

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 24/2011

in

Petition No. 108/2010

Coram:

Dr. Pramod Deo, Chairman

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 14.2.2012

Date of Order: 22.10.2012

IN THE MATTER OF

Review of order dated 14.6.2011 in Petition No. 108/2010 regarding approval of generation tariff of Loktak Hydroelectric Project (105 MW) for the period from 1.4.2009 to 31.3.2014.

AND

IN THE MATTER OF

NHPC Ltd, Faridabad

...Petitioner

Vs

1. Assam State Electricity Board, Guwahati
2. Department of Power, Government of Arunachal Pradesh
3. Electricity Department, Government of Mizoram
4. Tripura State Electricity Corporation Ltd., Agartala, Tripura
5. Meghalaya State Electricity Board, Shillong, Meghalaya
6. Electricity Department, Government of Manipur
7. Electricity Department, Government of Nagaland

...Respondents

Parties Present:

1. Shri R. Raina, NHPC
2. Shri S.K Meena, NHPC
3. Shri Amrik Singh, NHPC
4. Shri Jitendra Kumar Jha, NHPC



ORDER

Petition No. 108/2010 was filed by the petitioner, NHPC, for approval of generation tariff of Loktak Hydroelectric Project, (105 MW) (hereinafter referred to as “the generating station”) 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 ('the 2009 Tariff Regulations") and the Commission by its order dated 14.6.2011 determined the annual fixed charges for the generating station for the period 2009-14, as under:

	<i>(₹ in lakh)</i>				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	1188.30	1231.75	1275.87	1302.61	1307.78
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	552.37	648.31	762.64	846.48	869.05
Interest on Working Capital	355.88	377.07	399.70	422.43	444.61
O&M Expenses	6389.31	6754.78	7141.15	7549.62	7981.46
Total	8485.87	9011.91	9579.35	10121.14	10602.90

2. Aggrieved by the said order, the petitioner has filed this review petition seeking review of the order dated 14.6.2011 on the following issues, namely:

- (a) Disallowance of additional capital expenditure of certain assets during 2009-14;
- (b) Disallowance of expenses towards consumption of stores and R&M expenses for normalization of O&M expenses; and
- (c) Errors in calculation of administrative expenses and Annual Fixed Charges.

3. During the hearing on 14.2.2012, the representative of the petitioner made his submissions on the above issues and prayed that the order dated 14.6.2011 be reviewed for the reasons mentioned in the application. Reply to the application has been filed by ASEB (respondent no.1) and the petitioner has filed its rejoinder to the said reply.



4. Heard the application on the issues admitted by order dated 26.12.2011 including the issue of disallowance of additional capital expenditure of certain assets during 2009-14 and examined the documents on record. The representative of the petitioner made his submissions on the above issues and prayed that the order dated 14.6.2011 be reviewed for the reasons mentioned in the application. None appeared on behalf of the respondents. We now proceed to consider the issues raised by the petitioner, as discussed in subsequent paragraphs:

5. 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.

(A) Disallowance of Additional capital expenditure of certain assets during 2009-14

6. The petitioner has pointed out that the Commission in its order has not allowed the expenditure on certain assets, in terms of the findings of the Commission as under:

Assets	Value (in lakh)	Findings
Spare CVT	8.50	Not allowed since these assets are nature of spares
Training Equipment/Laptop/LCD Projector, PA system etc.	2.00	Not allowed since these assets are nature of minor assets
Welding set 3 phase, 400 Amps -2 nos.	5.00	Not allowed since these assets are nature of minor assets

7. The Commission in its order had disallowed the said assets, as above, based on the submissions of the petitioner in its original petition as under:

Spare CVT

Since the CVT available in power station are more than 25 years old as such it requires to keep spares CVT to avoid loss in power generation in case of CVT failure.

Equipment Laptop/LCD Projector, PA system etc.

These equipments are not available in our power station and required for day to day failure.

Welding Set 3 phase, 400 Amps-2 nos.

Available welding set is beyond economical repair. Replacement against the two nos. of welding set purchased during the year 1971-72 having Gross value of ₹35,063 and WDV of ₹1.

8. In justification of its claim, the petitioner has now submitted as under:

Spare CVT

The proposed CVT is not in the nature of spare; basically it will be used to replace the damaged CVT of the power station 132 KV CVTs installed in switchyard, which have become faulty due to aging. The condition monitoring test has been conducted by CPRI, Bangalore. The test report indicates high dielectric losses and capacitance change beyond limits. The said agency has also recommended the replacement of the CVT. The test report also indicated that one CVT failed in 2006 and is not in operation. Therefore, the above CVT is claimed for replacement of old CVT on the basis of CPRI recommendation & not for replacement of spare. The replacement is essential; otherwise it may lead to break down of equipment. This may also jeopardize the safety of other equipments connected with these CTs & other CVTs and personnel posted for monitoring the healthiness of these equipments. The test report is enclosed.

In this regard it is also submitted that existing equipment was commissioned as part of main generating plant & machineries (GPM). Hence, individual value of asset is not available in the records of Loktak Power Station.

In view of above justification, the Hon'ble Commission is requested to reconsider the above capitalization of CVTs after deducting the gross value of old asset, for this gross value of old asset be considered as 10% of new asset.

Equipment Laptop/LCD Projector, PA system etc

At present no facility is available at power station to provide training to its employee. Training and presentation are needed to be imparted to new engineers to keep abreast with latest technology for knowledge enhancement, updation of latest trends and other statutory guidelines and regulation of IEGC/grid guidelines etc. in the field of power generation. All the equipments are required for establishing a training facility at power house. These equipments are not minor in nature as substantial cost on purchase and maintenance is involved. Therefore, it is requested to reconsider the purchase of training equipment Laptop/LCD projector, PA system etc. on above ground.

Welding Set 3 phase, 400 Amps-2 nos.

Against the replacement of welding set, the justification and gross value of old assets provided as:

Available welding set is beyond economical repair & replacement against two nos. of Welding set purchased during the year 1971-72 having Gross value of ₹35,063 and WDV of ₹1.'

As mentioned above, the petitioner has given sufficient reason for replacement. As already stated, that purchase was made in 1971-72, so considering the price level of 40 year ago, these equipments are not minor in nature as substantial cost on purchase and maintenance is involved. This is omission by CERC." In view of above justification, the Hon'ble Commission may kindly reconsider the above capitalization of welding set after deducting the gross value of old asset.

9. The Respondent No.1, ASEB in its reply has submitted that the claims of the petitioner do not have any contribution on successful and efficient operation of the plant as envisaged under Regulation 9(2)(iv). As regards capitalization of CVT, the respondent has submitted that Regulation 9(2) does not have that provision to qualify the claim of spares as additional capitalization nor the recommendation of CPRI, Bangalore can be ground to justify the claim of the petitioner. As regards capitalization of training equipments and welding set, the respondent has submitted that these equipments are basically of O&M nature and not to be allowed by the Commission.

10. We have considered the submissions of the parties. The Commission by a conscious decision has disallowed the capitalization of these assets, based on the submissions of the petitioner. The petitioner, in this application has submitted additional information justifying the expenditure. The petitioner cannot be permitted to reopen the case on merits and seek review of the order. We are of the view that these assets are either in the nature of spares or in the nature of minor assets, which cannot be permitted to be capitalized under the provisions of Regulation 9(2) of the 2009 Tariff Regulations. In the circumstances, in our view, there is no error apparent

on the face of record and consequently, the petitioner's prayer for review of order on this count is rejected.

Replaced construction of permanent building during 2010-11, 2011-12 and 2012-13

11. The Commission had disallowed the capitalization of replaced construction of permanent building during 2010-11, 2011-12 and 2012-13 on the ground that proper justification has not been furnished and that the useful life of the asset like buildings should be 50 years, based on the submissions of the petitioner in its original petition as under:

“Residential building- Replaced against O-type quarter at surge shaft constructed during 1979-80 having Gross value of ₹3,35,245.

Residential building-Permanent-This project having all temporary buildings for residential purpose whose life is more than 35 years and the repair maintenance is very costly. As such construction of permanent residential building is badly required. Replaced against type-III quarters of old colony. Gross value of assets is ₹3,89,997 having WDV of ₹19,500.

Residential buildings-Permanent-The present quarters are temporary and more than 35 years old. The repair maintenance is very costly. Require replacement with new construction. Type III quarters at old colony constructed during the financial year 1976 having gross value of ₹3,89,997 and WDV of ₹19500.

Residential building- Permanent-All most all O-type temporary quarters were constructed during 1978-79 and become structurally weak, hence permanent building required.”

12. In this regard, the petitioner has now justified the expenditure as under:

“Surge Shaft and Valve house is located at Jeewan Nagar. The Valve house is an important location where butterfly valves are installed. For security of penstock as well as for operation of Valve house during an emergency situation, personnel's are to be housed round the clock at this location. The present quarters were constructed in 1977-80 and are of semi permanent nature with GI sheet roofing which has already outlived its useful life. Replacement against O-type Quarter at surge shaft constructed during 1979-80 having gross value of ₹3,35,245.

In view of above justification, Hon'ble Commission may kindly reconsider the above capitalization to replace construction of one semi permanent type-I building having 4 Nos. of quarters at Surge Shaft after deducting the gross value of old asset.

All others as mentioned in the table, are residential buildings, presently are in use in the project and are temporary buildings which were constructed in 1979-80. The building



constructed had no RCC foundation. The super structure was supported on wooden pillars. The walls are made up of bamboo net (ekra walling) having plaster on both sides. The roofing is of GI sheet supported on wooden structure with false ceiling. As per the CPWD norms these type of building are considered under temporary structures. Therefore, the useful life cannot be assessed as 50 years. The present buildings have already surpassed the useful life and are more than 35 years old now. These buildings have become beyond repair. Some of the quarters, which are in very dilapidated condition are not safe to live and are proposed for replacement. Petitioner is in the process of reducing the O&M expenditure in terms of reduction in expenditure against R&M of these old buildings. Moreover, petitioner also submitted the gross value of assets. Therefore, it is required to reconsider the case and allow the above mentioned replacement construction.”

13. The Respondent No.1 ASEB has submitted that the petitioner has already spent around ₹100.00 lakh during 2001-09 for replacement of construction building, and an amount of ₹13.00 lakh for construction of other accommodation like field hostel etc. and before admitting such expenditure like replacement of construction building and construction of permanent building in 2011-12 and 2012-13, the Commission should consider the number of employee's vis-à-vis number of quarters and hostel. As the petitioner recovers house rent, the expenditure should not be considered in capital cost. It has also submitted that the provisions of the 2009 Tariff Regulations do not contain provision for consideration of any expenditure incurred on such type of permanent/semi-permanent residential building which do not have direct bearing on successful and efficient operation of the plant to be allowed as additional capitalization. It has further submitted that the practice of additional capital expenditure incurred at the fag end of the project life should not be encouraged in the overall interest as per the tariff guidelines mandated under sub-para (c), (d), (e) of section 61 of the Electricity Act 2003.

14. On perusal of the submissions of the petitioner in the petition, it is noticed that the petitioner had indicated the temporary nature of the residential building and the need for construction of permanent building. This fact was lost sight of while denying

the expenditure under this head in our order. In our view, this is an error apparent on the face of the record and needs to be rectified on review. As regards the contention of the respondent, ASEB that the nature of the residential accommodation do not contribute towards the successful and efficient operation of the plant, we are of the view that proper and safe accommodation for the officers and staff of the plant is a minimum requirement which has a bearing on the morale of the officers and staff and contribute towards the efficient operation of the generating station. Hence, review of order dated 14.6.2011 on this count is allowed.

Construction of transit Camp and Field Hostel Building during 2010-11 and 2011-12

15. The claim of the petitioner for capitalization of expenditure towards the Construction of transit Camp and Field Hostel Building for ₹60.00 lakh during 2010-11 and ₹40.00 lakh during 2011-12 was disallowed on the ground that proper justification was not furnished, based on the submission of the petitioner in the original petition as under:

“Since lot of officers are bachelor/forced bachelor due to insurgency problem in the state of Manipur, as such the demand of bachelor accommodation of official posted from outside it has increased for which it requires the permanent field hostel which is not available in the project. Proposed construction of Field Hostel kept in 2010-11 shall continue up to 2011-12.”

16. In justification of its claim, the petitioner has now submitted as under:

“as on date there are 65 officers posted at Loktak Power station, most of the officers belong to the states other than Manipur. As no officer from outside Manipur state prefers to be posted at Loktak due to hard condition and insurgency prevailing in the area, the officers are posted as per transfer policy of the corporation, wherein the tenure is around three years for NE projects. In the wake of poor law and order situation, lack of higher education and specialized medical facilities, etc therefore officers are reluctant to bring their families to Manipur. This has necessitated for increase in the requirement of bachelor accommodation. The present guest house has only seven rooms which are being used for temporary housing of officers, visit of expert/technical teams, security personnel and other dignitaries etc. in view of this a permanent field hostel for housing the bachelor officers is required at power station which is presently not available in the power station.”



17. The respondent No.1 ASEB has submitted that it is not at all prudent to spend such type of huge expenditure on construction of either transit camps and field hostels or permanent quarters as the project is hardly 7 to 8 years of its normal life and instead the petitioner may be advised to use the existing vacant quarters as transit camps/hostels by allotting to two/three officers to stay together depending upon the floor area. Thus, it has submitted the problem would be solved and at the same time the project cost also does not increase.

18. The submissions of the parties have been examined. The Commission on prudence check and based on the available documents had disallowed the capitalization of expenditure in respect of this asset. It is noticed that the petitioner has sought to reopen the case on merits, which is not permissible in review. It is not the case of the petitioner that despite the exercise of due diligence these facts could not be made available at the time of finalizing the said petition. The Commission while disallowing the claims on these assets had also not given any liberty to claim the said asset after submission of proper justification. Hence, we are of the view that there is no error apparent on the face of the order and there is also no sufficient reason to review the order dated 14.6.2011, on this count. Therefore, review on this count fails.

19. Accordingly the Additional capital expenditure allowed for 2009-14 in the table under paragraph 26 of our order dated 14.6.2011, is revised as under:

	<i>(₹ in lakh)</i>				
	2009-10	2010-11	2011-12	2012-13	2013-14
Additional Capital Expenditure Allowed	801.05	859.73	902.46	248.66	3.72

(B) Error in calculation of O & M Expenses

20. The petitioner has pointed out to certain errors in calculation of various components in O&M expenses, and has prayed that the errors may be rectified for the reasons stated therein. Therefore, taking into consideration the submission of the parties and the documents on record, we consider the issues raised by the petitioner as mentioned as under:

(i) Consumption of Stores

21. The Commission while disallowing the consumption of capital spares amounting to ₹115.97 lakh during 2005-06 in paragraph 40(a) of the said order has observed as under:

“(a) Consumption of Spares: It is observed that during 2005-06, the expenditure on account of consumption of stores and spares increased by over 14 times the previous year, the capital spare amount of ₹115.97 lakh was charged to revenue expenditure during 2005-06 on account of the change in accounting policy of the petitioner company. Hence, the amount of ₹115.97 lakh for 2005-06 has not been considered for the purpose of normalization of O&M expenses.”

22. In justification of its claim the petitioner has now submitted as under:

“In para 44(a) of the above order, Commission has not considered consumption of capital spares amounting to ₹115.97 lakh during 2005-06. This is an omission as the Commission, while allowing additional capitalization for the period 2001-04 of Loktak Power station has observed and directed in para-30 of order dated 2.3.2006 in Petition No. 93/2005 as under:

“The petitioner has claimed an amount of ₹110.92 lakh (₹108.40 lakh in 2002-03 and ₹2.50 lakh 2003-04) towards capitalization of spares, as per its accounting policy and based on Accounting Standard-2 of the Institute of Chartered Accountants of India. Capitalization of additional spares over and above the reasonable spares already capitalized as initial spares within the approved capital cost. The generating station has been in operation for nearly 22 years. Capitalization of spares claimed by the petitioner cannot be allowed at this stage. However, the spares to the extent actually consumed for repairs & maintenance works during the years 2002-03 and 2003-04 may be considered as part of O&M expenses”

Based on this observation or direction, the actual consumption spares has been claimed by the petitioner, by charging the capital spares to O&M expenses on their consumption by changing its accounting policy. This amount is cumulatively charged to revenue which was consumed during 2003-04, 2004-05 & 2005-06. In view of this it is a normal increase if it spread in three years & this fact was also disclosed during Additional capitalization Petition No. 191/2009 of Loktak Power station. Further,

Loktak Power station is one of the oldest power station of NHPC which has been in operation for nearly 28 years now. As such, increase in expenses on consumption of stores & spares and on "Repair & Maintenance" are normal."

23. The Respondent, No.1 ASEB has submitted that the Commission has clearly mentioned in paragraph 30 of the earlier order dated 2.3.2003 in Petition No. 93/2005 that the capitalization of additional spares over and above the reasonable spares has already been capitalized as initial spares within the approved capital cost and on that basis the Commission did not allow the same in that order. It has also submitted that In tariff order dated 4.10.2006 in Petition No. 171/2004 for 2004-09, the Commission had observed that the actual amount of spares consumed can be considered under O&M expenses, subject to the satisfaction of the Commission. Also, as per the 2009 Tariff Regulations, if the O&M expenditure of a year escalates more than 120% of the preceding year then such type of excess O&M expense is considered as an abnormal O&M and in that case admissibility of such excess expenditure is subject to satisfaction of the Commission.

24. The submission of the petitioner has been examined. It is observed that the consideration of actual consumption of spares as part of the O&M expenses is in accordance with the order of the Commission dated 2.3.2006 in Petition No.93/2005 and this aspect had been overlooked by the Commission, in its order, while disallowing the claim of the petitioner for 2005-06 and 2006-07 under this head. This is an error apparent on the face of the order and review on this count is allowed. Accordingly, the expenditure towards consumption of stores & spares amounting to ₹115.97 lakh during 2005-06 is allowed for calculation of O&M expenses for 2009-14.

(ii) Repair and Maintenance (R&M) during 2005-06

25. The Commission had not considered the R&M expenses as claimed by the petitioner during 2005-06 and the increase in expenses had been restricted to 20% of the expenses of previous years, based on the submission of the petitioner in the original petition as under:

“Since this is an old project and all the parts are more than 25 years old, as such different component of power station including the residential and office building are required over hauling/repair/replacement. Therefore, the R&M expenses are more than 20% as compared to the previous year.”

26. In justification of its claim, the petitioner has now submitted as under:

“CERC has not considered R&M expenses as claimed during 2005-06 & incremental rise has been restricted to 20% of expenses of previous years. The reason for not considering the claim has been given in paragraph 44(b) as under:

“During 2004-05, the expenses on this count increased by 38% as compared to the previous year. The petitioner has submitted that the increase was mainly on account of increase in expenditure related to R&M of residential colony, roads and bridges, as the project was very old and these assets were in deteriorated condition. In view of this, the amount claimed has been considered for the purpose of normalization of O&M expenses. Also, during 2005-06, the R&M increased by 54% as compared to the previous year on account of undertaking repairs of the residential and office building. Since the increase in expenses due to repairs of the residential colony has already considered during 2004-05, the expenditure for 2005-06 is restricted to 20% of the expenses for 2004-05 and is considered accordingly.”

It is to mention here that the generating station was commissioned in 1.6.1983 and as explained by the petitioner and acknowledged by the Commission in above referred para of the order that all the buildings, roads etc. are in deteriorated condition. So repair and maintenance of these assets were carried out in 2004-05 & 2005-06 in phased manner, the Commission only considered expenses as claimed in 2004-05 and expenses during 2005-06 were restricted to 120% of 2004-05.

It is pertinent to mention here that looking into the conditions of old buildings, NHPC have proposed replacement of old buildings in projected additional capitalization of 2009-14 in Petition No. 108/2010, which has also not been allowed by the Hon'ble Commission. In the view of above, it is requested to reconsider the R&M expenditure claimed by the petitioner for normalization of O&M expenses.”

27. The Respondent No.1, ASEB has submitted that the Commission in order has justified the reasons for disallowance and considering the period of remaining life of the project the steps taken by the Commission is fully justified and no review is required.



28. The submission of the petitioner has been examined. The Commission after prudence check, had restricted the claim of the petitioner to an increase of 20% over the previous year expenses, based on the submissions of the petitioner. The petitioner cannot be permitted to re-agitate the issue on merits, in this application. It is noticed that R&M expenses had increased by 54% during 2005-06 as against the previous year and no specific reason was submitted by the petitioner. Hence, for the purpose of normalization, the expense for 2005-06 has been restricted to an increase of 20% of the expenses for the previous year. Accordingly, there is no error apparent on the face of record and review on this count is rejected.

(iii) Administrative Expenses

(a) Electricity charges for 2003-04

29. The petitioner has submitted that the Commission in its order has not considered the electricity charges of ₹33.14 lakh for 2003-04 but has considered the electricity charge equal to the year 2004-05 and the same is not in line with the approach of the Commission and inconsistent with Form-15 B of the 2009 Tariff Regulations.

30. The petitioner in the original petition had not submitted any justification for the increase of electricity charges during 2003-04. In this regard, the petitioner has now submitted as follows:

“CERC has not considered electricity charges of 2003-04 as ₹33.14 lakh (as claimed by the petitioner) and has been considered equal to following year i.e. 2004-05. This is not in line with the approach followed by the Commission and inconsistent with the footnote (II) of Form-15B on CERC Tariff Regulations, 2009. The above footnote is reproduced as under:

“An annual increase in O&M expenses under a given head in excess of 20 percent should be mentioned separately.”

In view of the above footnote, justification for more than 20% increase in O&M expenses from previous years has been given where ever required and therefore the first year expenses i.e. O&M expenses of 2003-04 need not be compared with the O&M expenses of 2004-05. This methodology adopted by the Commission will not encourage the entities to reduce O&M expenses in following years.

In view of the above, it is requested to reconsider claim for normalization of O&M expenses.

i) The petitioner has stated that CERC had not considered the payment of ₹33.56 lakh in 2006-07 to NERLDC and observed that “this amount, being a one-time payment has not been considered for the purpose of normalization, since no proper justification has been submitted by the petitioner for payment of the said wheeling charges.”

ii) In this regard it is to submit that the above payment made against billing for transmission charges of ISTS and states as per REA. This was as per CERC order dated 6.9.2004 in Petition No. 13/2004. The transmission charge @35 paise per unit under Uniform Common Pool Transmission Tariff (UCPIT) was charged.”

31. The Respondent No.1 ASEB has submitted that the claim for electricity charge for 2003-04 do not contain any justification note as claimed by the petitioner and the claim relating to 2006-07 for ₹40.56 lakh is related to NER transmission charge on account of either UI charge or bilateral sale following the Commission’s order dated 6.9.2004 in Petition No. 13/2004. It has also submitted that as per paragraph 13 of the said order, the Central Sector Generating Stations (CSGS) got relief from paying this NER transmission charge and those claims earlier made to CSGS are subsequently diverted to the beneficiary states. Therefore, the respondent has already accepted its share of NHPC bill.

32. The submissions of the petitioner are not acceptable. As no justification was submitted by the petitioner, the claim for the year 2003-04 for electricity charges was restricted to the expenses equal to the year 2004-05, based on the submissions made by the petitioner. The matter cannot be reargued based on the submissions of

the petitioner, in review. Moreover, it is clear from the Commission's order dated 6.9.2004 in Petition No.13/2004 that in case a central generating station injects energy into the NER grid in excess of that scheduled by NER beneficiaries, either on account of a bilateral or as UI, the central generating station shall pay the UCPTT rate on such excess energy. However, these expenses are to be borne by the petitioner on account of earning of UI or bilateral transaction and the beneficiaries cannot be burdened. Also, as per Appellate Tribunal's order, the CSGS had been relieved from payment of these charges and the same was diverted to the beneficiary states. In the circumstances, we find no error apparent on the face of the record and review on this count is rejected.

(b) Communication Expenses

33. The Commission while restricting the claim of the petitioner towards Communication in paragraph 44 (iii) of the said order, had observed as under:

“Communication expenses: The expense towards communication during 2007-08 increased by 97% as compared to the previous year's normalized expenditure. This was due to internet bandwidth charges for VSAT and charges for LDST and INMARSAT. Hence, the expenses claimed are restricted to 20 % as the rates for communication channels are highly competitive in nature.”

34. In justification of its claim, the petitioner has now submitted as under:

“CERC has restricted the expenses towards communication during 2007-08 to 20% of previous year mentioning the rates for communication channels like LDST and INMARSAT are highly competitive in nature. However, it is to mention that the Loktak Power station is located at a remote and far flung place and power house is 25 km further away in an inhabited area which is militancy infested and normal movement of NHPC staff is not warranted. As such satellite communication is very essential at power house site as no other mode of communication is reliable. Moreover, for generation and other data gathering from power house satellite based communications are utilized. For this purpose satellite based communication system such as VSAT, LDST, Inmarsat have been installed. Operation/maintenance charges of these systems of these systems are very high. As such there was increase in expenditure towards this. In view of the submissions made herein above, the expenses of account of communication expenses for determination of tariff of the Loktak Power station may be considered in O&M expenses.”

35. The Respondent No.1, ASEB has submitted that for reliable data collection and other communication of regional interest the RLDC network coverage is already



there and the communication expenditure is for its internal communication. Hence, order of the Commission is justified.

36. The matter has been examined. The Commission in its order had given proper reasons for restricting the claim of the petitioner under this head for 2007-08. The petitioner cannot be permitted to submit additional information and seek to reopen the matter on merits, which is not permissible in review. Therefore, in our view the petitioner has not demonstrated the existence of any error apparent on the face of the record and consequently, the review of order on this count fails.

(iv) Filing Fees

37. 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 mainly 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 dated. 9.5.2006 observed as under:

"92. 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.

Further the Hon'ble Commission *vide* order dated 11.9.2008 in Petition No. 129/2005 (suo-motu) directed 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."

XXXX



"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."

38. 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 paragraph 77 of the order dated 14.6.2011. In view of this, there is no error apparent on the face of the record and accordingly, review on this count fails.

(v) Other (Specific items) (Other Miscellaneous Expenses)

39. The Commission while restricting the claim of the petitioner under this head has in paragraph 60 of the said order, observed as under:

"60. It is observed that Other miscellaneous expenses during 2004-05 has increased substantially as compared to the previous year on account of the increase in the



expenditure on training program, license & registration fees for getting the explosive license for petrol and diesel pump and renewal of power house registration, conferences & seminar, guest house and field hostel consumables, NEREB meeting and miscellaneous office expenditure. After examining the claims and the justification submitted, the expenses on this count have been restricted to an increase of 20% and allowed. Similarly, the expenses for 2005-06, 2006-07 and 2007-08 have been restricted to an increase of 20% of the expenses claimed. Expenses on staff car for the years 2006-07 and 2007-08 have also been restricted to an increase of 20% over the previous year.”

40. The petitioner in the original petition had submitted as under:

“Expenditure increase on account of lump sum payment of ₹1,24,70,729 against compassionate appointment as compared to previous year.”

41. In justification of its claim, the petitioner has now submitted as under:

“The petitioner claimed ₹157.64 lakh and ₹124.91 lakh during 2006-07 & 2007-08 in which the major component is lump-sum payment of ₹124.71 lakh in 2006-07 and ₹68 lakh in 2007-08, made against compassionate appointment to legal heirs of deceased employee, which was introduced in 2005-06. Apart from this component the rise in expenditure of ₹32.93 lakh (157.64-124.71) and ₹54.91 lakh (124.91-68) in 2006-07 and 2007-08 respectively is normal in nature.”

The above claim made by the petitioner has not been considered by CERC without citing any reason & incremental rise has been restricted to 20% of expenses of previous year. However, it is to mention that lump sum payment scheme in lieu of compassionate appointment to legal heirs of deceased employee was introduced in 2005-06. A total of 27 cases were settled against this scheme in 2006-07 amounting to ₹124.71 lakh. Further, 12 cases amounting to ₹68 lakh was also settled in 2007-08 under this scheme. Through the scheme lump sum payment to the legal heirs of deceased employee were made and it contributed towards keeping our manpower constant. Such expenses are part and parcel of service terms & conditions of employees to give social security to the dependents of deceased employee in lieu of compensatory appointment/job. Due to sad demise of employees, corporation has paid above huge amount which has resulted in reduction of recurring expenditure i.e. salary, wages, perks etc. Also this is not an incentive/disincentive anyway which may be borne by the petitioner.

In view of the above ground if the expenditure of ₹157.64 lakh in 2006-07 has been considered, in that case, the expenditure of ₹124.91 lakh claimed in 2007-08 will be less than that of 2006-07.”

42. The Respondent No.1 ASEB has objected to the claim of the petitioner and has submitted that the petitioner should meet the expenditure from the profits earned by the generating station.

43. The Commission in its order has considered the claim of the petitioner under this head and has restricted the claim for the reasons mentioned therein. In our view, the matter cannot be permitted to be re-opened and there is no error apparent on the face of the order. Hence, review on this count fails.

(vi) Error in Employee cost

44. The Salary wages and allowances pertaining to Employee cost, corporate office expenses and regional office expenses as allowed by the Commission in the table under paragraph 61 of the order dated 14.6.2011 is as given under:

		<i>(₹ in lakh)</i>				
		2003-04	2004-05	2005-06	2006-07	2007-08
6	Employee cost	2903.05	3054.20	3140.83	3077.46	3138.48
7	(a) Corporate office expenses	44.20	43.09	43.86	61.75	54.43
	(b) Regional office expenses	0.00	0.00	50.44	29.04	20.90

45. The petitioner, in this application has submitted as under:

“In paragraph 64 of the order, while arriving at percentage of employee cost, the CERC has not considered the employee cost component of corporate office expenses and regional office expenses. This is omission by the CERC. Therefore, percentage of employee cost needs to be reworked by Hon’ble Commission in view of above omission.”

46. The matter has been examined. It is noticed that an error had occurred in the calculation of percentage of employee cost component as the Corporate office expenses and Regional office expenses were not segregated into Employee cost expenses and O&M expenses other than the Employee cost. This according to us is an inadvertent error which is sought to be corrected by this order. Hence, review on this count is allowed and the expenses allowed under employee cost, corporate office expenses other than employee cost and regional office expenses other than employee cost have been corrected and are mentioned overleaf:

	(₹ in lakh)				
	2003-04	2004-05	2005-06	2006-07	2007-08
Employee cost of the project allowed	2903.05	3054.20	3140.83	3077.46	3138.48
Employee cost of the Regional office allowed	30.45	31.25	33.07	47.75	41.87
Employee cost of the Corporate office allowed	0.00	0.00	34.59	21.69	14.90
Total Employee cost allowed.	2933.50	3085.45	3208.49	3146.90	3195.24

Methodology of 20% restriction of expenses

47. 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.

48. 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.

49. Based on the discussions in the foregoing paragraphs, the O&M expenses considered for the period 2003-04 to 2007-08 for calculation of O&M expenses for 2009-14 is revised as under:

(₹ in lakh)

		2003-04	2004-05	2005-06	2006-07	2007-08
(A)	Breakup of O & M expenses					
1	Consumption of Stores and Spares	18.70	15.55	239.99	82.37	7.67
2	Repair and maintenance	222.49	307.41	368.89	313.93	240.44
3	Insurance	76.90	78.38	74.17	75.93	76.02
4	Security	0.00	0.00	0.00	0.00	0.00
5	Administrative Expenses	69.08	74.28	75.19	95.33	95.12
6	Employee Cost (project, security forces, kendriya vidyalaya, staff welfare expenses)	2903.05	3054.20	3140.83	3077.46	3138.48
7	Employee cost (Corporate centre)	30.45	31.25	33.07	47.75	41.87
8	Employee cost (regional office)	0.00	0.00	34.59	21.69	14.90
9	Total employee cost	2933.50	3085.45	3208.49	3146.90	3195.24
10	Provisions	0.00	0.00	0.00	0.00	0.00
11	Corporate office expenses allocation other than employee cost	13.75	11.84	10.79	14.00	12.56
12	Regional office expenses allocation other than employee cost	0.00	0.00	15.85	7.35	6.00
13	Others (Specify items)	31.83	35.08	37.26	45.92	46.25
14	Total (1 to 13)	3366.25	3607.99	4030.64	3781.73	3679.30
15	Revenue/ Recoveries, if any	27.24	20.01	59.68	26.71	22.07
16	Net Expenses	3339.01	3587.98	3970.96	3755.02	3657.23

50. The average employee cost works out to 85.064% of the average O&M cost. Accordingly, the year-wise O&M expenses for the generating station after applying escalation @ 5.72% from 2008-09 and 50% increase of employee cost by considering the percentage of averaged normalized employee cost for the tariff period 2009-14 is revised and allowed as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Expenses allowed	6454.12	6823.30	7213.59	7626.21	8062.43

51. Thus, the issues raised by the petitioner in this application, is disposed of in terms of the above. Based on this, the deletions for the period 2009-14 shown in the table under paragraph 24 of the order dated 14.6.2011 is revised, as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Deletions claimed	0.35	21.30	11.28	21.63	1.78
Less: Deletions disallowed	0.35	0.00	0.00	0.00	0.00
Deletions allowed	0.00	21.30	11.28	21.63	1.78
Add: Assumed deletions	66.08	89.92	91.01	29.21	0.00
Total Deletions	66.08	111.22	102.29	50.84	1.78

52. Based on the above discussions, the annual fixed charges of the generating station for 2009-14 are revised as under:

Capital Cost

53. The capital cost allowed in paragraph 27 of the order dated 14.6.2011 in Petition No. 108/2010 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Capital Cost	14240.52	15041.57	15901.30	16803.76	17052.42
Additional Capitalization allowed	801.05	859.73	902.46	248.66	3.72
Capital Cost as on 31.3.2009	15041.57	15901.30	16803.76	17052.42	17056.14

Return on Equity

54. Return on equity as worked out in paragraph 32 of the order dated 14.6.2011 is revised overleaf:



	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Notional Equity	6677.70	6918.02	7175.94	7446.67	7521.27
Additional Capitalization	240.31	257.92	270.74	74.60	1.12
Closing Equity	6918.02	7175.94	7446.67	7521.27	7522.39
Average Equity	6797.86	7046.98	7311.30	7483.97	7521.83
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%
Return on Equity	1188.33	1231.88	1278.09	1308.27	1314.89

Depreciation

55. Depreciation worked out in paragraph 38 of the order dated 14.6.2011 is revised as under:

"Assets amounting to ₹66.08 lakh, ₹111.22 lakh, ₹102.29 lakh, ₹50.84 lakh and ₹1.78 lakh have been de-capitalized during 2009-10, 2010-11, 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 has been worked out as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Block as on 31.3.2009	14240.52	15041.57	15901.30	16803.76	17052.42
Additional capital expenditure during 2009-14	801.05	859.73	902.46	248.66	3.72
Closing gross block	15041.57	15901.30	16803.76	17052.42	17056.14
Average gross block	14641.04	15471.43	16352.53	16928.09	17054.28
Depreciable Value	13141.04	13888.39	14681.37	15199.38	15312.95
Balance Useful life of the asset	9.17	8.17	7.17	6.17	5.17
Remaining Depreciable Value	5063.41	5296.13	5504.80	5314.87	4598.51
Depreciation	552.37	648.51	768.11	861.87	890.03

Interest on Working Capital

56. The components of working capital allowed in paragraph 67 (a) (b) (c) of the order dated 14.6.2011 are revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Receivables	1425.66	1514.03	1610.55	1703.84	1786.10

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	968.12	1023.50	1082.04	1143.93	1209.36

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
O & M Expenses	537.84	568.61	601.13	635.52	671.87

57. Accordingly, the Interest on working capital in the table under paragraph 69 of the order dated 14.6.2011 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	968.12	1023.50	1082.04	1143.93	1209.36
O & M expenses	537.84	568.61	601.13	635.52	671.87
Receivables	1425.66	1514.03	1610.55	1703.84	1786.10
Total	2,931.62	3,106.14	3,293.72	3,483.29	3,667.33
Interest on Working Capital	359.12	380.50	403.48	426.70	449.25

Annual Fixed Charges

58. Based on the above, the annual fixed charges approved by order dated 14.6.2011 in Petition No. 108/2010 for the period 2009-14 stands revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	1188.33	1231.88	1278.09	1308.27	1314.89
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	552.37	648.51	768.11	861.87	890.03
Interest on Working Capital	359.12	380.50	403.48	426.70	449.25
O & M Expenses	6454.12	6823.30	7213.59	7626.21	8062.43
Total	8553.94	9084.19	9663.27	10223.05	10716.60

59. The petitioner shall claim the difference in respect of the tariff determined by order dated 14.6.2011 and the tariff determined by this order from the beneficiaries in six equal monthly installments.

60. Except the above, all other terms contained in the order dated 14.6.2011 in Petition No. 108/2010 remains unchanged.

61. Review Petition No. 24/2011 in Petition No. 108/2010 is disposed of as above.

Sd/-
[M. Deena Dayalan]
Member

Sd/-
[V. S. Verma]
Member

Sd/-
[S. Jayaraman]
Member

Sd/-
[Dr. Pramod Deo]
Chairperson

