

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.13/RP/2012**

**in**

**Petition No. 20/2010**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri V. S. Verma, Member**

**Shri M. Deena Dayalan, Member**

**Date of Hearing: 22.11.2012**

**Date of Order: 7.6.2013**

**In the matter of**

Review of Order dated.9.4.2012 in Petition No. 20/2010 pertaining to determination of tariff in respect of NLC TPS-I (600 MW) for the period from 1.4.2009 to 31.3.2014.

**And**

**In the matter of**

Neyveli Lignite Corporation Ltd, Chennai

.....**Petitioner**

Vs

Tamil Nadu Generation and Distribution Company Ltd, Chennai

....**Respondent**

**Parties present:**

1. Shri N.Rathinasabapathy, NLC
2. Shri S.Vallinayagam, Advocate, TANGEDCO
2. Shri S.Balaguru, TANGEDCO

**ORDER**

Petition No. 20/2010 was filed by the petitioner, NLC for determination of tariff in respect of NLC-TPS-I (600 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 (hereinafter referred to as "the 2009 Tariff Regulations") and the Commission by order dated 9.4.2012 in Petition No. 20/2010 determined the annual fixed charges for the generating station for the period 2009-14. Thereafter, the Commission by its order dated 1.5.2012 *suo motu* undertook the correction of certain inadvertent clerical errors in

order dated 9.4.2012. The annual fixed charges determined by order dated 9.4.2012 was as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Return on Equity	2870	2424	1977	1530	1083
Interest on Loan	43	42	40	39	37
Depreciation	1985	1985	1985	1985	1985
Interest on Working Capital	2869	2911	2963	3006	3059
O&M Expenses	16200	17124	18108	19140	20238
Cost of secondary fuel oil	2,417	2417	2423	2417	2417
Compensation allowance	390	390	390	390	390
<b>Total</b>	<b>26774</b>	<b>27292</b>	<b>27886</b>	<b>28506</b>	<b>29208</b>

2. Aggrieved by order dated 9.4.2012, the petitioner has sought review on the following issues:

- (i) Disallowance of additional capitalization for Common Assets for the period 2007-09 and 2009-14;
- (ii) Capital cost as on 1.4.2009;
- (iii) Disallowance of projected additional capital additions for the period 2009-14;
- (v) Adoption of normative O&M expenses as against actual O&M expenses claimed.

3. The Commission after hearing the parties on 7.8.2012 admitted the petition on the above said issues by interim order dated 9.8.2012. The respondent, TANGEDCO has filed its reply to the petition. Thereafter, the Commission after hearing the parties on 22.11.2012 reserved its orders in the matter.

4. We now proceed to examine the issues raised by the petitioner as discussed in the subsequent paragraphs.

#### **Disallowance of Additional Capitalization of Common Assets for 2007-09**

5. In terms of the liberty granted by the Commission in its order dated 18.12.2009 in Petition No. 13/2009, the petitioner had claimed additional capitalization of ₹76.29 lakh in Petition No. 20/2010 towards Common Assets apportioned to this generating station under the head 'Furniture & Equipments' and 'Office Equipments' in terms of the 2009 Tariff Regulations. Considering the fact that the Commission in its order dated 31.8.2010 in Petition No. 230/2009 (pertaining to tariff of NLC TPS-I Expansion) had disallowed the claim of the petitioner for

Common assets for the reason that these assets were either minor in nature or in the nature of O&M., the claim of the petitioner for ₹ 76.29 lakh was rejected by adopting the said order dated 31.8.2010 to this generating station.

6. The petitioner, in the instant petition has submitted that the observations of the Commission classifying the disallowed portions of additional capitalization for Common Assets as either minor in nature or in the nature of O&M needs to be reviewed taking into consideration the following relevant facts:

(a) The Commission in its order dated 17.11.2008 in Petition No. 125/2007 pertaining to additional capitalization for the period 2004-07 in respect of this generating station had allowed the claim of the petitioner for capitalization of expenditure for Common Assets in full based on the justification submitted by the petitioner, but has adopted a different yardstick in respect of the claim of the petitioner for capitalization of Common Assets for the period 2007-09 based on similar justification, in its order dated 18.12.2009. Hence capital additions of the same nature under the same regulations have to be viewed in the same manner.

(b) The expenditure which is revenue in nature is only claimed through O&M expenses while these Common Assets are capital in nature and hence not claimed under O&M.

(c) Categorization of additions as specified under Regulation 18 of the 2004 Tariff Regulations are applicable to direct assets and not Common Assets.

Accordingly, the petitioner has submitted that it is an integrated utility having mines and thermal stations along with services units and medical facilities to cater to the needs of the company and Common Assets occur and gets assigned to the generating station after duly getting distributed among various plants. The petitioner has therefore prayed that additional capitalization due to Common Assets has to be considered in full only as done in the earlier order for the generating station for which regulatory tool cannot be applied as such. Based on the above submissions, the petitioner has prayed that the error in the order dated 9.4.2012 be corrected.

7. The respondent, TANGEDCO in its reply vide affidavit dated 21.8.2012 has submitted that the disallowed items of expenditure on furniture, office equipment's and minor assets are not allowed to be capitalized in terms of Regulation 18(3) of the 2004 Tariff Regulations. It has also submitted that the Commission having disallowed the claim of the petitioner in Petition No. 13/2009 and in Petition No. 20/2010 therein cannot now claim the same in review. Accordingly, it

has prayed that there is no scope for review of order dated 9.4.2012 and review on this ground be rejected.

8. Pursuant to the hearing of the matter on 4.8.2011, the petitioner was directed to segregate the expenses pertaining to different assets under the nomenclature of Assets of minor nature, Capital nature of assets, Assets required for hospital purposes and O&M assets, along with their cost claimed in the Common Assets for the period 2007-09 and 2009-14, and to ensure that there was no duplicity in the claim of Common Assets and direct assets. In response, the petitioner vide its affidavit dated 19.6.2012 has submitted the details of the Common Assets after segregation for the period 2007-09 and has submitted that the Common assets are created for NLC complex as a whole to service all the core activity like power generation and mining. The details are as under:

<i>(₹ in lakh)</i>		
<b>Details of assets</b>	<b>2007-08</b>	<b>2008-09</b>
Assets like furniture	14.32	349.28
Office Equipment's	38.82	140.73
Assets costing less than ₹ 5000	19.55	0.00
<b>Total</b>	<b>72.69</b>	<b>490.01</b>
<b>Apportioned to this generating station @ 12% in 2007-08 and @ 12.4341% in 2008-09</b>	<b>8.72</b>	<b>60.93</b>

9. The learned counsel for the respondent, TANGEDCO during the hearing on 22.11.2012 reiterated its earlier submissions and pointed out that there is no apparent error on the face of the order.

10. The submissions of the parties have been considered. The petitioner has submitted that the Commission in its order dated 17.11.2008 in Petition No. 125/2007 had allowed the capitalization of Common Assets for the period 2004-07 in respect of this generating station, but has disallowed the same for the period 2007-09 on the ground that the said claims were rejected in order dated 31.8.2010 in Petition No. 230/2009. According to the petitioner, capitalization of assets of same nature under the same regulations cannot be viewed in a different manner and hence the order of the Commission requires to be reviewed. We agree with the submissions of the petitioner. The Commission having allowed the capitalization of Common Assets for 2004-07 under the provisions of the 2004 Tariff Regulations by order dated 17.11.2008, the same should

have been taken into consideration at the time of considering the claims of the petitioner for capitalization of Common Assets for the period 2007-09 in Petition No. 20/2010, specially considering the fact that the petitioner was given the liberty to claim the same along with detailed justification. The non-consideration of the order dated 17.11.2008 in Petition No. 125/2007 as regards the capitalization of Common Assets for the generating station, at the time of passing of the order dated 9.4.2012 in Petition No. 20/2010 is in our view an error apparent on the face of the order, which needs to be reviewed. We order accordingly. In this view, the details of the segregated Common Assets submitted by the petitioner has been examined along with its justification and on prudence check, the capitalization of those assets which are necessary for efficient operation of the generating station, is allowed to be capitalized as discussed below:

**(A) Equipments for hospital purposes**

11. The details of Common Assets for hospital purposes as claimed by the petitioner and allowed after prudence check for the years 2007-08 and 2008-09 are as follows:

	<b>2007-08 (in ₹)</b>	
	<b>Claimed</b>	<b>Allowed</b>
Storage water heater	57735	0.00
Pedestal fan-2 Nos	9639	0.00
Water dispenser – 15 Nos	94485	0.00
Needle destroyer – 2 Nos	2900	2900
BP apparatus	6300	6300
Pulmo Aid Neumaliser system – 10 Nos	35000	35000
Micro peak flow meter	11336	11336
Digital weighing machine – 2 Nos	7000	7000
<b>Total</b>	<b>224395</b>	<b>62536</b>
<b>Total ( ₹ in lakh)</b>	<b>2.24</b>	<b>0.63</b>
<b>Percentage allocation of common assets for generating station [@ 12%] (₹ in lakh)</b>	<b>0.27</b>	<b>0.08</b>
	<b>2008-09</b>	
Diatherapy machine ENT – 2 Nos.		
Tata motors Ambulance	1377411	1377411
Dermatology equipment	39000	39000
Spiral binding	8750	8750
Print/scan/fax machine	21440	0.00
Godrej 3 nos fire resisting	218400	218400
Projector light	58500	0.00
Cordless hand mike model	6300	0.00
Cordless hand mike model	18900	0.00
Fax machine	5150	0.00
Digital temperature controller	46940	46940
X-ray machine	2035000	2035000

Mobile 660 MA X-ray unit	245000	245000
Fully automated haematology Analyser	498488	498488
Blood donor coach	140400	140400
Automatic BP monitor with Monitor	150850	150850
Pulse Oxymeter 2 Nos	90480	90480
Oracle software for IHMA	9990000	9990000
Laying of Oxygen pipe line in various Deptt.	169546	169546
Total	15151755	15041465
Total ( <i>₹ in lakh</i> )	<b>151.52</b>	<b>150.41</b>
<b>Percentage allocation of common assets for generating station @ 12.4341% (<i>₹ in lakh</i>)</b>	<b>18.84</b>	<b>18.70</b>

12. Expenditure on assets like Storage water heater for ₹0.58 lakh, pedestal fans for ₹0.09 lakh, Water dispensers for ₹0.94 lakh during 2007-08 and Print/scan/fax machine for ₹0.21 lakh, projector light for ₹0.59 lakh, cordless hand mike model for ₹0.25 lakh and fax machine for ₹0.05 lakh claimed during 2008-09 are not in the nature of hospital equipments. Hence the expenditure on these assets totalling ₹1.61 lakh during 2007-08 and ₹1.10 lakh during 2008-09 have not been allowed for capitalization. Accordingly, expenditure of ₹0.63 lakh during 2007-08 and ₹150.41 lakh during 2008-09 is justified and is allowed to be capitalised in terms of Regulation 18(2)(iv) of 2004 Tariff Regulations towards successful and efficient operation of the generating station. Based on this, the apportioned amount of ₹0.08 lakh (12% of ₹0.63 lakh) during 2007-08 and ₹18.70 lakh (12.4341% of ₹150.41 lakh) during 2008-09 allocated to this generating station are allowed to be capitalised.

**(B) Assets of minor nature**

13. It is observed that some of the assets, other than hospital equipments, claimed by the petitioner during 2007-08 such as furniture, storage water heater, slotted angle rack, pedestal fan, fax machine, photocopier machine, mobile phone, exhaust fan, sofa, steel dining table, chairs, TV cabinet, water heater, shoe rack, table with drawers, vacuum cleaner etc., are in the nature of minor assets. Hence, in terms of Regulation 18(3) of the 2004 Tariff Regulations, the capitalisation of these assets has not been allowed.

**(C) Assets of capital nature**

14. It is observed that the Common Assets claimed during 2008-09 include some assets of capital nature like 16 mtr high mast light for ₹6.07 lakh, Capacitor bank for ₹0.96 lakh, 700 litres HDPE tanks for ₹123.46 lakh, 660 Volts LT panel for ₹1.49 lakh, School bus for ₹1.00 lakh, Ultra sonic cleaner card for ₹0.44 lakh and Carbon dioxide analyser for ₹9.49 lakh. Since these assets are considered necessary for successful and efficient operation of the generating station, the total expenditure of ₹142.91 lakh is allowed to be capitalised in terms of Regulation 18(2)(iv) of the 2004 Tariff Regulations. Based on this, the apportioned amount of ₹17.77 lakh (12.4341% of ₹142.91 lakh) for 2008-09 allocated to this generating station is allowed to be capitalised.

15. Based on the above discussions, the expenditure on Common Assets allowed during the years 2007-08 and 2008-09, is summarised as under:

<i>(₹ in lakh)</i>		
	<b>2007-08</b>	<b>2008-09</b>
Assets for Hospital purposes (a)	0.08	18.70
Assets of Capital nature (b)	0.00	17.77
<b>Total (a+b)</b>	<b>0.08</b>	<b>36.47</b>

**Capital cost for 2007-09**

16. In view of the above, the capital cost as on 31.3.2009 after considering the capitalisation of ₹0.08 lakh during 2007-08 and ₹36.47 lakh during 2008-09 towards Common Assets, stands revised as under:

<i>(₹ in lakh)</i>		
	<b>2007-08</b>	<b>2008-09</b>
Opening Capital cost as on 1 <sup>st</sup> April of the financial year (a)	45499.00	46776.08
Additional capital expenditure allowed in the order dated 17.12.2009 in Petition No.13/2009. (b)	1277.00	55.00
Additional Capitalization allowed now (c)	0.08	36.47
Closing Capital cost as on 31 <sup>st</sup> March of the financial year (a+b+c).	<b>46776.08</b>	<b>46867.55</b>

17. Based on the above, the annual fixed charges of the generating station for the period 2007-09 stands revised as given overleaf:

(₹ in lakh)		
	2007-08	2008-09
Interest on Loan	47	45
Interest on Working Capital	1806	1818
Depreciation	1756	1959
Advance against Depreciation	-	-
Return on Equity	2107	1964
O&M Expenses	10260	10668
<b>Total</b>	<b>15976</b>	<b>16454</b>

18. The marginal difference between the fixed charges approved vide order dated 18.12.2009 in Petition No. 13/2009 and those approved now shall be adjusted by the parties.

19. As stated, the closing capital cost as on 31.3.2009 is ₹46867.55 lakh. The same is considered as the opening capital cost as on 1.4.2009, for the purpose of tariff for the period 2009-14.

#### **Additional Capitalization of Common Assets for 2009-14**

20. In response to the directions of the Commission during the hearing on 4.8.2011, the petitioner vide its affidavit dated 6.1.2012 in Petition No. 6/RP/2011 has submitted the details of the segregated Common Assets in the petition as under:

(₹ in lakh)					
	2009-10	2010-11	2011-12	2012-13	2013-14
Assets of minor nature	873	0	0	0	0
Assets of capital nature other than hospital	3697	5012	5307	5619	5950
Assets for hospital purpose	600	658	697	738	781
O&M nature	0	0	0	0	0
<b>Total</b>	<b>5170</b>	<b>5670</b>	<b>6004</b>	<b>6357</b>	<b>6731</b>
Claim as apportioned to this generating station for Common Assets	<b>643.00</b>	<b>705.00</b>	<b>747.00</b>	<b>790.00</b>	<b>837.00</b>

21. It is observed that the normative O&M expenses allowed to the generating station contain corporate office expenses which would also include expenditure on Common Assets. In addition, the provisions of the 2009 Tariff Regulations do not provide for capitalisation of expenditure on hospital equipment's etc. In view of this, the expenditure incurred towards Common Assets as claimed by the petitioner for the period 2009-14 is not allowed to be capitalised.

## **Projected Additional Capital Expenditure for direct assets for 2009-14**

22. The Commission in its order dated 9.4.2012, while disallowing the claims of the petitioner under Regulation 9(2) of the 2009 Tariff Regulations had observed as under:

"18. The claims of the petitioner for additional capitalisation has been considered against the provisions of Regulation 9(2) and it is found that the expenditure cannot be allowed under any of the provisions of Regulation 9(2) of the 2009 Tariff Regulations. These expenditures are required for the successful operation of the generating station. In the 2004 Tariff Regulations applicable for the period 2004-09, Regulation 18(2)(iv) provided for the consideration of capital expenditure in respect of any additional works/services which have become necessary for efficient operation of the generating station, but not included in the original project cost. This provision was however not continued under the 2009 Tariff Regulations. However, in order to meet the expenses on new assets of capital nature including in the nature of minor assets, the Commission under Regulation 19(e) of the 2009 Tariff Regulations has provided for a separate compensation allowance following the year of completion of 10, 15 or 20 years of useful life of the generating station.

19. As stated, the claim of the petitioner for capitalisation of expenditure for 2009- 14 in respect of assets/works do not fall under any of the provisions of Regulation 9(2) of the 2009 Tariff Regulations. Regulation 19(e) of the 2009 Tariff Regulations, provide for a normative compensation allowance for generating stations which have completed 10, 15 or 20 years of useful life. Admittedly, the generating station has completed useful life of 25 years and had also undergone R&M for life extension and is to be phased out by the year 2014. The expenditure claimed by the petitioner in respect of the assets is considered necessary for compliance with statutory obligations and for sustenance of generation upto the year 2014 as per requirement of the respondent, TANGEDCO. Hence, keeping in view the absence of a provision for consideration of such expenditure under Regulation 9(2) of the 2009 Tariff Regulations and considering the need to maintain a balance between the bare minimum requirement for the generating station and at the same time minimize the financial burden on the respondent, we are of the view that the said expenditure should be allowed by relaxing the provisions of Regulation 19(e) of the 2009 Tariff Regulations, particularly, the allowance meant for the generating station between 21 to 25 years of operation, to be made applicable for this generating station beyond 25 years of operation. Accordingly, in exercise of power under Regulation 44 of the 2009 Tariff Regulations, we relax the provisions of Regulation 19(e) of the 2009 Tariff Regulations to allow compensation allowance @0.65 lakh/MW/year for this generating station for the period 2009-14, in lieu of additional capitalization. In view of this, the compensation allowance allowed to generating station for 2009-14 is worked out as under:"

*(₹ in lakh)*

<b>Year</b>	<b>Capacity (MW)</b>	<b>Compensation Allowance</b>
2009-10	600	390
2010-11		390
2011-12		390
2012-13		390
2013-14		390
	<i>Total</i>	1950

23. The petitioner, in this petition has submitted that the additional capital expenditure for assets which are required for successful operation of the generating station which has been rejected by the Commission on the ground that there is no provision under Regulation 9(2) of the 2009 Tariff Regulations, is an error apparent on the face of the order. It has submitted that the claims made by the petitioner was not under Regulation 9(2) but after excluding the Special Allowance and Compensation Allowance, as per directions of the Commission in its record of

proceedings dated 26.10.2010 to submit minimum additional expenditure essentially required to run the generating station. It has further submitted that under the circumstances, disallowing the minimum additional expenditure essentially required to run the generating station claimed as per directive of the Commission and subjecting them to Regulation 9(2) is an error apparent on the face of the order. It has further submitted that as per definition of Regulation 3(3) read with Regulation 5(2) of the 2009 Tariff Regulations, it is clear that the Commission can admit additions after prudence check. It has also submitted that rejection of assets based on Regulation 9(2) without applying Regulation 3(3), 5(2) and 7(2) of the 2009 Tariff Regulations is an error apparent on the face of the order. The petitioner while pointing out to the need for introduction of compensatory allowance under the draft tariff regulations by the Commission has submitted that specialised and major items which are not routine in nature is not covered under compensatory allowance, as new assets of capital nature including in the nature of minor assets was based on additional capital expenditure in NTPC existing stations in which routine additions have been covered. The respondent, TANDEGCO in its reply has submitted that Regulation 9(2) does not apply to the above claim of the petitioner as stated in the order dated 9.4.2012 and the commission after considering all relevant issues had disallowed the claim of the petitioner. He reiterated that there is no error apparent on the face of the record as submitted by the petitioner. The matter has been examined. The petitioner has submitted that since the claims for minimum additional expenditure essentially required to run the generating station was claimed based on the directive of the Commission, subjecting the said claims to Regulation 9(2) and disallowing the same is an error apparent on the face of the order. We do not agree with the said submissions. Directing the petitioner to submit additional information in order to examine the same cannot be construed as a promise by the Commission to allow the same, especially considering the fact that the generating station had already completed useful life of more than 25 years and had undergone R&M and is to be phased out by the year 2014. Taking in to consideration that the expenditure claimed by the petitioner in respect of assets is considered necessary for compliance with statutory obligations and for sustenance of generation upto the year 2014 as per requirement of the respondent, TANGEDCO and keeping in view the absence of a provision for

consideration of such expenditure under Regulation 9(2) of the 2009 Tariff Regulations and the need to maintain a balance between the bare minimum requirement for the generating station and at the same time minimize the financial burden on the respondent, the Commission by a conscious decision relaxed the provisions of Regulation 19 (e) of the 2009 Tariff Regulations particularly, the allowance meant for the generating station between 21 to 25 years of operation i.e 0.65 lakh/MW/year, to be made applicable for this generating station beyond 25 years of operation. We are of the considered view that issues which have been decided on merit cannot be reopened by the petitioner in review proceedings. In view of this, there is no error apparent on the face of record and review on this count fails.

#### **Capital Cost for 2009-14**

24. Consequent upon the revision of capital cost as on 1.4.2009 as stated above, the capital cost for the period 2009-14 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening capital cost	46867.55	46867.55	46867.55	46867.55	46867.55
Additional capital expenditure allowed	0.00	0.00	0.00	0.00	0.00
<b>Closing capital cost</b>	<b>46867.55</b>	<b>46867.55</b>	<b>46867.55</b>	<b>46867.55</b>	<b>46867.55</b>

#### **Adoption of normative O&M expenses as against actual O&M expenses claimed**

25. The Commission in its record of the proceedings held on 26.10.2010 directed the petitioner to indicate the actual requirement of additional O&M expenses with proper justification. In response, the petitioner filed amended petition submitting the actual requirement of O&M expenses (year-wise) as detailed below:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Actual O&M expenses	22395	24202	26165	28298	30617

26. The Commission in its order dated 9.4.2012 had disallowed the claim of O&M expenses on actuals and had observed as under:

"46. Against the O&M norm of ₹27.00 lakh/MW for 2009-10, the actual O&M expenses claimed by the petitioner is ₹37.33 lakh/MW. From the justification furnished by the petitioner, it is observed that the rise in O&M expenses is on account of increase in employee cost and not due to any increase in repair and maintenance cost of the generating station which is in a depleted condition. The Commission has specified the O&M expense norms after providing for 50% increase in the employee cost. In view of the above, and considering the fact that these units are to be phased

out, it is expected that the petitioner would reduce its man power gradually and manage its expenditure within the O&M norm specified by the Commission. Therefore, the claim of the petitioner for actual O&M expenses for 2009-10 has not been allowed. Accordingly, the normative O&M expenses as per provisions of the 2009 Tariff Regulations have been considered for the purpose of tariff. "

27. The petitioner has submitted that error apparent on the face of the record has crept in the order dated 9.4.2012 as the Commission had failed to consider the following points:

(i) The situation prevailing at TPS-I is unique as the petitioner as owner of the plant is not able to close the plant due to the insistence of the home state beneficiary TANGEDCO to run the plant despite incurring loss. Had the plant been closed, the respondent would have to procure power at market rates to meet the demand under UI rates. Having operated the plant, the petitioner should be assured of recovering the expenditure incurred in operation of plant on a no profit-no loss basis.

(ii) This being a very old plant and also on account of wage revision, the O&M expenses are overshooting the norms. NLC is also taking efforts to optimize the O&M expenses. However, as the number of units are more and also as the capacity of each unit is low the man/MW will be higher than the optimum only.

(iii) That this vintage plant adopting NFA methodology is fully depreciated thereby yielding no returns and cannot afford to lose on the O&M front also.

(iv) The Commission by exercising its power to relax under Regulation 44 has relaxed the provisions of Regulation 19(e) to allow the compensation allowance of ₹ 0.65lakh/MW/year. Considering that the plant and equipment were designed before 1960 with low capacity and multi stream, the allowance allowed is not sufficient to meet the smooth running of the plant. Hence the compensation allowance allowed at ₹ 0.65 lakh/MW/year be enhanced to ₹ 2.58 lakh/MW/year.

28. The respondent, TANGEDCO in its reply has submitted that the petitioner not satisfied with the special compensation allowance of ₹0.65lakh/MW/year has sought for increase of the same to ₹ 2.58 lakh/MW/year by adopting the second order polynomial curve, which was neither pleaded nor argued by the petitioner in the tariff petition. It has also been submitted that the compensatory allowance allowed by the Commission and the O&M expenses allowed by the Regulations works out to 35.42% of the gross block of ₹ 468.31 crore as on 1.4.2009. The respondent while pointing out that no where such huge percentage of O&M expenses are allowed on operating the plant more than the norms specified, has submitted that running the plant to cater to the needs of the respondent cannot be a ground to seek review of order dated 9.4.2012. It has further submitted that the petitioner cannot raise issues on merit in a review petition and hence there is no error apparent on the face of the record.

29. The submissions have been considered. It is noticed that the petitioner while on the one hand had challenged the compensatory allowance granted to it by relaxation under Regulation 44 of the 2009 Tariff Regulations, has on the other hand sought for an increase in the said compensatory allowance to ₹2.58 lakh/MW/year. As stated, the Commission after considering the fact that the generating station had lived its useful life of more than 40 years and is to be phased out during the year 2014, has allowed special compensatory allowance to meet the statutory obligations and sustenance of generation upto 2014, thereby maintaining the balance between bare minimum requirement for the generating station and minimise the financial burden on the respondent. Seen in this background, the prayer of the petitioner for enhancement of the Compensatory Allowance to ₹ 2.58 lakh/MW/year by exercising the 'power to relax' under Regulation 44 of the 2009 Tariff Regulations is not justified. The petitioner has not pointed out any error apparent on the face of record in the order dated 9.4.2012 and has only sought to raise extraneous issues, which cannot be considered in review. Accordingly, review on this count fails.

### **Annual Fixed Charges**

30. Based on the above discussions, the annual fixed charges of the generating station for the period 2009-14 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>
Return on Equity	2878	2430	1981	1533	1085
Interest on Loan	43	42	40	39	37
Depreciation	1991	1991	1991	1991	1991
Interest on Working Capital	2869	2912	2963	3006	3059
O&M Expenses	16200	17124	18108	19140	20238
Cost of secondary fuel oil	2417	2417	2423	2417	2417
Separate Compensation Allowance	390	390	390	390	390
<b>Total</b>	<b>26788</b>	<b>27306</b>	<b>27896</b>	<b>28516</b>	<b>29217</b>

31. The difference between the annual fixed charges determined by this order and those determined by order dated 9.4.2012 shall be adjusted by the parties, in terms of the proviso to Regulation 5(3) of the 2009 Tariff Regulations.

32. The petitioner claim for reimbursement of review petition filing fees cannot be allowed since it has been the decided by the Commission in order dated 11.1.2010 in Petition No. 109/2009 to

allow the reimbursement of tariff petition filing fees and publication fees only. The petitioner has been allowed the reimbursement of tariff filing fees and fees for publication of notice by order dated 9.4.2012 to be payable by the respondent. Hence the prayer is rejected.

33. Except the above, all other terms contained in the order dated 9.4.2012 remains unchanged.

34. Review Petition No. 13/2011 is disposed of in terms of the above.

**Sd/-**  
**[M. Deena Dayalan]**  
**Member**

**Sd/-**  
**[V. S. Verma]**  
**Member**

**Sd/-**  
**[Dr. Pramod Deo]**  
**Chairperson**