order dated 29.4.2008 in Petition No.116/2004. The petitioner has not claimed any additional capitalization.

10. Accordingly, gross block of ₹456.66 lakh as on 31.3.2009 has been considered for the purpose of tariff.

DEBT- EQUITY RATIO

11. Clause (2) of Regulation 12 of the 2009 regulations *inter alia* provides that,-

“(2) In case of the generating station and the transmission system declared under commercial operation prior to 1.4.2009, debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2009 shall be considered.”

12. The petitioner has claimed tariff based on debt-equity ratio of 54.47:45.53 as considered by the Commission in its order dated 25.4.2006 read with order dated 29.4.2008 *ibid*. The same debt-equity ratio has been considered for the purpose of tariff.

RETURN ON EQUITY

13. Regulation 15 of the 2009 regulations provides that,-

“15. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.

(3) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee, as the case may be:

Provided that return on equity with respect to the actual tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up separately for each year of the tariff period along with the tariff petition filed for the next tariff period.

(4) Rate of return on equity shall be rounded off to three decimal points and be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where t is the applicable tax rate in accordance with clause (3) of this regulation.

Illustration.-

(i) In case of the generating company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 11.33% including surcharge and cess:

Rate of return on equity = $15.50 / (1 - 0.1133) = 17.481\%$

(ii) In case of generating company or the transmission licensee paying normal corporate tax @ 33.99% including surcharge and cess:

Rate of return on equity = $15.50 / (1 - 0.3399) = 23.481\%$."

14. The petitioner has computed return on equity on pre-tax basis on 11.33% MAT in accordance with tax rate applicable for the year 2008-09 and claimed return on equity of ₹36.35 lakh each year during the tariff period @ 17.481% against the equity base of ₹207.92 lakh. This has been found to be in order. Accordingly, the petitioner shall be entitled to return on equity @ ₹36.35 lakh each year during the tariff period, as claimed.

15. In regard to MAT, the Commission vide its order dated 3.8.2010 in Petition No. 17/2010 has already taken a decision to amend the 2009 regulations. The relevant portion of the said order is extracted as under:

“We are of the view that this issue of ‘grossing up the base rate with the normal tax rate for the year 2008-09’ is generic in nature and therefore, it will be appropriate to make suitable provisions in the 2009 regulations to cater to any future changes in the tax rate. Accordingly, we direct the staff of the Commission to prepare and submit draft amendment to the 2009 regulations for allowing grossing up of base rate of return with the applicable tax rate as per the Finance Act for the relevant year and direct settlement of tax liability between the generating company/transmission licensee and the beneficiaries/long term transmission customers on year to year basis. Any under/over recovery on account of direct settlement of tax liability shall be subject to the final adjustment at the time of true up exercise.”

16. In view of our above order the prayer of the petitioner will be taken care of after amendment of the regulations.

INTEREST ON LOAN

17. Regulation 16 of the 2009 regulations provides that,-

“16. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.

(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed,.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan."

18. The interest on loan has been worked out as detailed below:
- (i) Gross amount of loan, repayment of instalments and rate of interest and weighted average rate of interest on actual average loan have been considered as per the petition;
 - (ii) The repayment for the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that period;
 - (iii) Weighted average rate of interest on actual loan worked out as per (i) above is applied on the notional average loan during the year to arrive at the interest on loan.

19. The petitioner has submitted that the change in interest rate due to floating rate of interest applicable, if any needs to be claimed/adjusted over the tariff period 2009-14 directly from the beneficiaries. The interest of loan has been calculated on the basis of interest rates prevailing as on 1.4.2009 as per the 2009 regulations. Based on the above, the year-wise details of interest worked out are given hereunder:

(₹ in lakh)

Details of loan	Up to 31.3.2009	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Normative Loan	248.74	248.74	248.74	248.74	248.74	248.74
Cumulative Repayment up to Previous Year		145.22	157.35	169.48	181.61	193.74
Net Loan-Opening		103.52	91.39	79.26	67.13	55.00
Addition due to Additional Capitalisation		0.00	0.00	0.00	0.00	0.00
Repayment during the year		12.13	12.13	12.13	12.13	12.13
Net Loan-Closing		91.39	79.26	67.13	55.00	42.88
Average Loan		97.46	85.33	73.20	61.07	48.94
Weighted Average Rate of Interest on Loan		8.3400%	8.3400%	8.3400%	8.3400%	8.3400%
Interest		8.13	7.12	6.10	5.09	4.08

20. The detailed calculations in support of the weighted revised average rate of interest are contained in **Annexure** attached.

DEPRECIATION

21. Regulation 17 of the 2009 regulations provides for computation of depreciation in the following manner, namely:

“17. (1) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission.

(2) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset.

xxxx
xxxx

(3) Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall

be excluded from the capital cost while computing depreciable value of the asset.

(4) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-III to these regulations for the assets of the generating station and transmission system:

Provided that, the remaining depreciable value as on 31st March of the year closing after a period of 12 years from date of commercial operation shall be spread over the balance useful life of the assets.

(5) In case of the existing projects, the balance depreciable value as on 1.4.2009 shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31.3.2009 from the gross depreciable value of the assets.

(6) Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis."

22. The deprecation has been worked out on the admitted capital expenditure of ₹456.66 lakh as on 31.3.2009. Cumulative depreciation amounting to ₹253.32 lakh up to 31.3.2009 has been taken as per order dated 25.4.2006 read with order dated 29.4.2008 in Petition No. 116/2004 and remaining depreciable value of the asset has been spread over the balance useful life of the asset.

23. For the period 1.4.2009 to 31.3.2014 the depreciation works out to ₹12.13 lakh each year as shown below:

		(₹ in lakh)					
Details of Depreciation		Up to 31.3.2009	2009-10	2010-11	2011-12	2012-13	2013-14
As per order dated 9.5.2006		456.66	456.66	456.66	456.66	456.66	456.66
Addition during 2009-14 due to projected Additional Capitalisation			0.00	0.00	0.00	0.00	0.00
Gross block as on 31.3.2009			456.66	456.66	456.66	456.66	456.66
Average gross block			456.66	456.66	456.66	456.66	456.66
Depreciable Value	90%		410.99	410.99	410.99	410.99	410.99
Elapsed Life			12	13	14	15	16
Balance Useful life of the asset			13	12	11	10	9
Remaining Depreciable Value			157.67	145.55	133.42	121.29	109.16
Depreciation			12.13	12.13	12.13	12.13	12.13

OPERATION & MAINTENANCE EXPENSES

24. In accordance with clause (g) of Regulation 19 the 2009 regulations, the following norms for 400 kV sub-station bays are prescribed for O & M expenses:

	Year				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M expenses for 400 kV bays (₹ in lakh per bay)	52.40	55.40	58.57	61.92	65.46

25. The petitioner has claimed O & M expenses for 1 bay, which has been allowed. Accordingly, the petitioner's entitlement to O & M expenses has been worked out as given hereunder:

(₹ in lakh)

	Year				
	2009-10	2010-11	2011-12	2012-13	2013-14
50 MVAR Reactor along with associated equipment at Chandrapur sub-station (1 bay)	52.40	55.40	58.57	61.92	65.46

26. The petitioner has submitted that transmission charges claimed for the year 2009-14 is inclusive of O & M expenses for project derived based on the norms for expenditure as specified under Regulation 19 (g) of the 2009 regulation. Accordingly, O & M expenses for the transmission assets have been considered as per Regulation 19 (g) of the 2009 regulations. The petitioner has further submitted that he reserves the right to approach the Commission for suitable revision in the norms for O & M expenditure in case the impact of wage hike w.e.f 1.1.2007 is more than 50%. The petitioner has further submitted that O & M norms for the period 2009-14, the cost associated with license fees had not been captured and the licence fee be allowed to be recovered separately from the respondents. The petitioner has not made any claim towards wage hike and licence fee in the present petition, these issues

shall be considered after making the application by the petitioner in this regard.

INTEREST ON WORKING CAPITAL

27. The components of the working capital and the interest thereon are discussed hereunder:

(i) Receivables

As per Regulation 18(1)(c)(i) of the 2009 regulations, receivables will be equivalent to two months average billing calculated on target availability level. The petitioner has claimed the receivables on the basis 2 months' transmission charges claimed in the petition. In the tariff being allowed, receivables have been worked out on the basis 2 months' transmission charges.

(ii) Maintenance spares

Regulation 18(1)(C)(ii) of the 2009 regulations provides for maintenance spares @ 15% per annum of the O & M expenses from 1.4.2009. The value of maintenance spares works out to ₹ 7.86 lakh as on 1.4.2009.

(iii) O & M expenses

Regulation 18(1) (c) (iii) of the 2009 regulations provides for operation and maintenance expenses for one month as a component of working capital. The petitioner has claimed O&M expenses for 1 month of O&M expenses of the respective year as claimed in the petition. This has been considered in the working capital.

(iv) Rate of interest on working capital

As per Regulation 18(3) of the 2009 regulations, rate of interest on working capital shall be on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2009 or on 1st April of the year in which the project or part thereof (as the case may be) is declared under commercial operation, whichever is later. The interest on working capital is payable on normative basis notwithstanding that the transmission licensee has not taken working capital loan from any outside agency. The petitioner has claimed interest on working capital @ 12.25% based on SBI PLR as on 1.4.2009, which is in accordance with the 2009 regulations and has been allowed.

28. The necessary computations in support of interest on working capital are appended hereinbelow:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	7.86	8.31	8.79	9.29	9.82
O & M expenses	4.37	4.62	4.88	5.16	5.46
Receivables	18.80	19.15	19.54	19.95	20.40
Total	31.03	32.08	33.20	34.40	35.67
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	3.80	3.93	4.07	4.21	4.37

TRANSMISSION CHARGES

29. The transmission charges being allowed for the transmission asset are summarised below:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	12.13	12.13	12.13	12.13	12.13
Interest on Loan	8.13	7.12	6.10	5.09	4.08
Return on Equity	36.35	36.35	36.35	36.35	36.35
Interest on Working Capital	3.80	3.93	4.07	4.21	4.37
O & M Expenses	52.40	55.40	58.57	61.92	65.46
Total	112.80	114.92	117.22	119.70	122.39

Application fee and the publication expenses

30. The petitioner has sought approval for the reimbursement of fee paid by it for filing the petition. In accordance with our decision in order dated 11.1.2010 in Petition No. 109/2009, the petitioner shall be entitled to recover the filing fee from the beneficiaries.

31. Accordingly, expenses incurred by the petitioner on application filing fees and publication of notices in connection with the present petition shall be directly recovered from the beneficiaries on pro rata basis.

Service Tax

32. Presently, service tax on transmission service has been exempted by Government of India vide its notification No. 20/2010 dated 27.2.2010 read with notification No. 45/2010 dated 20.7.2010. Therefore, prayer made by the petitioner for recovery of service tax on transmission charges from the beneficiaries has become infructuous.

33. In addition to the transmission charges, the petitioner shall be entitled to other charges like income-tax, surcharge and other cess and taxes in accordance with the 2009 regulations.

34. The transmission charges allowed shall be recovered on monthly basis in accordance with Regulation 23 and shall be shared by the respondents in accordance with Regulation 33 of the 2009 regulations.

35. This order disposes of Petition No.54/2010.

sd/-
(M.DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON

CALCULATION OF WEIGHTED AVERAGE RATE OF INTEREST ON LOAN

(₹ in lakh)

	Details of Loan	2009-10	2010-11	2011-12	2012-13	2013-14
1	IBRD I					
	Gross loan opening	183.43	183.43	183.43	183.43	183.43
	Cumulative Repayment up to the date of commercial operation/previous year	90.77	108.82	128.23	149.11	171.57
	Net Loan-Opening	92.66	74.61	55.20	34.32	11.86
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	18.05	19.41	20.88	22.46	11.87
	Net Loan-Closing	74.61	55.20	34.32	11.86	-0.01
	Average Loan	83.63	64.90	44.76	23.09	5.93
	Rate of Interest	8.34%	8.34%	8.34%	8.34%	8.34%
	Interest	6.97	5.41	3.73	1.93	0.49
	Rep Schedule	30 Half Yearly Instalments from 1.12.1998				
	Total Loan					
	Gross loan opening	183.43	183.43	183.43	183.43	183.43
	Cumulative Repayment up to the date of commercial operation /previous year	90.77	108.82	128.23	149.11	171.57
	Net Loan-Opening	92.66	74.61	55.20	34.32	11.86
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	18.05	19.41	20.88	22.46	11.87
	Net Loan-Closing	74.61	55.20	34.32	11.86	-0.01
	Average Loan	83.63	64.90	44.76	23.09	5.93
	Rate of Interest	8.3400%	8.3400%	8.3400%	8.3400%	8.3400%
	Interest	6.97	5.41	3.73	1.93	0.49