

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 258/GT/2014

Coram:

Shri A.K.Singhal, Member

Shri A.S Bakshi, Member

Date of Hearing: 14.05.2015

Date of Order: 21.06.2016

In the matter of

Revision of tariff in respect of Ratnagiri Power Gas & Power Project (1967.08 MW) for the period 1.4.2009 to 31.3.2014

And

Ratnagiri Gas and Power Pvt. Ltd,
5th Floor, GAIL Jubilee Tower,
B 35-36, Sector-I, NOIDA
Uttar Pradesh

...Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Ltd,
5th Floor, Prakashgad
G-9, Prof Anant Kanekar Marg,
Bandra (East)
Mumbai-400051

2. Dadra & Nagar Haveli Power Distribution Company Ltd,
Opposite Secretariat
Amli, Silvassa-396230
Dadra & Nagar Haveli

3. Electricity Department,
Daman & Diu,
Plot No. 35, Somnath
Nani Daman-396210

4. Electricity Department,
Govt of Goa,
3rd Floor, Vidyut Bhawan,
Panaji, Goa

....Respondents

Parties present:

Shri Arshad Jilani, RGPPL

Shri Krishan Aggarwal, RGPPL

Shri Aditya Dewan, Advocate, MSEDCL

Shri Varun Pathak, MSEDCL

Ms. Swapna Seshadri, Advocate, DNHPDCL & ED, Daman



ORDER

This petition has been filed by the petitioner, RGPPL for revision of tariff in respect of Ratnagiri Power Station (1967.08MW) ('the generating station') for the period 2009-14 based on actual additional capital expenditure incurred during the period 2009-14 in terms of the clause (1) of Regulation 6 of the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations').

2. The petitioner, a joint venture company of NTPC Ltd, GAIL, MSEB Holding Company and ICICI, IDBI, SBI and Canara Bank and established as a special purpose vehicle, had taken over the generating station from Dabhol Power Company. The power project of the petitioner is an inter-state generating station having arrangement for sale of electricity in more than one State. Upto 95% capacity of the generating station has been allocated to the successor of MSEB viz, the Maharashtra State Electricity Distribution Company Ltd. (the respondent herein) and the balance 5% has been treated as unallocated power at the disposal of the Government of India. Presently, the Govt. of India has designated the allocation of power from the generating station for 3 months each to Goa, Daman, Dadra & Nagar Haveli and Madhya Pradesh. The generating station has been granted Mega Power Project status by the Ministry of Power, Govt. of India vide Notification No. F. No. C-436/2085-IPC dated March 14, 2006. The actual dates of commercial operation of the different blocks of the generating station are as under:

Blocks (Units)	Capacity (MW)	COD
Block – II	663.54	1.9.2007
Block – III	663.54	21.11.2007
Block – I	640	19.5.2009

3. The Commission vide order dated 18.8.2010 in Petition No.283/2009 had determined the tariff of the generating station for the period 2009-14 based on capital cost of ₹571296.15 lakh as on 1.4.2009. Accordingly, the capital cost and the annual fixed charges approved vide order dated 18.8.2010 is as under:

Capital Cost

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Opening Capital Cost	571296.15	873969.60	873969.60	874004.10	893214.10	897069.10
Add: Additional capital expenditure	0.00	0.00	35.00	19210.00	3855.00	2720.00



Closing Capital Cost	571296.15	873969.60	874004.10	893214.10	897069.10	899789.10
Average Capital Cost	571296.15	873969.60	873986.8	883609.10	895141.60	898429.10

Annual Fixed Charges

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Return on Equity	22172	30853	30854	31359	31963	32136
Interest on Loan	36851	58187	53979	50104	46402	42257
Depreciation	29595	45576	45577	46079	46680	46852
Interest on Working Capital	9322	13885	16328	18298	18213	18134
O&M Expenses	35048	51951	51951	51951	51951	51951
Total	132988	200452	198688	197790	195210	191329

4. Clause (1) of Regulation 6 of the 2009 Tariff Regulations provides as under:

"6. Truing up of Capital Expenditure and Tariff

(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.

Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff."

5. As stated, the petitioner has filed this petition for revision of tariff of generating station based on admitted capital cost as on 31.3.2009 and 19.5.2009 and the actual additional capital expenditure incurred for the years 2009-10, 2010-11, 2011-12, 2012-13 respectively. Accordingly, the capital cost and the annual fixed charges claimed by the petitioner in the petitions are as under:

Capital Cost

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Opening Capital Cost	571272.95	866341.26	866278.30	864919.66	863803.80	866654.54
Add: Additional capital expenditure	12.01	(-) 62.96	(-) 1358.64	(-) 1115.86	2850.74	12108.46
Closing Capital Cost	571284.96	866278.30	864919.66	863803.80	866654.54	878763.00
Average Capital Cost	571278.95	866309.78	865598.98	864361.73	865229.17	872708.77



Annual Fixed Charges

(₹ in lakh)

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Depreciation	3927.98	39470.60	45414.40	45459.14	45502.77	45900.80
Interest on Loan	4829.60	49756.73	52790.93	48043.53	43870.19	40169.45
Return on Equity	3114.86	28624.54	34167.19	34200.19	34283.05	35136.33
Interest on Working Capital	915.74	11600.20	16368.52	18301.83	18184.52	18133.47
O&M Expenses	4609.08	45118.73	51950.58	51950.58	51950.58	51950.58
Total	17397.25	174570.80	200691.63	197955.28	193791.11	191290.63

6. The petitioner has filed additional information in compliance with the directions of the Commission and has served copies of the same on the respondents. Reply to the petition has been filed by the respondents, MSEDCL, DNHPDCL and ED, Daman and the petitioner has filed its rejoinder to the same. Based on the submissions of the parties and the documents available on record, we proceed to examine the claim of the petitioner in the petitions above, on prudence check, as stated in the subsequent paragraphs.

Capital Cost

7. The last proviso to Regulation 7 of the 2009 Tariff Regulations, as amended on 21.6.2011, provides as under:

“Provided also that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 duly trued up by excluding un-discharged liability, if any, as on 1.4.2009 and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff.”

Capital Cost as on 1.4.2009 (Power Blocks-II & III)

8. The Commission vide order dated 18.8.2010 in Petition No. 283/2009 had approved the opening capital cost of ₹571296.15 lakh as on 1.4.2009 for Power Blocks-II & III. However, the petitioner has claimed capital cost of ₹571272.95 lakh as on 1.4.2009, based on Auditor certificate. The opening capital cost of Rs. ₹571272.95 lakh as on 1.4.2009 claimed by the petitioner is lesser than the admitted capital cost of ₹571296.15 lakh as on 1.4.2009 and has been worked out as under:

(₹ in lakh)	
Gross Block as on 1.4.2009	571317.10
Less: Obsolete assets included in above	21.95
Less: Un-discharged liabilities included in above	22.20
Capital cost claimed as on 1.4.2009	571272.95



9. Accordingly, the capital cost of ₹571272.95 lakh as claimed by the petitioner after accounting for obsolete assets and un-discharged liabilities has been considered for revision of tariff.

Capital Cost as on COD of generating station (19.5.2009) [Power Blocks –I, II & III]

10. The Commission vide order dated 18.8.2010 in Petition No. 283/2009 had approved the opening capital cost of ₹873969.60 lakh as on 19.5.2009 for the generating station (Power Blocks –I, II & III). However, the petitioner has claimed capital cost of ₹866341.26 lakh as on 19.5.2009, based on audited certificate (as per balance sheet for the year 2009-10). The capital cost worked out by the petitioner is as under:

	<i>(Rs. in lakh)</i>
Capital cost claimed as on 1.4.2009	571272.95
Additions as on 19.5.2009 due to capitalization of Power Block- I	296794.68
Additions from 1.4.2009 to 18.5.2009	12.01
Less : Liabilities	(-) 1738.39
Gross block as on 19.5.2009	866341.26

11. The opening capital cost of ₹866341.26 lakh as on 19.5.2009 claimed by the petitioner is less than the capital cost of ₹873969.60 lakh as on 19.5.2009 approved in Commission's order dated 18.8.2010. Accordingly, the capital cost of ₹866341.26 lakh as on 19.5.2009, as claimed by the petitioner has been considered for revision of tariff. The petitioner has claimed additional capital cost of ₹295056.30 lakh as on COD of Block-I as detailed under:

	<i>(₹in lakh)</i>
Gross Block as on COD of Block-I	868123.80
Less: Gross Block considered for capitalization upto 18.5.2009	571329.11
Gross Block addition as on COD of block-I	296794.69
Less: Un-discharged liabilities included above	1738.39
Gross Block addition as on COD of Block-I (on cash basis)	295056.30

12. As per Form-9A submitted by the petitioner, the gross block as on COD of block-I amounting to ₹868123.80 lakh includes IDC of ₹90234.11 lakh. Further, the additional capital cost of ₹296794.69 lakh as on COD of block-I includes IDC amounting to ₹48788.11 lakh. However, after rectification of minor corrections in the IDC calculations as submitted by the petitioner, the allowable IDC corresponding to the additional capital cost as on COD of block-I works out to ₹46811.32 lakh and consequently, the IDC admissible till the COD of station is ₹88257.32 lakh. Accordingly, IDC disallowed as on COD of block-I works out to ₹1976.79 lakh. In view of this, the admissible additional



capital cost as on COD of block-I works out to ₹293079.51 lakh as against the petitioner's claim for ₹295056.30 lakh.

Additional Capital Expenditure

13. Regulation 9 of the 2009 Tariff Regulations, as amended on 21.6.2011 and 31.12.2012 provides as under:

9“(1) The capital expenditure incurred or projected to be incurred, on following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the commission, subject to prudence check:

- (i) Un-discharged liabilities;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares within the original scope of work, subject to the provisions of regulation 8;*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
- (v) Change in law.*

Provided that the details of works included in the original scope of work along with original estimates of expenditure, un-discharged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.”

(2) The capital expenditure incurred or projected to be incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;*
- (ii) Change in law;*
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation; and*
- (v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:*

Provided that in respect sub-clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009.

(vi) In case of gas/liquid fuel based open/ combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 year of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.



Provided that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station.

(viii) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payments etc.

(ix) Expenditure on account of creation of infrastructure for supply of reliable power to rural households within a radius of five kilometres of the power station if, the generating company does not intend to meet such expenditure as part of its Corporate Social Responsibility.”

14. The break-up of the projected additional capital expenditure allowed by Commission's order dated 18.8.2010 in Petition No. 283/2009 is as under:

(₹ in lakh)					
2009-10	2010-11	2011-12	2012-13	2013-14	Total
0.00	34.50	19210.00	3855.00	2720.00	25819.50

15. The actual additional capital expenditure claimed by the petitioner for the period 2009-14 is detailed as under:

(₹ in lakh)							
Sl. No.	Package Name	2009-10	2010-11	2011-12	2012-13	2013-14	Total
1	Additional dwelling units for employees	0.00	0.00	0.00	0.00	0.00	0.00
2	Additional dwelling units for CISF	0.00	0.00	0.00	0.00	0.00	0.00
3	Plant boundary wall	0.00	0.00	0.00	0.00	0.00	0.00
4	Warehouse/Stores construction	0.00	0.00	0.00	0.00	0.00	0.00
5	WTP extension & O/H tank construction	0.00	0.00	0.00	30.49	0.00	30.49
6	CT overflow collection tanks and pumping arrangement	0.00	0.00	0.00	0.00	0.00	0.00
7	Chemistry lab building construction	0.00	0.00	0.00	0.00	0.00	0.00
8	Construction of 2 No. of check dams for rain water harvesting	0.00	0.00	0.00	0.00	0.00	0.00
9	Construction of workshop building and purchase of work shop machine	0.00	0.00	0.00	0.00	0.00	0.00
10	Construction of Entrance gate complex	0.00	0.00	0.00	0.00	0.00	0.00
11	Construction of additional office building	0.00	0.00	0.00	0.00	0.00	0.00
12	Permanent canteen building	0.00	0.00	0.00	0.00	0.00	0.00
13	Construction of drains & culverts inside plant & Township	0.00	0.00	0.00	0.00	0.00	0.00
14	Construction of Approach road to scrap yard, cooling towers, Salt water intake	0.00	0.00	0.00	0.00	0.00	0.00
15	Control room for Power Block	0.00	0.00	0.00	0.00	0.00	0.00
16	Construction of Service Building	0.00	0.00	0.00	0.00	0.00	0.00



17	Construction of Electrical & C&I Lab.	0.00	0.00	0.00	0.00	0.00	0.00
18	Training Centre building construction	0.00	0.00	0.00	0.00	0.00	0.00
19	Lift for Power Block	0.00	0.00	0.00	0.00	0.00	0.00
20	Crane & Lifting equipment	11.47	53.06	66.56	2.93	157.67	291.69
21	Electrical capital items	0.00	0.00	1016.76	301.09	2477.68	3795.53
22	Mechanical capital items	0.00	0.00	0.00	2212.78	9191.03	11403.80
23	Augmentation of Shiral P/H	0.00	0.00	0.00	0.00	0.00	0.00
24	Equipment for Pollution Control	0.00	39.51	0.00	194.83	39.33	273.66
25	Sub-Total(1to 24)	11.47	92.57	1083.32	2742.11	11865.70	15795.18
26	Interest capitalized after financial restructuring on reconciliation for PB-I,II &III	0.00	6470.27	0.00	0.00	0.00	6470.27
27	Prior period Bill adjustment in items capitalized on COD	28.50	0.00	0.00	300.00	0.00	28.50
A	Total (25 to 27)	40.27	6562.84	1083.32	2742.11	11865.70	22294.24
	New items claimed						
28	Furniture & other office equipments	4.32	32.80	99.73	64.65	27.43	228.93
29	EDP, WP machine, software & others	51.57	134.54	40.75	45.17	11.41	283.44
30	Building security / Vehicles sheds	9.80	20.55	6.43	0.00	0.00	36.78
31	Plant & machinery	0.00	56.29	216.44	121.16	212.85	606.74
32	Vehicles	0.00	2.49	0.00	0.00	0.00	2.49
B	Sub-Total (28 to 32)	65.69	246.67	363.35	230.98	251.69	1158.38
C	Total additional capital expenditure (A+B)	105.96	6809.51	1446.67	2973.09	12117.40	23452.61
	Items De-capitalised						
33	Furniture , Fixtures & office equipments	0.00	3.14	10.26	0.25	0.00	13.65
34	EDP, WP machine, communication Equipment, software & others	2.06	1.57	7.02	2.26	0.80	13.71
35	Building security / Vehicles sheds	2.50	0.00	0.02	0.00	0.00	2.52
36	Plant & machinery	1011.07	8569.04	2545.24	118.42	5.73	12249.50
37	Vehicles	0.00	0.00	0.00	0.00	9.43	9.43
38	Water Drainage & Sewerage System	0.00	0.00	0.00	1.42	0.00	1.42
D	Total De-capitalisation (33 to 38)	1015.63	8573.75	2562.54	122.35	15.96	12290.23
E	Total additional capital expenditure before discharges (C-D)	(-)909.67	(-)1764.24	(-)1115.86	2850.74	12101.44	11162.37
F	Discharges of liabilities	858.73	103.18	0.00	0.00	7.03	968.94
G	Reversal of liabilities	0.00	302.42	0.00	0.00	0.00	302.42
H	Net additional capital expenditure (E+F+G)	(-)50.94*	(-)1358.64	(-)1115.86	2850.74	12108.46	12433.74

16. It is noticed that the actual additional capital expenditure (excluding de-capitalization and discharges/ reversals) claimed for the period from 19.5.2009 to 31.3.2014 is ₹22294.00 lakh as against the additional capital expenditure of ₹25819.50 lakh allowed vide order dated 18.8.2010 in Petition No. 283/2019. The petitioner has further claimed additional capital expenditure amounting to ₹1158.38 lakh towards 'new assets' thereby resulting in the total additional capital expenditure of ₹23452.61 lakh. We proceed to examine the actual/projected additional capital expenditure claimed



by the petitioner for 2009-14, on prudence check, based on the submissions of the parties and the documents available on records, in the subsequent paragraphs.

17. The respondent, MSEDCL vide affidavit dated 3.3.2015 has submitted that MBOA assets like furniture, office equipments, EDP, WP and communication equipment may be disallowed. It has also submitted that the claim of the petitioner on new assets which were not claimed earlier may not be allowed on the ground of abandon assets and it was difficult to assess the expenditure.

18. The respondents, DNHPDCL and Daman & Diu in their reply affidavits dated 27.4.2015 and 14.5.2015 have submitted the following:

(a) Though the entire additional capital expenditure as claimed by the petitioner has been allowed vide order dated 18.8.2010, the petitioner had not incurred most of the additional capital expenditure allowed. Also, some of the additional capital expenditure incurred is much lesser than those allowed by the Commission. Hence, in terms of the decision of the Commission in order dated 1.8.2013 (tariff of Kawas GPS of NTPC) not to allow the additional capitalization which had earlier been allowed in tariff but not incurred by the generating company and upheld by the Appellate Tribunal for Electricity in its judgment dated 17.4.2014 in Appeal No.245/2013, the additional capitalization may be reduced from the capital cost of the generating station.

(b) Only the additional capitalization allowed on projected basis by the Commission in the original petition is required to be trued-up at the end of the tariff period and no new claims can be considered for capitalization.

(c) Regulations 9(1)(ii) and 9(2)(vi) of the 2009 Tariff Regulations are not applicable in respect of the additional capitalization claims made by the petitioner. The Commission in order dated 18.8.2010 had allowed additional capitalization of assets under Regulation 9(1)(ii) in exercise of its 'Power to relax' and no further relaxation can be made. Also, the claims under Regulation 9(2)(vi) cannot be permitted as the generating station has not completed 15 years of operation.

(d) The expenditure claimed by the petitioner for computers, AC, refrigerators etc., are in the nature of O&M expenses and is not permissible in terms of the proviso to Regulation 9(2) of the 2009 Tariff Regulations

19. In response, the petitioner in its rejoinder affidavit dated 8.6.2015 has submitted that only actual expenditure incurred during the period 2009-14 has been claimed in the petition and all details of the capital expenditure actually incurred has been submitted. It has also submitted that due to specific circumstances of the project, the Commission was pleased to exercise the power under Regulation 44 and allow additional capitalization in order dated 18.8.2010. It has further submitted that due to severe financial constraints, minimum capital addition was incurred to revive the abandoned assets and any assets having balance life were not replaced and capitalized. The petitioner has further submitted that during the period 2009-14, old equipment were put to test and on



failure or obsolescence observed, required replacement was done. It has also stated that old items have been de-capitalized, wherever applicable and in place of these new items were purchased, put to use and capitalized. The petitioner has argued that these items claimed are akin to items allowed under Regulation 9(2)(vi) of the 2009 Tariff Regulations. The petitioner has prayed that taking a holistic view of the project and the financial constraints, the Commission may exercise the Power to relax under Regulation 44 of the 2009 Tariff Regulations, if deemed necessary for approving the additional capital expenditure incurred on new items.

20. We have examined the matter. The Commission in its order dated 18.8.2010 had allowed the claims of the petitioner for additional capital expenditure for 2009-14 observing as under:

“40. The additional capital expenditure pertains mainly to the construction of office buildings, control room, workshop and boundary wall around the generating station and for the purchase of mandatory spares. The generating station does not have these office buildings and boundary walls, which generally forms part of the scope of the project for every power generating station. Moreover, the generating station does not have the stock of the mandatory spares, which is understandable keeping in view the circumstances under which the generating station was taken over and revived.

41. The date of commercial operation of the generating station is 19.5.2009. In terms of the above provisions of the regulations, additional capital expenditure could be allowed up to the cut-off date, which in the instant case would be the end of the year 2011-12. Out of the total claim of Rs.35 lakh for 2010-11 and Rs.19210 lakh for 2011-12, the petitioner has claimed an amount of Rs.14200 lakh on mandatory spares during 2011-12 which works out to about 1.62% of the capital cost of 873990 lakh. Also, an expenditure of Rs. 300 lakh has been proposed to be made on equipments for pollution control and the balance expenditure on civil works relating to construction of office building. In view of the above, the expenditure Rs. 35 lakh for 2010-11 and Rs. 19210 lakh for 2011-12 is allowed to be capitalized.

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43. It is noticed that the additional capital expenditure claimed after the cut-off date (ie. for 2012-13 and 2013-14) pertains to the construction of office building such as service building, electrical and C&I lab, control rooms for power blocks, workshop, construction of drain and culverts, and construction of boundary wall. These construction works which are carried out for the first time, could not be undertaken up due to paucity of funds and major emphasis on revival of gas turbines. These buildings, after construction, are essential for the smooth and successful operation of the generating station. However, expenditure under this head is not covered under Regulation 9(2) of 2009 Regulations. Therefore, in the light of historical background, we relax the provisions of Regulation 9(2) of the 2009 regulations by invoking our power under Regulation 44, and allow the additional capital expenditure claimed by the petitioner for the years 2012-13 and 2014-13, as these works, in our view, are essential for the smooth and successful operation the generating station. However, expenditure under this head is not covered under Regulation 9(2) of 2009 Regulations. Therefore, in the light of historical background, we relax the provisions of Regulation 9(2) of the 2009 regulations by invoking our power under Regulation 44, and allow the additional capital expenditure claimed by the petitioner for the years 2012-13 and 2014-13, as these works, in our view, are essential for the smooth and successful operation the generating station.”

21. In terms of the said order dated 18.8.2010, the Commission had relaxed the provisions of Regulation 9(2) of the 2009 Tariff Regulations and had allowed the capitalization of items after the



cut-off date of the generating station, i.e for the period 2012-13 and 2013-14, The respondents DNH & DD have referred to the order of the Commission, which has been confirmed by the APTEL and have submitted that the additional capitalization which had earlier been allowed in tariff but not incurred by the generating company may be reduced from the capital cost of the generating station. It has also submitted that only the additional capitalization allowed on projected basis by the Commission in the original petition is required to be trued-up at the end of the tariff period and no new claims can be considered for capitalization. We do not agree with the submissions of the respondent as the facts in the present case differ from the facts of the case in appeal. In the case of NTPC, the additional capital expenditure which was not actually incurred towards R&M package for the years 2009-10, 2010-11 and 2011-12 was proposed to be incurred from 2013-14 and completed by 2014-15. This was rejected by the Commission on truing-up exercising and the same was upheld by the Tribunal. However, in the present case, it is noticed that minimum capital addition had been incurred by the petitioner only for revival of the abandoned assets and assets having balance life had not been replaced. In this background and keeping in view the observations of the Tribunal that truing-up in terms of Regulation 6 of the 2009 Tariff Regulations should be based on actual expenditure incurred and not the proposed projections, the actual expenditure incurred by the petitioner in respect of assets which are essential for smooth and successful operation of the generating station has only been considered on truing-up on prudence check.

22. As stated, the petitioner has claimed actual additional capital expenditure of ₹22294.00 lakh as against the projected additional capital expenditure of ₹25819.50 lakh allowed by Commission's order dated 18.8.2010 in Petition No. 283/2009. The claim includes assets like mandatory spares for ₹15199.33 lakh (Electrical capital spares of ₹3795.53 lakh and Mechanical capital spares of ₹11403.80 lakh), Crane & Lifting equipment for ₹291.69 lakh, Equipment for Pollution control for ₹273.66 lakh and Water treatment plant extension for ₹30.49 lakh. Apart from this, the capitalization of ₹22294.00 lakh also includes an amount of ₹6470.27 lakh as Interest capitalized after financial restructuring on reconciliation for Power blocks-I, II & III and an amount of ₹28.50 lakh towards Prior period bill adjustment in items capitalized on COD.



23. The IDC of ₹6470.27 lakh actually corresponds to COD of the project which has been capitalized in 2010-11 based on reconciliation with the lenders. Accordingly, the same is allowed as additional capital expenditure in 2010-11. Also, the expenditure of ₹28.50 lakh in 2009-10 towards Prior period bill adjustment in respect of items capitalized as on COD of the generating station is allowed.

24. The Commission in its order dated 18.8.2010 had allowed the capitalization of Mandatory spares on Electrical and Mechanical items, amounting to ₹14200 lakh within the cut-off date (31.3.2012) of the generating station. The petitioner in this petition has claimed the capitalization of mandatory spares amounting to ₹14182.57 lakh for the years 2012-13 and 2013-14 i.e. after the cut-off date. It is observed that the Commission in its order dated 18.8.2010 had in exercise of its Power to relax under Regulation 44 of the 2009 Tariff Regulations, relaxed the provisions of Regulation 9(2) of the 2009 Tariff Regulations and allowed the additional capital expenditure claimed for the years 2012-13 and 2013-14, considering the fact that the said works are essential for the smooth and successful operation of the generating station. In view of this, we are inclined to allow the additional capital expenditure of ₹15199.33 lakh (₹1016.76 lakh in 2011-12 and ₹14182.57 in 2012-13 and in 2013-14) towards Mandatory spares (on Electrical and Mechanical items). Similarly, the additional expenditure of ₹291.69 lakh during 2009-14 (i.e before and after the cut-off date) towards Crane & Lifting equipment, ₹273.66 lakh during 2012-14 towards Equipment for Pollution control and ₹30.49 lakh in 2012-13 towards Water Treatment Plant is allowed to be capitalized after cut-off date.

New Claims

25. As stated, the petitioner has sought capitalization of expenditure in respect of new assets amounting to ₹1158.38 lakh during 2009-14 which include Furniture & Other office equipments, EDP, WP machine, Software & others, Building security / Vehicles sheds, Plant & machinery and vehicles. Out of this, the petitioner has capitalized an amount of ₹675.71 lakh towards Furniture & Other office equipments, EDP, WP machine, software & others, Building security / Vehicles sheds, Plant & machinery and Vehicles for the period from 19.5.2009 to 31.3.2012 i.e. within the cut-off date and the balance amount of ₹482.67 lakh has been claimed during the years 2012-13 and 2013-14 (i.e. after the cut-off date) of the generating station.



26. The respondents DNH & DD have submitted that only the additional capitalization allowed on projected basis by the Commission in the original petition is required to be trued-up at the end of the tariff period and no new claims can be considered for capitalization. The petitioner has submitted that all these works/assets are part of original scope of work which had got stranded for completion due to severe financial crisis arising out of non-availability of domestic gas and non-payment by the beneficiaries. The petitioner has further argued that these items claimed are akin to items allowed under Regulation 9(2)(vi) of the 2009 Tariff Regulations and accordingly taking a holistic view of the project and the financial constraints, the Commission may exercise the Power to relax under Regulation 44 of the 2009 Tariff Regulations, if deemed necessary, for approving the additional capital expenditure incurred on new items. We have examined the matter. It is noticed that old items have been de-capitalized by the petitioner, wherever applicable and in place of these, new items have been purchased, put to use and capitalized by the petitioner. Considering the fact that these new items have been put to use by the petitioner for which expenditure has been actually incurred and power made available to the respondents, we are inclined to consider the same for capitalization. Accordingly, the additional capital expenditure of ₹675.71 lakh incurred up to the cut-off date of the generating station has been allowed under Regulation 9 (1) (ii) of the 2009 Tariff Regulations.

27. Also, considering the historical background for revival of the project and keeping in view that the Commission in its order dated 18.8.2010 had allowed relaxation of the provisions of Regulation 9(2) for additional capitalization of items after the cut-off date of the generating station, we are inclined to permit the additional capitalization of the balance amount of ₹482.67 lakh during 2012-14 in respect of these assets after the cut-off date of the generating station. It is observed that the total actual additional capital expenditure, including expenditure on new assets works out to ₹23452.61 lakh which is lesser than the additional capital expenditure of ₹25819.50 lakh allowed by Commission's order dated 18.8.2010 in Petition No. 283/2009.

28. The reconciliation of the actual additional capital expenditure for the period 2009-14 with the books of accounts as submitted by the petitioner is as under:



(₹ in Lakh)							
		2009-10		2010-11	2011-12	2012-13	2013-14
		1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
1	Closing Gross Block of the year	571329.11	867354.77	865590.52	864474.66	867365.32	1194519.00
2	Opening Gross Block of the year	571317.10	868123.80	867354.77	865590.52	864474.66	867365.32
3	Additional Capitalization as per the books (1-2)	12.01	(-)769.03	(-)1764.24	(-)1115.86	2890.65	327153.68
4	Exclusions for Additional Capitalization as per the books of Accounts.	0.00	130.91	0.00	0.00	32.89	314743.65
5	Additional Capitalization claimed as allowed by Commission including liability(3-4)	12.01	(-)899.94	(-)1764.24	(-)1115.86	2857.77	12410.03
6	Un-discharged liability in Sr. no. 5	0.0	21.75	0.0	0.0	7.03	308.60
7	Additional capital Expenditure claim on cash basis (5-6)	12.01	(-)921.69	(-)1764.24	(-)1115.86	2850.74	12101.43
8	Add: Discharge of Un-discharged liability as per Form 9(F)	0.0	858.73	405.60	0.0	0.0	7.03
9	Additional Capital Expenditure Claim (7+8)	12.01	(-)62.96	(-)1358.64	(-)1115.86	2850.74	12108.46

Exclusions

29. The summary of exclusions from books of accounts claimed for the period 2009 under different heads for the purpose of tariff are examined in the subsequent paragraphs. The details of the exclusions are as under:

(₹ in lakh)							
	2009-10		2010-11	2011-12	2012-13	2013-14	Total
	(1.4.2009 to 18.5.2009)	(19.5.2009 to 31.3.2010)					
Expenditure towards LNG Terminal	0.00	130.91	0.00	0.00	32.89	314743.65	314907.45

30. The petitioner has excluded an amount of ₹130.91 lakh in 2009-10 on account of Fire tender, an amount of ₹32.89 lakh for Inergen Cylinder 200 Bar, Lube oil Heater for BOG Compressor and Remote Tower monitor at Jetty in 2012-13 and ₹314743.65 lakh in 2013-14. It is observed that the capitalization of these assets pertain to LNG Block. Accordingly, the exclusions are found in order and is allowed.

31. Based on the above discussions, the additional capital expenditure allowed is summarized as under:



(₹ in lakh)

	2009-10 (1.4.2009 to 18.5.2009)	2009-10 (19.5.2009 to 31.3.2010)	2010-11	2011-12	2012-13	2013-14	Total
Additional capital expenditure for approved items	12.01	93.94	6809.51	1446.67	2973.09	12117.39	23452.61
De-Capitalization	0.00	(-)1015.63	(-)8573.75	(-)2562.54	(-)122.35	(-)15.96	(-)12290.23
Total additional capital expenditure	12.01	(-)921.69	(-)1764.24	(-)1115.86	2850.74	12101.44	11162.37
Reversal of liability	0.00	0.00	302.42	0.00	0.00	0.00	302.42
Discharge of Liability	0.00	858.73	103.18	0.00	0.00	7.03	968.94
Total additional capital expenditure. Including liability discharged	12.01	(-)62.96	(-)1358.64	(-)1115.86	2850.73	12108.46	12433.74
Add : Exclusions not allowed	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total additional capital expenditure allowed	12.01	(-)62.96	(-)1358.64	(-)1115.86	2850.74	12108.46	12433.74

32. Accordingly, the capital cost allowed for the purpose of tariff is as under:

(₹ in lakh)

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Opening Capital Cost	571272.95	864364.47	864301.51	862942.87	861827.01	864677.75
Add: Additional capital expenditure	12.01	(-)62.96	(-)1358.64	(-)1115.86	2850.74	12108.46
Closing Capital Cost	571284.96	864301.51	862942.87	861827.01	864677.75	876786.21
Average Capital Cost	571278.95	864332.99	863622.19	862384.94	863252.38	870731.98

Debt-Equity

33. The petitioner has considered the debt-equity ratio of 70:30 for the purpose of tariff. The debt-equity ratio considered as on 1.4.2009 and 19.5.2009 in order dated 18.8.2010 in Petition No. 283/2009 was 77.80:22.20 and 79.80:20.20 respectively. This ratio was worked out and allowed considering the capital expenditure on accrual basis. However, considering the position of cumulative cash expenditure, the debt and equity as on various dates, the admissible debt-equity ratio works out to 77.75:22.25 as on 1.4.2009 and 79.63:20.37 for the period from 19.5.2009 to 31.3.2010 (including as on COD of Block-I) and 70:30 for the period from 1.4.2010 to 31.3.2014. This has been considered for the purpose of tariff.



Return on Equity

34. The petitioner had computed the return on equity considering the base rate of 15.5% and the MAT rate applicable for respective years of the tariff period. However, from the books of account submitted by the petitioner it is observed that no tax has been paid for the years 2009-10, 2012-13 and 2013-14. Accordingly, the return on equity has been accordingly been computed and allowed as under:

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2009				
Normative Equity - Opening	127117.16	176073.06	176060.23	175652.64	175317.88	176173.10
Addition due to Additional capital expenditure	2.67	(-)12.83	(-)407.59	(-)334.76	855.22	3632.54
Normative Equity – Closing	127119.84	176060.23	175652.64	175317.88	176173.10	179805.64
Normative Equity – Average	127118.50	176066.64	175856.43	175485.26	175745.49	177989.37
Base Rate for return on equity	15.500%	15.500%	15.500%	15.500%	15.500%	15.500%
Applicable Tax Rate	0.00%	0.00%	19.931%	20.008%	0.00%	0.00%
Rate of Return on Equity (Pre-tax)	15.500%	15.500%	19.358%	19.377%	15.500%	15.500%
Return on Equity	19703.37	27290.33	34042.29	34003.78	27240.55	27588.35

Interest on loan

35. Interest on loan has been worked out as under:

(a) The gross normative loan and cumulative repayment considered as on 1.4.2009 vide order dated 18.8.2010 was ₹444456.13 lakh and ₹43051.96 lakh respectively. However, on account of change in the debt-equity ratio, as on 1.4.2009, as stated above, the gross normative loan as on 1.4.2009 works out to ₹444155.79 lakh. The cumulative repayment of loan remains unchanged and the net normative loan as on 1.4.2009 works out to ₹401103.82 lakh.

(b) Depreciation allowed has been considered as repayments for the respective periods. Further, repayments of loan have been adjusted for de-capitalization considered during the tariff period.

(c) Weighted average rate of interest has been computed considering the details of actual loan portfolio till 31.3.2014 as submitted by the petitioner.

36. Necessary calculation for interest on loan is as under:

	2009-10		2010-11	2011-12	2012-13	2013-14
	(1.4.2009 to 18.5.2009)	(19.5.2009 to 31.3.2009)				
Gross normative loan - opening	444155.79	688291.41	688241.28	687290.23	686509.13	688504.65
Cumulative repayment of loan upto previous year / period	43051.96	46979.94	86337.34	131054.19	175990.05	221271.47
Net Loan Opening	401103.82	641311.47	601903.94	556236.04	510519.08	467233.17
Addition due to Additional capital	9.34	(-)50.13	(-)951.05	(-)781.10	1995.52	8475.92



expenditure						
Repayment of loan during the year / period	3927.98	39380.53	45310.69	45254.30	45303.05	45700.55
Less: Repayment adjustment on account of de-caps	0.00	23.14	593.84	318.43	21.63	3.66
Net Repayment	3927.98	39357.39	44716.85	44935.86	45281.42	45696.90
Net Loan Closing	397185.18	601903.94	556236.04	510519.08	467233.17	430012.20
Average Loan	399144.50	621607.71	579069.99	533377.56	488876.13	448622.69
Weighted Average Rate of Interest on Loan	8.859%	9.085%	9.046%	8.983%	8.960%	9.040%
Interest on Loan	35361.99	56472.65	52384.34	47914.11	43805.29	40557.51

Depreciation

37. The cumulative depreciation as on 31.3.2009 as considered in order dated 4.6.2009 was ₹43051.96 lakh, the same has been retained as on 1.4.2009. Further, the petitioner has claimed depreciation considering weighted average rate of depreciation of 5.23% for the period 2009-10 (1.4.2009 to 18.5.2009), 5.25% for the period 19.5.2009 to 31.3.2011 and 5.26% for the period 2011-14, respectively. However, considering the rates of depreciation as enclosed in the Appendix-III to the Regulation, 2009 the weighted average rate of depreciation works out to 5.2284% for the period 2009-10 (1.4.2009 to 18.05.2009), 5.2461% for the period 2009-10 (19.5.2009 to 31.3.2010), 5.2466% for the year 2010-11, 5.2476% for year 2011-12, 5.2479% for the year 2012-13 and 5.2485% for the year 2013-14, respectively, the same has been considered for the purpose of tariff calculation. Further, cumulative depreciation has been adjusted for de-capitalization considered during tariff period 2009-14. Necessary calculations in support of depreciation are as under:

	2009-10		2010-11	2011-12	2012-13	2013-14
	(1.4.2009 to 18.5.2009)	(19.5.2009 to 31.3.2009)				
Average capital cost	571278.95	864332.99	863622.19	862384.94	863252.38	870731.98
Freehold Land (included above)	29.91	29.91	29.91	29.91	29.91	29.91
Depreciable value @ 90%	514124.14	777872.77	777233.05	776119.53	776900.22	783631.86
Balance depreciable value	471072.17	730892.83	690895.72	645065.34	600910.17	562360.39
Depreciation (for the period)	3927.98	39380.53	45310.69	45254.30	45303.05	45700.55
Depreciation (annualized)	29868.99	45343.51	45310.69	45254.30	45303.05	45700.55
Cumulative depreciation at the end	46979.94	86360.47	131648.03	176308.49	221293.10	266972.03
Less: Cumulative depreciation adjustment on account of de-capitalization	0.00	23.14	593.84	318.43	21.63	3.66
Cumulative depreciation (at the end of the period)	46979.94	86337.34	131054.19	175990.05	221271.47	266968.37



Operational Norms

38. The following operational norms as allowed in order dated 18.8.2010 has been considered for the computation of Energy charge rate and fuel component in working capital in terms of the 2009 Tariff Regulations.

	Units	Norm
NAPAF for recovery of fixed charges		
2009-10	%	49.90
2010-11	%	66.72
2011-12 and onwards	%	80.00
Gross Station Heat	kCal / kWh	1850.00
Auxiliary Energy Consumption	%	3.00

O&M Expenses

39. O&M expenses (annualized) as considered in order dated 18.8.2010 in Petition No. 283/2009 as stated below has been considered.

		(₹ in lakh)			
2009-10		2010-11	2011-12	2012-13	2013-14
1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
35048.18	51950.58	51950.58	51950.58	51950.58	51950.58

Interest on Working Capital

Fuel Component

40. The fuel component in the working capital as considered in order dated 18.8.2010 is considered as under:

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Cost of Fuel for 1 month	13498.47	20008.26	26752.53	32165.26	32077.38	32077.38
Energy Charges for two months as receivables	26996.94	40016.53	53505.07	64330.52	64154.75	64154.75

41. **Liquid Fuel Oil:** As the petitioner has not used any liquid fuel in the generation of electricity, the cost of liquid fuel has been considered as 'nil'.

Maintenance Spares

42. The maintenance spares as considered in order dated 18.8.2010 is allowed as under:



(₹ in lakh)

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010				
Maintenance spares	10514.45	15585.17	15585.17	15585.17	15585.17	15585.17

Receivables

43. Receivables have been worked out as under on the basis of two months of fixed and variable charges. For this purpose the operational parameters and weighted average price of fuel as above has been considered.

(₹ in lakh)

	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010	2010-11	2011-12	2012-13	2013-14
Variable Charges - for two months	26996.94	40016.53	53505.07	64330.52	64154.75	64154.75
Fixed Charges – for two months	21537.90	32471.23	33340.53	32902.26	31055.28	30629.51
Total	48534.84	72487.75	86845.60	97232.78	95210.04	94784.27

O&M Expenses (1 month)

44. O&M expenses for one month as considered in order dated 18.8.2010 has been considered.

(₹ in lakh)

	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2010	2010-11	2011-12	2012-13	2013-14
	2920.68	4329.22	4329.22	4329.22	4329.22	4329.22

45. Clauses (3) and (4) of Regulation 18 of the 2009 regulations Under the 2004 regulations, the rate of interest on working capital shall be equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2009 or on 1st April of the year in which the generating station or a unit thereof is declared under commercial operation, whichever is later. Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken working capital loan from any outside agency. Accordingly, SBI PLR of 12.25% has been considered in the computation of the interest on working capital. The necessary computations in support of calculation of interest on working capital are as under:

(₹ in lakh)

	2009-10		2010-11	2011-12	2012-13	2013-14
	(1.4.2009 to 18.5.2009)	(19.5.2009 to 31.3.2009)				
Fuel Cost – 1 month	13498.47	20008.26	26752.53	32165.26	32077.38	32077.38
O&M expenses – 1 month	2920.68	4329.22	4329.22	4329.22	4329.22	4329.22
Maintenance Spares	10514.45	15585.17	15585.17	15585.17	15585.17	15585.17



Receivables – 2 months	48534.84	72487.75	86845.60	97232.78	95210.04	94784.27
Total Working Capital	75468.44	112410.41	133512.52	149312.43	147201.80	146776.03
Weighted Average Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%	12.25%
Interest on working capital	9244.88	13770.27	16355.28	18290.77	18032.22	17980.06

Annual Fixed Charges

46. The Annual Fixed Charges allowed for the generating station for the period 2009-14 is summarized as under:

	2009-10		2010-11	2011-12	2012-13	2013-14
	1.4.2009 to 18.5.2009	19.5.2009 to 31.3.2009				
Depreciation	29868.99	45343.51	45310.69	45254.30	45303.05	45700.55
Interest on Loan	35361.99	56472.65	52384.34	47914.11	43805.29	40557.51
Return on Equity	19703.37	27290.33	34042.29	34003.78	27240.55	27588.35
Interest on Working Capital	9244.88	13770.27	16355.28	18290.77	18032.22	17980.06
O&M Expenses	35048.18	51950.58	51950.58	51950.58	51950.58	51950.58
Total	129227.42	194827.36	200043.18	197413.55	186331.70	183777.07

Note: (1) All figures are on annualized basis. (2) All figures under each head have been rounded. The figure in total column in each year is also rounded. As such, the sum of individual items may not be equal to the arithmetic total of the column.

47. The Energy Charge Rate of 287.87 paisa/kWh as determined by order dated 18.8.2010 shall remain unchanged.

48. The difference in the annual fixed charges determined by order dated 18.8.2010 and those determined by this order shall be adjusted in accordance with Regulation 6 (6) of the 2009 Tariff Regulations.

49. Petition No. 258/GT/2014 is disposed of in terms of the above.

-Sd/-
(A.S. Bakshi)
Member

-Sd/-
(A. K. Singhal)
Member

