

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 3/2012**

**in**

**Petition No. 121/2010**

**Coram: Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of Hearing: 22.3.2012**

**Date of Order: 31 .8.2012**

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**IN THE MATTER OF**

Review of order dated 30.11.2011 in Petition No.121/2010 regarding approval of generation tariff of Rangit Hydroelectric Project (3 x 20 MW) for the period from 1.4.2009 to 31.3.2014.

**AND**

**IN THE MATTER OF**

NHPC Ltd, Faridabad

**...Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd, Kolkata
2. Damodar Valley Corporation, Kolkata
3. Jharkhand State Electricity Board, Ranchi
4. Bihar State Electricity Board, Patna
5. Department of Power, Govt. of Sikkim, Gangtok

**...Respondents**

**Parties Present:**

1. Shri R. Raina, NHPC
2. Shri Amrik Singh, NHPC
3. Shri S.K.Meena, NHPC
4. Shri R.B.Sharma, Advocate, JSEB and BSEB

## ORDER

This review petition has been filed by the petitioner, NHPC Ltd, for review of order dated 30.11.2011 in Petition No.121/2010, wherein the annual fixed charges of Rangit Hydroelectric Project, (3 x 20 MW) (hereinafter referred to as “the generating station”) for the period from 1.4.2009 to 31.3.2014, was approved by the Commission based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”). The annual fixed charges approved for the period 2009-14 was as under:

	<i>(₹ in lakh)</i>				
	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Return on Equity	3279.06	3284.27	3286.81	3288.39	3289.74
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	1064.13	1067.84	1069.85	1071.31	1072.43
Interest on Working Capital	231.40	239.64	248.26	257.33	266.90
O&M Expenses	2816.33	2977.42	3147.73	3327.78	3518.13
<b>Total</b>	<b>7390.92</b>	<b>7569.17</b>	<b>7752.65</b>	<b>7944.80</b>	<b>8147.20</b>

2. Aggrieved by the said order, the petitioner has filed this review application seeking review of the order dated 30.11.2011 on the following issues, namely:

*(a) Error in calculation of Return on Equity;*

*(b) Error in calculation of Depreciation; and*

*(c) Error in calculation of O&M Expenses.*

3. By order dated 27.2.2012, the review petition was admitted on the above issues and notices were issued to the respondents. Reply to the said petition has been filed by the Respondent No.4, BSEB.

4. During the hearing on 22.3.2012, the representative of the petitioner submitted that in the calculation of Return on Equity, the Commission in its order has

considered the rate of return on equity as 17.48055% instead of 17.481% which is contrary to clause (4) of Regulation 15 of the 2009 Tariff Regulations. He also submitted that depreciation for 2009-14 has also not been calculated in terms of clause (4) of Regulation 17 of the 2009 Tariff Regulations. The representative of the petitioner also pointed out that the Commission in its order has not considered the filing fees of ₹25.00 lakh for 2004-09 under administrative expenses, for the calculation of O&M expenses for 2009-14. Thus, the petitioner has submitted there is error apparent on the face of the order dated 30.11.2011 on account of the above and prayed that the Commission may review the order dated 30.11.2011 and the annual fixed charges for the generating station for 2009-14 may accordingly be revised.

5. The learned counsel for the respondent BSEB, in general, submitted that the Commission has given detailed reasons in its order for disallowance of the expenditure for capitalization and the petitioner cannot be allowed to give fresh justification now and/or re-argue his case on the ground that there is an error apparent on the face of record. He also submitted that the power of review is to be exercised by the Commission only for correction of clerical or arithmetical errors/mistakes in the order and not for correction of any '*error in judgment*' and hence the application for review of order dated 30.11.2011 was not maintainable. The learned counsel while pointing out that none of the grounds raised for review of the order has been justified by the petitioner, also submitted that review is by no means an 'appeal in disguise' whereby an erroneous decision is reheard and corrected, but lies only for a patent error. In this regard, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in *Parsion Devi & ors-v-*

*Sumitra Devi & ors (1997) 8 SCC 715* and the judgments of the Appellate Tribunal for Electricity dated 12.8.2011 in *Review Petition No. 2/2011 (in Appeal No. 26/2008)*, judgment dated 24.3.2009 in *Review Petition No. 1/2009 (in Appeal No. 64/2008)*, judgment dated 26.8.2011 in *Review Petition No. 1/2011 (in Appeal No. 24/2010)* and the judgment dated 19.1.2011 in *Review Petition No. 7/2009 (in Appeal No. 85/2007)*. The learned counsel further submitted that the grounds raised by the petitioner in this petition are devoid of merits and prayed that the review petition may accordingly be rejected.

6. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

7. We have heard the parties and have examined the documents on record. We now proceed to consider the issues raised by the petitioner, as discussed in subsequent paragraphs:

#### **(A) Calculation of Return on Equity**

8. The petitioner in original petition had considered the rate of Return on Equity @ 18.674%, based on the prevailing MAT rate (basic rate of 15%+10% surcharge+3% education cess =16.995%) for 2009-10 for calculation of Return on Equity for 2009-14. Accordingly, in paragraph 48 of the order dated 30.11.2011, Return on Equity

@17.481% per annum on the normative equity, after accounting for the additional capital expenditure considering the base rate of 15.5% and MAT rate of 11.33% was worked out for 2009-14 as under:

	<i>(₹ in lakh)</i>				
	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Gross Notional Equity	18737.70	18778.96	18797.35	18808.03	18815.41
Additions due to Additional capitalization	41.26	18.39	10.68	7.38	8.10
Closing Equity	18778.96	18797.35	18808.03	18815.41	18823.51
Average Equity	18758.33	18788.15	18802.69	18811.72	18819.46
Return on Equity (Base Rate)	15.500%	15.500%	15.500%	15.500%	15.500%
Min Alt. Tax rate for the year 2008-09	11.330%	11.330%	11.330%	11.330%	11.330%
Rate of Return on Equity	17.481%	17.481%	17.481%	17.481%	17.481%
<b>Return on Equity</b>	<b>3279.06</b>	<b>3284.27</b>	<b>3286.81</b>	<b>3288.39</b>	<b>3289.74</b>

9. The petitioner in this petition while pointing out that Regulation 15(4) of 2009 Tariff Regulations provides that the return on equity shall be rounded off to three decimal points, has also submitted that the Commission has erred in the calculation of Return on Equity by taking the rate as 17.48055% in place of 17.481%. It has therefore submitted that there is error apparent in the order and has prayed that the review of order may be considered by allowing the return on equity @17.481% for 2009-14.

10. The matter has been examined. It is observed that Return on equity for 2009-14 in order dated 30.11.2011 has been worked out @17.481% per annum on the normative equity, after accounting for the additional capital expenditure, considering the base rate of 15.5% and MAT rate of 11.33%, by applying the formulae i.e. Base rate/ (1-MAT rate). This methodology has been consistently followed in all the orders determining the tariff of the generating stations of the petitioner for 2009-14. As return on equity has been calculated in terms of Regulation 15(4) of the 2009 Tariff

Regulations, we are of the view that there is no error apparent in the face of the order. Hence, review of order on this count is rejected.

**(B) Error in the calculation of Depreciation**

11. The Petitioner has submitted that the Commission in para 33 of its order dated 30.11.2011 in Petition No.121/2010 has recorded that since the loan was fully repaid during the year 2007-08, the remaining depreciable value has been spread over the balance useful life of the generating station during the period 2004-09 vide order dated 3.9.2010 in Petition No.176/2009 and in line with the said decision, the remaining depreciable value has been spread over the balance life of the asset during the year 2009-10. The Petitioner has submitted that the decision of the Commission in para 33 of the order dated 30.10.2011 in Petition 121/2009 is against the express provisions of the 2009 Regulations on the basis of which the tariff has to be determined. The Petitioner has further submitted that in the past, NHPC has made loan repayments over and above and beyond the amount of depreciation plus advance against depreciation. As a result of such schedule of repayment, NHPC has not only borne considerable hardship in the initial years of the project, but the same has also translated into considerable benefits for the said beneficiaries in terms of lower interest charges / advance against depreciation for the subsequent years . It has been further submitted that Petitioner has made excess repayment of loan amounting to Rs.13944.79 lacs during the previous tariff period over and above the cumulative depreciation and AAD recovered through tariff up to 31.3.2009. As a result, the Petitioner had to pay additional interest on loans to the extent of excess loan repayment without getting any reimbursement of this amount through tariff. Though, the Petitioner has claimed depreciation in Petition No.121/2010, as per

clause 4 of the Regulation 17 of 2009 Tariff Regulations, the Commission has not determined the depreciation, as per the said regulation and has decided the depreciation in terms of its decision in order dated 3.9.2010 in Petition No.176 of 2009. The Petitioner has submitted that there is an error in calculation of depreciation during 2009-14 period and has requested for rectification of the error in the order. BSEB in its reply filed vide dated 10.4.2012 has submitted that there is no error in the order of the Commission and the Petitioner is seeking to re-open the issue on merit and cannot be allowed to do the same.

12. We have considered the submissions of the Petitioner and the Respondent. During the 2004-09 period, there was no minimum period for repayment of loan specified in the 2004 Tariff Regulations. As a result, the balance depreciable value of the assets was being spread over the remaining useful life of the assets after the loans were repaid. In case of the generating station, the entire loan was repaid during 2007-08 and spread over of depreciation started from 2008-09 onwards. Regulation 17(4) of the 2009 Tariff Regulations, provides as under:-

*"(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."*

13. As per the above regulation, depreciation shall be calculated annually based on Straight Line Method and at the rates specified in Appendix-III of the regulations. However, the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the date of commercial operation shall be spread over the balance useful life of the assets. The period of 12 years is required to be counted from the date of commercial operation of the generating station irrespective of

whether the loan repayment has been completed prior to the said period of 12 years. Moreover, there is no saving provision to insulate the generating stations from the operation of the proviso to Regulation 17(4) which have already repaid their loans during the tariff period 2004-07. Therefore, the provisions of the Regulation 17(4) will operate and the depreciation of the generating station will be determined strictly in accordance with the said regulation. We have already taken a similar view in order dated 16.6.2011 in Petition No.74/2010 pertaining to the tariff of Uri Hydroelectric Project. Accordingly, review is allowed on this ground. Since the generating station completed 12 years during the year 2011-12, the remaining depreciable value of the generating station shall be spread over from the year 2012-13 onwards. We direct that para 33 of the order dated 30.11.2011 shall be revised as under :-

*“The COD of the generating station is 15.2.2000. Since the generating station has completed 12 years of operation as on 15.2.2012, the weighted average rate of depreciation of 5.083%, calculated as per the 2009 Tariff Regulations, has been considered for the calculation of depreciation during 2009-10, 2010-11 and 2011-12. The remaining depreciable value has been spread over the balance useful life of the project from 2012-13 to 2013-14. The land under reservoir amounting to ₹41.23 lakh as on 31.3.2009 has also been considered for calculation of depreciation. Assets amounting to ₹7.47 lakh, ₹11.70 lakh, ₹15.40 lakh, ₹3.40 lakh and ₹5.00 lakh have been de-capitalized during 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively. The amount of cumulative depreciation allowed in tariff against these de-capitalized assets has been calculated on pro rata basis and the same has been adjusted from the cumulative depreciation of the year of de-capitalization.”*

Accordingly, depreciation is worked out as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Block as on 31.3.2009	49350.88	49488.41	49549.71	49585.31	49609.91
Additional capital expenditure during 2009-14	137.53	61.30	35.60	24.60	27.00
Closing gross block	49488.41	49549.71	49585.31	49609.91	49636.91
Average gross block	49419.65	49519.06	49567.51	49597.61	49623.41
Rate of Depreciation	5.083%	5.083%	5.083%	5.083%	5.083%
Depreciable value	44208.79	44298.26	44341.87	44368.96	44392.18
Balance Useful life of the asset	25.9	24.9	23.9	22.9	21.9
Remaining Depreciable value	27531.50	25111.68	22643.17	20158.07	19301.68
<b>Depreciation</b>	<b>2512.19</b>	<b>2517.24</b>	<b>2519.70</b>	<b>881.33</b>	<b>882.47</b>



### **(C) Error in calculation of O & M Expenses**

14. The petitioner, in its application, has pointed out certain errors in the calculation of various components under O&M expenses, and has prayed that the errors may be rectified for the reasons stated therein. The respondent, BRPL has submitted that the Commission in terms of Regulation 19(f) of the 2009 Tariff Regulations had considered the actual O&M expenses during the period 2003-04 to 2007-08 for any abnormal increase for the purpose of normalization duly considering the justification and arriving at the permissible O&M expenses for the year 2009-10, which was further escalated at the rate of 5.72% per annum to arrive at the permissible O&M expenses for the subsequent years of tariff period. The respondent has also submitted that the petitioner has not pointed out to any fundamental errors but has only made submissions pointing to errors in the judgment, which cannot be cured in a review petition. Based on the above submissions and the documents on record, we examine the issues raised under this head, in the subsequent paragraphs.

15. Taking into consideration the submission of the parties and the documents on record, we consider the issues raised by the petitioner as under:

#### **Administrative Expenses**

##### **(i) Filing Fees**

16. As regards the claim for filing fees under administrative expenses, the Commission in paragraph 49 of order dated 30.11.2011 has observed as under:

*"Filing fee expenses has been excluded for the purpose of normalization."*

17. The petitioner has submitted that the expenses on account of filing fee paid to the Commission for determination of tariff of the generating station may be considered in O&M expenses. In addition, the petitioner has submitted as under:

*"In terms of CERC (Payment of Fees Regulations), 2004, NHPC had paid filing fee of ₹25 lakh in FY 2004-05 to CERC. In the tariff period 2001-04, CERC had allowed reimbursement of filing fee from the beneficiaries. CERC while allowing tariff of the Salal Power Station for the period 2004-09 vide order dtd. 09.05.2006 observed as under: "94. The petitioner has sought reimbursement of filing fee of ₹25 lakh paid. A final view on reimbursement of filing fee is yet to be taken by the Commission for which views of the stakeholder have been called for. The view taken on consideration of the comments received shall apply in the present case as regards reimbursement of filing fee.*

*Keeping above fact in mind, we had kept this amount as recoverable from the beneficiaries; till the final view was taken by the commission vides order dated 11.09.2008 in Petition No. 129/2005 (suo-motu) as under:*

*"12. .... Recently, the CPSUs have furnished to the Commission past data of O&M expenses. On analysis of the data it has been found that the application filing fee constitutes less than 0.5% of the actual O&M expenses. The proportion of the application filing fee will be infinitesimally small when compared to overall tariff for the generating station or the transmission system. Year-wise, escalation being allowed in whole lot of O&M expenses seems to take care of the enhanced application filing fee."*

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*"14 In the light of above analysis, we decline the claim of the CPSUs to allow reimbursement of expenditure on the application filing fee. This decision will, however, not be quoted as a precedent for any decision on similar issue arising in future." Further, NHPC has claimed this amount of filing fees under O&M expenses during 2005-06 in Form-15B of the petition. Regulation 42 deals with the filing fees paid for the tariff period 2009-14, not for filing fees of previous tariff period 2004-09."*

18. The submissions of the petitioner have been examined. The norms of O&M expenses under sub-clauses (i) to (iii) of Regulation 19(f) of the 2009 Tariff Regulations is based on the actual O&M expenses for the period 2003-04 to 2007-08. Admittedly, the Commission by its order dated 11.9.2008 in Petition No. 129/2005 (*suo motu*) had rejected the claim of the petitioner for reimbursement of filing fees for 2004-09 by observing that the year-wise escalation allowed in O&M expenses has taken care of the enhanced application filing fee. Since the filing fee of

₹25.00 lakh claimed during 2004-09 has not been allowed to be reimbursed in terms of the decision contained in order dated 11.9.2008, the said expenditure has not been considered for the purpose of normalization of O&M expenses for the period 2009-14. Moreover, separate provision has been made by the Commission for reimbursement of expenditure for filing fees during the period 2009-14 under Regulation 42 of the 2009 Tariff Regulations. The expenditure on filing fees for the years 2009-10 and 2010-11 incurred by the petitioner has been allowed to be recovered from the beneficiaries in terms of para 81 of the order dated 30.11.2011. In view of this, there is no error apparent on the face of the record and accordingly, review on this count fails.

**(ii) Methodology of 20% restriction of expenses**

19. The petitioner in this application has objected to the methodology adopted by the Commission, by restricting the increase in expenses of a particular year to 20% of the expenses of the previous year. According to the petitioner, in some cases, the original claim was well within 120% of previous year expenses and therefore following the prescribed footnote under Form-15B, justification was not given. However, due to reduction of previous year expenses by the Commission, the increase in expenses of subsequent years becomes more. Therefore, in the absence of proper justification, Commission has again restricted the incremental increase to 20% of the previous year and in this manner all future expenses have been restricted.

20. We have considered the submissions of the petitioner. As per Appendix-II to Form-15 B to the petition, the annual increase in O&M expenses under a given head

in excess of 20% should be explained by the petitioner with proper justification. While normalization of O&M expenses, the abnormal expenses are to be excluded. It is not correct to assume that normal O&M expenses would increase by more than 20% every year and during the end of the five year period (2003-04 to 2007-08) these expenses would become 2.4 times the normal expenses. Normal O&M expenses would remain more or less constant, except on account of impact of inflation and other escalation factors. For the purpose of normalization of O&M expenses, based on prudence check, the abnormal increase in O&M expenses are either excluded or restricted to 20% increase (of the previous year) based on the justification submitted by the petitioner. If no justification for any increase is submitted by the petitioner the expenses are restricted on prudence check. In view of this, there is no error apparent on the face of the record and the submission of the petitioner for reconsideration of the issue is rejected.

21. Thus, the issues raised by the petitioner in this review petition are disposed of in terms of the above. Based on this, the annual fixed charges determined by order dated 30.11.2011 is revised as under:

22. In view of the above, the receivable component of the working capital in paragraph 70 of the order dated 30.11.2011 is revised as under:

	<i>(₹ in lakh)</i>				
	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Receivables	1478.19	1508.13	1538.79	1291.81	1325.55

23. Accordingly, the interest on working capital approved *vide* order dated 30.11.2011 in paragraph 72 of the order dated 30.11.2011 is revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	422.45	446.61	472.16	499.17	527.72
O & M expenses	234.69	248.12	262.31	277.32	293.18
Receivables	1478.19	1508.13	1538.79	1291.81	1325.55
Total	2135.34	2,202.86	2,273.26	2,068.29	2,146.44
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest on Working Capital	<b>261.58</b>	<b>269.85</b>	<b>278.47</b>	<b>253.37</b>	<b>262.94</b>

### Annual Fixed Charges

24. Based on the above discussions, the annual fixed charges for the period 2009-14 approved in paragraph 73 of the order dated 30.11.2011 stands revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	3279.06	3284.27	3286.81	3288.39	3289.74
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	2512.19	2517.24	2519.70	881.33	882.47
Interest on Working Capital	261.58	269.85	278.47	253.37	262.94
O & M Expenses	2816.33	2977.42	3147.73	3327.78	3518.13
<b>Total</b>	<b>8869.15</b>	<b>9048.78</b>	<b>9232.72</b>	<b>7750.87</b>	<b>7953.29</b>

25. The petitioner shall claim the difference in respect of the tariff determined by order dated 30.11.2011 and the tariff determined by this order from the beneficiaries in six equal monthly installments.

26. Review Petition No. 3/2012 is disposed of as above.

sd/-  
[M. Deena Dayalan]  
Member

sd/-  
[V.S. Verma]  
Member

sd/-  
[S. Jayaraman]  
Member

sd/-  
[Dr. Pramod Deo]  
Chairperson