CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram

1. **Dr. Pramod Deo, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri R. Krishnamoorthy, Member**

Review Petition No. 22/2008
In Petition No.107/2006

In the matter of

Review of the order dated 13.12.2007 in Petition No. 107/2006-Approval of final tariff in respect of Dhauliganga Hydroelectric Project Stage-I (4x70MW) of National Hydroelectric Power Corporation Limited for the period from 1.10.2005 to 31.3.2009.

And in the matter of

National Hydroelectric Power Corporation Limited …….**Petitioner**

Vs

1. Punjab State Electricity Board, Patiala
2. Haryana Power Generation Corporation Ltd., Chandigarh
3. Delhi Transco Limited, New Delhi
4. Uttar Pradesh Power Corporation Limited, Lucknow
5. Jaipur Vidyut Vitaran Nigam Limited, Jaipur
6. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
7. Uttaranchal Power Corporation Limited, Dehradun
8. Jodhpur Vidyut Vitaran Nigam Limited, Jodhpur
9.. Himachal Pradesh State Electricity Board, Shimla
10. Ajmer Vidyut Vitaran Nigam Limited, Ajmer
11. Chief Engineer & Secretary, Engineering Deptt, UT of Chandigarh, Chandigarh
12. Power Development Department, J & K, Jammu …….. **Respondents**

The following were present

1. Shri R.N.Mishra, ED, NHPC
2. Shri Prashant Kaul, CE (Tariff), NHPC
3. Shri. Anjuman Ray, NHPC
4. Shri. D. Chakraborty, NHPC
5. Shri A.K. Sharma, JVVNL

ORDER
(DATE OF HEARING : 17.6.2008)

The application has been made by National Hydroelectric Power Corporation Ltd., (hereinafter referred to as "the applicant") for review of order dated 13.12.2007 in Petition No.107/2006 whereby the Commission approved tariff for Dhauliganga Hydroelectric Project (hereinafter referred to as "the generating station") for the period 1.10.2005 to 31.3.2009. The generating station comprises of four units. The first unit was commissioned on 1.10.2005 and the remaining three units on 1.11.2005. The applicant has raised the following issues for review:

(a) Consideration of depreciation as deemed normative repayment and its consequent effect on calculation of interest on loan and Advance Against Depreciation;

(b) Calculation of O&M expenses;

(c) Calculation of cost of maintenance spares as a component of working capital; and

(d) Recovery of filing fee of Rs.25 lakh and expenditure of Rs.2,14,848/- and Rs.2,97,214/- incurred on publication of notices in the newspapers.

2. The application was admitted by order dated 22.4.2008 when the applicant was directed to serve copy of the application, on the respondents, who were also asked to file their reply. The applicant by its affidavit verified on 9.5.2008 has confirmed service of copy the application on the respondents. It is noticed that Jaipur Vidyut Vitaran Nigam Ltd., Jodhpur Vidyut Vitaran Nigam Ltd. and Ajmer Vidyut Vitaran Nigam Ltd. have filed their replies to which the applicant has filed its rejoinder. Shri A.K. Sharma JVNNL, was present on behalf of the respondents at the hearing.

3. Under clause (f) of sub-section (1) of Section 94 of the Electricity Act, 2003, the Commission is vested with the same powers, as are vested in a Civil Court under the Code of Civil Procedure (the Code), inter alia, for reviewing its decision, directions and orders. Section 114 read with Order 47 of the Code lays down the detailed procedure for review. Under Rule 1, Order 47 of the Code, any person considering himself aggrieved by a decree or order may apply for review, subject to fulfillment of the following conditions, namely:

(a) From the discovery of new and important matter or evidence which was not within his knowledge or which, after the exercise of due diligence, could not be produced by him at the time the decree or order was passed; or

(b) On account of some mistake or error apparent on the face of record; or

(c) For any other sufficient reason.

4. The application is to be considered on the touchstone of the above provisions contained in the Code.

Consideration of Depreciation as Deemed Normative Repayment

5. While approving tariff by the order dated 13.12.2007, depreciation including Advance Against Depreciation during a year was deemed to be normative repayment of loan, since normative repayment was less than the depreciation and Advance Against Depreciation. The applicant has contested the methodology considered by the Commission, as being contrary to the provisions of the Central Electricity

Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 regulations"). According to the applicant, the 2004 regulations do not provide that in case of depreciation and Advance Against Depreciation exceed the normative repayment of loan during the year, depreciation and Advance Against Depreciation are to be considered as normative repayment of loan during that year. The applicant has contended that methodology considered by the Commission has resulted in complete distortion of computation of repayment of loan during a year and consequently interest thereon and computation of Advance Against Depreciation.

6. The question regarding treatment of depreciation when it exceeded repayment of loan in a year was considered by the Commission for the first time in its order dated 5.5.2006 in Petition No.162/2004 (NTPC Vs UPPCL and others) (Tariff for NCTPS Dadri for the period 2004-09), when it decided that the entire amount of depreciation (including Advance Against Depreciation) was to be considered as repayment of loan for tariff computation when it was more than the amount of repayment during the year. This approach was consistently followed by the Commission while approving tariff in respect of the transmission assets and the generating stations. In the case of generating stations owned by the applicant, this issue was considered by the Commission in its order dated 9.5.2006 in Petition No.197/2004 (NHPC Vs Punjab State Electricity Board and others) (Tariff for Salal Hydroelectric Project for the period 2004-09). The Commission examined the matter elaborately, in great detail. The relevant portion of the said order dated 9.5.2006 is extracted as under:

> "9. Before we attempt a detailed analysis of the matter, the relevant provisions of the 2004 regulations need to be taken note of. These regulations, *inter alia*, provide as under:

(a) In case any moratorium period is availed of by the generating company or the transmission licensee, depreciation provided for in the tariff during the years of moratorium is treated as repayment during those years and interest on loan capital is calculated accordingly.

(b) Depreciation is calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in the regulations.

The residual value of the asset is considered as 10% and depreciation is allowed up to maximum of 90% of the historical capital cost of the asset. Land is not a depreciable asset and its cost is excluded from the capital cost while computing 90% of the historical cost of the asset. The historical capital cost of the asset includes additional capitalization on account of Foreign Exchange Rate Variation up to 31.3.2004 already allowed by the Central Government/Commission.

(c) On repayment of entire loan the remaining depreciable value is to be spread over to the balance useful life of the asset.

(d) In addition to allowable depreciation, the generating company or the transmission licensee is entitled to Advance Against Depreciation, computed in the manner given hereunder:

AAD = Loan repayment amount as per regulation 38 (i) subject to a ceiling of $1/10^{th}$ of loan amount as per regulation 20 minus depreciation as per schedule

Advance Against Depreciation is permitted only if the cumulative repayment up to a particular year exceeds the cumulative depreciation up to that year and Advance Against Depreciation in a year is restricted to the extent of difference between cumulative repayment and cumulative depreciation up to that year.

10. From the above, it is to be seen that the 2004 regulations do not contain any express provision as regards the adjustment of depreciation against repayment of loan when it exceeds the amount of repayment in a year. Some of the State utilities in other petitions have in their replies argued that notwithstanding absence of any specific provision for adjustment of excess depreciation against the repayment of loan, the combined reading of the above-noted provisions of the 2004 regulations, leads to an inference that the excess depreciation has to be taken as repayment of loan.

11. In the first instance, we take notice of the historical background. Prior to 1992, the tariff in respect central power sector utilities was determined through the Power Purchase Agreements signed by such utilities with the State beneficiaries, as single part tariff. The Central Government constituted a Committee under the Chairmanship of Shri K.P. Rao, the then Member CEA to formulate principles and normative parameters for working out tariff for sale of power from NTPC and NHPC generating stations. The Committee in its report, *inter alia,* recommended two-part tariff and merit order operation of the power

plant. The Committee recommended that the loans would be progressively reduced to the extent these have been repaid as per repayment schedule and once the loans are totally repaid and reduced to zero, the tariff would not include any interest element and the equity element would remain constant up to that stage. It was further provided in the report that after the loans were reduced to zero, equity component would progressively be reduced to the extent of further depreciation and return on equity would be determined on the basis of the equity component as reduced from year to year. The Central Government vide Department of Power letter dated 5.7.1991 conveyed that the Committee's report should be adopted without any modification with effect from 1.4.1991. Incidentally, till that time there was no specific provision in law under which the Central Government could lay down norms for determination of tariff though as owner of the petitioner and NHPC, it could issue suitable guidelines to these utilities.

12. With effect from 15.10.1991 section 43A was introduced in the Electricity (Supply) Act, 1948, which enabled the Central Government and CEA to prescribe financial and operational norms respectively for determination of tariff. The newly added section 43A (2) also empowered the Central and State Governments to determine the terms, conditions and tariff for sale of electricity in respect of the generating companies wholly or partly owned by these Governments. Despite the fact that the Central Government had decided to adopt the report without any modification, the particular recommendation regarding reduction of equity was not given effect to either in the general notification dated 30.3.1992 issued under section 43A (2) of the Electricity (Supply) Act, 1948 or the project-specific notifications in respect of NTPC and NHPC generating stations. On the question of interest on loan it was provided in the notifications that interest on loan capital would be computed on the outstanding loans, including the schedule of repayment, as per the financial package approved by CEA. It was further provided that return on equity would be computed on the paid up and subscribed capital. Under the notifications, depreciation was recoverable in tariff based on the rates of depreciation notified by the Central Government from time to time.

13. The terms and conditions prescribed by the Central Government were continued up to 31.3.2001. With effect from 1.4.2001, the terms and conditions for determination of tariff as contained in the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 (the 2001 regulations) became applicable. The 2001 regulations provided that interest on loan capital would be computed on the outstanding loans, taking into account the schedule of repayment as per the financial package approved by CEA or an Appropriate Agency. It was provided that return on equity would be computed on the paid up and subscribed capital. It would thus be seen that as regards interest on loan and return on equity, the provisions of the notifications earlier issued by the Central Government were generally retained. However, certain changes were made as regards recovery of depreciation. In the 2001 regulations it was provided that the value base for the purpose of depreciation would be the historical cost of the asset and would be calculated annually as per straight line method at the specified rates. It was further provided that total depreciation during the life of the project would not exceed 90% of the

approved original cost and on repayment of loan, the remaining depreciable value would be spread over the balance useful life. A new concept of Advance Against Depreciation was made applicable to thermal power generating stations. According to this, Advance Against Depreciation was permitted in addition to allowable depreciation where originally scheduled loan repayment exceeded the depreciation allowable. Therefore, under the 2001 regulations for the first time, some linkage was established between depreciation and the repayment of loan. The Commission in its order dated 20.12.2000 gave the following reasons for allowing Advance Against Depreciation:

> "It is worthwhile to bring about uniformity in the method of charging depreciation across the entire electricity sector covering the thermal and hydro generation as well as transmission. This could be achieved either by providing further accelerated depreciation for hydro and transmission projects or by providing advance against depreciation for repayment of loans in the case of thermal and transmission projects as well. Along with extending advance against depreciation, it is appropriate that the depreciation rates would then have to be linked to the fair life of the various assets. Thus, depreciation rates which were prevailing before 1992 could broadly become the relevant rates subject of course to any revision in estimation of useful life of the asset which was done in 1992 and 1994. This would smoothen out the tariff, reduce tariff shocks due to excessive front loading of tariff, bring uniformity of depreciation rates across various utilities etc. As far as the utilities are concerned, their debt service obligations are to be fully met subject to application of test of prudence with regard to the duration of loan which has been recognised as 12 years in the case of existing hydro stations. The utilities would also do well to manage their finance by resorting to refinancing etc by which they can create opportunities for optimising their financing cost and reduce interest burden, which shall accrue to them exclusively.
>
> We do recognise that the above may result in some reduction in the cash flow to utilities which are presently using accelerated depreciation. <u>However, no utility shall suffer on account of lack of funds for repayment of loans as the concept of advance against depreciation is a flexible measure.</u> It should be ensured that once the loans are repaid the depreciation rates are readjusted to spread the balance depreciable value over the balance life of the assets."

14. The terms and conditions as contained in the 2001 regulations were valid up to 31.3.2004. Therefore, the Commission undertook an exercise for formulation of terms and conditions for determination of tariff applicable from 1.4.2004. In the first instance, the Commission had invited views of the stakeholders and other interested persons on the 2001 regulations. In response, a suggestion was made that the loan repayment should match the depreciation because in some cases loan repayment could start later due to moratorium period. It was also suggested that the provision for Advance Against Depreciation should be omitted or it should be provided only when the cumulative depreciation allowable is less than the original scheduled loan

repayment on cumulative basis. The State utilities had also raised the issue of reduction of equity corresponding to recovery of depreciation after the loan is fully repaid, as recommended by the K.P. Rao Committee. These aspects were deliberated in the Discussion Paper on terms and conditions of tariff circulated by the Commission in June 2003. On further consideration of the responses received on the Discussion Paper, the Commission formulated draft regulations on the terms and conditions of tariff applicable from 1.4.2004, elaborately dealing with the genesis for the provisions made therein. The draft regulations provided that interest on loan capital would be computed duly taking into account the schedule of repayment and actual interest rate. It was provided that in case of the existing projects, the normative loan outstanding would be considered as the opening loan and the repayment would be worked out on normative basis. On the question of return on equity, the suggestion made by the State utilities for its reduction corresponding to depreciation recovered was not incorporated in the draft regulations. As regards depreciation and Advance Against Depreciation, the provisions made in the 2001 regulations were generally retained in the draft regulations.

15. The suggestions and objections received on the draft regulations were considered by the Commission in its order dated 29.3.2004. In response to the draft regulations, the State utilities had pleaded that in the past, central power sector utilities contracted loans with a moratorium period extending beyond the date of commercial operation and in all such cases the interest on loan was passed on to the beneficiaries without considering any repayment during the moratorium period. This issue was considered threadbare and the Commission decided that in case any moratorium period is availed of by the central power sector utilities, the repayment during such period should be reckoned as depreciation provided in tariff during that year and the interest on loan would be calculated accordingly. The relevant extract from the order is placed below:-

> "89. We have also applied our mind to the issue of moratorium period after the commercial operation date. The effect of moratorium period is to increase the liability on account of interest on loan. In case the loan is repaid from the date of commercial operation, the interest liability would be going down on a year to year basis. We are, therefore, of the view that the moratorium period only benefits the central power sector utilities at the cost of the beneficiaries. We are keen to correct this situation and accordingly we have decided that in case any moratorium period is availed of by the central power sector utilities, the depreciation shall be reckoned as repayment during such moratorium period and the interest on loan shall be calculated accordingly. This arrangement is equitable to both i.e. the central power sector utilities and the beneficiaries inasmuch as the central power sector utilities would have sufficient cash flows during the moratorium period of loans, while the beneficiaries would get the benefit of reduction in the interest."

16. The above decision of the Commission has been notified in the 2004 regulations, as given at para 9 (a) above. In this manner, the 2004 regulations moved towards further strengthening the bond between depreciation and loan

repayment and this has brought material change in the position on the nexus between the two.

17. It would, however, be seen that when the terms and conditions for determination of tariff applicable from 1.4.2004 were being formulated, the issue was raised on behalf of the State beneficiaries to co-relate depreciation with repayment of loan so that depreciation recovered should be treated as repayment in case of loans with moratorium period. The issue of adjusting excess depreciation against repayment of loan generally was not raised or considered or decided.

18. The argument for adjusting excess amount of depreciation against repayment of loan is that the 2004 regulations provide for considering depreciation against repayment of loan where there is a moratorium period. The 2004 regulations also provide for Advance Against Depreciation where depreciation is less than the amount of repayment, (subject to $1/10^{th}$ of the gross loan) to provide for cash flow to facilitate repayment. It has been urged that though the 2004 regulations are silent on the question of adjustment of depreciation, when depreciation exceeds repayment amount, provision has to be read into these regulations by implication, that being a situation in between the two positions expressly covered. It is also urged that unless the provision is so implied, the central power sector utilities, by not repaying the loans or contracting loans with longer tenor, be able to recover depreciation at accelerated rates, since so long as loan is outstanding, and is not fully paid, depreciation is recoverable in tariff based on the depreciation rates specified by the Commission and after entire repayment of loan, the amount of depreciation each year gets considerably reduced, because in such case, balance recoverable depreciation is spread over the balance useful life of the asset, in accordance with para 9 (c) above.

19. There is a well known principle of statutory interpretation called "*exressio unius est exclusio alterius*" which means that express enactment shuts the door to further implication. This has been interpreted to mean that where an expressly prescribed one or more particular modes of dealing with property are provided, such expression always excludes any other mode, except as specifically authorised. It has, however, been held that for application of the principle it is not enough that the express and the tacit are incongruous; it must be clear that they cannot be reasonably be intended to co-exist. The courts have observed that the rule has to be applied with great caution for it is neither conclusive nor of universal application. The Hon'ble Supreme Court in Asstt Collector of Central Excise Vs National Tobacco Co. [(1972) 2 SCC 560] observed that the rule, is often a valuable servant, but a dangerous master and further held that the rule is subservient to the basic principle that courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than the one that may defeat them. Maxwell on Interpretation of Statutes (12^{th} Edition – Page 296) has stated that "the maxim ought not be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency and injustice".

20. The strict application of the principle will lead to the conclusion that when depreciation recovered exceeds the amount of repayment, the excess amount cannot be considered as repayment since the express provisions in the 2004 regulations are made for other purposes, and not for this purpose.

21. But, such an interpretation will appear to be inconsistent with the other provisions of the 2004 regulations and will do injustice to the State beneficiaries. The 2004 regulations provide that whenever the repayment amount exceeds the depreciation recovered, excess amount is to be allowed as Advance Against Depreciation. The converse of it should also be taken as true, which would mean that where depreciation exceeds the actual repayment, the excess amount is taken as repayment of loan; otherwise the State beneficiaries will be put to hardship and will be subjected to injustice. It is also to be noted that under the 2004 regulations when there is no actual repayment, (as during the moratorium period) the depreciation recovered is adjusted against loan repayment. Non-adjustment of depreciation against repayment of loan where depreciation is more will lead to illogical results. For example, where amount of repayment is only nominal, depreciation is not adjusted against repayment of loan, but when repayment is 'nil', depreciation is considered as repayment of loan. This interpretation may afford opportunity to the central power sector utilities for maneuvering their affairs in such a manner that they contract loans in such a manner that the loan repayments, howsoever small in amount, always remain outstanding. This cannot be the intention of the 2004 regulations which were based on equitable considerations, as extracted at para 14 above. Thus, rigid observance of the maxim *"expressio unius est exclusio alterius"* in this case would lead to a wholly irrational situation, make other provisions of the 2004 regulations inconsistent and absurd, and result in injustice. Therefore, strict interpretation of the 2004 regulations based on the rule should not be permitted. It was an omission not to consider the matter in the context of the issue presently before us. The conclusion, therefore, is that when depreciation recovered in a year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation. This interpretation will coexist with the specific provisions of the 2004 regulations, adverted to at para 8 above, and will be in consonance with the intent and object the provision of these regulations which lays down that in case of moratorium, deprecation will be considered as repayment of loan.

22. Similar approach has been adopted by the Commission, while approving tariff in respect the generating stations owned by NTPC and of the transmission assets of PGCIL, and in the interest of consistency and continuity of approach same methodology needs to be followed in case of the petitioner also."

7. The approach decided in Petition No.197/2004 has been taken forward and applied in the order dated 13.12.2007 in Petition No.107/2006, while allowing tariff for the generating station. Thus, there is no case for review of the order dated

13.12.2007 for the reason that the methodology has been followed consistently through a conscious decision of the Commission, after taking note of the provisions of the 2004 regulations. In our considered view, this cannot be said to be a case error apparent, of fact or law, on the face of record.

8. It bears notice that NTPC in whose case the methodology was devised for the first time filed appeals before the Appellate Tribunal for Electricity questioning, *inter alia*, the methodology. The Appellate Tribunal in its judgment dated 13.6.2007 in Appeal No. 139/2006 and other appeals, set aside the methodology considered by the Commission as regards generating stations owned by NTPC. The Commission has filed appeals against the said judgment dated 13.6.2007 of Appellate Tribunal before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the first instance by its order dated 27.11.2007 in Civil Appeal No.5434/2007 stayed operation of the Appellate Tribunal's order. However, after NTPC gave an undertaking that it would not press for the issue based on the Appellate Tribunal's judgment dated 13.6.2007, the stay order was vacated by the Hon'ble Supreme Court on 10.12.2007. In substance, the position remains that the matter is presently sub-judice before the Hon'ble Supreme Court. When it was pointed out to the representative of the applicant, he did not press the issue. However, the decision on this issue is subject to final outcome of the appeals pending before the Hon'ble Supreme Court.

Calculation of O&M Expenses

9. In accordance with sub-clause (c) of clause (iv) of Regulation 38 of the 2004 regulations, O&M expenses in respect of the hydroelectric generating stations commissioned on or after 1.4.2004 are to be determined at 1.5% of the actual capital

cost admitted by the Commission in the year of commissioning and for the subsequent years, O&M expenses determined for the year of commissioning are to be annually escalated @ 4% per annum. Sub-clause (c) ibid is reproduced as under:

> "(c) In case of the hydro electric generating stations declared under commercial operation on or after 1.4.2004, the base operation and maintenance expenses shall be fixed at 1.5% of the actual capital cost as admitted by the Commission, in the year of commissioning and shall be subject to an annual escalation of 4% per annum for the subsequent years."

10. The Commission while approving tariff by order dated 13.12.2007 arrived at capital cost of Rs.163139.66 lakh as on the date of commercial operation. For the year 2005-06, O&M expenses were allowed @ 4% of this capital cost for the period of operation on pro rata basis. Further, while arriving at O&M expenses for the year 2006-07, the Commission considered pro rata escalation over O&M expenses allowed for the year 2005-06, though the applicant in its claim had escalated O&M expenses for the year 2005-06 @ 4% for full year. The applicant has submitted that in accordance with the relevant provisions of the 2004 regulations annual escalation @ 4% per annum is to be allowed for the years subsequent to the year of commercial operation and has argued that O&M expenses for the year 2006-07 could not be prorated. In support of its claim, the applicant has relied upon the definition of the term `year' given in the 2004 regulations and also the illustration given at Form 17 annexed to the 2004 regulations, specifying details of computation of O&M expenses. The utilities in the State of Rajasthan have supported the Commission's order.

11. The term "year" is defined in the 2004 regulations as the financial year. The 2004 regulations contain the following illustration as regards computation of O&M expenses for hydro generating stations:

"For example if the capital cost of the plant commissioned in 2000-01 is Rs 1000 crore then the base for 2003-04 is computed as follows:-

Base O&M for 2003-04= Rs. (0.015 x1000) x $(1.04)^3$ crore"

12. In the order dated 13.12.2007, the Commission in para 51 of the order observed as under:

"51. We observe that the petitioner has claimed the O&M expenses @ 1.5% of the admitted capital cost as on the date of commercial operation as per the Tariff Regulations 2004. However for the year 2006-07, the O&M expenses have been escalated @ 4% for the full year instead of considering pro rata escalation after completion of one year of DOCO. After considering pro rata escalation during 2006-07, the O&M expenses allowed for calculation of tariff for the tariff period are as under:

(Rs in lakh)

Period	1.10.2005 to 31.10.2005	1.11.2005 to 31.3.2006	2006-07	2007-08	2008-09
"O&M Expenses	51.48	1012.36	2487.59	2587.09	2690.58

13. It is thus seen that there has not been adequate discussion on the statutory provisions made in the 2004 regulations and their effect before arriving at the conclusion as per para 51, reproduced above. This prima facie, in our opinion, amounts to an error of law, apparent on the face of record. Therefore, we allow review of the order dated 13.12.2007 as regards computation of O&M expenses.

Calculation of cost of maintenance spares for working capital

14. Clause (v) of Regulation 38 of the 2004 regulations provides as under:

"(v) **Interest on Working Capital**

(a) Working Capital shall cover:

(i) Operation and Maintenance expenses for one month;

(ii) Maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation; and

(iii) Receivables equivalent to two months of fixed charges for sale of electricity, calculated on normative capacity index.

(b) Rate of interest on working capital shall be the short-term Prime Lending Rate of State Bank of India as on 1.4.2004 or on 1st April of the year in which the generating unit/station is declared under commercial operation, whichever is later. The 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."

15. In its claim for tariff, the applicant escalated maintenance spares for the year 2005-06 @ 6% for the full year, over 1% of the capital cost to arrive at cost of maintenance spares for the year 2006-07. The Commission, however, considered pro rata escalation of 6% for the year 2006-07 over the cost of maintenance spares considered for the year 2005-06. The applicant has contended that the methodology considered by the Commission is contrary to the 2004 regulations since, it is argued, these do not provide that annual escalation of 6% per annum is to be allowed on pro rata basis, for the year subsequent to the year of commercial operation.

16. We do not find this contention of the applicant as sufficient ground for review. "Annum" means a year, that is, a period of 365 or 366 days in a leap year. Therefore, per annum would naturally mean per year, that is, completion of cycle of 365 or 366 days, as the case may be (P.N. Chopra Vs Kuldip Raj Gupta AIR 1971 J&K 140). As per the provisions of clause (v) of Regulation 38 reproduced above, period of one year or 365 days was to be counted from the date of commercial operation of the generating station from the year of commercial operation. Accordingly, 6% escalation for the year 2006-07 was applicable only after completion of one year from 1.10.2005/1.11.2005. Therefore, cost of maintenance spares has been allowed on pro rata basis. This has been done strictly in accordance with the 2004 regulations. Therefore, the applicant's prayer for review on this ground is not maintainable.

Recovery of filing fee and expenditure of publication of notices

17. The applicant has claimed recovery of filing fee of Rs.25. lakh paid in Petition No.107/2006. In general, normative O&M expenses payable during the period 2004-09 have been arrived at based on the expenses for the previous years. Such expenses included filing fee paid during 2001-04, which was reimbursed. Therefore, the question of reimbursement of filing fee during 2004-09 is separately under consideration of the Commission in Petition No.129/2005 (suo motu). The decision arrived at in that case shall apply universally to all the generating stations, including those owned by the applicant. Therefore, at this point of time, we are not inclined to pass any order in regard to recovery of filing fee by the applicant. The applicant has also prayed for recovery of expenses incurred on publication of notices in the newspapers. The Commission has in the past allowed recovery of expenses incurred by the generating companies/transmission licensees on publication of notices in the newspapers. In Petition No.107/2006, while seeking approval for final tariff, the applicant incurred an expenditure of Rs.297214/- on this account. In keeping with the general policy of the Commission, we direct that this expenditure shall be recovered by the petitioner from the respondents in one instalment in the ratio Annual Fixed Charges payable by them for the year 2005-06 for the generating station. Because of oversight, this could not be considered in the order dated 13.12.2007. The applicant has also claimed recovery of an amount of Rs.214848/- under the same head, for publication of notices for provisional tariff for the generating station, the subject matter of Petition No.20/2005. The claim of the applicant is outside the scope of the present application, which arises out of order dated 13.12.2007 in Petition No.107/2006 and, therefore, is disallowed.

18. There are certain typographical errors in the said order dated 13.12.2007 and these are directed to be corrected as under:

(a) In sub-para (a) of Para 9 of the order dated 13.12.2007 the name of the generating station shall be read as “Dhauliganga Hydroelectric Project” instead of “Nathpa Jhakri Project”.

(b) In sub-para (e) of para 38 the words “transmission licensee” shall be read as “generating station”.

(c) Table given in para 61 of the order dated 13.12.2007 shall be substituted as under:

Month	Design Energy (MU)
April	56.08
May	91.26
June	144.33
July	208.32
August	208.32
September	160.00
October	94.40
November	52.48
December	31.69
January	31.62
February	25.89
March	30.30
Total	1134.69

19. Although the applicant has sought corrections in para 40 of the order dated 13.12.2007, we feel that no such correction is needed.

20. Petition No.107/2006 shall be set down for hearing on 4.9.2008 in terms of our decision at para 13 above.

21. With the above, the present application stands disposed of.

Sd/-	Sd/-	Sd/-
(R. KRISHNAMOORTHY)	**(BHANU BHUSHAN)**	**(DR. PRAMOD DEO)**
MEMBER	**MEMBER**	**CHAIRPERSON**

New Delhi dated the 28th July 2008