

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 14/2011

in

Petition No. 75/2010

**Coram: Shri S. Jayaraman, Member
Shri V.S. Verma, Member**

Date of Hearing: 12.1.2012

Date of Order: 15.6.2012

IN THE MATTER OF

Revision of order dated 10.5.2011 in Petition No. 75/2010 regarding approval of generation tariff of Tanakpur Hydroelectric Project (3 x 31.4 MW) for the period from 1.4.2009 to 31.3.2014.

AND

IN THE MATTER OF

NHPC Ltd, Faridabad

...Petitioner

Vs

1. Punjab State Electricity Board, Patiala
2. Haryana Power Generation Corporation Ltd., Panchkula
3. BSES-Rajdhani Power Ltd., New Delhi
4. Uttar Pradesh Power Corporation Ltd, Lucknow
5. BSES-Yamuna Power Ltd., New Delhi
6. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
7. North Delhi Power Ltd., Delhi
8. Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
9. Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur
10. Uttarakhand Power Corporation of Ltd., Dehradun
11. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
12. Himachal Pradesh State Electricity Board, Shimla
13. Engineering Department, UT Secretariat, Chandigarh
14. Power Development Department, Govt. of J&K, Jammu

...Respondents

Parties Present:

1. Shri R.Raina, NHPC
2. Shri Amrik Singh, NHPC
3. Shri S.K.Meena, NHPC
4. Shri M.D.Faruque, NHPC
5. Shri C.Vinod, NHPC
6. Shri R.B.Sharma, Advocate, BRPL &BYPL
7. Shri T.P.S.Bawa, PSPCL

ORDER

The present petition was filed by the petitioner, NHPC, for approval of generation tariff of Tanakpur Hydroelectric Project, (3 x 31.4 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 and the Commission by its order dated 10.5.2011 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	1715.10	1734.28	1755.93	1767.54	1769.29
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	894.17	912.61	936.42	952.25	954.75
Interest on Working Capital	283.00	296.86	311.63	326.82	342.36
O&M Expenses	4570.40	4831.82	5108.20	5400.39	5709.29
Total	7462.67	7775.05	8112.18	8447.00	8775.69

2. Aggrieved, the petitioner has filed this review application seeking review of the order dated 10.5.2011 on the following issues, namely:

(a) Disallowance of additional capitalization on certain assets/items for 2009-14; and

(b) Errors in the calculation of O&M expenses.

3. By order dated 2.11.2011, the application was admitted on the above issues and notices were issued to the respondents. Reply to the application has been filed by PSPCL (respondent no.1) and BRPL (respondent no.3) and the petitioner has filed its rejoinder to the said replies.

4. During the hearing on 12.1.2012, the representative of the petitioner made his submissions on the above issues and prayed that the order dated 10.5.2011 be reviewed for the reasons mentioned in the application.

5. The learned counsel for the respondent, BRPL and the representative of the respondent, PSPCL have, 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. They have 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 was not maintainable. The learned counsel for respondent, BRPL while pointing out that none of the grounds raised for review of the order has been justified by the petitioner, has submitted that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. In this regard, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Parsion Devi & ors-v-Sumitra Devi & ors (1997) 8 SCC 715 and judgments of the Appellate Tribunal for Electricity dated 27.5.2011 in Review Petition No. 13/2010 (in Appeal No. 56/2008), judgment 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) and the judgment dated 19.1.2011 in Review Petition No. 7/2009 (in Appeal No. 85/2007).

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

7. 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 capitalization on certain assets/items for 2009-14

8. The petitioner has sought review of order dated 10.5.2011 against disallowance of certain assets for additional capitalization, under this head, which are examined hereunder:

(a) Excavator, Dumpers and Tippers

9. As regards claim for capitalization of these assets for 2009-10, the petitioner in the original petition had submitted as under:

"Additional construction equipments required for construction of gabion structure as proposed above at Sl.No. 21 to 23. i.e for Televisions/ Music Systems Other Than For Office, Projectors, Audio Visuals Equipments, Other EDP Equipment, Misc. assets/ Equipments"

10. The claim of the petitioner for capitalization of these assets during 2009-10 was disallowed by the Commission on the ground that *"these assets are construction equipments"*. Accordingly, the claim for capitalization of these assets during 2010-11 as *"balance payment of expenditure for 2009-10"* was also not allowed by the Commission in its order dated 10.5.2011.

11. The petitioner has prayed that the Commission may reconsider the additional capital expenditure disallowed and has justified its claim for capitalization as under:

"The Sarda River has changed its original course towards right bank and eroded area adjacent to power channel. At some location, right bank of this river is 10-15 meters away from left side of Power channel and any further damage may cause damage to Power channel which may result in huge loss of generation to the tune of 100 Crore. These Construction equipments were purchased to channelize the river towards left side and to carry out protection work of right bank at Sarda River in order to protect the Power channel. Work is of huge nature as such. Tippers, dumpers and excavator have already been purchased and are being used since last two years. These equipments are also required to be used during special repair of stilling basin which has been recommended by Dam safety team as bay from 6 to 22 need repair on urgent basis. Bay from 1 to 5 has already repaired in 2011-12." As such the use of Tippers, dumpers and excavator during repair & maintenance is a regular feature hence equipments should not be considered as construction equipment.

12. The Commission has disallowed the capitalization of these assets based on the submissions of the petitioner in its original petition that the said assets were required for construction of gabion structure. Moreover, the need for construction equipments in an operational plant was also not justified by the petitioner. Having not submitted proper

justification for its claim in the original petition, the petitioner cannot be permitted to make additional submissions on review, justifying the said claims, and seek the reconsideration of the said order. As the expenditure was disallowed by a conscious decision, on prudence check, based on the submissions made by the petitioner in its original petition, there exists no reason for us to review the said order. We are of the view that there is no error apparent on the face of record and consequently, the petitioner's prayer for review on this count is rejected. Based on this, the claim of the petitioner for capitalization of the said asset during 2010-11 on the ground of 'balance payment of expenditure for 2009-10' has also been rejected.

(b) Replacements of Street Lighting (2009-10) and internal distribution lines (2010-11) and Purchase of one OPU pump (2013-14)

13. In respect of capitalization of these assets, the petitioner in its original petition had submitted as under:

Replacement of street lightning

"Overhead lines fail frequently due to many trees in route as well as disturbances caused by monkeys etc. Underground cable shall improve supply reliability to power house, Barrage and colony feeders. Against this the petitioner claimed of ₹19.10 lakh In the year 2009-10, Already approved BE 08-09&09-10."

Replacement of internal distribution lines

"New provision for DG supply from barrage to silt ejector. Overhead lines fail frequently due to many trees in route as well disturbances caused by monkeys etc. Underground cable also improve supply reliability"

Purchase of one OPU pump

Provision has been kept for purchase of one No. OPU pump as installed pumps are very old and are in service since commissioning".

14. The claim of the petitioner for capitalization of assets like replacement of street lighting during 2009-10, the replacement of internal distribution lines during 2010-11 and the Purchase of one OPU pump during 2013-14 were disallowed by the Commission on the ground that *'the gross value of the original assets were not furnished by the petitioner'*.

15. In justification of its claim, the petitioner has now sought the capitalization of these items as under:

Replacement of street lightning

“the proposal is not for replacement of street lighting but it was for laying of 11 KV underground XLPE insulated cable from DPH Banbassa to Power house and other important installations of the generating station. The existing 11 KV lines are overhead and passing through dense forest which gives frequent tripping during monsoon period which creates chaos. Therefore, to give reliable power supply to the generating station laying of 11 KV underground XLPE insulated cable from DPH Banbassa to the power house and other important installations of the generating station was proposed being essential for smooth operation of the power house.”

Replacement of internal distribution lines

“there is an O/H line feeding power to silt ejector & Nepal side electrical installations. The proposal is for separate feeder consisting of laying 11 KV underground XLPE insulated cable from DPH Barrage to Silt ejector and Nepal side of Tanakpur Barrage. The proposal is to provide reliable power supply to all electrical installations of Barrage/ silt ejector during monsoon period. The cable has already been purchased for ₹8 lakh and laying of cable is in process with estimated FI of ₹3.25 lakh.”

Purchase of one OPU pump

“One no. OPU pump is not operating satisfactorily, as spare pump is not available with the power station, therefore, One no. pump with motor has been ordered to M/s BHEL (s.o. value = ₹11.83 lakh) for one-to-one replacement. The gross value of old pump is ₹1.5 lakh.”

16. The Commission had disallowed the capitalization of these assets since the petitioner in its original petition had not furnished the gross value of the old assets (overhead line) for replacement. The petitioner cannot seek to reopen the issues on merits, by making additional submissions and placing the gross value of the assets replaced, at this stage, even though the same was available at the time of filing of the petition. The petitioner has also not pleaded that it had no knowledge of the documents/value of the gross assets replaced, at the time of filing of the petition, even though due diligence was exercised. The petitioner cannot be allowed to re-agitate the issue on merits, in the proceedings for review. In view of this, there exists no error apparent on the face of the record and the review of order on this count fails.

(c) Pumps, Numerical distance relay

17. The petitioner in its original petition had sought the capitalization of the said asset and had submitted as under:

Pumps (2009-10)

"As per advice of CEA sufficient numbers of Pumps are to be kept as **spare** to meet any eventuality."

Pumps (2010-11)

"Three nos CGLS pums are installed in power station , purchase of CGLS pump is required to be kept as **spare stock** & shall be used in case of fault in any one.."

Pumps (2011-12)

"For safety of power house sufficient quantity of pumps is required to kept as safety stock to meet any eventuality hence provision has been kept".

Numerical distance relay (2012-13)

"Numerical distance relays have been installed in line protection. The proposed relays shall be kept as **spare against** installed relays for future. Also MM3V scheme consisting of electro-mechanical type distance relays for protection of lines (Main-II) are to be replaced with numerical distance relays. The cost of electro-mechanical relay inclusive of line protection panel is ₹1092800 as per GR. No. 13708 Dt.7/2/1991."

18. Based on the above submissions, on prudence check, the Commission by its order dated 10.5.2011 had disallowed the capitalization of Pumps during the years 2009-10, 2010-11 and 2011-12 and Numerical distance relay during 2012-13, on the ground that these are in the nature of spares.

19. The petitioner has now claimed the capitalization of this asset justifying as under:

Pumps (2009-10 & 2011-12)

"VT pumps were installed in drainage sump of the power house; during rainy seasons these pumps are not sufficient to evacuate the leakage water. Therefore, four nos. submersible pumps 35 HP in 2009-10 and one nos. submersible pumps 35 HP in 2011-12 were purchased and installed in drainage pit to evacuate the leakage water. Also, 3 nos., 3 HP pump are being purchased for turbine top cover drainage/DT pit drainage system." And for 2010-11: "one no. CGLS pump was purchased for 0.10 lakh to replace existing pump which was not working properly."

Numerical Distance Relay

"the power station was commissioned during 1993 and has electromechanical protection system. NRPC has recommended replacing all line protection relays with Numerical Distance Relay. Therefore, to comply with NRPC recommendations, provisions have been kept for one to one replacement of relays."

20. From the submissions made by the petitioner in its original petition, it was clear that these assets were to be capitalized as "spares" and hence, the Commission by a conscious decision had disallowed the same, on prudence check. The petitioner, by this application, has sought to reopen the issues on merits by making additional submissions justifying the capitalization of these assets, and has prayed for reconsideration of the same. This in our

view is not permissible, on review. We are of the view that there exists no error apparent on the face of the order, and accordingly, the submission of the petitioner is rejected. Hence, the review of the said order on this count fails.

(d) Purchase of Cooling tower

21. The petitioner in the original petition had claimed capitalization of the said asset for ₹15.00 lakh during 2010-11 on the ground *“To reduce inlet water temperature for safe operation of machines provision is being kept”*. The claim of the petitioner was however, disallowed by the Commission on the ground that *‘sufficient justification as to why the asset was necessary after 17 years of operation, without installation of the said asset’*, had not been furnished.

22. In justification of its claim, the petitioner has reiterated the need for capitalization of the said asset as under:

“this work is required for successful and efficient operation of the plant. In original scheme the cooling system of the generating station was open-loop in which cooling water was tapped from penstock itself. The system could not run anymore because of choking of coolers & strainers due to heavy trash and silt in summer and rainy season.

The original scheme was then modified to existing closed-loop cooling system with cooling pond. Now during summer peak seasons, ambient temperature rises to 40+0C, the cooling efficiency of cooling pond decreases and inlet cooling water temperature rise to 31-32^o C. At such a high inlet cooling water temperature, heat exchangers become inefficient.

Due to above cooling of stator windings & shaft bearings is thus become ineffective and hot air temperature and bearing oil temperature crosses the alarming levels. Under such operating condition in peaks season, there is no other way to avoid tripping of machines due to high temperature except reducing lad/ generation. Also during high hot air/ winding temperature, ancillary services/ MVAR cannot be supplied to grid.”

23. From the submissions made by the petitioner in its original petition, it could not be ascertained by the Commission as to why the said asset was required and as to how the same would improve the efficiency of the generating station. Hence, the Commission by a conscious decision disallowed its capitalization. The petitioner by its additional submissions has sought the indulgence of the Commission to reconsider the issue and allow the capitalization. The petitioner has sought to reargue the case on merits, by making additional

submissions, and the same is not permissible on review. Even otherwise, the information submitted now was available with the petitioner at the time of filing of the petition and the petitioner having failed to submit the same cannot be permitted to take advantage of its own fault by seeking the review of the said order. We are of the view that there is no error apparent on the face of the record and the justification submitted by the petitioner is not acceptable. Hence, review of order on this count fails.

(e) Laboratory and Meter testing equipments

24. The petitioner in its original petition had sought the capitalization of this asset during 2010-11 and had submitted as under:

“CRO/Power Analyser is very much required in power house for testing of various systems and sub-systems. Existing CRO has become unservicable. The cost of old CRO is ₹17750 Vide. GR. No. 13739 Dt. 16.4.1991.”

25. The petitioner's claim for capitalization was however disallowed on the ground that the said assets were in the 'nature of tools and tackles'. In justification of its claim, the petitioner has now submitted as under:

“the power station has analog type relay test kit for testing of electromechanically protective relays. As line protection relays are being phased out with numerical distance relays to comply with NRPC recommendations. Therefore, one nos. Micro processors based relay test kit was purchased for testing of Numerical Relays whose features can only be tested with such type of relay test kit.”

26. Based on the submissions of the petitioner in its original petition, the Commission in its order had disallowed the capitalization of the said assets on the ground that these assets were are in the nature of tools & tackles in terms of the last proviso to Regulation 9 of the 2009 Tariff Regulations. The submissions made by the petitioner, in this application, have been examined and we are of the view that the petitioner has not demonstrated the existence of any error apparent in the said order. Accordingly, the petitioner's prayer for reconsideration of this asset for capitalization is rejected.

27. Based on the aforesaid discussions, we are of the view that the petitioner has neither demonstrated the existence of any error apparent in the face of the order nor has shown any

'sufficient reasons' for review of the order on the grounds therein. Since, the requirements for review of order under Rule 1 Order 47 of the CPC has not been satisfied by the petitioner, the issue of disallowance of additional capital expenditure on certain assets/items for the period 2009-14, as raised in paragraph 2(a) of this order, is rejected.

(B) Errors in calculation of O & M Expenses

28. 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 5.2% 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.

(a) Administrative Expenses

29. The petitioner has submitted that the expenditure in respect of 'Rent' under "Administrative Expenses", has been shown as ₹5.33 lakh for 2007-08, but the same has been considered in the table under paragraph 50 of the said order as ₹3.96 lakh for the said year. The petitioner has prayed that the said error may be corrected.

30. The matter has been examined and the typographical error in the said order is corrected, by considering the expenditure on 'Rent' as ₹5.33 lakh for 2007-08, instead of ₹3.96 lakh.

(b) Filing Fees

31. 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 Rs. 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 Rs. 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."

"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, NPHC 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."

32. 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 be considered for the purpose of normalization of O&M expenses for the period

2009-14. Moreover, separate provision has been made 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 85 of the order dated 10.5.2011. In view of this, there is no error apparent on the face of the record and accordingly, review on this count fails.

33. Based on the above discussions, the normalized administrative expenses considered for O&M in paragraph 50 of the order dated 10.5.2011 is revised as under:

<i>(₹ in lakh)</i>					
Administrative Expenses	2003-04	2004-05	2005-06	2006-07	2007-08
Rent	8.67	7.63	6.35	3.30	5.33
Electricity Charges	0.22	0.64	24.52	61.18	60.89
Travelling and Conveyance	21.59	29.03	23.61	32.04	21.85
Communication expenses	14.22	10.86	11.35	10.68	12.82
Advertising	3.62	4.34	5.52	3.49	4.18
Entertainment	0.00	0.00	0.58	0.69	0.41
Filing Fees	0.00	0.00	0.00	0.00	0.00
Total	48.32	52.50	71.93	111.38	105.48

(c) Employee Cost

34. The petitioner has submitted that there is prima facie error in the employee cost of ₹1831.56 lakh and ₹1963.79 allowed by the Commission after normalization, for the years 2006-07 and 2007-08 respectively, in the table under paragraph 55 of the order dated 10.5.2011, and the same needs to be corrected as ₹1878.04 lakh and ₹2061.95 lakh respectively, for the said years, considering the observations of the Commission in paragraph 52 to 55 of the said order. The matter has been examined and the typographical errors are corrected to read as ₹1878.04 lakh and ₹2061.95 lakh.

(d) Error in not considering Regional Office Expenses

35. The petitioner has submitted that the Regional office expenses allowed by the Commission in paragraphs 64 and 65 of the order dated 10.5.2011, has not been considered in the table under paragraph 69 of the said order, while considering the O&M expenses for 2003-04 to 2004-08 for calculation of O&M expense for the period 2009-14. The petitioner

has prayed that the error be accordingly corrected. We have examined the matter and it is found that the said figures allowed in respect of the Regional office expenses have not been considered finally due to inadvertence. Accordingly, the prayer of the petitioner is allowed and the typographical error is corrected by this order.

36. Also, the typographical error in the figure for ₹49.53 lakh towards Revenue/recovery (misc. receipts & recovery) considered during 2005-06, in the table under paragraph 69 of the said order, is corrected as ₹74.92 lakh for the said year.

(e) Interest on settlement of old contracts

37. The petitioner, in its original petition had included ₹325.40 lakh during 2003-04 to 2007-08 on account of 'Interest on settlement of old contracts' under the head 'other admissible expenditure' for the purpose of normalization of O&M expenses as under.

	<i>(₹ in lakh)</i>				
	2003-04	2004-05	2005-06	2006-07	2007-08
Interest on settlement of old contracts	0.00	20.33	0.00	304.96	0.11

38. The petitioner in Appendix-1 to Form 15B of the original petition had given reasons for the expenditure as under:-

"Increase of expenditure under the head of account (92-28-01) payment of courts/arbitration cases is due to interest payable on sales tax demand as per court order"

39. On prudence check, it was found that the said expenditure is covered under additional capitalization under Regulation 18 of the 2004 Tariff Regulations. Accordingly, these expenses were not allowed under O&M expenses for the period 2003-2008 for the purpose of normalization of O&M expenses.

40. The petitioner has sought review on the ground that as per its accounting policy, interest on settlement of old contracts pertaining to period up to the commercial operation of the generating station has to be claimed under O&M expenses only and accordingly the said expenditure was not claimed for approval during the period 1.4.2004 to 31.3.2009.

41. The petitioner has submitted that since the expenditure has actually been incurred and has not been claimed /reimbursed under additional capitalization, it should be reimbursed under O&M expenses. Alternatively, the petitioner has prayed that the expenditure may be allowed in additional capital expenditure for the period 2009-14 or as one-time reimbursement, as was allowed by Commission's order 5.2.2007 in Review Petition No. 68/2006 pertaining to Tanakpur Power generating station of the petitioner, for the period 2004-09.

42. We have considered the submissions of the petitioner. It is noticed that the petitioner should have claimed the expenditure as additional capitalization under Regulation 18(2)(ii) under the head "liability to made the award of arbitration or compliance of the order or decree of court". However, it has chosen not to claim the said expenditure on account of its accounting policy. It is to be noted that the claim for expenditure in tariff should be made strictly as per the regulations of the Commission and not as per the accounting policy of the petitioner.

43. The petitioner should have included the expenditure in its claim for the tariff period 2004-09. Having failed to do so, the petitioner cannot be allowed to include the expenditure in O&M expenses for the purpose of normalization of O&M expenses for the period 2009-14.

44. As regards the submission of the petitioner that the expenditure be allowed as additional capital expenditure during the period 2009-14, we are of the view that the same is not acceptable since the petitioner, though was at liberty to claim the expenditure in the original petition for determination of tariff for the period 2009-14, has not preferred to claim the same. Having failed to do so, the petitioner cannot through this review application, seek the capitalization of the said expenditure.

45. As regards the prayer of the petitioner for one time reimbursement of the expenditure in terms of the Commission's order dated 5.2.2007 in Review Petition No. 68/2006, it is

noted that the order in Review Petition No. 68/2006 was available to the petitioner while filing the petition for determination of tariff for the period 2009-14. Despite this, the petitioner has not claimed the expenditure as one time reimbursement in terms of the said order dated 5.2.2007. Having not raised the claim at the time of filing the original petition, the expenditure cannot be allowed and the same is outside the scope of review. The petitioner has for the first time made this claim in the review application and hence cannot be allowed. In view of this, the claim of the petitioner stands rejected.

Methodology of 20% restriction of expenses

46. 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, again Commission has restricted the incremental increase to 20% of previous year and in this manner all future expenses are restricted.

47. 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 four 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.

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

(₹ in lakh)

	2003-04	2004-05	2005-06	2006-07	2007-08
Breakup of O & M expenses					
Consumption of Stores and Spares	98.36	90.91	303.29	105.96	75.16
Repair and maintenance	358.90	240.02	628.51	345.31	1516.51
Insurance	199.02	200.38	199.27	199.85	200.07
Security (Other than Salary & Wages)	19.70	20.20	32.47	33.42	31.83
Administrative Expenses	48.32	52.50	71.93	111.38	105.48
Employee Cost	1645.24	1657.50	1785.77	1831.56	2061.96
Loss of stores	0	0	0	0	0
Provisions	0	0	0	0	0
Corporate Office expenses allocation	14.04	13.69	12.12	14.30	11.52
Regional Office expenses allocation	0.00	0.00	6.17	37.56	32.45
Others (Specific items)	32.60	39.12	46.94	62.21	69.88
Total	2416.17	2314.32	3086.47	2741.55	4104.86
Revenue/ Recovery, if any (Misc. receipts & recovery only)	67.64	41.28	74.92	82.86	56.09
Net Expenditure	2348.53	2273.05	3011.55	2658.70	4048.77

49. Accordingly, the year-wise O&M expenses for the generating station, applying escalation @ 5.72% from 2008-09 and 50% increase of employee cost by considering the percentage of averaged normalized employee cost (as shown below) for the 2003-04 to 2007-08 at 2007-08 price level to the averaged normalized net operation and maintenance expenses for the period 2003-08 at 2007-08 price level after prudence check, for the period 2009-14 work out as under:

Employee Cost percentage

(₹ in lakh)

	2003-04	2004-05	2005-06	2006-07	2007-08	Average normalized at 2007-08 price level
Employee cost (Considered)	1645.24	1657.50	1785.77	1831.56	2061.96	
Average normalized Employee cost at	2012.78	1928.10	1975.19	1926.25	2061.96	1980.86

2007-08 price level						
O&M Expense Considered)	2348.53	2273.05	3011.55	2658.70	4048.77	
Average normalized O&M at 2007-08 price level	2873.19	2644.14	3330.95	2796.15	4048.77	3138.65
	(P1)X(Esc) ⁴	(P2)X(Esc) ³	(P3)X(Esc) ²	(P4)X(Esc)	(P5)	
Escalation rate (Esc)%	5.17	5.17	5.17	5.17	5.17	
Percentage of employee cost (1980.86/ 3138.65)						63.11 %

50. Accordingly, the total Operation and Maintenance expenses claimed and approved for the period 2009-14 is as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M Expense (claimed)	4942.63	5225.35	5524.24	5840.23	6174.29
O&M Expense (Allowed)	4614.92	4878.89	5157.97	5452.00	5764.91

51. Thus, the issues raised by the petitioner for review of order in this application, is disposed of in terms of the above. Based on this, the annual fixed charges determined by order dated 10.5.2011 is revised, as discussed below:

52. In view of the above, the components of Interest on Working Capital approved *vide* order dated 10.5.2011 in Petition No.75/2010 is revised as under:

(a) Receivables

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Receivables	1251.57	1304.17	1360.74	1417.04	1472.35

(b) Maintenance Spares

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	692.24	731.83	773.70	817.95	864.74

(c) O & M Expenses

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
O & M Expenses	384.58	406.57	429.83	454.42	480.41

53. Accordingly, Interest on Working Capital in order dated 10.5.2011 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	692.24	731.83	773.70	817.95	864.74
O & M expenses	384.58	406.57	429.83	454.42	480.41
Receivables	1251.57	1304.17	1360.74	1417.04	1472.35
Total	2328.38	2442.57	2564.27	2689.41	2817.49
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest on Working Capital	285.23	299.22	314.12	329.45	345.14

Annual Fixed Charges

54. The annual fixed charges approved by order dated 10.5.2011 stands revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	1715.10	1734.28	1755.93	1767.54	1769.29
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Depreciation	894.17	912.61	936.42	952.25	954.75
Interest on Working Capital	285.23	299.22	314.12	329.45	345.14
O & M Expenses	4614.92	4878.89	5157.97	5453.00	5764.91
Total	7509.42	7824.99	8164.43	8502.24	8834.09

55. The petitioner shall claim the difference in respect of the tariff determined by order dated 10.5.2011 and the tariff determined by this order from the beneficiaries in six equal monthly installments.

56. Except the above, all other terms contained in the order dated 10.5.2011 remains unchanged.

57. Review Petition No. 14/2011 is disposed of as above.

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[S.JAYARAMAN]
MEMBER